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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Colleton County
Court of Common Pleas

The Honorable Edgar Dickson, PCR Judge

Appellate Case No. 2026-000508

LESLIE TWYMAN.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

***JOHNSON PETITION FOR
WRIT OF CERTIORARI PURSUANT
TO AUSTIN V. STATE***

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STATEMENTS OF ISSUE ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

1. Whether the PCR court erred in finding that trial counsel was not ineffective where counsel failed to object to *Doyle* evidence, that strongly conveyed to the jury that Petitioner was intentionally omitting evidence reflective of guilt.

STATEMENT OF THE CASE

Leslie Twyman (hereafter “Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Colleton County Grand Jury indicted Petitioner for first-degree criminal sexual conduct and third-degree criminal sexual conduct (2010-GS-15-00849, Count I and Count 2). Harris S. Beach of the Colleton County Public Defender's Office represented Petitioner. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case. On April 18, 2011, Petitioner proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Petitioner, as indicted. On April 20, 2011. Judge Buckner sentenced Petitioner to imprisonment for twenty-five years for first-degree criminal sexual conduct and for ten years’ for third-degree criminal sexual conduct, sentences running concurrently.

Petitioner pursued a direct appeal and represented by Appellate Defenders Elizabeth Frnnklin-Best and Susan B. Hackett. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. *Stale v. Leslie Twyman*, Unpub. Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The remittitur was returned to the circuit court on August 9, 2013.

Petitioner filed his first application for post-conviction relief on February 11, 2014. In that application, Petitioner alleged his imprisonment was unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
 - a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct.
 - b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;
 - a. On third-degree criminal sexual conduct, more to be amended later.

As requested relief, Petitioner stated he was seeking to have his conviction and sentences vacated, a new trial, or resentencing. Respondent made its return on August 20, 2014, requesting an evidentiary hearing, which was convened on October 29, 2014, before the Honorable Edgar W. Dickson. Petitioner was represented by Tristan Shaffer, Esquire. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and served on counsel for Petitioner on March 1, 2016. Petitioner did not file an appeal.

Petitioner's second PCR application was filed on June 24, 2019. The State filed a return and partial motion to dismiss on July 1, 2020. An evidentiary hearing was held on July 20, 2022, at the Beaufort County Courthouse. Petitioner was present at the hearing and represented by James K. Falk, Esquire and Assistant Attorney General Lauren Mims represented the State. The Court granted Petitioner an *Austin* appeal but stated that they could not address claims of insufficiency of the initial PCR order. This order was filed on July 23, 2024.

Applicant appealed, filing a brief raising issues regarding the belated appeal and whether the case should be remanded because the order was insufficient. The State filed a return on August 6, 2025. On November 19, 2025, the South Carolina Supreme Court issued a filed order vacating the circuit court's order on December 21, 2025, remanding and ordering an order that complied with §17-27-80 of the South Carolina Code (2014) and Rule 52(a), SCRCP. The new order of dismissal with prejudice was filed February 25, 2026.

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts “give[] great deference to the PCR court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the petitioner shouldering the burden of proof. Rule 71.1(e), SCRCP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). A PCR court’s findings will be upheld if there is “any evidence of probative value sufficient to support them.” *Id.* Reversal of the lower court’s findings occurs when no probative evidence to support the initial findings. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a *de novo* review if evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court erred in finding that trial counsel was not ineffective where counsel failed to object to *Doyle* evidence, that strongly conveyed to the jury that Petitioner was intentionally omitting evidence reflective of guilt.

The PCR court erred in finding that trial counsel was not ineffective where counsel failed to object to *Doyle* evidence, that strongly conveyed to the jury that Petitioner was intentionally omitting evidence reflective of guilt.

In a PCR action, the petitioner bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When a petitioner asserts ineffective assistance of counsel as a ground for relief, the petitioner must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the petitioner must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the petitioner must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains deferential towards defense counsel with a presumption that counsel acted competently. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the petitioner so that “there is a 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Whether failure to object constitutes deficient performance generally hinges on whether a valid trial strategy was utilized. See *Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Criminal defendants have a constitutional right not to be compelled to incriminate themselves during trial. *See* U.S. Const. amend. V; S.C. Const. art. I, § 12. Thus, comments by the prosecution and instructions by the trial judge on a defendant's silence constitute evidence of guilt and are prohibited. *Griffin v. California*, 380 U.S. 609, 615 (1965); *see Doyle v. Ohio*, 426 U.S. 610, 618 (1976) (“[W]hile it is true that Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.”).

“[T]he State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent.” *Edmond v. State*, 341 S.C. 340, 346, 534 S.E.2d 682, 685 (2000). *See also McFadden v. State*, 342 S.C. 637, 640, 539 S.E.2d 391, 393 (2000); *State v. Weaver*, 361 S.C. 73, 88-89, 602 S.E.2d 786, 794 (Ct. App. 2004). The point of this rule is to prevent jurors from improperly inferring that the defendant is guilty simply by invoking his rights. *Edmond*, 341 S.C. at 346, 534 S.E.2d at 685.

Testimony mentioning a defendant's decision to exercise his right to remain silent warrants remand if it is prejudicial. *See Gill v. State*, 346 S.C. 209, 221, 552 S.E.2d 26, 33 (2001); *State v. Johnson*, 306 S.C. 199, 129, 410 S.E.2d 547, 553 (1991). Reversal is appropriate unless admission of the testimony will not result in reversal if a review of the entire record establishes the error was harmless beyond a reasonable doubt. *See United States v. Hastings*, 461 U.S. 499, 509 (1983); *State v. Arther*, 290 S.C. 291, 296, 350 S.E.2d 187, 190 (1986). The court is to consider whether the reference was a single reference, whether it was repeated or otherwise alluded to, whether the prosecutor tied the defendant's exercise of his right directly to his

exculpatory story, whether the exculpatory story was plausible, and whether the evidence of guilt was overwhelming. *Edmond*, 341 S.C. at 348, 534 S.E.2d 682 at 686-87. This determination of harmless error is made on a case-by-case basis. *See Alderman v. Austin*, 695 F.2d 124, 126, n. 7 (5th Cir. 1983).

Here, Detective Jodi Taylor stated that he Mirandized and had the opportunity to interview Petitioner but that he “refused to sign and waive his rights a make a statement.” (App. 221). This is a clear comment on Petitioner’s decision to remain silent. There is no other reason to make mention of Petitioner’s decision to remain silent than to implicate him. Counsel’s only excuse for failing to object was that he did not believe it was objectionable, which is not a reasonable strategic decision. (App. 475).

Regarding prejudice, though it was one single comment that was not repeated and it was not utilized to discredit an exculpatory story, prejudice exists because of the lack of evidence presented at trial. The case was essentially a “he said she said” case where there was no DNA evidence tying Petitioner to the crime. Though the sexual assault examination revealed swelling and redness in the vaginal and anal areas, there was nothing tying Petitioner to that injury. (App. 266). The individual accusing Petitioner of the assault, the victim, was noted as having significant emotional and intellectual disabilities, which already brings her credibility into dispute. (App. 147). This lack of evidence makes the impact of the admission of Petitioner’s lack of police statement more meaningful. Thus, prejudice is established and relief should have been granted accordingly.

CONCLUSION

For the reasons stated above, a writ of certiorari should be issued to permit full briefing on the issue.

Respectfully submitted,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leslie Twyman states:

1. This case was conflicted out of the South Carolina Office of Appellate Defense and she was appointed to represent Petitioner accordingly.
2. She has reviewed the record on Petitioner's post-conviction relief matter and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Leslie Twyman

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this *Johnson* Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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