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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County
The Honorable Grace G. Knie, Circuit Court Judge
(Post-Conviction Relief)

MARQUAL DEVINE GRIFFINPETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT.

Appellate Case No. 2024-000091

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE TO CONTENTS.....	i
TABLE OF AUTHORITIES	ii
PETITIONER’S STATEMENT OF THE ISSUE	1
RESPONDENT’S COUNTERSTATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE.....	2
RESPONDENT’S STATEMENT OF FACTS.....	4
STANDARD OF REVIEW	6
ARGUMENT	
The PCR Court properly found that counsel did not provide constitutionally ineffective assistance in not objecting to an instruction of inference of malice from the intentional use of a deadly weapon when the facts did not support the lesser offense, involuntary manslaughter charge giver, and that there was overwhelming evidence of malice separate from the simple use of a weapon.	7
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<i>Anders v. California</i> , 386 U.S. 738 (1967).....	2
<i>Jackson v. State</i> , 355 S.C. 568, 586 S.E.2d 562 (2003).....	10
<i>Sellner v. State</i> , 416 S.C. 606, 787 S.E.2d 525(2016)	7
<i>Simpson v. Moore</i> , 367 S.C. 587, 627 S.E.2d 701 (2006)	7
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018)	7, 12
<i>State v. Belcher</i> , 385 S.C. 597, 685 S.E.2d 802 (2009)	1, 3, 8, 12
<i>State v. Brewton</i> , 437 S.C. 44, 876 S.E.2d 141 (Ct. App. 2022).....	12
<i>State v. Burdette</i> , 427 S.C. 490, 832 S.E.2d 575 (2019)	1, 8
<i>State v. Campbell</i> , 443 S.C. 182, 904 S.E.2d 441 (2024)	13
<i>State v. Price</i> , 400 S.C. 110, 732 S.E.2d 652 (Ct. App. 2012).....	11
<i>State v. Reese</i> , 370 S.C. 31, 633 S.E.2d 898 (2006)	11
<i>State v. Smith</i> , 391 S.C. 408, 706 S.E.2d 12 (2011)	10
<i>State v. Sroka</i> , 267 S.C. 664, 230 S.E.2d 816 (1976)	13
<i>State v. Stanko</i> , 402 S.C. 252, 741 S.E.2d 708 (2013)	12
<i>State v. Tucker</i> , 324 S.C. 155, 478 S.E.2d 260 (1996)	11
<i>State v. Wharton</i> , 381 S.C. 209, 672 S.E.2d 786 (2009)	10, 12
<i>State v. Wiley</i> , 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010).....	13
<i>State v. Williams</i> , 427 S.C. 246, 830 S.E.2d 904 (2019)	10
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	7, 9, 12
<i>Truesdale v. Moore</i> , 142 F.3d 749 (4th Cir. 1998)	11
<i>United States v. Nersesian</i> , 824 F.2d 1294 (2d Cir. 1987).....	11, 12

Statutes

S.C. Const. art. V, § 213
S.C.Code Ann. § 16-23-410 11

PETITIONER'S STATEMENT OF THE ISSUE

Whether the court erred in denying post-conviction relief where counsel did not object to the jury instruction that malice could be inferred from the use of a deadly weapon, and where *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), held the trial court may not give such instruction where evidence is presented that would reduce, mitigate, excuse or justify the homicide, since Petitioner was entitled to and received a charge on the lesser offense of involuntary manslaughter, and since Petitioner was prejudiced

RESPONDENT'S COUNTER STATEMENT OF THE ISSUE

In this murder case tried before our Court found in *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) that the permissible inference from use of a deadly weapon instruction from *Belcher* should not be given in any circumstance, whether the PCR court erred as a matter of law in finding that because the facts did not support the involuntary manslaughter charge given at trial, then trial counsel did not provide constitutionally ineffective assistance in not objecting to the instruction given there could be no prejudice?

STATEMENT OF THE CASE

On March 22, 2016, a Greenville County Grand Jury indicted Petitioner Marqual Griffin for murder, possession of a weapon during the commission of a violent crime, attempted armed robbery, two counts of kidnapping, and first-degree assault and battery. On June 27, 2017, a Greenville County Grand Jury additionally indicted Griffin for first-degree burglary. (App. 641-652).

On September 11-13, 2017, Griffin's case was called to trial before the Honorable Perry Gravely and a jury. He was represented by Randall Chambers Esq., and Edward Dawson, III, Esq. (App. 1). Griffin was convicted as indicted and sentenced to serve concurrent terms of imprisonment of 45 years for murder; 5 years for the weapons charge; 10 years for each count of kidnapping; 10 years for attempted armed robbery; 15 years for burglary first degree; and 10 years for assault and battery first degree. (App. 469). Griffin timely appealed.

Assistant Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Griffin in his direct appeal. On June 13, 2018, appellate counsel filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and argued that the trial judge erred by instructing the jury that malice could be inferred from the use of a deadly weapon. Counsel also moved to be relieved from appointment. The South Carolina Court of Appeals granted counsel's motion and dismissed the appeal. *State v. Griffin*, Unpublished Opinion No. 2019-UP-226 (S.C. Ct. App. filed June 26, 2019) (*per curiam*). The Court of Appeals subsequently issued the remittitur on July 12, 2019. (*See* Appellate Case No. 2017-001960).

Griffin then filed an application for post-conviction relief (PCR) on June 12, 2020, which he amended on July 16, 2020, and September 20, 2023. (App. 471-498; 508-511). Sarah Henry,

Esq., was appointed to represent him in the action.

On September 20, 2023, a hearing was convened at the Greenville County Courthouse before the Honorable Grace G. Knie. On December 27, 2023, the PCR court issued an order of dismissal denying relief. (App. 626-640). Griffin timely appealed.

Griffin filed his Petition for Writ of Certiorari in our Supreme Court on September 24, 2024, which he amended on November 12, 2024, and raised these questions:

I.

Whether the court erred in denying post-conviction relief where counsel did not object to the jury instruction that malice could be inferred from the use of a deadly weapon, and where *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), held the trial court may not give such instruction where evidence is presented that would reduce, mitigate, excuse or justify the homicide, since Petitioner was entitled to and received a charge on the lesser offense of involuntary manslaughter, and since Petitioner was prejudiced?

II.

Whether the court erred in denying post-conviction relief where counsel did not object to the jury instruction that lying in wait for a person was an example of express malice, and where the State repeatedly contended that Petitioner was "hiding around the corner" until he got an opportunity to enter the house, since the charge was an improper comment on the facts pursuant to S.C. Const. art. V, § 21, and since Petitioner was prejudiced?

On January 28, 2025, our Court transferred the appeal to this Court for disposition. On November 19, 2025, this Court granted on question 2, but denied on question 1. Petitioner filed his brief of petition on April 16, 2026. This brief of respondent follows.

RESPONDENT'S STATEMENT OF FACTS

On December 27, 2015, Griffin murdered Nathan Crouch in April Green's home. The testimony at trial showed that April Green was selling drugs from the home that day. Nathan Crouch was present in the home along with Shane Barron, Green's brother. A customer named "Kevin" (Hoffman) came by twice that day. One transaction happened without incident. In the second, Green opened the door for him to complete another drug buy when Griffin pushed in. (State's Exhibit 9; *see also* Trial Tr., at 171-72; 189). Griffin placed a gun to Hoffman's head and told him to "get down," and asked "what y'all got in here?" (App. 150; 171-72; 189). Griffin went on to hit Green with his gun, fight with her brother, Shane Barron, and eventually shot and killed Green's friend, Nathan Crouch. (*See* Trial Tr., at 98-103; 120; 170-79; 193-94; *see also* Court's Exhibit 2 (State's Exhibit 8)). Terry Harris, a friend to Griffin, testified that he knew Griffin intended to rob someone and connected him to a SUV that Barron testified that he saw at the scene. (App. 362-369).¹ Griffin's recorded interview with law enforcement was admitted at trial. Griffin told law enforcement that he bought methamphetamine from Green earlier that day, but some of the drugs she sold him were "fake," and he went back to Green's place to confront her. In closing, counsel maintained, "This was a person that went back to get recompense for having been ripped off." (App. 409; *see also* 405 and Court Exhibit 1).

The jury convicted Griffin of attempted armed robbery; assault and battery, first degree; two counts of kidnapping; first degree burglary; possession of a weapon during the commission or attempt to commit a violent crime; and murder. (App. 458-59).

¹ Griffin attempted to gain Harris' help in this crime and Harris aided him in part. (*See* App. 363). Harris was charged with attempted armed robbery for his part and pled guilty. (App. 368).

At sentencing, Griffin repeatedly accepted responsibility and apologized: “ ... *I'm sorry. I never meant for none of this to happen ... I'm sorry. I never meant/or nobody to be taken from their family.... If I could change everything that happened, I wish I could. I wish I could go back and make better decisions ... I can't speak bad on nobody because pretty much, it my fault ... I'm sorry from the bottom of my heart.* ” (App. 464-65) (emphasis added). Griffin also stated, “I never meant for that to happen to nobody ... never meant for the situation to go that far,” (App. 465 and 466), and “if I could just change it, If I could do it all over again, it would be way different,” but at the time he was in need of money, “It was just so much pressure on me about being homeless and not being able to do for my daughter,” (App. 466). Griffin stated that it was not planned to “rob these people,” but “was just heat of the moment. It just happened.” (App. 467). As to the trial, he stated “it just prove that I did something wrong. I'm sorry for that. I mean, I can't take it back.” (App. 468).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters “depends on the specific issue” before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 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 evidence in the record to support them.” *Smalls*, 422 S.C. at 180, 810 S.E.2d at 839 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). 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.

Ineffective Assistance of Counsel Standard

An applicant seeking to show that Sixth Amendment counsel was ineffective, must demonstrate “that (1) counsel’s representation fell below an objective standard of reasonableness and (2) but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different.” *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). “ ‘ A reasonable probability is a sufficient to undermine confidence in the outcome’ of the trial.’ ” *Id* (quoting *Strickland*, at 694).

ARGUMENT

The PCR court properly found that counsel did not provide constitutionally ineffective assistance in not objecting to an instruction on inference of malice from the intentional use of a deadly weapon when the facts did not support the lesser offense, involuntary manslaughter charge given, and that there was overwhelming evidence of malice separate from the simple use of a weapon.

In his PCR action, Griffin alleged trial counsel was constitutionally ineffective for not objection to the jury instruction that malice could be inferred from the use of a deadly weapon. (App. 621). The instruction at trial was as follows:

... the law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with all the other evidence. You may give it such weight as you determine it should receive.

(App. 450).

The trial in this case was in 2017. In 2009, this Court decided *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), which disapproved of the instruction being given where the case included evidence that could “reduce, mitigate, excuse or justify” the killing. 385 S.C. at 611, 685 S.E.2d at 809. The charge was abandoned completely *after* the trial in this case, in this Court’s 2019 opinion, *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

The Ruling Below

The PCR judge observed that *Belcher* was available for the 2017 trial, but noted *Burdette* was not. (App. 638). She noted that “the charge ‘remain[ed] a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder....’ *Belcher*, at 612, 685 S.E.2d at 810.” (App. 638). The PCR judge found that “though the judge instructed on involuntary manslaughter, the facts did not support it.” (App. 638). Thus, the PCR judge essentially made two conclusions: (1) because there was no factual cause for objection, counsel was not

deficient, and (2) even so, there could be no prejudice where the record reflected overwhelming evidence of malice which negated any chance of a reasonable probability of a different result. (App. 639).

Petitioner's Argument on Appeal

In his appeal, Griffin overlooks the basic finding that he failed to carry his burden of showing that his trial counsel's representation was outside the recognized "wide range of reasonable professional assistance." *Strickland v. Washington*, 466 U.S. 668, 689 (1984). *Strickland* is a context-specific test. This is true both in deficiency and prejudice. *Id.*, 690-692. And, it must be remembered that failure to meet *either* prong defeats the claim. Here, Griffin failed to carry his burden of proof and simply failed to show ineffective assistance of counsel. In other words, Griffin failed to show both deficient performance and resulting prejudice.

As to deficiency, Griffin appears to contend that counsel *must* make a possible objection or motion, and if there is no strategic reason for doing so is expressed, counsel *must* be found deficient. That distills down to suggesting that counsel should make all *possible* objections or motions but that is refuted by *Strickland's* admonishment that "[t]here are countless ways to provide effective assistance in any given case," and its further acknowledgement that "[i]ntensive scrutiny of counsel and rigid requirements for acceptable assistance could dampen the ardor and impair the independence of defense counsel..." *Id.*, at 690. The PCR judge appropriately considered the context of the case in reviewing the claim and the record supports her ruling.

In his argument to this Court, Petitioner fails to reference counsel's testimony which tends to show why the objection would not have been appropriate in counsel's view. Instead, he offers his statement that he merely went to the home to "confront" the dealer based on his receipt of "fake drugs" and merely a weapon for protection. (*See* Pet. at 13). While true that the trial court would not have had the benefit of counsel's considerations, the PCR court was. Counsel's testimony is

telling. Counsel testified to his knowledge of the facts of the crime, specifically, the entry to the home while armed with a gun, and the murder:

Q And were you ever in doubt of the fact from anything your client told you or anything you learned from the solicitor's office, that your client pushed in that house, hiding behind another person, carrying a gun to get money?

A No. I mean, that's consistent with what he said in the statement that he gave.

Q Thank you, sir.

A And I would say consistent with anything he may have told me during the course of my representation.

(App. 586).

Petitioner has declined to acknowledge in his petition to this Court that evidence from counsel, or, for that matter, that entry into the home without permission is a crime. (*See* Pet. at 13). Petitioner does admit he unlawfully possessed the weapon by carry a handgun into another's home without permission. *See* S.C. Code Ann. 16-23-20 (A)(10). (*See* Pet. at 14).²

Counsel also testified that he was aware of *Belcher*, (App. 585), would research the relevant law before a trial, and clearly did not think the charge was objectionable, (App. 584). In his view, the murder in this case was "*not premeditated ... at most voluntary manslaughter and hopefully an involuntary manslaughter.*" (App. 581, emphasis added). As to any possibility of acquittal or a lesser charge, he testified he would "try to explore that." (App. 584-585). He candidly stated that while he believed himself a "pretty good lawyer," he could make mistakes, but did not know about

² In another way of looking at the facts, waiving a gun is could not be said to be an activity not tending to cause death or great harm or support that Griffin was acting lawfully at the time. *Id.* *See also State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900-901 (2006), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) ("there is no doubt that Reese was **presenting** a firearm when he took the gun out and began waiving it around" and "It is a felony for a person to present or point at another person a loaded or unloaded firearm. S.C.Code Ann. § 16-23-410 (2003).").

“mistake in this case” leaving it, essentially to the PCR court’s consideration. (App. 584-585). Notably, the record shows that trial counsel argued in closing to the jury that Griffin himself described what happened (by way of his statement) which indicated that the drugs he bought were not of sufficient quality which angered him. Further, Griffin indicated that he was “going to go back and recoup his loss, if he can. *And he goes armed*, because guess what, these are drug dealers” guns are “expect[ed].” (App. 405, emphasis added).³ Moreover, the facts can certainly be treated different on collateral review than they would on review in direct appeal. That makes counsel’s knowledge, and the remaining context, relevant to the determination. *See Jackson v. State*, 355 S.C. 568, 573, 586 S.E.2d 562, 564 (2003) (acknowledging *Strickland* “prejudice does not automatically result from” from instruction error finding that Jackson would have been entitled to a self-defense charge, but “the instruction would not have affected the outcome of trial” under the reasonable probability of result standard since his “testimony was unsupported by the physical evidence and highly incredible”).

Taking the record as it is, critical facts support the PCR court’s ruling that counsel was not deficient because no *evidence* supported the lesser charge.

“If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction.” *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011). However, it is error to instruct on a charge that is not warranted on the facts. *See, e.g., State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009). That is the case here. But more specifically,

³ Our Court has since this trial clarified that the fact that one brings a “unlawfully possessed” loaded gun to a drug deal is an act “calculated to produce a violent occasion.” *State v. Williams*, 427 S.C. 246, 251, 830 S.E.2d 904, 907 (2019). The Court eschewed in *Williams* that carrying such a weapon cannot be for mere self-defense “just in case violence arose” noting that “it is well-documented that the mere presence of guns at illegal drug transactions *produces* the violence.” *Id.* This was not an entirely new concept but a refinement of an existing one: the basic notation one cannot bring about the difficulty and claim self-defense. *Id.*

trial counsel was aware the facts supported the intentional carrying and intended use of the weapon during the course of what was essentially a home invasion, and therefore not the unintentional killing required under involuntary manslaughter. *State v. Tucker*, 324 S.C. 155, 170, 478 S.E.2d 260, 268 (1996) (“Involuntary manslaughter is defined as either (1) the killing of another without malice and unintentionally, but while one is engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the killing of another without malice and unintentionally but while engaged in the doing of a lawful act with a reckless disregard of the safety of others.”). Moreover, trial counsel was aware of the limitations of what he could credibly argue; his client was in possession of the weapon and used the weapon while committing felonies. The instruction simply did not affect *any* fact that counsel was arguing and did not support the lesser offense. (*See App.* 450).

Further still, at the time of the trial, even where a lesser charge was given, if the facts did not support the lesser charge, there could be no *Belcher* error in giving the instruction. *State v. Price*, 400 S.C. 110, 114, 732 S.E.2d 652, 654 (Ct. App. 2012). “It is certainly reasonable for counsel not to raise unmeritorious claims.” *Truesdale v. Moore*, 142 F.3d 749, 756 (4th Cir. 1998). Likewise, “counsel certainly is not required to engage in the filing of futile or frivolous motions.” *United States v. Nersesian*, 824 F.2d 1294, 1322 (2d Cir. 1987). Therefore, just because an involuntary charge was given, and the general inference of malice tied to use of the gun was disfavored, that does not convert reasonable representation to unreasonable representation on these facts. *See also Strickland*, at 689 (“a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance”); *id.* (“Even the best criminal defense attorneys would not defend a particular client in the same way.”).

But again, there is no reasonable probability of a different result so, thus, Petitioner cannot show the required prejudice. *See also Strickland*, at 697 (Although we have discussed the

performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one” and ““If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.”).

Griffin maintained at trial that he entered the home with a gun to get money back from a drug deal. (*See* App. 409). Griffin was armed going into the home, uninvited, with the intent to take something from the occupants - a fact counsel acknowledged at trial and Griffin admitted at sentencing, (App. 464-468), and again admitted at the PCR hearing, (App. 552). The PCR court correctly found as a matter of law the charge was defeated as the failure to qualify under the definition will defeat the necessity of the lesser offense charge. *State v. Brewton*, 437 S.C. 44, 55-56, 876 S.E.2d 141, 147 (Ct. App. 2022); *Wharton*, 381 S.C. at 216, 672 S.E.2d at 789. The PCR court correctly concluded that burglary and attempted armed robbery make it impossible to meet either prong. Thus, even under *Belcher*, there could be no resulting prejudice. *See State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) (finding error harmless pre-*Burdette*); *see also Belcher*, 385 S.C. at 611, 685 S.E.2d at 809 (“In many murder prosecutions, as *Belcher* concedes, there will be overwhelming evidence of malice apart from the use of a deadly weapon.”); *Smalls*, 422 S.C. at 191, 810 S.E.2d at 845 (where the record shows “a combination of physical and corroborating evidence so strong” it may be overwhelming such that *Strickland* prejudice “cannot possibly be met”). *Accord State v. Campbell*, 443 S.C. 182, 192, 904 S.E.2d 441, 446 (2024) (in direct appeal review, concluding overwhelming evidence of malice rendered err in giving the “inferred malice instruction” harmless as it “did not contribute to the verdict.”).

Again, Griffin pushed his way into April Green's home brandishing a gun, demanding to

know what they had, terrorizing the occupants, hitting Green with his gun, fighting with her brother, Shane Barron, and eventually shooting and killing her friend, Nathan Crouch. (*See* App. 98-103; 120; 170-79; 193-94; *see also* Court Exhibit 2 (State's Exhibit 8)). Griffin obtained the entry by subterfuge. When Ms. Green opened the door for "Kevin," Griffin pushed into the home. (State's Exhibit 9; *see also* Trial Tr., at 171-72; 189). Further, Terry Harris, who provided the transportation for Petitioner (and also pled guilty to attempted armed robbery), testified that he understood that Griffin had a gun and was going to commit a robbery. (App. 365-368). Harris also testified that Kevin Hoffman was speaking with Griffin before the crimes. (App. 374). There were certainly "other acts in preparation" supporting the malice, and overwhelming evidence of malice such that a reasonable likelihood of a different result cannot be shown.

Moreover, the PCR court did not err in considering, in the alternative, Griffin's admissions at sentencing. (App. 636-637). Even when error would normally be prejudicial, the fact of admission of guilt in open court weighs heavily in finding no basis to reverse. *See State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010). *See also State v. Sroka*, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) ("We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the correctness of this conclusion is eliminated by the admission of appellant in open court, after conviction ... "). Regardless of this alternative ground, however, as demonstrated, there was overwhelming evidence of malice such that Petitioner failed to show the required prejudice.

In conclusion, this record shows no error in the application of *Strickland* in denying relief. Petitioner simply failed to carry his burden of proof and was due no relief. There is no error for this Court to correct either in fact or law.

CONCLUSION

The PCR court's denial of relief should be affirmed.

Respectfully submitted,

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August 3, 2026

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SC Court of Appeals

STATE OF SOUTH CAROLINA IN
THE COURT OF APPEALS

Certiorari to Greenville County
The Honorable Grace G. Knie, Circuit Court Judge
(Post-Conviction Relief)

MARQUAL DEVINE GRIFFIN PETITIONER,

v.

STATE OF SOUTH CAROLINA RESPONDENT.

CERTIFICATE OF SERVICE

I, Melody J. Brown, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Brief of Respondent, and Certificate of Service has been forwarded to Petitioner's counsel, Joanna K. Delany, Esquire via email today, August 3, 2026 to JDelany@sccid.sc.gov, and to her assistant at smcinnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of August, 2026.

s/ Melody J. Brown

Melody J. Brown
Senior Assistant Deputy Attorney General

From: [Melody Brown](#)
To: [Delany, Joanna](#); [Mcinnis, Sara](#)
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Good afternoon:

Attached is the State's brief with certificate of service. These will be filed with the Court of Appeals shortly.

Kind regards,

MELODY J. BROWN, Senior Assistant Deputy Attorney General

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