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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2025-001342

DRAKE CAMPBELL,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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PETITIONER'S ISSUE ON PETITION FOR CERTIORARI

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 trial?

COUNTERSTATEMENT OF ISSUE ON PETITION FOR CERTIORARI

Whether the post-conviction relief court properly determined Petitioner failed to establish Trial Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on the alleged failure to request a pretrial instruction on joint trials, in addition to the instruction given at the end of trial when there is no requirement to do so and no reasonable probability the outcome of trial would have been different?

STATEMENT OF THE CASE

In April 2017, the Berkeley County Grand Jury indicted Petitioner for murder (2017-GS-08-00785), attempted murder (-00787), two counts of kidnapping (-00788, -00789), two counts of armed robbery (-00786, -00783), first-degree burglary (-00784), and possession of a weapon during the commission of a violent crime (-00790).

On August 27-31, 2018, Petitioner and three of his co-defendants proceeded to a jury trial before the Honorable Deadra L. Jefferson. Grant B. Smaldone, Esquire, represented Petitioner, and Assistant Solicitors Bryan Alfaro and Wilson McNeely prosecuted the case. The jury acquitted Petitioner of murder, attempted murder, and first-degree burglary, but convicted him as indicted on the remaining charges.¹ Judge Jefferson sentenced him to concurrent terms of twenty years for each kidnapping and armed robbery charge, and five years for the weapon charge.

Petitioner filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine H. Hudgins through the filing of an Anders² brief raising the issue of whether the Court erred in denying the motion to sever. The South Carolina Court of Appeals dismissed pursuant to Anders. The remittitur was returned on May 20, 2021.

On June 8, 2021, Petitioner filed an application for post-conviction relief. An evidentiary hearing was held on September 9-10, 2024, before the Honorable Michael G. Nettles. Denise Swope, Esquire, represented Petitioner. Assistant Attorney General Danielle Dixon represented the State. In an order filed June 5, 2025, Judge Nettles denied relief and dismissed the application.

On July 6, 2025, Petitioner timely filed a notice of appeal. On December 18, 2025,

¹ Co-defendant Jacob Mouzon was convicted as indicted of all charges, and co-defendant Sherrod Palmer was acquitted of all charges. Co-defendant Kenneth Campbell, like Petitioner, was acquitted of murder, attempted murder, and first-degree burglary; but convicted of two counts of kidnapping and armed robbery, and one count of possession of a weapon during a violent crime.

² Anders v. California, 386 U.S. 738 (1967).

Petitioner filed this petition for writ of certiorari.

This return to petition for writ of certiorari follows.

STATEMENT OF FACTS

At trial, Krystal Snipe testified she and her boyfriend, Kadeem Johnson, were returning home around 2:00 a.m. As they were getting out of the car, five masked men approached, armed with guns, and forced Snipe and Johnson inside their home. (App. 242, 244). She stated three of the men went inside while two remained outside. Once inside, Snipe and Johnson were forced at gunpoint to their bedroom, where their hands were taped. Snipe stated one of the men stayed in the bedroom holding two guns on them while the other two men took items—including a red Hello Kitty bag—from their home. (App. 247, 250-53). Snipe testified one of the men removed his mask, and the men began “arguing about they saw our faces, they saw our face. And at that point, he shot Kadeem, and he fell in front of me. And then he shot me, and he ran out the door.” (App. 282). The men left in the victims’ white Crown Victoria and gray Crown Victoria. After they left, Snipe called 911. (App. 202-03, 292). She later identified co-defendant Jacob Mouzon as the shooter. (App. 284).

Deputy Corinthian Green was dispatched to the shooting. On her way, she received a BOLO for a white Crown Victoria. As she heard the BOLO, a white Crown Victoria and a truck passed her, “going around that curve probably about 80 miles per hour.” (App. 357, 359-60). She turned around to pursue the vehicles; however, the Crown Victoria stopped in the road. As Deputy Green approached, she saw “a black male in the middle of the highway” and surmised he came from the car. (App. 362-63). Deputy Green testified the man ran into the woods. She observed a red bandana on the ground near the car. (App. 372).

Law enforcement established a perimeter around the abandoned vehicle and began searching. Deputy Timothy Ham observed a black hoodie and an AK-47 rifle on Yellow Jacket Road—a forestry road directly through the woods from where the Crown Victoria was abandoned.

(App. 388, 390-93).

Brittany Bordeaux testified she saw three men walking in the road near Eccles Church and “stopped them because they were in an unusual area for that time of morning.” (App. 490-93). She allowed them to use her phone and overheard one of the men asking for a ride. (App. 493-94). Bordeaux stated the men didn’t know where they were, and she provided directions to the nearest highway. (App. 494). After learning about the shooting, Bordeaux notified the police about her encounter. (App. 495-96, 499-500).

Kenny Hooffa testified he saw three men walking down a dirt road about two miles from Eccles Church. (App. 553-54). He was in the area a short time later and saw the three men “going through the front yard of the church, and they took off running into the woods behind the church.” (App. 554). Hoffa contacted police; he later identified Mouzon from a lineup. (App. 556, 558-59).

Deputy Ham responded to Eccles Church and found a red Hello Kitty bag in the wooded area by the church. (App. 397-400). Bloodhound Tracker Richard Hunton had his dog track the area where the men ran into the woods; he subsequently located and apprehended Petitioner and Mouzon—who both ran from him as he approached. Bloodhound Tracker Jamar Bennett located Kenneth Campbell in a different area, lying under brush on a dirt road. (App. 613-14).

Law enforcement recovered Darius Hamilton’s fingerprint on tape found in the gray Crown Victoria. (App. 974-75). They determined the four cartridges recovered from the bedroom were fired by the same weapon. (App. 993-94). A DNA analyst testified Petitioner was a major contributor to a mixture of at least three people recovered from the red bandana, and Mouzon was a major contributor to a mixture of DNA on the black hoodie. (App. 1062).

Co-Defendant Darius Hamilton testified about the events surrounding the shooting and implicated Petitioner, Kenneth Campbell, Mouzon, and Palmer. He testified they all met near a

two-story building in a wooded area, and Kenneth gave Petitioner, Mouzon, Palmer, and Hamilton pistols while Kenneth carried a rifle. (App. 732-34). Hamilton testified they approached a trailer in the wooded area and waited two to three hours. (App. 735). He stated a car pulled up, and a man and a woman got out. Kenneth and Mouzon ran toward them, and Petitioner, Palmer, and Hamilton walked up to them. (App. 740). Hamilton testified he, Kenneth, and Mouzon went inside while Petitioner remained outside, and Palmer stood in the doorway. (App. 742). Hamilton taped their hands, Mouzon held them at gunpoint, and Kenneth searched the house “looking for the weed.” (App. 743-44).

STANDARD OF REVIEW

The standard of review in post-conviction relief cases depends on the specific issue before the court. Smalls v. State, 422 S.C. 174, 181, 810 S.E.2d 836, 839 (2018). The burden is on the Petitioner to prove the allegations in the post-conviction relief application. Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Appellate courts will defer to a post-conviction relief court's findings of fact and will uphold them if evidence in the record supports the findings of fact. Id. Appellate courts review questions of law de novo with no deference to the conclusions of the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when such a decision is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly determined Petitioner failed to establish Trial Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on the alleged failure to request a pretrial instruction on joint trials, in addition to the instruction given at the end of trial when there is no requirement to do so and no reasonable probability the outcome of trial would have been different.

On appeal, Petitioner asserts the post-conviction relief court erred in not finding Trial Counsel's representation constitutionally ineffective in a joint trial 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 trial.

In a post-conviction relief action, Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Petitioner must prove that counsel's performances was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). The proper measure of performances is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. At 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C at 117-18, 386 S.E.2d at 625.

The post-conviction relief court appropriately determined that Petitioner did not meet the burden of proving either deficiency in counsel's performance or any resulting prejudice. During the post-conviction relief hearing, counsel provided testimony indicating his belief that the cautionary instruction delivered by the judge was adequate and sufficient. (App. 1421). Notably, Petitioner failed to present any legal precedent or case law that mandates the issuance of an additional cautionary instruction prior to the commencement of the trial.

Nevertheless, Petitioner asserts that "while there is no case law to require the charge at both the start of trial and the end of trial, there is no case law prohibiting giving the cautionary instruction at both times" (Pet. p. 6). However, as established by the legal standard outlined in Strickland, the measurement for deficiency hinges on what is "reasonable under prevailing professional norms." The argument that it's unreasonable to require an additional cautionary instruction at both the start and end of the trial is rooted in several factors. First, the effectiveness of the trial judge's instructions should be assessed based on their clarity and comprehensiveness. Here, the trial judge delivered a cautionary instruction when he instructed the jury on the law, which counsel deemed sufficient during the post-conviction relief hearing. This reflects a professional assessment aligned with established norms in legal practice.

Moreover, demanding an additional instruction prior to the commencement of the trial may suggest a lack of confidence in the judge's ability to deliver clear guidance, potentially undermining the judicial process. Courts generally operate under the premise that jurors can comprehend and follow the instructions given to them, provided they are reasonable and well-articulated. Requiring a cautionary instruction before the commencement of trial and during the jury's charge on the law could imply that the guidance during the jury charge was inherently flawed, which was not demonstrated in this case.

Additionally, the absence of legal precedent requiring such dual instructions supports the notion that a single, clear cautionary instruction is adequate under prevailing professional standards, as recognized in Strickland. Therefore, insisting on an additional instruction may not only be unnecessary but also divert the jury's focus, causing confusion rather than clarity. In summary, the legal community operates on the understanding that reasonable professional norms do not require repetitive instructions unless a clear justification is provided, which was not provided by the Petitioner.

Furthermore, the post-conviction relief court, in its analysis, found—supported by the absence of relevant case law—that there is no requirement to issue a cautionary instruction before any witness testimony is given. Consequently, the court correctly concluded that Petitioner failed in his burden of proving that counsel's performance was deficient. This ruling emphasizes the necessity of legal standards in determining the efficacy of counsel and reinforces the principle that trial strategy must align with what is reasonable given the circumstances.

Lastly, the post-conviction relief court properly found Petitioner failed to prove prejudice. As the post-conviction relief court noted, the jury in this case gave different verdicts for each defendant – showing that it understood it must consider each charge, each defendant, and the evidence against each defendant separately. Therefore, Petitioner cannot show a reasonable probability that the outcome would have been different had counsel requested a pre-trial cautionary instruction. See Cherry, supra.

Therefore, the post-conviction relief court properly found that Petitioner failed to meet his burden of proving both deficiency and prejudice, and the Court should deny certiorari to this issue.

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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