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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable B. Alex Hyman, Post-Conviction Relief Court Judge

Case No. 2020-CP-23-00737

Braxton L. Hare, #373172 Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable B. Alex Hyman’s order granting post-conviction relief filed on November 26, 2025. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRPC, which Judge Hyman denied by written order filed on November 26, 2025, and received on November 26, 2025. Copies of both orders are attached hereto.

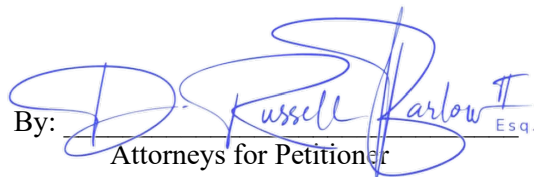
December 15, 2025

Respectfully submitted,

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Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Braxton Lavon Hare,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF **COMMON PLEAS**
THIRTEENTH JUDICIAL CIRCUIT
Case No.: **2020-CP-23-0737**

**ORDER GRANTING APPLICANT
POST-CONVICTION RELIEF**

ENTERED COMPUTER

FILED: 25NOV26AM9:46
COC JAY GRESHAM QUIL SC

This matter comes before the Court on the above-named Applicant's application for Post-Conviction Relief (PCR).¹ Applicant appeared before the Honorable B. Alex Hyman on May 13, 2024, for a hearing on the above-captioned PCR action.² Dayne Phillips represented the Applicant, and Assistant Attorney General Julianna Battenfield represented the Respondent. Applicant, forensic psychiatrist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

At the close of evidence and hearing arguments from counsel, the PCR Court requested that the parties submit proposed orders for his review and consideration. After reviewing the proposed orders from the parties and weighing the evidence presented at

¹ Applicant filed a separate application requesting Post-Conviction Relief (PCR) related to his subsequent conviction from a guilty plea to carjacking before the Honorable Edward W. Miller and received a concurrent twenty-year sentence. (Case No. 2020-CP-23-0736).

² The evidentiary hearing addressed both PCR actions, and this Court denied relief for the application resulting from the guilty plea conviction.

the hearing, this Court grants the PCR application requesting a new trial based on ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

PROCEDURAL HISTORY

On May 24, 2016, the Greenville County Grand Jury indicted Applicant for attempted murder, possession of a weapon during the commission of a violent crime, and failure to stop for a blue light. (2015-GS-23-9117–9118).

On July 12–13, 2017, Applicant and his Co-Defendant proceeded to a joint jury trial before the Honorable Edward W. Miller. Trial Counsel, Ernest Hamilton, represented Applicant, and Assistant Solicitors L. Mark Moyer and Brann W. Fowler prosecuted the case on behalf of the State.

After jury selection and opening statements, the Co-Defendant pleaded guilty to assault and battery of a high and aggravated nature (ABHAN). The Trial Court deferred sentencing for the Co-Defendant based on his testimony at Applicant's trial. At the conclusion of trial, the jury found Applicant guilty of the lesser-included offense of ABHAN and failure to stop for a blue light. Judge Miller sentenced Applicant to twenty years imprisonment for the ABHAN conviction and three years for the FSBL conviction.

On July 14, 2017, the State dismissed the charge for the possession of a weapon during the commission of a violent crime due to prosecutorial discretion.

On July 19, 2017, Trial counsel filed a timely notice of appeal. Appellate Defenders Robert M. Pachak and Taylor Davis Gilliam represented Applicant on the direct appeal. Senior Assistant Deputy Attorney General John Benjamin Aplin represented the State.

Appellate Defender Pachak filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Applicant did not file a *pro se* response.

On February 6, 2019, the South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. *State v. Hare*, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019) (per curiam). The Court of Appeals issued the Remittitur on February 26, 2019.

On February 5, 2020, Applicant filed an application requesting PCR. Respondent filed its Return on May 18, 2020.

On March 15, 2023, Applicant filed an amended application requesting PCR:

Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims); see also *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result". *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v.*

Lucey, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

EVIDENTIARY HEARING

On May 13, 2024, Applicant appeared before the Court for an evidentiary hearing. Dayne Phillips represented Applicant, and Julianna Battenfield represented the State. The following witnesses testified at the evidentiary hearing: Applicant, Forensic Psychologist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

BRAXTON HARE

Applicant testified that his attorney visited him five or six times while he was incarcerated. Applicant also testified that during these visits, Trial Counsel discussed the motion for discovery, the evidence discovered in the case, defense's theory of the case, and the plea offers made by the Solicitor's office. Applicant further testified that Trial Counsel did not discuss any additional motions or potential defenses with him prior to trial.

Specifically, Applicant stated that they did not discuss arguing a motion to sever the case between the co-defendants or between the indicted offenses. Applicant also stated that the decision to testify at trial was never discussed prior to trial and occurred while on a break during the trial. Applicant further noted that Trial Counsel never discussed the chance of being found guilty of a lesser included offense.

Additionally, Applicant testified that Trial Counsel never discussed presenting motions for continuance, mistrial, or recusal of the Judge after his Co-Defendant pled guilty. Applicant also stated that he never had any discussion with Trial Counsel about conceding guilt during opening statement and closing argument or presenting his cognitive deficits as mitigating factors. Applicant further explained that these decisions were made solely by Trial Counsel without his approval. Notably, Applicant testified that Trial Counsel did not discuss obtaining his school or medical records or seeking a mental health evaluation.

On cross-examination, the State questioned Applicant about rejecting the plea offers, his trial testimony, and the charge for failure to stop for a blue light. Applicant then testified on re-direct examination that Trial Counsel never discussed moving for severance of the failure to stop for a blue light charge.

ERNEST HAMILTON

Trial Counsel testified that he was retained for the indicted offenses of attempted murder and failure to stop for blue lights. Trial Counsel admitted that he did not consider moving to sever the attempted murder charge from the failure to stop for a blue light charge. Trial Counsel conceded that Applicant's Co-Defendant pled guilty after jury selection, the Trial Court held sentencing in abeyance based on the Co-Defendant's testimony, and the jury is informed that the Co-Defendant pled guilty to ABHAN. Trial Counsel further noted that the Co-Defendant pleading guilty "was a complete ambush" and that it was to Applicant's advantage because his testimony would be that Applicant did not intend to kill the victim (despite that he did not consider moving for a mistrial or recusal of the trial judge due to the Co-Defendant's deferred sentencing).

Trial Counsel acknowledged that if he had Dr. Maddox, he could have presented that mitigation evidence to the Trial Court and that it would have been advantageous for Applicant during sentencing. Trial Counsel also admitted that he never inquired into the background of Applicant; specifically, his intellectual deficits nor his prior criminal record (besides what was provided in discovery from the solicitor's office). Trial Counsel further admitted that he would have hired an expert to present mitigation evidence "knowing what I know now . . . but there was nothing to indicate that I needed to present that [evidence]" (despite conceding that he knew Applicant went to DJJ).

Trial Counsel testified that he prepared the trial, alongside Applicant, through discussions of the evidence and the state's ability to prove the differing legal issues. Trial Counsel stated he could not remember whether he apprised Applicant of whether he could be found guilty of a lesser included offense. Trial Counsel also admitted that he did not have a reason for his failure to submit proposed *voir dire* questions. Trial Counsel testified that he did not have a strategic reason for not joining the motion of the co-defendant's lawyer for the additional peremptory strikes.

Trial Counsel testified that in his opening statement he committed his client to testify—without Applicant's consent—and any invocation of his fifth amendment right to remain silent would be detrimental to his case.

Trial Counsel testified that he did not find the identification of his client, Applicant, to be an issue. Trial Counsel acknowledged that he stated that Applicant was essentially up to no good the morning of the incident because they were skipping school. Trial Counsel also acknowledged that he conceded Applicant's guilt for the FSBL charge because "[Applicant] was not trying to hide anything."

When asked about the victim's passenger side door—and the failure of the state to maintain a proper chain of custody—Trial Counsel testified that he had no justification for failing to object to its admissibility. Trial Counsel also testified that he had no justification for his failure to put the bench conferences between Counsel and the Trial Court on the record for error preservation on appellate review. Trial Counsel further stated that he stipulated the admission of the introduction of the car chase video because he could not formulate an objection against its admission into evidence.

Trial Counsel admitted that he did not have a strategic reason for failing to object to Jaquan Salter's testimony that he had previously seen Applicant with a gun. When questioned about his failure to object to improper opinion testimony regarding firing ballistic rounds into a sheet of metal, Trial Counsel stated that he had no strategic reason for his failure. Trial Counsel testified that he did not have a strategic reason for his failure to request for either a mistrial or curative instruction regarding the improper testimony referencing Applicant's bandana based on the Trial Court's previous ruling prohibiting references to gang involvement. Trial Counsel further conceded that there was not a specific strategic reason for the introduction of Applicant's prior juvenile record for strong-arm robbery and shoplifting and noted, "[t]hat may have been a misstep by counsel."

Trial Counsel testified that it was misleading and must have gone over his head when he failed to object when the Prosecutor argued reasonable doubt being similar to a loan offer from a bank during closing argument and argued that the jury could find Applicant guilty "after hesitating to act". Trial Counsel further acknowledged that he had no strategic reason for failing to object to the inferred malice charged based on use of a deadly weapon.

Trial Counsel acknowledged that he referenced Applicant as a troubled child and noted that he was of mix-race and not doing well in school during his closing argument. Trial Counsel admitted that his trial strategy was self-defense, and the Trial Court denied Counsel's request to charge the jury on self-defense. Trial Counsel also conceded that he had no reason for failing to request the *Logan* circumstantial evidence jury instruction.

Trial Counsel acknowledged that he could have used the expert testimony to assist in moving to suppress the Applicant's statements to police during a *Jackson v. Denno* hearing.

On cross-examination, Trial Counsel explained that there was evidence mitigating the road rage and that self-defense evidence was Applicant's perception of what he observed the victim to be doing. Trial Counsel also clarified that, during his opening statement, he said nothing good happened because they should have been in school. Trial Counsel testified that he had been practicing criminal law for forty years and had been a career prosecutor for twenty years. Trial Counsel further noted that he did not object to the testimony about the bandana.

MARK MOYER

Former solicitor Mark Moyer testified that he had the power to resolve the case, and that he turned over all evidence in a timely manner. Mr. Moyer also testified that there was a hearing where a judge ruled that the pre-trial identification was done constitutionally. He testified that the identification was done through six-person photo-lineup where the victim was able to identify the Applicant.

Mr. Moyer testified that he extended plea offers for ABHAN to both co-defendants before trial, and that Applicant rejected the plea offer. Mr. Moyer stated that he did not

move to qualify Darwin Shaw or Investigator Matt Owens as an expert because he believed that the testimony about the trajectory of the bullet from the defects in the car door was not opinion. Mr. Moyer also testified that he never received the Applicant's records from the DJJ that reflect his sub-80 IQ, intellectual deficit, or closed head injury. Mr. Moyer further stated that he did not remember Trial Counsel making an objection to the identification, and that he sent his plea offers in writing. Notably, Mr. Moyer acknowledged that the co-defendant pleaded guilty after the trial began.

TAYLOR GILLIAM

Taylor Gilliam testified virtually that he used to work at the Appellate Division of the South Carolina Commission on Indigent Defense and was assigned Applicant's case after Rob Pachak left that office. He testified that Mr. Pachak filed a short, one issue *Anders* brief about the specific intent to kill because the other potential issues were not preserved for review. Mr. Gilliam testified that had these meritorious issues been preserved, they could have been raised, and that, in his opinion, some of these issues were the kind that could have been reversed on appeal.

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LAW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). “First, an [Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, a Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic “[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.”

Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, “for the evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of ‘a reasonable probability . . . the factfinder would have had a reasonable doubt’ cannot possibly be met.” *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court heard the testimony presented at the evidentiary hearing, observed the witnesses, assessed their credibility, and weighed the testimony accordingly based on the evidence presented at the hearing. This Court also reviewed the Clerk of Court records, trial transcript, applications for post-conviction relief, and legal arguments made by the lawyers. Therefore, the relevant findings of fact and conclusions of law are set forth below as required by Section 17-27-80 of the South Carolina Code of Laws.

This Court finds that Trial Counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel’s deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692). Therefore, this Court has concluded that Trial Counsel provided ineffective assistance of counsel because “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); *See* U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and

14; S.C. Code § 17-27-20(A)(1), (4), and (6).

CONCLUSION

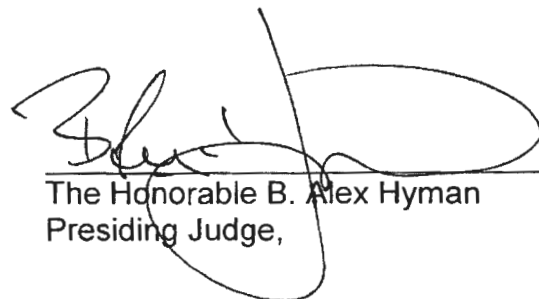
Based on the foregoing reasons, this Court finds and concludes Applicant has established constitutional violations and deprivations that would require post-conviction relief. This Court finds that Trial Counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. See *Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel's deficient performance prejudiced Petitioner because it "so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692).

Therefore, This Court has concluded that Trial Counsel provided ineffective assistance of counsel because "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); See U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

Accordingly, Applicant's convictions and sentences are vacated and remanded to the Greenville County Court of General Sessions for a new trial.

IT IS ORDERED that Applicant's application for PCR is hereby **GRANTED**.

IT IS SO ORDERED.


The Honorable B. Alex Hyman
Presiding Judge,

4/10, 2025

Conway, South Carolina.