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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Anderson County
Honorable Alexander S. Macaulay, Trial Judge
Honorable Perry H. Gravely, Post-Conviction Relief Judge

Appellate Case No. 2025-000263

Angela M. Vaughn, #313443,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Whether the post-conviction relief court properly determined that Petitioner was ineligible for parole under S.C. Code Ann. § 16-25-90, as she failed to meet the burden of proof required by a preponderance of the evidence where the statute and legislative intent clearly mandate that the Petitioner provide credible evidence demonstrating a history of criminal domestic violence and the post-conviction relief court found Petitioner not credible, and the evidence she presented was deemed unpersuasive thus, Petitioner did not fulfill the necessary criteria to qualify for parole under S.C. Code Ann. § 16-25-90?

STATEMENT OF THE CASE

Petitioner Angela M. Vaughn is presently confined in the South Carolina Department of Corrections. In March 2004, the Anderson County Grand Jury indicted Petitioner for Murder (2004-GS-04-0748) and Possession of a Firearm During the Commission of a Violent Crime (2004-GS-04-0749). On January 17-19, 2006, Petitioner proceeded to a jury trial before the Honorable Alexander S. Macaulay. Robert Gamble, Esquire (Trial Counsel), represented Petitioner. Solicitor Catherine Townsend Huey of the Tenth Circuit Solicitor's Office prosecuted the case. On January 19, 2006, Petitioner was found guilty as indicted. Judge Macaulay sentenced Petitioner to five (5) years' imprisonment for Possession of a Firearm During a Violent Crime and thirty (30) years' imprisonment for Murder, the sentences to run concurrently.

On March 12, 2008, Petitioner filed a timely Notice of Appeal. Michael Barcroft, Esquire, perfected Petitioner's appeal by filing an Anders¹ brief. The South Carolina Court of Appeals dismissed Petitioner's appeal. State v. Vaughn, Op. No. 2008-UP-167 (S.C. Ct. App. filed March 12, 2008). The Remittitur was returned to the circuit court on March 31, 2008.

FIRST PCR ACTION & SUBSEQUENT APPEAL: 2008-CP-04-02319

Petitioner filed her *first pro se* application for post-conviction relief on July 18, 2008, alleging she was being held in custody unlawfully based on: ineffective assistance of counsel, prosecutorial misconduct, and denial of due process. Petitioner sought relief in the form of a "complete vacation of all charges." An evidentiary hearing was convened on June 15, 2010, before the Honorable R. Lawton McIntosh. Assistant Attorney General Gregory P. Jones, Jr., represented the State. Petitioner was present and represented by PCR Counsel. On December 14, 2011, by written Order, Judge McIntosh denied and dismissed Petitioner's application with prejudice.

¹ Anders v. California, 386 U.S. 738 (1967).

On January 17, 2012, Petitioner timely filed a Notice of Appeal. Appellate Defender Susan B. Hackett of the Office of Appellate Defense filed Petitioner's Petition for Writ of Certiorari. On April 30, 2014, the Court of Appeals denied Petitioner's Petition for Writ of Certiorari. The Remittur was returned on May 27, 2014.

SECOND PCR ACTION: 2012-CP-04-0375

During the pendency of Petitioner's initial PCR appeal, Petitioner filed her *second* PCR application *pro se* on February 6, 2012. The State made its Return and Motion to Dismiss on July 26, 2013. On September 11, 2013, Judge McIntosh issued a Conditional Order of Dismissal. On March 24, 2016, Judge McIntosh dismissed the application by Form 4 Order due to Petitioner's failure to respond to the Conditional Order of Dismissal.

FEDERAL HABEAS CORPUS: 5:14-4758-DCN-KDW

On December 22, 2014, Clarence Rauch Wise, Esquire, filed a Petition for Writ of Habeas Corpus. Petitioner alleged ineffective assistance of trial counsel, PCR Counsel, and appellate counsel. On May 20, 2015, the Honorable Kaymani D. West, United States Magistrate Judge, issued the Report and Recommendation, recommending that the State's Motion for Summary Judgment be granted, and Petitioner's Petition be denied. On June 25, 2015, the Honorable David C. Norton, United States District Judge, issued the written order affirming the Report and Recommendation of the Magistrate Judge.

THIRD PCR ACTION: 2016-CP-04-00534

Petitioner filed her *third* application for post-conviction relief (PCR) on March 2, 2016. Respondent, the State of South Carolina, made its Return and Motion to Dismiss on September 18, 2017, seeking to summarily dismiss the action as untimely, successive, failure to state a cognizable claim, and barred by the doctrine of *laches*. On September 18, 2017, the Honorable

Judge J. Cordell Maddox, Jr., issued the Conditional Order of Dismissal, intending to dismiss this PCR application unless Petitioner provided factual or legal reasons why the application should not be dismissed in its entirety. On October 5, 2017, Petitioner filed a Return to the Conditional Order of Dismissal, stating legal and factual reasons why her application should not be dismissed. On January 6, 2021, the Honorable Eugene C. Griffith, Jr., denied Respondent's Motion to Dismiss the application and ordered an evidentiary hearing to determine Petitioner's eligibility for parole under S.C. Code Ann. § 16-25-90.

An evidentiary hearing was convened on February 28, 2023, at the Anderson County Courthouse before the Honorable Perry H. Gravely. Assistant Attorney General Taylor Smith represented Respondent. Petitioner was present and represented by Clarence Rauch Wise, Esquire. At the hearing, Petitioner proceeded forward on the sole claim permitted by the Order regarding her parole eligibility. Petitioner testified on her behalf and presented testimony from Cindy Speight (Speight), Mandy Reed (Reed), Marilyn Gilbert (Gilbert), Alicia Moser (Moser), and Caleb Hammonds (Hammonds). Respondent presented testimony from Mary C. McCormac, Esquire (PCR counsel).

On January 20, 2024, Judge Gravely filed an Order of Dismissal, denying Petitioner's application and finding that Petitioner failed to show by the preponderance of the evidence that Petitioner suffered a long-term history of domestic violence at the hands of the victim, Ronnie Grant. Petitioner filed a Rule 59(e), SCRPC, motion on February 12, 2024. Respondent filed a Return to [Petitioner's] Motion Pursuant to Rule 59(e), SCRPC on February 27, 2024. On January 14, 2025, Judge Gravely denied Petitioner's motion by filed order.

This appeal follows.

STATEMENT OF THE FACTS

On October 24, 2003, Petitioner shot and killed Ronald Lee Grant ²(Victim), her live-in boyfriend, because the Victim had planned to leave her. (App'x pp. 62-63). Deputy Karen E. Elrod and Deputy Raines Burns responded to a 911 call made by Petitioner from Highland Drive in Anderson County at 3:40 PM. (App'x pp. 65-66; St. Ex. 2). Deputy Elrod testified that when she stepped into the residence, she observed the Victim's body on the floor and a silver revolver near his body. (App'x p. 67). Deputy Elrod testified she restrained Petitioner, and Petitioner stated, "[Victim was grabbing for the gun, but I got it. I got to it faster. I'm not as drunk as he is, and I was faster. I ain't never done anything like this before." (App'x pp. 67-68). On cross-examination, the Petitioner indicated to Deputy Karen Elrod that she didn't mean to and that it was self-defense. (App'x p. 70).

Crime Scene Investigator Mark Coyle (Investigator Coyle) also responded to the scene, and he observed the Victim on the living room floor, face down in a pool of his blood, and a trail of blood leading from the couch to the Victim's body. (App'x p. 74-75). He observed no injuries on the Petitioner. (App'x p. 82). Investigator Coyle testified that, based on his investigation of the scene, the Victim had been sitting on the couch in the living room when he had been shot, based on the trail of blood on the Victim's pants and the trail of blood from the sofa to the Victim's body. (App'x pp. 83-84). Investigator Coyle testified he was present at the Victim's autopsy and used trajectory rods on the Victim's gunshot wounds to determine the directionality. (App'x pp. 96-97). Investigator Coyle testified that it was determined that the Victim was shot from a downward angle, the bullet moving from his right side to his left side. (App'x p. 99).

² The court noted that Victim is referred to simultaneously as "Ronnie" and "Mr. Grant" in both the PCR transcript and trial transcript and understood to be the same person.

Forensic pathologist Dr. Brett Woodard (Dr. Woodard) testified he performed the Victim's autopsy on October 25, 2003. (App'x p. 107). Dr. Woodard testified that, in his expert opinion and based on his findings, Victim was in a seated position when he was shot, and Victim was shot at a downward angle from behind. (App'x pp. 110-11). Dr. Woodard testified that based on the directionality of the bullet and the blood pattern, the Victim had likely been sitting on the couch when he was shot, abruptly stood after being shot, and then fell to the ground unsupported. (App'x pp. 114-16). Dr. Woodard testified that the Victim's blood would have projected in front of him if he had been shot while lunging for the gun and would have had very little blood on his person. (App'x p. 117).

Investigator Jeff Miles responded to the scene on Highland Drive on October 24, 2003. He testified he spoke with Petitioner about taking her statement and advised Petitioner of her Miranda³ rights at 4:36 PM and 7:06 PM. (App'x pp. 126-27; St. Ex. 23). He did not see any injuries on the Petitioner. Investigator Miles testified that Petitioner appeared level-headed and seemed to understand what was happening, although it also appeared she had been drinking. (App'x. 127 - 130). In her initial statement, Petitioner stated she picked Victim up from work around 7:00 AM the day of the shooting and took him to the liquor store around 1:00 PM. (App'x. 132; Ct. Ex. 2; St. Ex. 23-24).

Petitioner stated that she returned home and that she and Victim went into the bedroom separately; Victim remained in the bedroom longer than it made sense to her. (App'x p. 132). Petitioner stated that she entered the bedroom and that Victim began arguing with her. She noted the Victim reached for her gun, but she got the gun first. (App'x. pp. 132-33). Petitioner stated she faced the Victim in the living room, she saw the Victim raise his arm, and she shot him out of

³ Miranda v. Arizona, 384 U.S. 436 (1966).

reflex. (App'x p. 133). Investigator Miles testified that Petitioner stated she believed Victim was going to lunge at her, and she shot Victim out of fear. (App'x. p. 134).

On October 30, 2003, Petitioner gave a second statement to Investigator Miles. Investigator Miles testified that he again advised Petitioner of her rights before she gave her statement. (App'x pp. 136-38; Ct. Ex. 3; St. Ex. 25). In her second statement, Petitioner stated she met Victim at Walmart in August of 2001, and they had been living together for 23 months. (app'x p. 136). Petitioner stated that she picked up Victim, they drove her son to daycare, purchased items, including liquor, and then went home, where Victim poured them a drink. (App'x pp. 137-38). Petitioner stated that Victim commented that anything can be killed, and when she asked Victim what he meant by that, he did not respond. (App'x. p. 138). Petitioner stated she was getting ready to leave for work, but did not because the Victim accused her of lying and cheating on him, and she did not want to go to work after that. (App'x p. 139).

Petitioner stated that after she called out of work, it appeared that Victim had calmed down; however, he then went into the bathroom, and when he came out, his pupils were dilated, and he began arguing again. Petitioner stated that she then entered the bedroom and started folding clothes. She noted the Victim entered the bedroom, and they were both standing in front of the closet where the Petitioner kept her gun. (App'x. p. 139). Petitioner stated that while they were arguing, the Victim kept looking at the gun. She saw his right arm go up, and she grabbed the gun from the closet. Petitioner stated that the Victim had never threatened her with a gun before, and after she grabbed the gun, she went into the living room with the gun down by her side. She stated that the Victim's arm then went out, and she believed the Victim was going to twist her wrists and take the gun from her, so she just shot. Petitioner stated she was sure Victim was not sitting on the couch when she shot him. (App'x p. 140).

SHARON DAVENPORT TRIAL TESTIMONY

On direct examination at trial, Sharon Davenport (Devenport) testified that the Victim was her foreman and that the Victim worked with her at Experimental Fabrics. (App'x p. 158). Davenport testified she knew Petitioner through Victim. (App'x. p. 158). Davenport testified that Petitioner would bring Victim to work, and that Victim usually finished work at 3:00 PM. (App'x p. 158). In September 2003, when Petitioner picked up Victim, a few minutes after 3:00 PM, Victim was loading boxes, and "[Ppetitioner] was just hollering, Victim" and Victim motioned Petitioner to the front. (App'x p. 159). As the Victim approached the door to leave, Davenport stated she stopped because she heard Petitioner screaming. (App'x p. 160). Davenport testified Petitioner told Victim, "You'd better be proud you got your ass out here when you did because you don't want me to come in that place with my damn gun." (App'x p. 160). However, Davenport stated that she did not see Petitioner with a gun that day, nor did Petitioner wave a gun in the air. (App'x p. 160).

On redirect examination, Davenport explained that she and Victim worked together from October 2002 to September 2003. (App'x p. 162). Davenport testified that when Petitioner made the threat, Petitioner was with her son, Caleb. (App'x p. 163).

SHANNON SMITH TRIAL TESTIMONY

On direct examination at trial, Shannon Smith (Smith) testified that she worked with Petitioner at Walmart until Petitioner's termination. (App'x p. 165). Smith testified that she recalled that on October 16, 2003, she and her husband were at the jail in Anderson County, related to her husband's criminal domestic violence charge. (App'x p. 166). Smith explained that at some point, she ran into Petitioner and Victim. (App'x 166). Smith testified that after their husbands were called back, she and Petitioner spent the rest of the day talking. (App'x 167). Smith testified,

"We were all talking about...just joking around and talking about like killing our husbands."
(App'x p. 168).

Smith stated Petitioner told her, "[Victim] had never beat her, but that he would restrain her, and one time pushed her into a dresser." (App'x p. 168). She further testified Petitioner "said that next time she would kill [Victim] and that she would – she might try the rat poison." (App'x 168). Smith testified that Petitioner told her they had an argument and that Petitioner accused Victim of leaving to be with another woman. (App'x 168). Petitioner told Smith she believed Victim was cheating on her. Smith further testified Petitioner told her about "finding a blonde hair in [Petitioner's] car and that [Petitioner] thought [Victim] was sneaking out at nighttime." (App'x p. 160).

TESTIMONY OF VICTIM'S CO-WORKERS

At trial, David Sanders, Paul M. Sullivan, Bria D. Collins, and Christi R. Wilson all testified that they had a conversation with Victim in the break room, during which Victim stated that he planned to leave Petitioner. (App'x. pp. 175-187; 188-189; 190; 192).

DEFENSE'S CASE

The defense called the Petitioner's neighbor, Tammy Patterson. She claimed she saw an incident in early October. She stated that he saw the victim had the Petitioner by either the throat or shirt and almost hit her, appearing to have his arm drawn back. (App'x p. 249). She thought that when the Victim saw her, he shoved the Petitioner against the garbage. She also testified that she would hear frequent yelling from the house. (App'x. p. 250). She did not see what occurred before she observed the man threatening to hit the Petitioner. (App'x p. 251).

PETITIONER'S TRIAL TESTIMONY

Petitioner testified during the trial. She stated she had been living with the victim for almost two years. (App'x. p. 259). She noted that the victim began drinking about one-fifth of hard liquor each day, until she talked him into drinking beer. (App'x p. 260). She claimed the victim was on methamphetamine and got violent when he was on the drug. She claimed she could tell because his pupils were dilated. (App'x p. 260). She stated that she took him to the detention center on October 16 pursuant to a CDV warrant she had issued for his arrest. (App'x p. 261). While she was waiting for him, she spoke with Shannon Smith. She stated that after the October 16 bond hearing, the victim's demeanor changed. She stated that he appeared to be in deep thought, was very angry, and said he knew he would serve time for it. (App'x p. 262). Because he did not have a valid driver's license, she had to drive him to work while he was switching jobs. She said that the Victim had worked the third shift and that she had picked him up at seven in the morning. (App'x. p. 263). She said after she returned home and had her son get dressed for day care, they left and dropped him off. She said they drove around, eventually bought six large beers, then went together to a liquor store and bought 100-proof Wild Turkey. (App'x pp. 265-266).

She claimed they returned home at around 9:30 in the morning. She described the victim as being in a good mood. (App'x. p. 266). He had already consumed six large beers and began drinking Wild Turkey. He then started acting strangely. That afternoon (October 24th), we entered the bedroom as he was screaming and cussing at me. He would stop screaming and cussing briefly, but he would then start up again. He kept looking at my gun on the shelf. She saw him start to reach for the gun, but then she reached and got it to keep him from getting it. (App'x. p. 269). She recalled that they went into the living room, and she held the gun by her side, preventing the victim from taking it. The victim continued to yell and then stopped, only to start screaming again after

a brief break. (App'x. p. 269-270). She stated that he was arguing about the hours she had worked that day as a waitress at O'Charley's. While he was on the sofa, it appeared to her that he was coming towards her, "and that's when I raised it and shot because he had a pattern of twisting my arm." She said when she fired the shot that she was thinking of calling 911. She claimed that she was in fear of her life "because he was violent and I knew if he made it to twist my wrist, it would be me." (App'x p. 271).

She said it was possible that he was in a sitting position, but she claimed he was coming off the sofa when she shot him. (App'x. p. 271). She said she did not remember seeing him fall or dropping the gun. (App'x. pp. 271-272). She recalled calling 911. She claimed she did one shot of Wild Turkey and one 16-ounce beer.

On cross-examination, she acknowledged that her blood alcohol was around 10, but she only claimed to have drunk one beer and 2 ounces of Wild Turkey in her October 30, 2003, statement. She claimed at trial that the victim had used meth, but claimed she thought she had told the police that he had used meth, although it was not in her statement. The state questioned the Petitioner about the meth story at trial and suggested it came out of the fact that the victim's samples had not been tested for meth, which she denied. (App'x. p. 275).

She confirmed that in her first statement to law enforcement on October 24, 2003, she claimed that the victim entered the bedroom first, but now claimed she entered the bedroom to put up laundry and also see what was taking him so long. (App'x p. 277). However, she stated that she entered first in the October 30, 2003, statement. She confirmed, although he was looking up at her gun, that the victim had never pointed the gun at her. (App'x p. 278). She testified that they entered the living room, and she was wondering where to hide the weapon.

She denied that the CDV warrant for his arrest from October 5th was because he threatened to leave her or go to stay with his grandfather to get away from her. (App'x p. 279).

She claimed she did not call 911 while she thought he was reaching for the gun because there was no available phone in that room. She claimed he had torn up phones previously to keep her from calling the police, although she admitted she had called the law before. (App'x. p. 280).

She denied that the October 5th CDV charge was bogus, although she heard Shannon Smith's testimony saying that he had never beaten her. *Id.* She denied ever stating she would kill him the next time he tried to leave or mentioned rat poison, claiming it was another lady who mentioned it. (App'x p. 281).

She claimed on October 24th that she had thought the argument was over until he began to get off the couch, but did not call 911 because there was no phone between them. She claimed he had threatened to kill her that morning. However, she admitted that she had the gun in her hand while the victim was unarmed. She guessed that after the victim sat on the sofa, she still had the gun by her side for around five minutes. (App'x. p. 283). She feared he would attack her, grab her wrist, and get the gun and put it to her. (App'x p. 283).

She claimed she felt threatened that morning after they started drinking, and she did not go to work. She claimed that, for the first time in court, she heard that he intended to leave her that day. (App'x p. 275). She claimed he had a pattern of twisting her wrists and lunging toward her. She did not recall if he actually got off the sofa. She denied that she had threatened the victim with a gun before, as Sharon Davenport reported. (App'x p. 287). She also did not recall how he fell. She also denied the discussion with Shannon Smith about the victim leaving her. (App'x pp. 289-290).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). "In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the [circuit] court unless an abuse of discretion is shown." State v. Hawes, 411 S.C. 188, 190, 767 S.E.2d 707, 708 (2015) (quoting State v. Blackwell-Selim, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011)). "Pursuant to [section] 16-25-90, a person who is convicted of or pleads guilty to an offense against a household member is eligible for parole after serving one-fourth of his or her prison term if the person presents credible evidence of a history of criminal domestic violence ... suffered at the hands of the household member." Blackwell-Selim, 392 S.C. at 3, 707 S.E.2d at 428. "The appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit court's] ruling is supported by any evidence." Id. at 3, 707 S.E.2d at 427-28. "[M]ere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant must persuade the [circuit court] by presenting proof [that] leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence." Id. at 4, 707 S.E.2d at 428. "Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the [circuit] court's factual findings are supported by any evidence in the record.... [C]redibility determinations are entitled to great deference. State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) (citation omitted).

ARGUMENT

The post-conviction relief court properly determined that Petitioner was ineligible for parole under S.C. Code Ann. § 16-25-90, as she failed to meet the burden of proof required by a preponderance of the evidence where the statute and legislative intent clearly mandate that the Petitioner provide credible evidence demonstrating a history of criminal domestic violence and the post-conviction relief court found Petitioner not credible, and the evidence she presented was deemed unpersuasive thus, Petitioner did not fulfill the necessary criteria to qualify for parole under S.C. Code Ann. § 16-25-90.

On appeal, Petitioner argues that the post-conviction relief court applied the incorrect standard in finding that Petitioner failed to show entitlement to parole after serving one-fourth of their prison sentence under S.C. Code Ann. § 16-25-90. Specifically, Petitioner asserts that the statute requires Petitioner to present "credible evidence of a history of criminal domestic violence" and that they do not have to show long-term repeated abuse. However, Petitioner fails to support her contention that the post-conviction relief court committed an error of law, instead expressing her dissatisfaction with the manner in which the court weighed the evidence. Additionally, Petitioner ignores that the post-conviction relief court specifically found that "the [c]ourt does not believe that [Petitioner] has established 'credible evidence' of a history of criminal domestic violence," applying the standard prescribed by statute. (App'x p. 538-39). The post-conviction relief court clearly applied the correct standard according to the plain language of the statute and the legislative history and properly found that Petitioner failed to present credible evidence of a history of domestic violence after weighing the evidence presented and the entire record. Accordingly, this Court should deny certiorari.

Section 16-25-90 of the South Carolina Code states:

...an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction

proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

"In interpreting a statute, the Court's primary purpose is to ascertain and effectuate the actual intent of the legislature." State v. Grooms, 343 S.C. 248, 252, 540 S.E.2d 99, 101 (2000). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

In Grooms, the Court considered this statute, stating that "by enacting § 16-25-90, the legislature intended a defendant who presents credible evidence of a history of criminal domestic violence *at the hands of her victim*, as found by the trial judge, to be eligible for parole after service of one-fourth of her prison term." 343 S.C. at 253, 540 S.E.2d at 101 (emphasis added). Additionally, "[t]he legislative history of Section 16-25-90 indicates the statute was intended for victims of *long-term* and *repeated abuse* at the hands of a household member. See Act No. 7, 1995 S.C. Acts 58-59 (indicating that Section 16-25-90 was first enacted alongside the defense of battered spouse syndrome)." State v. Hawes, 411 S.C. 188, 767 S.E.2d 707, n.2 (2015) (emphasis added).

In State v. Blackwell-Selim, the Court noted that use of the term "credible evidence" indicates that the evidence must be trustworthy, not merely plausible, requiring the defendant to persuade the judge. 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). Also, "the legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility." Grooms, 343 S.C. at 253, 540 S.E.2d at 101. As the Court in Grooms noted, if the mere production of evidence of a history of criminal domestic violence automatically resulted in earlier parole eligibility, then any defendant who presented testimony that they suffered violence at the hands of

their victim would be eligible; instead, the defendant must prove their claims by presenting trustworthy evidence to the trial court. Id.

At the evidentiary hearing, Petitioner testified that she began living with Victim in 2001, and Victim became violent in March of 2002. (App'x p. 449). In October of 2003, Petitioner testified she filed a criminal domestic violence claim against Victim, and provided her voluntary statement to law enforcement, wherein she stated that she had an argument with Victim and he decided to leave, she attempted to reach into his pocket to grab some keys, and then Victim twisted her wrists and held her to the ground. (PCR Tr. pp. 450-51; App. Exh. 2 and 4). Applicant then testified that she continued to live with Victim after filing the complaint, and accompanied him to his bond hearing, where she asserts Victim "looked at [her] like he was going to kill [her]"; Petitioner continued to live with Victim after the bond hearing. (PCR Tr. pp. 455; 457-58). The post-conviction relief court noted that Petitioner did not testify to specific instances of violence, except the instance associated with the complaint, which took place close in time to the shooting, and her account of the shooting itself. (App'x p.543).

In addition to Petitioner's testimony, Petitioner presented testimony from Mandy Reed, Marilyn Gilbert, Alicia Moser, Caleb Hammonds, and Cindy Speight. (App'x pp. 470-73; 474-78; 480-84; 486-89; 426-30). The only witnesses who testified to actually observing Victim be violent with Petitioner, or observed marks or bruises on Petitioner, were her children, Moser and Hammond. Notably, Hammond was the only witness who testified to observing a specific instance of abuse; Hammond was four years old at the time.

Initially, Petitioner argues that the post-conviction relief court applied the incorrect standard in finding Petitioner failed to establish she was entitled to early parole under S.C. Code Ann. § 16-25-90; however, Petitioner wholly failed to support this assertion. Instead, Petitioner

complains of the manner in which the post-conviction relief court weighed the evidence, acknowledging that the legislative history provides that the statute was intended only for long-term victims of repeated abuse in connection with their offense. See Act No. 7, 1995 S.C. Acts 58–59.

In State v. Blackwell, Blackwell argued the trial court committed an error of law in determining that he was eligible for the death penalty, given the evidence "conclusively demonstrated" he was mentally retarded, citing all the evidence presented to the trial court to support his contention. 420 S.C. 127, 137, 801 S.E.2d 713, 718 (2017). However, as the Blackwell Court noted, while Blackwell suggested the trial court committed an error of law, he failed to identify any specific error and instead expressed his disagreement with the trial court's credibility determinations and the weight the trial court afforded the evidence. 420 S.C. at 140-41, 801 S.E.2d at 720.

Likewise, Petitioner has failed to identify any specific error and merely expresses disagreement with the weight the trial court afforded to the testimony and evidence Petitioner presented. However, the trial court is the "sole judge of credibility of the witnesses and their testimony," and Petitioner's self-assessment of the credibility of the evidence is not relevant or appropriate. See Id., citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998); Grooms, *supra* (Noting that the use of the term "credible evidence" indicates the defendant must persuade the judge).

In the case of Petitioner, the post-conviction relief court weighed the testimony and evidence presented at the evidentiary hearing alongside the testimony and evidence presented at the trial. Namely, the post-conviction relief court considered the testimony of several witnesses

regarding the Victim and Petitioner's relationship, including Sharon Davenport⁴ and Shannon Smith⁵. (App'x pp. 541-42; Trial Tr. pp. 156-160, 166-173). Notably, the post-conviction relief court considered Petitioner's incredulous account of the shooting, which she continues to hold to, considering the evidence that clearly discounts her version of events. (App'x pp. 542-43, 544). The forensic evidence clearly indicated that the Victim was sitting when he was shot, the shot came from above him, and he was not oriented toward the gun when shot. (App'x p. 544; Trial Tr. pp. 108-17). Further, as noted *supra*, the post-conviction relief court found that the only witnesses who testified to specific instances of abuse or observing injuries to Petitioner were her children—one of whom was four years old at the time—and Petitioner did not provide any evidence to counter the testimony at trial of the statements she made threatening Victim and that she fabricated the abuse. (App'x p. 543).

Petitioner's claim that the post-conviction relief court applied the incorrect standard is baseless, as Petitioner failed to provide the specific error of law that the post-conviction relief court committed, instead expressing her dissatisfaction with the weight afforded to the evidence she presented. Additionally, Petitioner argued that the terms "history" and "long-term" should be defined as "Verbal and physical abuse suffered more than a year." (PWC p. 10). However, even assuming *arguendo* that Petitioner's interpretation was the standard, it would not affect the post-conviction relief court's findings. The post-conviction relief court expressed uncertainty concerning who the primary aggressor was, considering the evidence presented at trial, the lack of

⁴ Davenport testified that in September 2003, she witnessed Petitioner threaten to come after Victim with "[her] damn gun" when Petitioner came by his work to pick him up. (Trial Tr. p. 160, ll. 16-19).

⁵ Smith testified that in October 2003, Petitioner told Smith that after an argument, Victim decided to leave, and she accused him of cheating, and she reached for his pocket because she thought he had her keys. When she reached for his pocket, Victim grabbed her arm and restrained her, and Petitioner kicked him. After that, the Victim left. (Trial Tr. p. 166).

a documented history showing abuse, and Applicant's own statements denying abuse. Notably, it was presented at trial that the narrative of abuse was circulated by Petitioner close in time to the shooting, and that Petitioner was concerned that Victim was leaving her. Further, the post-conviction relief court noted the suspicious lack of testimony regarding observed instances of abuse and the self-serving and biased testimony presented. Lastly, the post-conviction relief court noted Petitioner's insistence on holding to her narrative of the shooting that was unsupported by the forensic evidence, negatively affecting Petitioner's credibility. Therefore, the post-conviction relief court weighed the evidence carefully and determined that Petitioner failed to provide trustworthy evidence to establish she was entitled to relief pursuant to S.C. Code Ann. § 16-25-90, and that trial counsel was not ineffective for failing to request relief under the statute.

For the foregoing reasons, this Court should deny certiorari.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

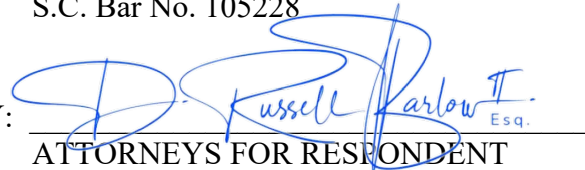
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