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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable B. Alex Hyman, Circuit Court Judge

BRAXTON LAVON HARE,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2025-002475

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

QUESTION PRESENTED 1

STATEMENT OF THE CASE 2

ARGUMENT

Respondent agrees that this Court should remand Respondent's case to the PCR court for the limited purpose of entering a supplemental order outlining specific findings of fact and conclusions of law for each allegation upon which PCR was granted and the remaining allegations in accordance with S.C. Code Ann. § 17-27-80 and where a remand is proper in these circumstances pursuant to *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). 4

Relevant Facts 4
Discussion 8

CONCLUSION 12

QUESTION PRESENTED

Respondent agrees that this Court should remand Respondent's case to the PCR court for the limited purpose of entering a supplemental order outlining specific findings of fact and conclusions of law for each allegation upon which PCR was granted and the remaining allegations in accordance with S.C. Code Ann. § 17-27-80 and where a remand is proper in these circumstances pursuant to *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

STATEMENT OF THE CASE

In May 2016, the Greenville County grand jury indicted Respondent for attempted murder, possession of a weapon during the commission of a violent crime,[1] and failure to stop for a blue light. App. 664-665, 669-670. On July 12, 2017, Respondent proceeded to trial before the Honorable Edward W. Miller and a jury. App. 1. Mark Moyer and Bran Fowler prosecuted the case for the state. App. 1. Ernest Hamilton represented Respondent. App. 1. The jury ultimately found Respondent guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) and failure to stop for a blue light. App. 397, ll. 5-18. Judge Miller imposed a total sentence of twenty (20) years' imprisonment comprised of twenty (20) years as to ABHAN and three (3) years as to failure to stop for a blue light. App. 402, ll. 21-22. Petitioner filed a timely notice of appeal; after briefing, the South Carolina Court of Appeals dismissed his appeal in an unpublished opinion pursuant to *Anders v. California*, 386 U.S. 738 (1967). *See State v. Hare*, Op. No. 2019-UP-055 (Ct. App. filed February 6, 2019) (per curiam).

On February 5, 2020, on behalf of Respondent, Dayne C. Phillips, filed an application for post-conviction relief (PCR). App. 411-418. On May 14, 2020, the state filed a return and motion for a more definite statement. App. 433-445. On March 15, 2023, Respondent filed an amended application for PCR. App. 419-432. On May 13, 2024, an evidentiary hearing was held before the Honorable B. Alex Hyman. App. 446-597. Dayne C. Phillips represented Respondent and Julianna E. Battenfield represented the state. App. 446. On September 12, 2024, Judge Hyman notified the parties by email that he would grant the PCR application as to allegations 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. App. 598. Judge Hyman signed an order

[1] The state dismissed the weapons offense on July 14, 2017, due to prosecutorial discretion. *See* PWC at 4.

granting PCR on April 10, 2025; however, the order was not clocked as filed by the clerk of court until November 26, 2025. App. 599-610. On May 5, 2025, the state moved to alter or amend the judgement pursuant to Rule 59(e), SCRCP. App. 611-620. On May 19, 2025, Respondent filed a return to the state's Rule 59(e) motion. App. 621. Respondent attached his proposed order granting PCR to the return as "Attachment A." App. 622-657. On November 26, 2025, and December 4, 2025, Judge Hyman denied the state's motion to alter or amend the judgment. App. 660-663. Although there are two Form 4 orders denying the state's motion, the two separate orders appear to be identical and were both signed by Judge Hyman on November 24, 2025. App. 660-663. The state appealed and filed a petition for writ of certiorari on June 5, 2026. *See* PWC.

This return follows.

ARGUMENT

Respondent agrees that this Court should remand Respondent's case to the PCR court for the limited purpose of entering a supplemental order outlining specific findings of fact and conclusions of law for each allegation upon which PCR was granted and the remaining allegations in accordance with S.C. Code Ann. § 17-27-80 and where a remand is proper in these circumstances pursuant to *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

Relevant facts

Trial

During trial, Deputy Michael Nunez testified that he responded to a call for a shooting on September 1, 2015, at 10:30 a.m. App. 170, ll. 13-25. The complainant, a driving instructor for the Greenville Driving School testified that on September 1, 2015, he was driving to pick up a student when a black Mercedes approached him and was driving erratically. App. 99, l. 1 – 103, l. 20. He testified that the occupants of the Mercedes were yelling at him and his driver's side window was rolled down. App. 104, ll. 1-14. He testified that Respondent was the driver and that Respondent began hanging out the window and yelling. App. 108, ll. 10-14. He testified that both men in the car pointed guns at him. App. 108, ll. 16-25. He explained that he "hit the deck" and heard "bang, bang, they fired the gun." App. 112, ll. 10-24. He testified that his passenger side window shattered. App. 113, ll. 16-20. He called 911. App. 116, ll. 1-6. He positively identified Respondent from a lineup. App. 129, ll. 9-23.

The state also called William Hunter, Respondent's co-defendant, who testified that he had pled guilty the day before to ABHAN and was facing zero to twenty years imprisonment. App. 256, ll. 2-19. He described the incident as a road rage incident. App. 258, ll. 4-5. He testified that he and Respondent pulled up beside a car. App. 258, l. 5. He pointed a firearm and

Respondent shot into the car door. App. 258, ll. 5-6, 9-15. He testified that Respondent picked him up at his house and he had a .380 caliber loaded firearm in his possession. App. 260, ll. 1-7. He explained that they were headed back to school for his meeting at 10:30 a.m. App. 263, ll. 4-9. He testified that the complainants car stopped and nearly caused them to wreck. App. 263, l. 24 – 265, l. 3. He explained that Respondent pulled next to the car, he pointed a firearm, and Respondent shot at the car. App. 265, l. 2 – 267, l. 19. He testified that he later saw on the news that Respondent had gotten into a chase with the police and hit another car. App. 273, ll. 10-24.

Respondent testified in his own defense. He described that when he was driving the complainant's car swerved in front of him. App. 313, ll. 12-18. He testified that because complainant's car swerved he almost hit complainant's car. App. 313, ll. 17-20. He testified that the complainant was "waiving his hand, doing his middle finger and laughing." App. 313, l. 24 – 314, l. 1. He testified that he was not trying to shoot and kill the complainant. App. 314, ll. 8-12. He explained that he saw the complainant reach down so he thought he was going to pull a gun and believed he was in danger. App. 315, ll. 13-22. He explained he was aiming at the tire. App. 315, ll. 23-25. He testified that he shot while the complainant was reaching down and then immediately drove off. App. 317, ll. 1-8. He testified that he dropped off his Hunter, his co-defendant, and then went to William Salter's house to pick him up. App. 317, ll. 16-22. He testified that he stopped at a Citgo and saw police. App. 318, ll. 1-5. He explained that he did not stop for police because he did not have a driver's license. App. 318, ll. 5-11. He agreed that he did not stop for blue lights. App. 318, ll. 21-23.[2]

[2] The state also presented testimony from Willie Wright who explained that he was involved in a car wreck on September 1, 2015, wherein he was stopped at a stoplight, saw blue lights, and a black Mercedes ran into the driver's side of his truck. App. 200, l. 10 – 201, l. 5.

PCR proceedings

On February 5, 2020, Respondent filed an application for PCR. App. 411-418. Thereafter, on March 15, 2023, Respondent filed an amended PCR app raising, as relevant: (13) "Trial Counsel failed to move for a continuance and recusal the Trial [Court] who took the Co-Defendant's plea after jury selection and sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to the Co-Defendant's guilty plea to Assault and Battery of a High and Aggravated Nature, and the jury being notified that the Co-Defendant had pled guilty during the break;" (23) "Trial Counsel improperly questioned [Respondent] on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE;" (24) "Trial Counsel improperly questioned [Respondent] on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(b), SCRE;" (28) "Trial Counsel improperly conceded [Respondent's] guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument;" (29) "Trial Counsel improperly referred to [Respondent] as a juvenile delinquent in his closing argument (prejudicial propensity character);" (31) "Trial Counsel improperly presented [Respondent] as a troubled child of mixed race who was not good in school during his closing argument;" (32) Trial Counsel failed to request and properly argue for a jury instruction on self-defense (under the 'any evidence' standard) based on [Respondent's] testimony that he was acting on appearance. *See State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989); *Douglas v. State*, 332 S.C. 67, 504 S.E.2d 307 (1998);" (33) "Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction ('any evidence' standard);" (34) "Trial Counsel failed to request and properly argue for a jury instruction on acting on

appearances for self-defense;" and (37) "Trial Counsel failed to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon." App. 423-426.

On May 13, 2024, an evidentiary hearing was convened wherein forensic psychiatrist Donna Maddox, Respondent, former Appellate Defendant Taylor Gilliam, trial counsel Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified. *See generally* App. 446-597. On September 12, 2024, Judge Hyman notified the parties that he was granting Respondent's PCR application as to the following allegations: 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. App. 598.

On April 10, 2025,[3] Judge Hyman entered an order granting Respondent post-conviction relief. App. 599-610. The order outlined the procedural history of Respondent's case, the testimony presented at the evidentiary hearing, and the applicable law. App. 600-609. The PCR court, in its section titled findings of fact and conclusion of law, concluded that trial counsel's performance fell below an objective standard of reasonableness and that trial counsel's deficient performance prejudiced Respondent. App. 609-610. The PCR court thus concluded that trial counsel provided ineffective assistance of counsel and granted Respondent's application for post-conviction relief. App. 610.

On May 5, 2025, the state moved to alter or amend the judgment pursuant to Rule 59(e), SCRCP. App. 611. Therein, the sate cited the ten allegations for which the PCR court notified the parties it intended to grant Respondent's PCR application. App. 611-612. The state argued that the PCR court did not address specific findings as it related to those allegations. App. 612.

[3] It is worth noting that the order granting PCR was not clocked as filed by the clerk of court until November 26, 2025. App. 599.

The state addressed each allegation in turn. App. 612-617. The state concluded that the PCR court's order did not adequately address specific findings of law and fact. App. 617.

On May 15, 2025, Respondent filed a return to the state's Rule 59(e) motion arguing that the PCR court properly found that Respondent established constitutional violations and deprivations that required PCR. App. 621. Respondent pointed to his proposed order granting PCR which addressed the findings of ineffective assistance of counsel and attached the order as "Attachment A." App. 621-657. In that proposed order, PCR counsel identified each allegation Respondent raised in his PCR application. App. 625-630. The order contained a section labeled "Findings of Fact and Conclusions of Law," wherein each allegation the PCR court granted relief was addressed with specific citations to relevant law and record evidence. App. 640-652. Finally, the order identified each allegation for which the PCR court denied relief as to trial counsel and appellate counsel. App. 653-657.

The PCR court then entered a Form 4 order denying the state's motion to alter or amend the judgment pursuant to Rule 59(e). App. 660-663.

Discussion

Respondent agrees that this matter should be remanded to the PCR court for the limited purpose of allowing the PCR court to enter a supplemental order with specific findings of fact and conclusions of law addressing Respondent's allegations upon which the PCR court granted relief and the remaining allegations pursuant to S.C. Code Ann. § 17-27-80 (2014) and *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). Importantly, the record contains a proposed order submitted by PCR counsel detailing the allegations upon which the PCR court granted relief and providing findings of fact and conclusions of law. App. 621-657. Thus, given

that a proposed order is contained in the record, Respondent submits that a remand may be conducted efficiently and without the need for a hearing. App. 621-657.

The PCR court must make "specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." S.C. Code Ann. § 17-27-80; *see also* Rule 52(a), SCRCivP; *see generally Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016) (general denial of all claims not sufficient). When the PCR court fails to do so "as to *all issues* raised by an applicant," the proper remedy is for this Court to remand the matter to the PCR court. *Fishburne*, 427 S.C. at 516, 832 S.E.2d at 589 (emphasis added). The scope of that remand can vary; this Court could remand for the limited purpose of requiring the PCR court to make the proper findings, *see id.*, or it could remand for a new PCR hearing entirely, *see McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991) ("we reverse the order . . . and remand for a new PCR hearing."). Typically, a prerequisite for challenging the sufficiency of an order on appeal would be the filing of a Rule 59(e), SCRCivP motion. In Respondent's case, the state satisfied this requirement by filing a motion to alter or amend the judgment pursuant to Rule 59(e) on May 5, 2015, which the PCR court denied. App. 660-663.

Additionally, in *Fishburne*, our Supreme Court remanded the matter to the PCR court for the "PCR court to issue an order setting forth adequate findings of fact and conclusions of law regarding Fishburne's unaddressed PCR claim." 427 S.C. at 507-508, 832 S.E.2d at 585. There, our Supreme Court "stress[ed] that PCR orders must be prepared in compliance with section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure." *Id.* at 508, 832 S.E.2d at 585. Moreover, while discussing deficiencies in an order, the Court explained that "[w]e do not place blame on a single party below for an insufficient PCR order." *Id.* at 516, 832 S.E.2d at 589. The Court continued that "[b]ecause the PCR judge

will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised." *Id.* The *Fishburne* Court nonetheless explained that when remanding to the PCR court "[w]e simply require the PCR court to set forth the appropriate findings of fact and conclusions of law, whatever they may be." *Id.* at 516, 832 S.E.2d at 590.

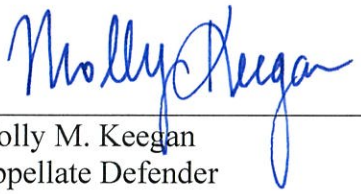
Respondent agrees that the PCR court's initial order lacks specific findings of fact and conclusions of law necessary to satisfy statutory requirements and *Fishburne*. App. 599-610. For instance, the order does not identify the specific allegations for which the PCR court granted relief, nor does it provide specific findings related to the ten allegations the PCR court notified the parties it would grant relief or any allegation raised by Respondent. App. 599-610; *see e.g.*, *Fishburne*, 427 S.C. at 512, 832 S.E.2d at 587 (citing *Simmons*, 416 S.C. at 592, 788 S.E.2d at (internal quotations omitted) ("The PCR court's general denial of all claims not specifically addressed in the PCR court's order dos not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law."). Instead, the order concludes that Respondent established *Strickland* deficiency and prejudice. App. 609-610. Respondent also agrees that the initial order prevents meaningful appellate review. PWC at 14. Therefore, Respondent respectfully submits that the interests of justice dictate that Respondent's case should be remanded to the PCR court with instructions for the court to enter a supplemental order to make specific findings of fact and conclusions of law as to the allegations granted and raised by Respondent.

Accordingly, Respondent agrees that a remand to the PCR court for the limited purpose of entering a supplemental order granting PCR is appropriate so that the PCR court can make

specific findings of facts and conclusions of law. App. 599-610; S.C. Code Ann. § 17-27-80; *Fishburne*, 427 S.C. at 505, 832 S.E.2d at 584.

CONCLUSION

This Court should remand Respondent's case to the PCR court for the limited purpose of entering a supplemental order addressing the allegations for which the PCR court granted relief and the remaining allegations with specific findings of facts and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 and *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).



Molly M. Keegan
Appellate Defender

ATTORNEY FOR RESPONDENT

This 14th day of October, 2026.