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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 Beaufort County
Honorable Deadra Jefferson, Trial Judge
Honorable Dale E. Van Slambrook, Post-Conviction Relief Judge

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Appellate Case No. 2026-001206

ANTONIO RICARDO LEE, #381145,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

**PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

KYLEE KANEALEY
Assistant Attorney General
S.C. Bar No. 107060

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON PETITION FOR CERTIORARI

Whether the post-conviction relief court erred as a matter of law in finding trial counsel's representation was ineffective for failing to be clairvoyant and anticipate changes in the law, where that finding is expressly contradicted by the precedent set by the South Carolina Supreme Court?

STATEMENT OF THE CASE

In August 2019, the Beaufort County Grand Jury indicted Antonio Ricardo Lee (Lee) for trafficking in cocaine (2018-GS-07-01997), possession with intent to distribute (PWID) heroin (2018-GS-07-01187), PWID controlled substance within proximity of a park (2018-GS-07-01188), and possession of marijuana (2018-GS-07-01184). On August 12-14, 2019, Lee proceeded to a jury trial before the Honorable Deadra Jefferson. Assistant Public Defenders Jeffrey Stephens and Sharon Carroway represented Lee, and Assistant Solicitors Sarah Fowler and Daniel Gorley prosecuted the case. The jury convicted Lee as indicted, and Judge Jefferson sentenced him concurrently to twenty-five years for trafficking cocaine, eight years each for PWID heroin and the proximity charge, and one year for possession of marijuana.

Lee filed a direct appeal, which was perfected by Appellate Defender Victor R. Seeger. On appeal, Lee argued the trial court erred in denying his motion for disclosure of the informant's identity. The Court of Appeals affirmed on the merits. State v. Lee, Op. No. 2022-UP-70 (Ct. App. filed Feb. 16, 2022). The remittitur was sent March 7, 2022.

Lee filed an action for post-conviction relief (PCR) on February 13, 2023, and filed an amended application on September 24, 2025. An evidentiary hearing was held on November 13, 2025, at the Beaufort County Courthouse before the Honorable Dale E. Van Slambrook. Lee was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Following the hearing, the Court issued an order on February 26, 2026, granting relief on the issue that counsel was ineffective for failing to object to erroneous jury instructions based on State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021).

On March 9, 2026, the State filed a motion to reconsider the grant of relief pursuant to Rule 59(e), SCRCP, arguing the Court's findings contradicted South Carolina Supreme Court precedent.

On May 19, 2026, Judge Van Slambrook summarily dismissed the State's motion without a hearing. The State then timely initiated this instant appeal.

STATEMENT OF THE FACTS

In July of 2018, law enforcement officers from the Beaufort County Sheriff's Office began conducting a narcotics investigation with the assistance of a confidential informant. (App. pp. 315-327). As part of the investigation, the officers reviewed a recorded phone conversation between the confidential informant and an individual named Joseph Atkins. (App. pp. 315-327). During that conversation, the informant asked Atkins if he had any drugs at that time, and Atkins responded he was going to get some soon.[1] (App. pp. 315-327). The informant then asked Atkins where he was going to get the drugs from, and he indicated he was going to get them from an individual named "Tone." (App. pp. 315-327).

Upon hearing the name "Tone," the officers attempted to ascertain who went by that nickname in the area, identified Lee as a possible suspect, and determined Lee's girlfriend lived at a particular apartment on Paddle Boat Lane in Hilton Head, South Carolina. (App. p. 107; pp. 110-112; pp. 315-327). Officers then began conducting covert surveillance of Atkins, followed him to an apartment complex on Paddle Boat Lane, and observed him enter the specific building in which Lee's girlfriend's apartment was located.[2] (App. pp. 315-327). A few minutes later, Atkins returned to his vehicle, and officers quickly made contact with him and a passenger before the two could leave the area. (App. pp. 315-327). After making contact with them, Atkins and his passenger, Shae Dalrymple, turned over some heroin and cocaine. (App. pp. 315-327). Atkins further revealed he purchased the narcotics from "T," and Dalrymple indicated they had come to

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[1] During the call, neither the confidential informant nor Atkins directly identified the subject matter of the conversation as drugs, but the context of the conversation was apparently clear. (App. pp. 315-327). Furthermore, the officers were subsequently able to confirm the conversation had been about drugs through their surveillance of Atkins, their recovery of drugs from Atkins, and Atkins' incriminating admissions. (App. pp. 315-327).

[2] The apartment was located within half a mile of a park. (App. pp. 198-199).

the apartment complex to get the drugs from "Tone." (App. pp. 315-327).

After that, the officers proceeded to knock on the door of Lee's girlfriend's apartment, and Lee approached the door with a ripped plastic baggie in his hand. (App. p. 113; pp. 315-327). In response, Lee was detained and searched, and an officer found $3,000 in cash in his pockets, along with additional ripped plastic baggies. (App. p. 91; p. 190; p. 205). The apartment was then secured while an officer attempted to obtain a search warrant based on the information uncovered up to that point, and a magistrate later issued a search warrant for the apartment. (App. p. 40; p. 91; p. 93; p. 123; pp. 315-327).

During the ensuing warrant-based search, cocaine, heroin, marijuana, and items associated with drug trafficking were found scattered and hidden all throughout the apartment. (App. pp. 42-44; pp. 49-56; p. 60-62; pp. 65-69; pp. 71-82; p. 133; pp. 194-197; pp. 208-210; p. 217). Furthermore, Lee's driver's license was found in close proximity to some heroin, and mail addressed to Lee at the apartment's address was found in one of the bedrooms.[3] (App. p. 42; p. 44; p. 53; p. 60; pp. 66-68; p. 106).

Following those discoveries, the drugs found during the search were subjected to chemical analysis and identified as 295.8 grams of cocaine, 5.046 grains of heroin, and 0.14 grams of marijuana. (App. p. 160; pp. 163-164; pp. 166-167). Likewise, some of the evidence recovered at the scene was analyzed for DNA, and Lee was identified as having a DNA profile matching the profile of the major contributor of the DNA found on one of the bags of cocaine along with another item seized from the apartment. (App. p. 99; p. 101; p. 200; pp. 223-230).

Subsequently, based exclusively on the drugs found during the search of the apartment,

[3] The address listed on Lee's driver's license was not the apartment's address, but the license had been issued several years earlier. (App. p. 97; p. 107).

Lee was indicted for a variety of offenses, including trafficking in cocaine, possession of heroin with intent to distribute, and possession of marijuana. (App. pp. 2-4; pp. 291-309). Prior to trial, defense counsel filed a motion requesting disclosure of the "[n]ames and contact information in the custody or control of any law enforcement for any 'confidential informant' cited in the incident report and search warrant affidavit that provided information used in support of the search warrant, or whose information will be referenced by the State at trial in the subject case."[4] (App. p. 314). However, the solicitor declined to reveal that information on the basis the confidential informant was a mere tipster with only peripheral knowledge of Lee's charged crimes. (App. p. 11).

Thereafter, Lee proceeded forward to trial, and, at its outset, defense counsel moved for the trial judge to require disclosure of the confidential informant's identity. (App. pp. 5-6). As support for that motion, defense counsel maintained he did not currently possess sufficient information to raise a challenge to the search that led to the discovery of drugs and speculated a review of the recording of the phone call between the confidential informant and Atkins could potentially be pertinent to the matter. (App. pp. 7-8; p. 10).

In response to defense counsel's motion, the trial judge personally reviewed a recording of the call in camera along with the search warrant affidavit, and, after doing so, she noted the role of the confidential informant had been limited to contacting Atkins—and not Lee—to see if he had any drugs and to asking Atkins where he intended to get his drugs from when Atkins asserted he was going to get some soon. (App. pp. 10-14). The trial judge further noted that the confidential informant did not have any direct knowledge of Atkins' transaction with Lee, which was surveilled by law enforcement and led to Atkins providing inculpatory information about Lee that established

[4] Notably, in seeking that particular information, defense counsel did not include in the motion any statements indicating *why* the information was being sought or *how* it might be relevant to Lee's case or defense. (App. p. 314).

probable cause for the search of Lee's residence. (App. pp. 8-10; pp. 14-15). Under those circumstances, the trial judge concluded the confidential informant only possessed peripheral knowledge and was neither an active participant in the criminal transaction, a material witness on the issue of guilt or innocence, nor essential to a fair determination of the State's case. (App. pp. 14-15). Accordingly, the trial judge ruled Lee failed to meet his burden of establishing disclosure of the confidential informant's identity was required and denied defense counsel's motion seeking that information. (App. p. 15).

Following that ruling, the trial proceeded forward, and testimony and evidence were presented about the warrant-based search that led to the discovery of Lee's drugs and other incriminating evidence. (App. pp. 40-108; pp. 122-126; pp. 129-135; pp. 158-167; pp. 170-217; pp. 219-230). However, no testimony was presented in front of the jury about the basis for the search warrant or about Atkins' transaction with Lee, and Lee did not present any evidence in his defense outside of what defense counsel elicited through cross-examination of the State's witnesses. (App. p. 241). Ultimately, following the presentation of that testimony and evidence, the jury convicted Lee as indicted. (App. pp. 287-288).

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 any probative evidence in the record supports 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. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief 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).

ARGUMENT

The post-conviction relief court erred as a matter of law in finding trial counsel's representation was ineffective for failing to be clairvoyant and anticipate changes in the law, where that finding is expressly contradicted by the precedent set by the South Carolina Supreme Court.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687–88 (1984); Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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, 386 S.E.2d at 625.

This Court has repeatedly and unequivocally held that counsel is *not* required to anticipate changes in the law. See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (The Supreme Court of South Carolina has "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)); Thornes v. State, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."); see also Bowman v. State, 422 S.C. 19, 809 S.E.2d 232 (2018); Teamer v. State, 416 S.C. 171, 786 S.E.2d 109 (2016); Robinson v. State, 308 S.C. 74, 77–78, 417 S.E.2d 88, 91–92 (1992).

Cases that are pending appeal are not the law. The post-conviction relief court erred as a matter of law in its reliance on State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021), which overruled Adams[5] and held that courts should no longer instruct juries on the inference of knowledge or possession from drugs found on property under a defendant's control; it was not decided until 2021, two years after Lee's trial. At the time of trial, the Adams instruction was correct and good law. See Gilmore v. State, *supra* (finding defendant's conviction occurred over a year before the Court of Appeals decision and therefore, trial counsel could not be ineffective for failing to request a jury instruction which would not be applicable to the offenses charged for at least another year.)

Nevertheless, the post-conviction relief court found deficiency, stating "that Counsel should have been diligent in researching cases currently before the courts." (App. p. 614). The post-conviction relief court did not stop there; it went on to find that "Counsel failed to present a reasonable, strategic decision why they did not object." (App. p. 618). These findings directly contradict this Court's precedent. See Gilmore, Thornes, Bowman, Teamer, Robinson, *supra*. Under Strickland, deficiency is determined under reasonable prevailing professional norms. It is contrary to this Court's existing precedent to require attorneys to research every single case pending appeal before the courts, as they are *not* controlling law. Requiring counsel to monitor every pending appeal and object "just in case" the law might change imposes precisely the clairvoyance this Court has never required.

Further, the post-conviction relief court erred in finding that counsel failed to provide a strategic reason for not objecting to the jury charge. Contrary to the post-conviction relief court's finding, Counsel testified that the Adams charge was good law at the time and there was no reason

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[5] State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987).

for him to object. (App. p. 595).[6] Not objecting because the Adams charge was good law at the time *is* a reasonable, strategic decision. See Cartrette v. State, 323 S.C. 15, 448 S.E.2d 553 (1994) (finding trial counsel's performance could not be deficient since the appropriate request was made under then existing state law precedent and that trial counsel argued the law as it existed at the time of trial, which is well within the objective standard of reasonableness under Strickland.).

Notably, the post-conviction relief court's ruling creates a dangerous and unworkable precedent. It would require every trial attorney in South Carolina to treat every pending appellate case as if it were already the law and to object to every established instruction that might someday be overruled. This is not Strickland. It is clairvoyance.

This case presents an important question of recurring significance: the proper application of Strickland when the law changes after trial. The post-conviction relief court's findings are not supported by the record and fail as a matter of law.

CONCLUSION

For the reasons stated above, this Court should grant the Petition for Writ of Certiorari. Should this Court grant certiorari, Petitioner requests permission under the rules to brief the issues discussed above fully.

ALAN WILSON
Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

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[6] In addition to the charge being good law at the time, counsel also testified that he did not object because this charge did not hurt Applicant any more than just the regular charge about possession and control. Their argument was that these were Mr. Vito's drugs because it was his residence, not Applicant's. (App. p. 595). Therefore, contrary to the post-conviction relief court's findings, Counsel articulated *multiple* strategic reasons for not objecting.

KYLEE KANEALEY
Assistant Attorney General

By: ______________________
Kylee M. Kanealey
S.C. Bar No. 107060

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

This 24th day of August, 2026.