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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
Honorable Kristi F. Curtis, Circuit Court Judge
Appellate Case No. 2024-000244

CHAVIAS JENKINS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S ISSUE PRESENTED

- I. The PCR Court properly found that trial counsel was not ineffective for failing to object to a witness's alleged vouching testimony.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 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); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. 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).

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Petitioner for carjacking, kidnapping, possession of a handgun during a violent crime, and armed robbery. (App. 550-557). On August 24, 2016, Petitioner proceeded to jury trial before the Honorable Kristi L. Harrington. Petitioner was convicted as indicted. Following the guilty verdict, Petitioner was sentenced to consecutive terms of imprisonment of 22 years for armed robbery, 22 years for kidnapping, 20 years for carjacking, and 5 years for possession of a weapon. (App. 558-561). Petitioner then timely filed and perfected an appeal. On direct appeal, an Anders¹ brief was filed along with a petition to be relieved as counsel. The Court of Appeals relieved counsel and dismissed the appeal on May 1, 2019.

Petitioner timely filed an application for PCR. (App. 452). The application was amended before the evidentiary hearing to include allegations surrounding counsel's failure to object to the bolstering testimony of an expert witness. (App. 465). An evidentiary hearing was held before the Honorable Kristi Curtis on June 23, 2022. (App. 469). By order dated January 17, 2024, Judge Curtis denied the application for relief. (App. 535-549). Following that, Petitioner timely initiated an appeal.

On appeal, appellate counsel filed a petition for certiorari under the provisions of Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), along with a petition to be relieved. The case was transferred to this Court by the Supreme Court. By order dated January 7, 2026, this Court denied the motion to be relieved as counsel and directed counsel to file a petition addressing the following question:

Did the post-conviction relief court err in finding trial counsel was not ineffective for failing to object to Travis Repman's alleged improper bolstering and vouching testimony regarding the photographic line up?

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

Petitioner then filed a new petition for a writ of certiorari in compliance with this Court's directive.

RELEVANT FACTS

On September 13, 2013, Maria Davila arranged to buy a cell phone on Craigslist. (App. 175-176). After arriving at the meeting location, Davila was forced into her vehicle by an armed individual who then drove her around Charleston County at gun point. (App. 178-183). After robbing Davila of money and a cell phone, the assailant then abandoned Davila and her vehicle in a rural area. (App. 178-183).

Petitioner was originally connected to the crimes through a tip that his girlfriend, Candace Singleton, had information about the robbery. (App. 263). Investigators then obtained Petitioner's name off a prescription pill bottle they observed while questioning Singleton in the hotel room she shared with Petitioner. (App. 265-266). Armed with a potential suspect, a photographic lineup was prepared, and Davila identified Petitioner as her assailant. (App. 250-255). At trial, Davila again identified Petitioner as her assailant. (App. 204).

During the trial, officer Travis Repman testified that he showed her a sequential double-blind lineup, meaning that the suspect is paired with five fillers with similar features. The person conducting the lineup is unaware of which person in the lineup is the suspect and neither does the person looking at the lineup until they possibly see someone they recognize. (App. 250). Repman testified as to how the lineup worked and defense counsel objected that he was not qualified as an expert. (App. 250). Repman went on to testify that doing a line up this way is "believed to that this is the most reliable false positive way to show a lineup...when you have somebody that's gone through a traumatic event such as this, you know, they are frightened, they are scared, you know, it's an eyewitness. You want to give the best chance to have the right person selected." (App. 250-251).

At the PCR evidentiary hearing, defense counsel was asked what the grounds for his objection to Repman's testimony had been. (App. 490). He stated "the grounds for my objection were that he was essentially giving an opinion as to the accuracy of the lineup procedure although he had not been qualified as an expert as such. (App. 491). He was further asked if he felt like Repman's comment about being the most reliable false positive way to show a lineup was bolstering. (App. 491). Defense counsel agreed but felt like that was covered by his objection. (App. 491). On cross examination, defense counsel was asked the following questions:

Q: And can you just clarify for the record why you objected above on line 19² but did not object below?

A: I felt like I had already raised the issue to the Court for the Court's consideration. And the Court had made its ruling; it overruled that objection. And I felt that I would have gotten the same response to these additional questions.

Q: Okay. Is there sometimes a reason why you may not object even when you know something is objectionable?

A: Sure. Out of risk of annoyance and annoying the jury and potentially annoying the judge for that matter.

(App. 508).

² This is referring to the objection on page 251 of the Appendix.

ARGUMENT

I. The PCR Court properly found that trial counsel was not ineffective for failing to object to a witness's alleged vouching testimony.

Petitioner argues that the PCR court erred in finding trial counsel was not ineffective for failing to object to Travis Redman's alleged improper bolstering and vouching testimony regarding the photographic lineup.

To prove counsel was ineffective, a PCR applicant must show counsel's performance was deficient and the applicant was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Counsel's performance will be deemed deficient if it falls "outside the wide range of professionally competent assistance." Id. The applicant is prejudiced by the deficient performance if "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id. at 695.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689. "Judicial scrutiny of counsel's performance must be highly deferential." Id., at 689. To prove a claim of ineffectiveness, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. "[T]he existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous advocacy of the defendant's cause." Id. at 689.

Trial counsel's articulation of valid trial strategy defeats a claim of ineffective assistance

of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546; 419 S.E.2d 778 (1992). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Strickland requires extreme deference to counsel’s strategic judgments that are adequately investigated; as Strickland explains: “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable. . . .” Strickland, 466 U.S. at 690-91.

“The question is whether an attorney’s representation amounted to incompetence under ‘prevailing professional norms,’ not whether it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 105, 131 S.Ct. 770, 788 (2011). “Under Strickland, counsel’s representation must be only objectively reasonable, not flawless or to the highest degree of skill.” Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). Moreover, counsel’s tactical decisions at trial, such as refraining from cross-examining a particular witness or from asking a particular line of questions, are given great deference and must similarly meet only objectively reasonable standards. Id. See Dunn v. Reeves, 594 U.S. 731, 739 (2021). (“[E]ven if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” (citation and internal quotation marks omitted)).

Redman’s testimony was not expert testimony nor was vouching testimony. His testimony merely concerned the features of the identification procedure employed that was designed to

minimize the possibility of the suggestiveness, and it constituted relevant³ evidence to explain the process of photo lineup. Generally, “the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain - ‘the assessment of witness credibility...within the exclusive province of the jury.’” State v. Taylor, 404 S.C. 506, 514-515, 745 S.E.2d 124, 128 (Ct. App. 2013). Petitioner cites to State v. Ellis⁴ in stating that “Our Supreme Court has warned against the dangers of allowing police officers to interject opinions about credibility or the value of evidence such as the accuracy of a lineup procedure.” However, in State v. Ellis, the officer was qualified as an expert witness and allowed to offer his opinion on the ultimate issue of whether the defendant was acting in self defense when he shot and killed the victim. Id. Here, Redman testified to the process of how the lineup was shown to the victim. Specifically, that testimony explained what double blind meant and discussed what was done to minimize the suggestiveness to the greatest extent possible. This is not an opinion on the truth of whether the victim picked the right person. The witness stated he did not know who the person was in the lineup when the Victim was going through the photos.

The PCR court found that defense counsel’s testimony regarding that he had objected on this issue and felt the statements regarding the alleged vouching statements were covered by his objection credible. “When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” The court cited Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). (App. 543). The court found that counsel was not deficient for failing to object to the statements made by the witness.

Further, the court found Petitioner did not establish any prejudice resulting from the

³ Indeed, the trial judge later expressly instructed to the jury identification testimony in its jury instruction and the state’s burden of proving the accuracy of the identification. (App. 414-415)

⁴ State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001).

statement. Davila identified Petitioner as the person in the photo lineup and in an in court identification. Petitioner's girlfriend gave the police the initial "tip" that he was the person involved. Redman's statements on how the photo lineup works and what the process is did not make Davila's identification any more credible than it already was. Petitioner has the burden of showing there was a reasonable likelihood of a different outcome at trial but for counsel's performance and Petitioner has failed to meet his burden. The PCR court properly denied relief because counsel was not deficient and Petitioner failed to show prejudice.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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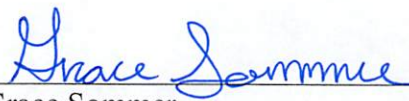
STATE OF SOUTH CAROLINA,

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the Return to Petition for Writ of Certiorari on Gary H. Johnson, II, Esquire, counsel of record for Petitioner, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This day 8th of June, 2026.


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