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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Lancaster County
Honorable Brian M. Gibbons, Trial Judge
Honorable Patrick C. Fant III, Post-Conviction Relief Judge

Appellate Case No. 2025-000932

John Marion Ghent, Jr., #367453,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Trial Counsel erred in failing to investigate into and present evidence at trial in support of a mental illness defense in the case.

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON 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 Trial Counsel's failure to investigate and present evidence at trial of a mental illness defense where the post-conviction relief court credited Trial Counsel's testimony that he reasonably concluded—based on his direct interactions with Petitioner—that Petitioner was fully competent to stand trial and that the facts of this case did not warrant a mental-illness defense and where the post-conviction relief court found Petitioner presented zero credible evidence to support this allegation?

STATEMENT OF THE CASE

Petitioner John M. Ghent, Jr., was indicted during the January 2013 term of the Lancaster County Grand Jury for Murder (2014-GS-29-00047). Subsequently, during its January 2014 term, the Lancaster County Grand Jury indicted Petitioner for Possession or Display of Firearm or Knife During Commission of a Violent Crime (2014-GS-29-00048). Petitioner was represented by Michael H. Lifsey, Esquire (Trial Counsel). Sixth Circuit Deputy Solicitor Lisa Collins prosecuted the case.

On March 14–17, 2016, Petitioner proceeded to a jury trial before the Honorable Brian M. Gibbons. The jury convicted Petitioner as indicted. On March 17, 2016, Judge Gibbons sentenced Petitioner to fifty-four (54) years' imprisonment for Murder and to a consecutive five (5) years' imprisonment for Possession or Display of Firearm or Knife During Commission of a Violent Crime.

Petitioner filed a timely Notice of Appeal. On appeal, Petitioner was represented by Chief Appellate Defender Robert M. Dudek, who briefed the following issue:

Whether the court erred by instructing the jury that "evidence of a suicide attempt is probative of a defendant's consciousness of guilt" since this was an improper jury instruction, it was a charge on the facts, and it was highly prejudicial?

The case was submitted on briefs, and the South Carolina Court of Appeals affirmed. State v. Ghent, Op. No. 2019-UP-272 (S.C. Ct. App. filed July 24, 2019). Thereafter, on August 8, 2019, Petitioner petitioned for rehearing; however, the Court of Appeals denied Petitioner's petition. State v. Ghent, S.C. Ct. App. Order filed September 19, 2019. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari, which was subsequently denied by filed order on March 12, 2020. The Remittitur was returned to the circuit court on March 13, 2020.

Petitioner filed his application for post-conviction relief on May 8, 2020. On February 23, 2024, an evidentiary hearing was convened before the Honorable Patrick C. Fant III at the

Lancaster County Courthouse. Petitioner was present and represented by Ola A. Johnson, Esquire. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented the State. During the hearing, testimony was taken from Petitioner and Trial Counsel. On May 1, 2025, Judge Fant issued an order denying and dismissing the application with prejudice. Petitioner did not file a Rule 59(e), SCRCP, motion to alter or amend Judge Fant's order.

This petition follows.

STATEMENT OF THE FACTS

After Petitioner killed his wife, Elaine, and watched her perish in their bed, he told everyone within earshot that he was responsible. (App'x p. 177; p. 187; p. 262; p. 266; p. 375; p. 385–386). Petitioner, who went by Butch, stabbed Elaine in the chest with a fourteen-and-a-half-inch-long filet knife at approximately 4:00 AM on October 28, 2017. (App'x p. 179–180; p. 272; p. 296). The knife entered her lung slightly left of center. (App'x p. 114). The wound was nine-tenths of an inch long with a slight twist and was made by a single-edged knife. (App'x p. 115). Other signs of injury included two surface scratches to the back of her right hand, two bruises to the left forearm, and one bruise near the stab wound on her chest. (App'x p. 115). She bled out within minutes. (App'x p. 120).

Between 4:00 and 4:15 AM, Petitioner left apologetic voicemail messages for his daughter, Tabitha, and his sister, Betsy. (App'x p. 159; p. 366–368). Waking up around 7:00 that morning, Tabitha listened to the message and immediately sent her husband over to her parents' house to check on them. (App'x p. 155–157; p. 161). After a minute of knocking, Petitioner and Elaine's son, Johnathan, and his wife came to the door. (App'x p. 162; p. 185). They lived with Petitioner and Elaine, along with two of their own children. (App'x p. 163). Elaine's father, Roddy, and sister, Tressa, also arrived at the house. (App'x p. 168; p. 174). Johnathan rammed open the door to Petitioner and Elaine's locked bedroom and found Petitioner lying on the bed, facing his bloodied, deceased wife. (App'x p. 185–187). Immediately, "Johnathan grabbed [Petitioner] and took him out to the kitchen" and began beating him. (App'x p. 187). Other family members became sick from the gore. (App'x p. 168; p. 230; p. 272; p. 288–290). "After about the 20th punch [Petitioner] said, 'I f--- stabbed her.'" (App'x 187).

Over the next couple of days, Petitioner volunteered confessions to nearly everyone he

encountered. Law enforcement arrived on scene and found him lying on his back on the kitchen floor, nonresponsive, largely uninjured, and covered in what appeared to be flour. (App'x p. 229–230; p. 241). Petitioner had at least one laceration to a wrist, but it did not require medical treatment. (App'x p. 241–242). On a non-emergency ride to the hospital, Petitioner volunteered to EMS that his "son hit [him] in the face because [he had] killed [his] wife." (App'x p. 251–253; p. 262; p. 266; p. 267). Petitioner's vitals were stable, but his blood sugar was high. (App'x p. 243–246). He showed no signs of overdose despite stating he had taken a copious amount of unknown pills. (App'x p. 417). At all times, he was conscious, oriented, speaking clearly, and alert to person, place, and time. (App'x p. 247; p. 248).

Not only did Petitioner repeatedly claim responsibility for his wife's murder, but he also volunteered why. At the hospital, Petitioner told the deputy standing watch that he "killed her because she was going to leave [him]. She loved [him] but was not in love with [him]. She was staying out until 3:00 or 4:00 in the morning with her girlfriends and not coming home." (App'x p. 374). Petitioner expounded, saying:

he tried to slit his wrists but it didn't work so he took pills and he thought he would die but that didn't work. So he said his son drug him out of the bed and beat him. Son asked why did he do it, to kill his mama and Ghent stated because she was going to leave him.

(App'x p. 375). The deputy typed Petitioner's confession onto his cell phone. (App'x p. 375). They were the only two people in the hospital room. (App'x p. 374). The deputy did not ask any questions to elicit this information; the Petitioner just volunteered it. (App'x p. 375).

The deputy on guard duty later that evening allowed Petitioner to call his sister, Betsy. (App'x p. 383). This is what this deputy heard Petitioner volunteer to his sister during the chaperoned phone call:

Shortly after the conversation started Mr. Ghent began to sob and stated that he had

killed his wife. He said he had been drinking for the both of them and taking pills. When his wife got home they had a confrontation that began and he at that point began to stab her. His wife begged him to stop. Ghent made the statement he had been thinking about it for three weeks. Mr. Ghent then stated he cut his own wrists and got on the bed next to his wife – next to his wife's body, told her that he would die with her. And then the next thing he realized was that his son had found them in the bed and his son began kicking him in the head and body. When he calmed down that was pretty much the extent of that conversation.

(App'x pp. 385–386). Petitioner was alert, aware, and speaking plainly on both occasions. (App'x p. 376; p. 382).

At the hospital, Petitioner required no medical treatment for the superficial abrasions on his wrists. (App'x pp. 130–131). Petitioner's treating physician noted that Petitioner reported experiencing pain at a "zero" on a zero-to-ten scale. (App'x p. 133). He did state that he had taken two blood pressure medications and an antidepressant, presented with low blood pressure, and was treated accordingly. (App'x p. 134). Petitioner normally took high blood pressure medicine. (App'x p. 134). He was ushered from the emergency room into general admission at 11:46 AM on October 28 and discharged into the custody of law enforcement on the 30th. (App'x p. 132). At all times, Petitioner presented as alert and oriented. (App'x pp. 131–133).

Aside from Petitioner's own confessions, direct evidence linked Petitioner to the murder. The forensic pathologist opined that the knife recovered from the bedroom floor and brought to the autopsy likely caused the wound. (App'x pp. 116–117). A DNA analysis conducted with samples from Petitioner, the victim, and the bloody knife determined that Elaine's DNA profile matched that found on the knife with a probability of 1 in 2.2 quintillion. (App'x pp. 358–359). With a probability of 1 in 4500, Petitioner was a minor contributor to the DNA on the knife based upon a Y-chromosome analysis. (App'x p. 359). This analysis could not exclude Petitioner's fraternal male relatives because they share the same Y-chromosome DNA profile. (App'x pp. 359–365).

Still other evidence indicated that Petitioner contemplated the murder. Johnathan and Tressa's daughter, Raylee, usually slept with Petitioner and Elaine, but that night, Petitioner said she had to sleep with her own parents and slammed the door shut before going to bed. (App'x p. 182). When Petitioner and Elaine were discovered, there was a note taped to the outside of the bedroom door that said: "DON'T LET RAYLEE COME IN. HOPE YOU ARE HAPPY NOW!! SORRY!! SELL HOUSE AND SPLIT WITH SISTER!" (App'x pp. 237–238). A handwriting analyst opined that Petitioner wrote the note. (App'x p. 238). Petitioner consented to the production of twenty-five handwriting samples used for the comparative analysis. (App'x p. 320–321).

The victim's family and friends corroborated Petitioner's confessed reasoning. It seemed that everybody knew that she wanted to leave him. (App'x pp. 151–152; p. 206; p. 212; p. 217). Elaine had financially supported Petitioner, who had been out of work for ten years. (App'x p. 48, lines 8-18). When Elaine could not afford her mortgage and car payments, her father assisted. (App'x p. 151; pp. 167–168). Petitioner would charge odds and ends against Elaine's credit account at work. (App'x p. 211). Tired of paying his way, she had asked him to leave, but he refused. (App'x p. 174). When Elaine got into a car accident a few months before her death, she began caring for herself more, changed her hairstyle, began an affair, and was described as being "happy for the first time in a long time." (App'x pp. 172–173; p. 219). Elaine's co-workers and friends knew that Elaine was actively looking for a new place to live. (App'x p. 214; p. 217). It was her paramour who saw her last: they met up when Elaine got off work around midnight and stayed together until about 2:00 or 3:00 in the morning. (App'x p. 218; pp. 220–221). Elaine went home and texted her lover that she made it there safely. (App'x p. 223). She texted him that night at about 2:45 or 3:00 AM. (App'x p. 328). No one but Petitioner heard from her after. (App'x p.

184; p. 203).

According to Petitioner , who testified at trial, Elaine fell victim during a struggle over the knife Petitioner was going to use to kill himself. He had been thinking about the prospect of suicide for three or four weeks as a response to the prospect of Elaine planning to leave him. (App'x pp. 400–401; pp. 436–437). He had previously spoken to his daughter Tabitha about killing himself. (App'x p. 159). The day before the early-morning incident, October 27, was Petitioner's birthday. (App'x p. 400). When Elaine came home from work in the early morning hours, Petitioner initiated a conversation with Elaine to see if "she was really serious about leaving." (App'x p. 402). He could not "remember whether she even answered [him] or not," (App'x p. 403), but he "picked up the knife [he] had beside the bed because [he] was already planning on cutting [his] wrists and all and . . . [she must have] seen the knife in [his hand.]" (App'x p. 402).

A struggle ensued over the knife wherein, according to Petitioner, Elaine grabbed his arm trying to get him to let it go. (App'x p. 403). By Petitioner's own demonstration, he held the knife in his fist in a threatening way, and not in a manner demonstrative of drawing the knife across his wrist in a suicide attempt. (App'x p. 420; p. 488). By Petitioner's own admission, he "was standing at the foot of the bed" blocking the door to the bedroom. (App'x p. 403; p. 450). During this interaction, according to Petitioner, "she grabbed ahold of [his] wrist," and his "hand just slipped – arm just slipped out of her hand and went straight into her chest." (App'x p. 400). Panicking, he guessed he pulled the knife out "and throwed it down or ripped it out." (App'x p. 400). Then, Petitioner testified,

I just let her lay down and I put her to bed. I just let her lay the way she fell. I got up and went in and washed the blood off my hands and stuff and I went and sat on the bed, that's when I got the pills, I tried to cut my wrists first. . . . [B]ut something wouldn't let me cut my wrists. . . . Then I got up and went and looking around trying to see what kind of pills I could take to see what I had. I know she had blood pressure pills and stuff . . . I just swallowed all of them. And then I went back to

the bed and I thought about my granddaughter, I didn't want her to come and see us so I wrote the note to not let her come in. I called my sister and my daughter, told them I was sorry . . . I was planning on being dead when they found us and I just wanted to let them know I was sorry.

(App'x pp. 400–401).

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). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is any probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Appellate courts give great deference to a PCR court's credibility findings because appellate courts lack the opportunity to directly observe the witnesses. Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40. Appellate courts will reverse the decision of the post-conviction relief court when it 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 Trial Counsel's failure to investigate and present evidence at trial of a mental illness defense where the post-conviction relief court credited Trial Counsel's testimony that he reasonably concluded—based on his direct interactions with Petitioner—that Petitioner was fully competent to stand trial and that the facts of this case did not warrant a mental-illness defense and where the post-conviction relief court found Petitioner presented zero credible evidence to support this allegation.

On appeal, Petitioner asserts the post-conviction relief court erred in finding Trial Counsel was not ineffective where he failed to investigate and present evidence at trial in support of a mental illness defense in Petitioner's case. Specifically, Petitioner contends that Trial Counsel failed to request a competency evaluation prior to trial, failed to raise questions of his mental health, failed to present his mental health records at trial, and failed to investigate and present a mental illness defense. However, Trial Counsel reasonably concluded—based on his direct interactions with Petitioner—that Petitioner was fully competent and that the facts of this case did not warrant a mental-illness defense. The post-conviction relief court expressly found Petitioner's self-serving testimony incredible and noted that Petitioner presented zero corroborating evidence: no competency evaluation, no mental-health records, no expert testimony, and no proof that any additional investigation would have changed the outcome. Because Petitioner failed to meet his burden on either prong of Strickland, *infra*, the post-conviction relief court properly denied relief. This Court should deny certiorari.

The Sixth and Fourteenth Amendments guarantee a criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685 (1984). In post-conviction relief proceedings, the applicant bears the burden of proving (1) counsel's performance

fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing Strickland, *supra*). Failure to satisfy either prong defeats the claim. Strickland, 466 U.S. at 700.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

"Due process prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings. Id., 308 S.C. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he [or she] has the ability to understand the proceedings." Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)).

As to the deficiency prong under Strickland, an attorney may reasonably rely on his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. Jeter, 308 S.C. at 233, 417 S.E.2d at 596. When establishing Strickland prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant needs only to show a reasonable probability that he was incompetent at the time of the original proceeding. Garren, 423 S.C. at 12, 813 S.E.2d at 710 (citing Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues that undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Id., 423 S.C. at 13–14, 813 S.E.2d at 711.

Here, the record in this case conclusively demonstrates that Trial Counsel's performance was objectively reasonable and that Petitioner suffered no prejudice. At the February 23, 2024, post-conviction relief evidentiary hearing, Trial Counsel testified without equivocation that he "had no reason to doubt [Petitioner's] competency because he (Petitioner) appeared oriented as to time and place, and that the case did not rise to the level of a mental health defense case or a lack of criminal responsibility case." Trial Counsel explained that Petitioner was coherent, understood the charges, and actively assisted in preparing the defense. Nothing in Petitioner's demeanor, statements, or interactions ever triggered a red flag warranting a competency evaluation or a formal mental-illness defense. (App'x pp. 573–575). Trial Counsel's professional judgment, formed after direct interaction, is entitled to substantial deference. Jeter, 308 S.C. at 233, 417 S.E.2d at 596.

At trial, Petitioner's testimony further refutes any claim of incompetence or a viable mental illness defense. On direct examination, Petitioner provided a clear, detailed, and chronologically coherent account of the events of March 2014. He explained the deteriorating marriage, his wife's

announcement that she planned to leave, and his deliberate decision to attempt suicide with a knife because "he promised to kill himself if his wife decided to exit the marriage as he did not want to live without her." He admitted he had previously placed a 9-millimeter gun to his head and pulled the trigger (leading to the removal of all guns from the home), that he moved the knife toward his own wrist, that a physical struggle ensued when his wife grabbed his arm, and that "his hand just slipped...arm just slipped out of her hand and went straight into her chest." He then described swallowing hypertension pills and attempting to cut his wrist again. (App'x pp. 398–405). This testimony was rational, responsive, and consistent with the physical evidence and the defense theory actually presented, an accident during a suicide attempt. Nothing in Petitioner's trial testimony remotely suggested he lacked the capacity to understand the proceedings or assist counsel.

At the post-conviction relief evidentiary hearing, Petitioner attempted to contradict this picture by claiming he had received mental-health treatment for "five or ten years," suffered from depression and substance abuse after family deaths, had been seen at Three Rivers Mental Hospital after a prior gun-to-head incident and threat of arson, and was not competent to stand trial. (App'x pp. 550–551; pp. 553–554; p. 559; pp. 564–565). The post-conviction relief court, however, expressly found this testimony incredible. (App'x pp. 596–636). The post-conviction relief court credited Trial Counsel's testimony instead and concluded that Petitioner failed to present any credible, corroborating evidence supporting his allegations. Appellate courts defer to the post-conviction relief judge's credibility determinations, particularly where the judge personally observed the witnesses. Smith v. State, 369 S.C. 456, 459, 632 S.E.2d 869, 870 (2006).

Furthermore, Petitioner's certiorari petition collapses for four independent and fatal reasons. First, no competency evaluation was ever presented to the post-conviction relief court.

Despite claiming incompetence, Petitioner introduced zero expert evidence, neither a retrospective competency evaluation nor any contemporaneous mental-health professional's opinion, that he was incompetent at the time of trial. Garren, 423 S.C. at 13–14, 813 S.E.2d at 711 (mere speculation insufficient). Second, no mental-health records or expert testimony were introduced. Petitioner repeatedly referenced purported treatment at Three Rivers and the Catawba Center and claimed long-term depression and substance abuse. Yet he produced no records, no treating-provider testimony, and no expert opinion linking any diagnosis to incompetence or a viable insanity/guilty-but-mentally-ill defense. This omission is fatal to any claim of deficient investigation. Harris v. State, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Third, the post-conviction relief court's credibility finding controls. The post-conviction relief judge, who heard both Petitioner and Trial Counsel testify, expressly rejected Petitioner's account as not credible and accepted Trial Counsel's account. (App'x pp. 596–636). That finding is binding on appeal.

Fourth, Petitioner's cited authorities are readily distinguishable and do not support relief. In Ramirez v. State, counsel possessed actual mental-health reports documenting severe mental retardation and personally observed the defendant's inability to understand basic proceedings. 419 S.C. 14, 795 S.E.2d 841 (2017). Counsel in Ramirez testified at the post-conviction relief hearing "that Ramirez was very naïve and he questioned whether Ramirez fully understood what was going on prior to and at the plea hearing." Id. at 19, 795 S.E.2d at 844. Here, Trial Counsel observed the exact opposite: Petitioner was "oriented as to time and place," and fully participatory, and Petitioner presented no comparable evidence of severe impairment. (App'x pp. 573–575).

In Von Dohlen, this Court found counsel deficient, and the applicant suffered prejudice from counsel's failure to provide crucial medical records to their psychiatric expert, noting that the absence of crucial medical records prevented the expert from conveying an accurate diagnosis to

the jury and in mitigation. 360 S.C. 598, 602 S.E.2d 738 (2004). Notably, Von Dohlen was facing the death penalty, and here, Petitioner did not. Nevertheless, any alleged mental health records that Petitioner avers exist were not provided to the post-conviction relief court.

In Wiggins, also a death penalty case, Wiggins presented expert testimony from a licensed social worker detailing extensive evidence "of the severe physical and sexual abuse [Wiggins] suffered at the hands of his mother and while in the care of a series of foster parents." 539 U.S. 510, 516 (2003). Based on the expert testimony and the comprehensive social history report, the United States Supreme Court concluded that found that counsel's failure to further investigate his client's life history for mitigation purposes beyond the presentence report was deficient and that deficiency prejudiced Wiggins. Id. Here, again, Petitioner did not face the death penalty.

In Davenport, this Court found that counsel's representation was constitutionally ineffective where counsel let Davenport plead guilty but mentally ill, where the State's psychiatrist found Davenport to be legally insane. 301 S.C. 39, 389 S.E.2d 649 (1990). Here, nothing in this record indicates that Petitioner was or is legally insane or even mentally ill.

Moreover, Petitioner's claim that a mental-illness defense "obviously existed" (PWC p. 5) is contradicted by the very facts he presented at trial. The defense strategy Petitioner actually employed—an accident during a suicide attempt—was consistent with Petitioner's own coherent testimony and the physical evidence (knife wounds, low blood pressure, wrist injuries). Pursuing insanity or guilty-but-mentally-ill would have required Petitioner to concede he lacked the capacity to distinguish right from wrong or conform his conduct to the law (S.C. Code Ann. §§ 17-24-10 & 20), a concession that would have been inconsistent with his detailed, rational explanation of events and could have undermined the accident defense the jury ultimately rejected. Trial Counsel cannot be deemed ineffective for choosing one reasonable strategy over another, especially when

the client never provided Trial Counsel with any indication that a mental-illness defense was viable. See Strickland, 466 U.S. at 690 (holding that there is a strong presumption that counsel exercised reasonable professional judgment).

In sum, Petitioner's entire claim rests on speculation, uncorroborated self-serving testimony that the post-conviction relief court properly rejected, and a complete failure to produce the very evidence necessary to support either prong of Strickland. The post-conviction relief court's thorough, well-reasoned Order of Dismissal (App'x pp. 596–636) correctly applied the law to the facts of this case and should be affirmed.

Accordingly, this Court should deny certiorari.

|CONCLUSION PAGE FOLLOWS|

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.


Respectfully submitted,

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