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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 Marion County
Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

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Appellate Case No. 2025-001590

BLATON W. SMITH,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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II. Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to the trial court's instruction to the jury that the offense of attempted murder does not require a specific intent to kill?

COUNTERSTATEMENT OF ISSUES ON PETITION FOR CERTIORARI

I. Whether the post-conviction relief court correctly 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 object to Investigator Watson's testimony, where there was no objectionable basis and no prejudice as a result?

II. Whether the post-conviction relief court correctly 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 object to the jury charge that was the correct law at the time of trial?

STATEMENT OF THE CASE

Petitioner Blaton W. Smith was indicted in February 2013 by the Marion County Grand Jury for murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). On August 6-8, 2014, Petitioner proceeded to a jury trial before the Honorable D. Craig Brown. Petitioner was represented by Joshua A. Bailey, Esquire (Trial Counsel). Solicitor E. L. Clements, III, prosecuted the case. Petitioner was found guilty as indicted for murder, possession of a weapon during the commission of a violent crime, and all four counts of attempted murder. Petitioner was found not guilty of discharging a firearm into a dwelling. Judge Brown sentenced the Petitioner to life without parole for murder, thirty years for each count of attempted murder, and five years for the weapon charge. Sentences to run consecutively. Petitioner filed a timely notice of appeal. Appellate Defender David Alexander perfected his appeal. The South Carolina Court of Appeals affirmed his convictions and sentences. State v. Smith, Op. No. 2016-UP-323 (S.C. Ct. App. filed June 22, 2016).

On December 12, 2016, Petitioner filed an application for post-conviction relief. On December 12, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable George M. McFadden, Jr. Petitioner was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. On June 23, 2025, Judge McFaddin denied and dismissed the application with prejudice. On August 11, 2025, Petitioner timely filed a notice of appeal. On November 24, 2025, Petitioner filed this petition for writ of certiorari.

This return to petition for writ of certiorari follows.

STATEMENT OF FACTS

On the night of April 12, 2012, Gavin Graves, Victim, Derrick Wilson, Christopher Kollock, and Darrell Davis were hanging out at Graves' home. (App. 359). A little after midnight, they thought they heard a knock at the back door. (App. 362, 368, 432, 435). Davis got up to check, but there was no one there. (App. 368).

About three minutes later, a number of bullets were fired into the home from outside. (App. 368 - 369). According to Graves, "[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop." (App. 369). Wilson testified, "It sounded like at least 20—25" gunshots, but there might have been more. (App. p. 438). Victim was hit by the gunfire. (App. 369, 370, 439, 440).

The police were unable to recover any physical evidence pointing to any suspects. Wilson had prior problems with Adrian Smith ("Adrian"), Petitioner's cousin, and he told police about that. (App. 447). However, he told police that Victim had never had any problems with "the Smith boys" or anybody that Wilson knew of. (App. 446 – 447). Detectives followed up on those leads. (App. 224, 231). Petitioner's mother took him to Marion County for an interview with the police, but Petitioner was uncooperative. (App. 228).

Through their investigation, detectives learned that a man named Willie Bethea[1] may have been involved in the shooting. (App. 227). Bethea met with the police and admitted his involvement in the shooting. (App. 228, 230). As a result of their conversation with Bethea, the police arrested Petitioner, Shaheed Hayes, Bethea, and Jamie Williams.[2] (App. 229).

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[1] Also called "Boo Boo." (App. 531).
[2] Also known as "Lil Boosie." (App. 230, 468, 469).

At trial, both Williams and Bethea testified about the shooting. Williams testified that Petitioner, Hayes, and Bethea picked him up from his home; Petitioner was driving Adrian's car, Bethea sat in the front passenger seat, Hayes sat in the back seat on the passenger's side, and Williams sat behind the driver (App. 472, 474). According to Williams, they drove past a home, and Hayes saw Wilson's SUV parked out back. (App. 474). Petitioner turned around and slowly drove back by the home while Hayes and Williams shot at the house. (App. 477, 480). Williams testified that Petitioner told him to shoot. (App. 480). Hayes shot directly out of the rear, passenger window, while Williams hung out of the car and shot over the top of the car. (App. 479). Williams testified he only shot three to five bullets before he "froze up", but Hayes emptied a clip into the home. (App. 479 - 480). They then drove back to Latta, where Petitioner stopped at a house and took the guns inside. (App. 480, 482). After that, they dropped Williams off back at his house. (App. 482 – 483).

Two days after the shooting, Williams received a call from Petitioner, who told him someone had died and warned him that he better not say anything. (App. 483). Williams went to Adrian's house later that day. (App. 483). Williams testified, "They were kind of mad that they hit the wrong person." (App. 483). According to Williams, "Eyebrows" was the person they intended to hit—"they wanted him dead." (App. 484, 489). Williams did not know Wilson. (App. 490). Williams testified he was scared of Adrian because, although Adrian is a paraplegic,"[h]e got people too." (App. 484 – 485). Williams testified that when he first spoke with police, he lied and said that Petitioner and Hayes were the shooters, but he later admitted he was one of the shooters and that Petitioner was driving the car. (App. 485).

Bethea's testimony regarding the shooting was largely consistent with Williams'. Bethea testified that he and Petitioner were cousins. (App. 531). He also identified Hayes as "[o]ne of my

people from Latta." (App. 532). Bethea testified that he and Petitioner were together all day on April 12, 2012, and they picked up Williams and Hayes later that evening. (App. 535 – 536, 538). Bethea believed they were going to a club; when they passed that club, he assumed they were headed to a different club. (App. 540). Petitioner, who was driving, stopped in front of a trailer that Bethea identified as "Eyebrows' trailer." (App. 540 – 541). Petitioner said: "This is the house right here. That's the car in the back." (App. 541). Hayes and Williams then started shooting. (App. 543 – 547). After they finished, Hayes said he hoped he had hit somebody in the house. (App. p. 547). They then drove back to Latta, and Petitioner dropped the guns off at "Karen['s] house." (App. 547).

According to Bethea, afterward, "We just said don't say nothing about it and just keep your mouth closed." (App. 550 – 551). Petitioner later told Bethea, "Keep your cool," and advised him not to say anything about what had happened. (App. 552 – 553). Bethea testified it was Wilson who was the intended target because Wilson and Petitioner had "bad blood". (App. 554). Bethea left town because he was "worried something crazy was going to happen. That somebody was going to get shot or something." (App. 554). When asked if he left town because he was worried about Hayes or Petitioner, Bethea responded, "They just told me—they kept calling me, like, don't say nothing or we're going to do something to you." (App. 555). Nevertheless, Bethea eventually turned himself in. (App. 558 – 559). After the police spoke with Bethea, they arrested him. (App. 559).

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

I. The post-conviction relief court correctly 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 object to Investigator Watson's testimony where there was no objectionable basis and no prejudice as a result.

On appeal, Petitioner asserts the post-conviction relief court erred in failing to find Trial Counsel's representation constitutionally ineffective for failing to object to the testimony of Investigator Watson, who allegedly bolstered and vouched for the credibility of Willie Bethea. However, the post-conviction relief court correctly found Petitioner did not meet his burden in proving deficiency because the testimony did not constitute improper vouching or bolstering. The post-conviction relief court further correctly found that it is not reasonably likely an objection would have changed the outcome of the trial, and thus, Petitioner did not prove prejudice. The Court should deny certiorari to this issue.

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 performance 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.

At trial, the following occurred on direct examination of Investigator Charlie Watson (Watson):

> Q: Okay. When you talked to Willie Bethea, can you describe for us what was his demeanor and how did he act?
> A: Mr. Willie Bethea was very cooperative. Out of all the co-defendants involved in this, he was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.

(App. p. 230).

The post-conviction relief court found this was a description of emotional demeanor, not an opinion on the truthfulness of Bethea's trial testimony. The phrase "honest opinion of 18 years of law enforcement" was expressly tied to Bethea's emotional state (cooperative, sincere, apologetic, remorseful) in direct response to a demeanor question; it did not comment on whether Bethea was telling the truth on the witness stand months later. See Chappell v. State, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019) (provides the specific test: testimony is improper bolstering only if (1) the witness directly states an opinion about the other witness's credibility, (2) the sole purpose of the testimony is to convey that opinion, or (3) there is no other reasonable interpretation than that the witness believes the other person is telling the truth.); State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012) (holding that the assessment of witness credibility is exclusively within the province of the jury. A witness (including a law-enforcement officer) may not testify that another witness is telling the truth or otherwise bolster that witness's credibility.). Here, Watson never said Bethea was "truthful," "credible," or "believable," nor did he point to any

extra-record evidence. Simply put, Detective Watson's answer that Bethea felt bad for what happened does not equate to vouching.

Further, the post-conviction relief court correctly found that Petitioner failed to prove prejudice. The post-conviction relief court's finding that Bethea was thoroughly cross-examined on his inconsistent statements, highlighting that his credibility was questionable, is amply supported by the record. Initially, at trial, on direct examination, Willie Bethea was asked about his prior record which included: grand larceny and burglary, malicious injury to personal property, giving a false name or address or birthdate, a pending charge for forgery, and pending charges for the present case for murder, four counts of attempted murder, discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime. (App. pp. 532, 533). On cross-examination, counsel elicited from Bethea that he is diagnosed with schizophrenia and that he has been previously institutionalized for mental health concerns. (App. pp. 585, 586).

Additionally, on cross-examination, the following occurred:

> Q: When Mr. Clements asked you a question earlier, you first testified that Blaton Smith handed no one a gun that night. Do you remember that?
> A: Yes, sir.
> Q: Okay. Then he asked you another question and you changed your story and said yes, Blaton Smith handed somebody one gun. Do you remember that?
> A: I said that. Yes, sir.

(App. pp. 598, 599). Counsel then further highlighted these inconsistencies for the jury in his closing argument. (App p. 666). The record reflects that Bethea's credibility was thoroughly attacked. Further, Bethea was not the only witness who testified implicating Petitioner at trial.[3] The post-conviction relief court properly found that Petitioner failed to prove prejudice, as there

[3] Additionally, the judge instructed the jury "you alone must decide the force, effect, and truth of the testimony." (App. p. 676). "Jurors are presumed to follow the law as instructed to them." State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999).

is no reasonable probability the outcome of the trial would have been different had counsel objected to this fleeting, singular statement made by Watson.

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.

II. The post-conviction relief court correctly 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 object to the jury charge that was the correct law at the time of trial.

Petitioner asserts that the post-conviction relief court erred by refusing to find counsel ineffective for failing to object to the trial court's instruction to the jury that the offense of attempted murder does not require a specific intent to kill. Specifically, Petitioner argues counsel should have objected based on the statutory language and dicta in State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000). However, the post-conviction relief court correctly found, the jury instruction was proper at the time of Petitioner's trial, and therefore, counsel was not deficient for failing to be clairvoyant and anticipate future changes in the law. This Court should deny certiorari to this issue.

The Court in Sutton addressed common-law attempted murder and expressly declined to recognize the offense; its discussion of specific intent was dicta. State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), aff'd as modified, 422 S.C. 47, 55-56, 810 S.E.2d 18 (2017). At the time of Petitioner's August 2014 trial, no published decision held that the newly enacted attempted-murder statute, S.C. Code Ann. § 16-3-29, required specific intent to kill. Notably, even the King decision was closely divided (3-2 on the specific-intent question), underscoring that the law was not settled or obvious at the time of Petitioner's 2014 trial.[4] Here, the post-conviction relief court

[4] Petitioner concedes that King was not decided until after Petitioner's trial. (PWC p. 13).

correctly found counsel's representation was effective where counsel is not required to anticipate changes in the law and any objection would have been futile. See Kornahrens v. Evatt, 66 F.3d 1350, 1360 (4th Cir. 1995) ("[T]he case law is clear that an attorney's assistance is not rendered ineffective because he failed to anticipate *a new rule of law*." (emphasis added)); Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial."), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); cf. Black, 373 F.3d at 1146 (concluding counsel did not perform deficiently by "failing to predict what was not yet a certain holding"); Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) ("The PCR court found trial counsel was ineffective for failing to object to the trial court's instruction, even though Daniels had not yet been decided, because if trial counsel had made an objection, the issue would have been preserved for appellate review. . . . We disagree and hold that the PCR court erred in finding trial counsel ineffective for failing to object to the jury instruction *when no case law existed rendering the instruction improper per se.* This Court has previously held that reasonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law. As trial counsel's performance was not deficient, we reverse the PCR court's grant of relief on this ground." (emphasis added))

The post-conviction relief court correctly found that counsel's performance was reasonable under prevailing professional norms and in accordance with Strickland. Petitioner's suggestion that counsel should have foreseen the King outcome from the statutory text alone is precisely the type of hindsight this Court has repeatedly rejected.

Therefore, the post-conviction relief court correctly 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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