

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Daniel D. Hall, Circuit Court Judge

RAEFORD D. WIDEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002426

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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QUESTION PRESENTED

Whether the PCR court erred in finding that trial counsel was not ineffective for failing to interview or call three favorable defense witnesses?

ARGUMENT

The PCR court erred in finding that trial counsel was not ineffective for failing to interview or call three favorable defense witnesses.

This case is about a brother who was placed in an impossible position after simply checking on his sister. Petitioner was woken up in the middle of the night by loud noises and walked outside his home to see a vehicle and two men he did not know. In the backseat of the vehicle, he saw his older sister, unconscious and unresponsive. While trying to check on his sister, the driver of the vehicle began driving in reverse, pulling Petitioner alongside the moving car. In a split-second decision, Petitioner shot and killed the driver of the vehicle.

This is a classic case of self-defense. Petitioner was on his own property, was checking on his sister whose health he was reasonably concerned for, and was in the midst of a potentially deadly assault by the intoxicated driver of a motor vehicle. Trial counsel was aware of three witnesses who would have supported this narrative. However, trial counsel chose not to utilize those witnesses, opting instead for the defense of accident. No reasonable attorney would have acted in that fashion, and trial counsel did not articulate a valid strategic rationale for proceeding that way. Therefore, trial counsel was deficient. Petitioner's trial likely would have ended differently if his favorable witnesses had testified. Therefore, Petitioner was prejudiced. Accordingly, trial counsel rendered ineffective assistance of counsel, and the PCR court's order should be reversed.

At the outset, the state accuses Petitioner of suggesting a "questionable standard that because no lawyer was available due to disability to testify about his reasons for his actions or inactions, Sixth Amendment deficient performance must be presumed and relief granted." Return at 13. The state mischaracterizes Petitioner's argument. The first prong of ineffective assistance

of counsel requires Petitioner to demonstrate that his attorney's representation fell below "an objective standard of reasonableness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Within this prong there are essentially two sub-prongs. First, the court asks whether trial counsel performed deficiently, meaning that his performance was not "within the range of competence demanded of attorneys in criminal cases." *Strickland*, 466 U.S. at 687 (citation omitted). However, even if trial counsel's performance appears invalid, it is still entitled to deference if trial counsel can "articulate a valid reason for employing a certain strategy." *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

For example, imagine a hypothetical case where a PCR applicant is alleging ineffective assistance of counsel based on his trial counsel's failure to object to improper testimony. If the applicant is wrong, and the testimony is in fact proper, then trial counsel was not deficient. However, if the improper testimony *is* improper, trial counsel is deficient *unless* he articulates a valid reason for not objecting. *See, e.g., Dawkins v. State*, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001); *Gilchrist v. State*, 350 S.C. 221, 226-27, 565 S.E.2d 281, 284 (2002). Deficient performance can essentially be 'saved' if trial counsel had a valid reason for performing the way he did.

In this case, however, Petitioner's argument is that no reasonable attorney would have failed to call witnesses that support self-defense in a self-defense case. Trial counsel could potentially have articulated a strategic reason for this failure, but he did not. In the absence of his testimony, "neither the PCR court nor the appellate court can conclude trial counsel exercised a valid trial strategy...." *Lindsey v. State*, 447 S.C. 93, 133, 924 S.E.2d 104, 126 (2025). Petitioner is not asserting entitlement to "a windfall of relief when counsel becomes deceased or mentally disabled subsequent to a conviction," *see* Return at 13, Petitioner is arguing that trial counsel

rendered objectively deficient performance, and the PCR court cannot save that performance by imputing strategic decisions onto trial counsel when no evidence of the same exists. Rather, it is the state that makes a “dangerous assertion” of “a windfall of relief” by suggesting that a PCR applicant can never obtain relief if his trial counsel does not testify. *See* Return at 14 (“As Thomas’s deceased lawyer [*and Scott Robinson here*] cannot provide answers, the reasons for her decisions at trial—if indeed they were ‘decisions’ at all—will remain forever unknown. A federal court evidentiary hearing would do little good, if any, even if the facts there discovered could be considered.” (*quoting Thomas v. Thaler*, 520 Fed. Appx. 276, 283 (5th Cir. 2013) (alteration and all emphasis in original))).¹

Next, the state asserts that Petitioner cannot establish prejudice from trial counsel’s decision not to call the three witnesses because “neither father, mother nor Taquana has any credible evidence about that other than their own speculation or from Petitioner’s evolving self-serving statements which would not be admissible at trial as a self-serving hearsay statement.” Return at 19. This assertion is belied by the record. Rose Wideman testified that Tatum put the

¹ Petitioner would again highlight the pitfalls of applying *habeas* cases from federal courts of appeal to state PCR cases. *See* Petition at 12, n. 10. *Thomas v. Thaler* is one of several of these cases cited by the state. Setting aside that *Thomas* is both unpublished and outside of the Fourth Circuit, the *Thomas* Court was not reviewing a claim of ineffective assistance anew. Rather, it was reviewing a state court’s denial of PCR under the AEDPA, 28 U.S.C. § 2254. *Thomas*, 520 Fed. Appx. at 280. The *Thomas* Court was not reviewing whether the habeas petitioner’s trial counsel was ineffective – it was reviewing whether the Texas state courts had applied *Strickland* in an “unreasonable” way, which is a “substantially higher threshold” than whether the decision was “incorrect.” *Id.* This standard is so much more deferential than the standard this Court must employ here that *Thomas* is of essentially no utility. In fact, *Thomas* expressly stated that it was not even truly reviewing the *Strickland* standard. *Id.* (“A state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself.”). Therefore, *Thomas* provides no support for the state’s position that the PCR court may conduct a sweeping, extra-evidentiary review to find any hypothetical strategic reason that trial counsel may have had, simply because trial counsel is not available. On the contrary, this Court has repeatedly held that “[c]ounsel *must articulate a valid* reason for employing a certain strategy to avoid a finding of ineffectiveness.” *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (emphasis added); *Lindsey*, 447 S.C. at 133, 924 S.E.2d at 126 (collecting cases).

car in reverse and started moving out of the driveway with the door still open and Petitioner still half inside. She also testified that the moving car was pulling Petitioner along with it. Rose offered testimony that critical state's witness Briana Ware was extremely intoxicated, which would have possessed impeachment value at trial. Raeford Wideman, Sr., testified that he told Tatum to give him the car keys, and Tatum refused. He testified that Tatum began driving away with Petitioner still in the car, and Petitioner would have been pushed into a large ditch. None of that evidence has anything to do with "Petitioner's...self-serving statements." Return at 19. Rather, they are the first-hand observations of eyewitnesses, which would have served as excellent direct evidence in support of Petitioner's self-defense claim.

Further, the state asserts that trial counsel made a strategic decision not to call Rose or Raeford Wideman, Sr., as witnesses due to their "credibility." Return at 24, 25.² Again, however, trial counsel did not "articulate" that rationale. *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402. Therefore, neither the PCR court nor this Court can assume from no evidence that was the reason trial counsel failed to call them as witnesses. *Lindsey*, 447 S.C. at 133, 924 S.E.2d at 126.³ Furthermore, it is not clear why Rose's initial inconsistent statements to the police would automatically disqualify her as a witness. She explained the inconsistency by testifying that she

² The state identifies as "important" that Rose's testimony conflicted "with both Briana's and McDonald's testimony about who was present when the gun was fired." Return at 24. The state vastly oversells the evidentiary value of Briana and McDonald's testimony. Briana was heavily intoxicated on the night of the shooting; McDonald had previously been convicted of several felonies and was facing pending charges for failure to stop for blue light. McDonald testified that Petitioner yelled "you gonna die" before shooting, something that Briana apparently did not hear despite sitting mere feet away from Petitioner. Further, McDonald's testimony about where Petitioner was standing was thoroughly contradicted by the state's own evidence.

³ As it applies to Raeford Wideman, Sr., specifically, the state's contention is again belied by the record. While Petitioner and Rose made inconsistent statements to the police, there appears to be no indication that Raeford, Sr., made *any* statement to the police on the night of the shooting. Therefore, it is not clear what he would have been impeached with.

and Petitioner were initially nervous. While the original inconsistent statements would have some impeachment value, nothing indicates that the jury would automatically refuse to believe her; rather, the jury would have been entitled to believe her story in full.

Finally, the state seems to suggest that Petitioner was not prejudiced by trial counsel's failure to call the witnesses because Petitioner's statements already provided evidence of accident and self-defense. Return at 24. That assertion is too clever by half. For one, Petitioner's statements to police were presented to the jury along with evidence that Petitioner initially gave inconsistent statements to the police. The state repeatedly asserts that such inconsistent statements would have been fatal to Rose's credibility but then simultaneously seems to argue that Petitioner's testimony alone was sufficient for Petitioner's defense. *See* Return at 24 ("The evidence from Petitioner's own statements clearly presented possible defense of accident and possibly self-defense without putting Petitioner through impeachment with the various and evolving positions which would only be added to by questionable and inconsistent testimony or irrelevant from his mother and father. [sic]"). That assertion fails as a matter of logic. Petitioner's father would likely have been insulated from the same impeachment because he did not give a statement to the police. Had trial counsel called Petitioner's parents and sister, Petitioner's self-defense theory would have been bolstered by the testimony of three more witnesses, at least one of whom would not have been impeached by an inconsistent statement. The presence of a non-impeached witness giving similar testimony to Rose and Petitioner may well have led the jury to believe Rose's explanation for her inconsistent statements. There is at least a "*reasonable probability*" that the result of the trial would have been different. *Weik v. State*, 409 S.C. 214, 233, 761 S.E.2d 757, 767 (2014) (emphasis added). Accordingly, Petitioner has established prejudice.

The jury would have heard a very different story had trial counsel called Petitioner's witnesses. Instead, the only evidence of self-defense the jury heard came second-hand from Petitioner's own statements to law enforcement. Any reasonable attorney who litigated this case would have presented evidence of self-defense. Because trial counsel did not, his representation was objectively unreasonable and therefore deficient. Because there is a reasonable probability that the jury would have reached a different verdict had it heard from Petitioner's witnesses, Petitioner was prejudiced by trial counsel's deficiency. For these reasons, and the reasons stated in the petition for certiorari, the PCR court's denial of relief was erroneous. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, and the reasons stated in the Petition for Certiorari, this Court should grant certiorari and reverse the PCR court.



W. Chandler Norville
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This 11th day of September, 2026.