

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

DRAKE CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001342

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

In the joint trial where severance was denied, did the PCR judge err in refusing to find trial counsel ineffective for failing to request a cautionary instruction in the judge's opening comments to the jury, before testimony, in addition to the instruction given at the end of the trial?

STATEMENT

In April of 2017, the Berkeley County Grand Jury indicted Petitioner, Drake Edward Campbell, for burglary first degree, two counts of armed robbery, murder, attempted murder, two counts of kidnapping and possession of a weapon during the commission of a violent crime, indictments #2017-GS-08-783 – 790. On August 27, 2018, Petitioner, with three other co-defendants, proceeded to jury trial before the Honorable Deadra Jefferson. Grant B. Smaldone represented Petitioner at trial. Bryan A. Alfaro and Wilton McNelly prosecuted the case. The jury found Petitioner not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder. The jury found Petitioner guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime.

The jury found the alleged triggerman, co-defendant Jacob Mouzon, guilty on all counts. The jury found Petitioner's brother and co-defendant, Kenneth Campbell, not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder but found him guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime, the same charges for which the jury returned verdicts of guilty for Petitioner. The jury found co-defendant Sherrod Palmer not guilty on all counts.

Judge Jefferson sentenced Petitioner to twenty (20) years concurrent for each of the armed robbery charges, twenty (20) years concurrent for each of the kidnapping charges and five (5) years concurrent for the weapon charge. (App. pp. 1354-1358). A timely notice of intent to appeal was served and the direct appeal perfected with a brief filed pursuant to Anders v. California, 386 U.S. 738 (1967). (App. pp. 1359-1373). On April 28, 2021, the South Carolina Court of Appeals dismissed the appeal. State v. Campbell, Op. No. 2021-UP-140 (S.C.Ct.App. Filed April 28, 2021).

On June 8, 2021, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 1376-1382). The State filed a return on October 8, 2021. (App. pp. 1383-1396). Petitioner filed an amended PCR application on March 1, 2024. (App. pp. 1397-1398). On September 9, 2024, an evidentiary hearing was held before the Honorable Michael G. Nettles. Denise G. Swope represented Petitioner. Danielle Dixon represented the State. In a written order filed June 5, 2025, Judge Nettles denied relief and dismissed the application. (App. pp. 1449-1460). A timely notice of intent to appeal was filed on July 7, 2025. This petition for writ of certiorari follows.

ARGUMENT

In the joint trial where severance was denied, the PCR judge erred in refusing to find trial counsel ineffective for failing to request a cautionary instruction in the judge's opening comments to the jury, before testimony, in addition to the instruction given at the end of the trial.

Petitioner was tried with three of his co-defendants, the alleged triggerman, Jacob Mouzon, Petitioner's brother, Kenneth Campbell, and Sherrod Palmer. Prior to trial Petitioner moved for severance. (App. pp. 50-69). The trial judge denied the motion. (App. p. 68, line 24 – p. 69, lines 1-4). In the judge's preliminary instructions, she failed to caution the jury about joint trials. (App. pp. 155-165). Trial counsel failed to request a preliminary cautionary instruction about joint trials and failed to object when the judge failed to give one. (App. p. 165, lines 18-19). Trial counsel's performance was deficient.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694,

104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

During the PCR hearing trial counsel admitted that he did not prepare cautionary instructions about a joint trial to be submitted to the judge and opined that the instruction given at the end of the trial was sufficient. (App. p. 1415, line 20 – p. 1416, 1417, lines 1-2). At the end of the PCR hearing the PCR judge said, “I find the instruction that was given at the conclusion of the case explained how the jury was to evaluate the evidence and the actual verdicts that were rendered seemed to indicate that they did treat each defendant separately and according to the evidence presented against them.” (App. p. 1446, lines 16-21).

In the order of dismissal the PCR judge wrote, “Likewise, Applicant has not pointed to caselaw at the time of Applicant’s trial that *required* a cautionary instruction to be given *prior* to testimony. Because the Standard of effectiveness under Strickland does not require attorneys to advocate for changes in the law, and because Applicant has not pointed to any law that indicates this instruction a cautionary instruction must be provided at the *start* of a joint trial, he did not meet his burden of proving deficiency related to counsel’s failure to request a cautionary instruction prior to trial.” (App. p. 1459). The PCR judge erred. Under an objective standard of reasonableness, trial counsel was deficient in failing to request a cautionary instruction about joint trials at the start of trial.

The order of dismissal cites State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999), and State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009). In both Dennis and Halcomb the Court found that the defendants were not entitled to severance. While neither case addresses the adequacy of the cautionary instruction, in Dennis the South Carolina Supreme Court wrote:

The trial judge, however, must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as

redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. State v. Holland, 261 S.C. at 494, 201 S.E.2d at 121.


Dennis, 337 S.C. at 281–82, 523 S.E.2d at 176.

Importantly, in Dennis, “The judge gave the jury cautionary instructions in his opening comments and at the end of the trial.” 337 S.C. at 281, 523 S.E.2d at 175. Based on Dennis, under an objective standard of reasonableness, trial counsel should have requested a cautionary instruction in the judge’s opening comments to the jury. The instruction given at the end of the case was not sufficient. While there is no case law to require the charge at both the start of the trial and the end of the trial, there is no case law prohibiting giving the cautionary at both times. Giving the charge at both times did not require trial counsel to advocate for a change of law, as referenced in the order of dismissal. The fact that the cautionary instruction was given both times in Dennis was a factor the Court considered in affirming the denial of severance.

Trial counsel was deficient in failing to request and then object when the judge failed to give a cautionary instruction at the start of the trial. Petitioner was prejudiced by the deficient performance. There is a reasonable probability that, but for the deficient performance, the result of the trial would have been different.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 2025.