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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas (PCR)
The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2025-002211

CLARENCE W. JENKINS, JR.,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

Whether the PCR court erred by finding that trial counsels were not ineffective for failing to call several witnesses on Petitioner's behalf that, while not establishing the defense of alibi *in toto*, could have created a reasonable doubt by accounting for Petitioner's whereabouts for some of the alleged time-frame and by contradicting several parts of the state's most important witness's testimony?

STATEMENT OF THE CASE

Petitioner, Clarence W. Jenkins, Jr., is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In November 2008 and September 2011, the Greenville County Grand Jury indicted Jenkins for the murder and kidnapping of Mekole Harris. (App. 1293-1296). The Greenville County Public Defender's Office was appointed to represent Petitioner, and then Chief Public Defender John Mauldin assumed the lead counsel role.

After the State served notice of intent to seek the death penalty, Susannah Ross, Esq., was appointed to assist in Petitioner's defense. Mr. Mauldin also associated Mark MacDougal, Esq., of the Akin Gump Law Firm, to also assist in the defense. (App. 1101, 1104).¹ Solicitor Walt Wilkins, Assistant Solicitor Betty Strom and Assistant Solicitor George Campbell of the Thirteenth Circuit Solicitor's Office prosecuted the case. (App. 1). However, the State subsequently withdrew the death penalty notice and the trial continued in a non-capital posture. (*See* App. 1104-1105). A jury trial began on April 9, 2012, before the Honorable Edward W. Miller, Circuit Court Judge. (App. 1). The jury convicted as indicted, and Judge Miller sentenced Jenkins to life in prison. (App. 788-789, 797). Jenkins appealed.

Assistant Appellate Defender Susan Hackett of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Jenkins in the appeal. (App. 799). Appellate counsel filed a final brief of appellant on October 21, 2013, and raised three issues, the first challenging the trial court's jury instruction on circumstantial evidence; the second challenging the trial court's failure to strike testimony or grant a mistrial based on an alleged failure

¹ Respondent references primary counsel for each side; other attorneys assisted at trial. (App. 1).

to timely disclose evidence; and the third challenging the trial court's to allow an additional "lengthy" amount of time to retain expert services regarding the evidence reference in issue two. (App. 802). The State filed a brief in response on October 15, 2013, (App. 824-863). Appellate counsel for Jenkins filed a final reply, as well. (App. 866). Oral argument in the case was presented on May 6, 2014. (App. 875). By published opinion filed May 21, 2014, the South Carolina Court of Appeals affirmed Jenkins's convictions and sentence. The South Carolina Supreme Court denied his subsequently filed petition for writ of certiorari seeking further review, (App. 888), and the Court of Appeals issued the remittitur on February 17, 2015.

Petitioner's application for post-conviction relief was filed on April 20, 2015, and raised various allegations of ineffective assistance. (App. 889). Respondent filed a return to the application on September 18, 2015, which disputed the claims of ineffective assistance but requested an evidentiary hearing to resolve those claims. (App. 899). Sarah Henry, Esquire, was appointed to represent Petitioner. PCR counsel filed two amended applications, the last on January 23, 2023. (App. 904-910).

An evidentiary hearing was convened before this Court on January 30, 2023, at the Greenville County Courthouse. (App. 911). Jenkins appeared with counsel, Ms. Henry, and Assistant Attorney General Taylor Smith of the South Carolina Attorney General's Office appeared on behalf of the State. (App. 911). Jenkins proceeded on his claims, as amended, but also submitted additional amendments at the beginning of the evidentiary hearing, which were accepted, without objection, by the PCR court. (*See* App. 915-918). The PCR court then received testimony from Jenkins, Laverne Ronnie Mitchell, James Gibbs and Shanek Robinson as part of Jenkins's case. The State, in their case, presented testimony from former trial counsel, John Mauldin, Esq., Mark MacDougall, Esq., and Susannah Ross, Esq. Further, both parties offered a

number of exhibits. (*See* App. 914). By written order dated October 3, 2025, and filed October 6, 2025, the post-conviction relief judge denied relief and dismissed the application with prejudice. (App. 1263-1292). Jenkins timely sought an appeal.

Jenkins, now represented by appellate counsel, filed a petition for writ of certiorari on August 14, 2026. This return follows.

STATEMENT OF FACTS

The Court of Appeals opinion provides a good summary of the general case development and facts of the case, and that direct appeal summary was the summary relied upon by the PCR court for context. (App. 1265). Respondent relies on a portion of same for the facts of the crime:

On the morning of April 7, 2008, Sue Bostic discovered a garbage bag with unknown contents sitting on her front porch and a threatening note under the windshield wiper of her automobile. Bostic contacted the Greenville City Police Department, and Officer Scott Odom responded to the call. Officer Amber Allen also arrived at the scene and spoke with Bostic while Officer Odom took the garbage bag to the back of his vehicle to inspect the bag's contents. Officer Odom discovered a severed human foot and hand and several severed toes. Officer Michael Petersen, who was employed with the forensic division of the Greenville County Department of Public Safety, then arrived to assist in processing the crime scene and collecting the evidence. Officers Allen and Petersen were informed that a similar note and garbage bag containing severed body parts had been left at the residence of Judon Burnside. They later proceeded to this residence to collect the evidence.

Officer Petersen took the garbage bags and their contents to the morgue and rolled fingerprint impressions from the severed hands. Captain Jackie Kellet, of the forensic division Of the Greenville County Department of Public Safety, examined the fingerprints processed by Officer Petersen and matched them to fingerprints on file for Mekole Harris (Victim).

...

[At trial Jenkins's wife Carmen who had previously pled guilty] testified about Appellant's alleged plan to intimidate a former housemate, Grace Davis, into returning to their home and continuing to live with them. According to Wife, during the time Davis lived with Appellant and Wife, Davis developed an intimate relationship with both of them. Eventually, the Department of Social Services removed Davis's children from the home and notified her that she could not regain custody of her children as long as she was living with Appellant and Wife. Therefore, Davis left the home. A few days later, Appellant told Wife that Davis "needed to come back to [their] relationship because she was a partner in [their] relationship" and "she knew too much about the organization that he was in." Appellant also told Wife "the organization would kill all of [them]

if she didn't come back." Wife testified that she had never heard about this organization until that day.

Appellant began executing his plan to intimidate Davis by mailing threatening letters to her and to members of her family. Next, on the evening of Friday, April 4, 2008, Appellant brought home Victim, a prostitute, and handcuffed her to a bed. Appellant told Victim that he and Wife were police officers and that Victim was "under arrest for prostitution and possession of crack." Appellant also told Victim that the only way she would get out of those "charges" was for her to help Appellant and Wife with a "case." The "case" Appellant referenced was his plan to intimidate Davis into returning to their home.

After Victim agreed to cooperate, Appellant removed the handcuffs. Appellant wrote out a script for Victim to read over the telephone to members of Davis's family. Appellant then handcuffed Victim again and gave the script to her to memorize. Sometime around midnight, Appellant, Wife, and Victim went to a pay telephone at a nearby gasoline station, and Appellant dialed the telephone numbers for Davis's mother, Judon Burnside, and Davis's aunt, Sue Bostic.

During each telephone call, Victim recited the material from the script written by Appellant. Appellant and Wife then took Victim back to their home, and Appellant handcuffed Victim to a chair for the remainder of the day on Saturday.

On Saturday night, Appellant crushed up "some Tylenol PM and some other sleeping medicine," mixed it into some ice cream, and gave it to Victim. However, Victim only ate a small amount of the ice cream. On the next day, Sunday, April 6, 2008, Appellant ordered Wife to kill Victim, who was still handcuffed to the chair. Wife attempted to strangle Victim with a cable cord, but as Victim struggled against Wife, Wife lost control of the cord. Appellant then tied the cord to the back of the chair, placed a plastic bag over Victim's head, and suffocated her.

Appellant and Wife took Victim's body to the bathroom and placed her body in the shower. Later that day, Appellant dismembered Victim's body, forcing Wife to participate, and placed the dismembered hands and feet in the couple's freezer. Appellant and Wife disposed of Victim's body near a golf course on Paris Mountain and returned to their residence, where Appellant placed the dismembered parts into two separate garbage bags.

After midnight, Appellant and Wife went to Bostic's apartment. Appellant "dropped [Wife] off right at the entrance of the apartments...." Wife took one of the garbage bags and threw it onto Bostic's front porch. Wife then left a threatening letter on the windshield of Bostic's car. Next, Appellant drove Wife to Burnside's residence. Wife placed a second threatening letter in Burnside's mailbox and placed the second garbage bag on Burnside's front porch.

Robin Taylor, a SLED employee, also testified at Appellant's trial. Taylor described the DNA analysis she performed on a swab from the severed hand. Taylor matched the DNA from this swab to the DNA from swabs of blood collected from (1) a wall near the ceiling in a bathroom at Appellant's residence; (2) a wall on the right side of the medicine cabinet in Appellant's bathroom; (3) a latex glove found on the floor of Wife's Van; and (4) the p-trap of the shower drain in Appellant's bathroom.

State v. Jenkins, 408 S.C. 560, 567, 759 S.E.2d 759, 763 (Ct. App. 2014).

As noted above, after hearing the evidence, the jury convicted as charged. (App. 788-789).

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.

ARGUMENT

The PCR court reasonably found based on the facts presented that trial counsel was not ineffective for failing to call two family witnesses in Jenkins's defense to present a partial basis for an alibi, or for impeachment of another witness, when counsel knew about the witnesses and testified to specific and supported reasons for the decision not to call them for either alibi or impeachment value, reasonably assessing the testimony would not aid (and for alibi, would harm) the defense.

Petitioner argues that PCR court failed to appreciate the impact that alibi evidence may have had on the jurors, though Jenkins admittedly could not have shown a complete alibi. (Pet. 13-14). Further he argues that the his sisters testimony may have made a difference at trial generally by undermining some aspects of Carmen's testimony by their "credible testimonies" presented at PCR. (Pet. 13). First, he is incorrect factually since the PCR court did not find the testimony of either to be credible when compared to other evidence of record. (App. 1282). Second, Jenkins essentially argues counsel should have made different strategic decisions; that does not show a constitutional deficiency. Jenkins has failed to show either factual or legal error that would warrant further review.

Relevant law:

The PCR court was guided by the familiar test for ineffective assistance claims: the applicant must show that Sixth Amendment counsel's representation fell below an objective standard of reasonableness, and but for such error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). (App. 1279). Further, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCR. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application"). "The benchmark for judging any claim of ineffectiveness must be

whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. Further, the issue of whether counsel's performance fall below that which is guaranteed by the Sixth Amendment must be measured by "an objective standard of reasonableness." *Id.*, at 688.

In such an evaluation, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.*, at 689 (quoting *Michel v. State of La.*, 350 U.S. 91, 101 (1955)). See also *Strickland*, at 689-90 ("There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.") (citing Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983)). *Strickland* acknowledges there is "wide range of professionally competent assistance." *Strickland*, at 689.

Relevant testimony at the PCR hearing:

Jenkins testified at the PCR hearing that Carmen took the lead in the murder, and the victim was dead by the time he returned from his sister's home to the mobile home that he shared with Carmen. Jenkins further testified that he believed he had "no choice but to help her cover up what happened." Jenkins and Carmen were arrested together at the mobile home. (*See App.* 964-975).

Trial counsel, Mr. Mauldin, testified that the defense only had knowledge of "a potential alibi ... maybe a year and a half or more into the case." (*App.* 1113). Mr. Mauldin testified that delay in revealing a potential alibi raised concerns on the truthfulness of the information. (*App.* 1113-1114). As to potential alibi, the defense team had an issue with the "coming and going" between homes narrative which created a "difficulty" for an alibi defense. (*App.* 1114, 1157).

The defense team assessed the information as “suspect” and did not assess the credibility as being very high. (App. 1114-1116). The defense did consider the matter in context of a capital case, as it was a capital case as they prepared, (App. 1115), but there was no evidence that the information they received, and the inherent issues in that information, changed with the withdrawal of the notice. Moreover, it was not simply potential credibility issues and the fluidity about timing and leaving and returning causing concern, Mr. Mauldin also testified that about another year after the family alibi surfaced, the team was given information on a possible alibi that Jenkins had been out of state, in Florida. (App. 117). At that point, the defense team “knew that that was absolutely not true.” (App. 1117). This development “served to contaminate ... consideration” of the family alibi and worked to undermine the defense team’s ability to rely on the family members’ testimony at all. (App. 117). Mr. Mauldin was clear that given these facts, he did not wish to put up family members at all, whether to challenge Carmen’s testimony or for alibi. (App. 1118). Mr. Mauldin testified, “The value of calling the family members to attempt to impeach the information that Carmen was providing on the stand would not have been worthwhile. And that was my call.” (App. 1119).

Further, Mr. Mauldin testified Jenkins should not have testified (though he was clearly Jenkins own choice to make) because there was jail correspondence that would “totally impeach” him, and also that the defense was “worried” about what Jenkins might say under oath should he chose to testify. (App. 1119-1123).

Mr. Mauldin also testified that his cross-examination of Carmen did touch on her being the violent one in the relationship and he did not consider testimony by Jenkins’s sister concerning same “would have risen to the level to warrant then calling her as a witness.” (App. 1155-1156).

Co-counsel at trial, Ms. Ross also testified that she “probably” did not consider the family members for witnesses to impeach Carmen’s testimony, given that the minor details about Carmen providing good care for the children or other “stuff that [family] could say about” Carmen failed to convince counsel “that would be a powerful witness position, especially when you’re giving up putting up no defense and getting final closing versus coming up and saying” Carmen “didn’t tell the truth about one little tiny thing.” (App. 1217). Ms. Ross explained that she “didn’t think that would bring the whole testimony into question enough to be worthwhile.” (App. 1217).

Ms. Ross also testified (as the PCR judge found, credibly), about other evidence, particular a neighbor who saw Jenkins use a grill to burn items at the mobile home, and “a print from an envelope that could have only been created that weekend” before concluding that consideration of those additional pieces of evidence “soundly rebuffs the contention that Jenkins was absent.” (App. 1282; *see also* App. 1204-1207). The PCR judge also noted the consistency in counsel’s testimony and found that to be “persuasive.” (App. 1282). The PCR judge concluded that the defense investigated the possibility of alibi and reasonably determined that presenting such “would undermine the defense strategy and certainly cause a loss of credibility.” (App. 1282). The PCR judge also noted that counsel’s reasonable strategic decision not to use “the purported alibi(s) not only sound strategy, but an ethical response to prevent the presentation of false evidence, particularly as to the out-of-state alibi evidence brought to their attention.” (App. 1282).

Further, the PCR judge considered the PCR testimony from Ms. Gibbs and Ms. Robinson in detail and found the testimony “offered little toward impeachment of any value,” with Ms. Gibbs in fact confirming Jenkins was with Carmen the Sunday of the weekend in question. (App. 1285; *see also* App. 1059). The PCR judge concluded the cross-examination “suggested goes to character; that Carmen was a bad mother and, though not witnessed, one sister believed that

Carmen had once given Applicant a black eye,” but that Jenkins failed to prove any of this would be admissible, citing Rule 404(b), SCRE, Rule 602, SCRE, and Rule 608, SCRE, but if it could be, Jenkins failed to show a reasonable probability of a different result:

...the offered evidence would be cumulative or otherwise of little if any impact given the totality of the evidence at trial concerning the events of the murder. Notably, this includes not just Carmen’s testimony about the murder but also evidence linking Applicant to intimidation prior to the murder, (*see* Trial Tr. 429-432, use of library computer for letters to Grace’s family, destruction of evidence of the murder (by use of the grill), and active participation in using the victim’s name to attempt to gain financial benefit. The evidence shows Applicant’s deep involvement in this crime and supports the jury verdict.

(App. 1287-1288).

The PCR judge found neither deficient performance or prejudice under the Strickland standard. (App. 1288).

Discussion:

Jenkins has failed to show either a lack of factual basis or an error of law that would warrant certiorari review. *Smalls, supra*. As to alibi(s), the above testimony shows ample factual basis in the record to support that defense counsel assessed the credibility of the family witnesses as low given the delay in report of alibi and then the especially obviously false assertion regarding Florida. The PCR court correctly considered the evidence at trial as well, and in particular that there was a video of Jenkins in his local library the weekend spanning the crime. (*See* 1287-1288). As a result, the alibi testimony was reasonably assessed as tremendously suspect, and as to the home alibi, not even a full alibi. As the PCR court found: “[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused’s guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.” *State v.*

Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am.Jur.2d Criminal Law 136)). (See App. 1281).

Notably, in addition to presenting a defense, counsel has the duty of candor to the court and the right to “refuse to offer evidence, other than the testimony of the defendant in a criminal matter, that the lawyer reasonably believes is false.” See Rule 407, Appellate Court Rules, Rules of Professional Conduct 3.3 (a)(3). Counsel could reasonably conclude that the information about alibi received here, under the circumstances outlined, would be suspect, and they did. Further, Jenkins presented family members at the hearing (Ms. Gibbs and Ms. Robinson) and the PCR court similarly found them “not credible in their attempts to provide an alibi given the delay in relaying the information and the incompleteness of the whereabouts testimony.” (App. 1282).

As to presenting Ms. Gibbs or Ms. Robinson, counsel made a strategic decision not to present the family members for the reasons outlined above. Especially probative is Ms. Ross’s testimony that comparatively speaking, the potential gain in presenting the witnesses was simply too little in contrast to potential loss.

Strickland requires that “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, ***the defendant must overcome*** the presumption that, under the circumstances, the challenged action “might be considered sound trial strategy.” *Strickland*, 466 U.S., at 689 (emphasis added). The Supreme Court has cautioned reviewing courts to refrain from “*post hoc* rationalization” when it “contradicts the available evidence of counsel’s actions,” but there is no command to have “counsel confirm every aspect of the strategic basis for his or her actions.” *Harrington v. Richter*, 562 U.S. 86, 109 (2011) (quoting *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003)). Rather, “[t]here is a ‘strong presumption’ that counsel’s attention to certain issues to the exclusion of others reflects

trial tactics rather than ‘sheer neglect.’” *Id.*, (quoting *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (*per curiam*)). Here, though, there is no question counsel exercised strategy, and the PCR judge found the strategy reasonable. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530, 531 (1992) (“Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”). *See also Strickland*, at 690-691 (“strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[.]”).

Indeed, Jenkins does not assert there is a lack of factual basis to support the PCR court’s ruling; rather, he appears to argue counsel should have made a different decision about presenting the family witnesses. (Pet. at 14-15). That shows nothing to support deficiency. Notably, “which witnesses to call is a classic tactical decision left to counsel.” *U.S. v. Chapman*, 593 F.3d 365, 369 (4th Cir. 2010) (citing *Boyle v. McKune*, 544 F.3d 1132, 1139 (10th Cir. 2008) (“[T]he decision of which witnesses to call is quintessentially a matter of strategy for the trial attorney.”)).

Strickland tells us that “[f]ailure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.” *Id.*, at 700. However, here, Jenkins failed on both prongs. Even Jenkins does not contend he could show a full alibi, credible or not. Yet, the PCR judge did not find the proffered testimony credible and even found that had counsel attempted to offer certain testimony for impeach or to otherwise challenge Carmen’s testimony collateral matters, Jenkins failed to show a reasonable likelihood of admissibility. Finally, the PCR judge found that even if the testimony came in, Jenkins failed to show it was of the caliber to make a difference at trial. Mere speculation that a different strategy *may* have worked simply does not show a reasonable probability of a different result which

Strickland requires. The PCR court's ruling is well supported in law and fact. Therefore, the petition should be denied.

CONCLUSION

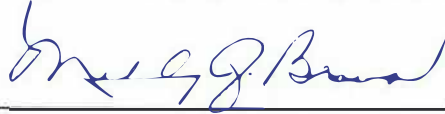
For all the foregoing reasons, the petition should be denied.

Respectfully submitted,

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