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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Certiorari to the Court of Common Pleas
Appeal from Berkeley County
Honorable R. Kirk Griffin, Post-Conviction Relief Judge

Appellate Case No. 2024-001521

EMORY W. ROBERTS, #373393,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED[1]

I. Whether the post-conviction relief court correctly found trial counsel was not ineffective for failing to raise a Confrontation Clause objection to Agent Wingo's testimony regarding the results reflected in the SLED laboratory reports, where trial counsel reviewed the certified chain-of-custody documentation, the State's forensic witnesses were available to testify, and Petitioner presented no evidence that any test result was inaccurate? (Q6, Q7, Q18(A)-(B); Br. 1).

II. Whether the post-conviction relief court correctly found trial counsel was not ineffective for failing to object to Agent Wingo's testimony regarding codefendant Justin Hunter's statement, where the statement did not mention or implicate Petitioner?

III. Whether there is probative evidence supporting the post-conviction relief court's denial of Petitioner's remaining claims concerning the State Grand Jury, the empanelment documents, alleged Brady violations, the Court Administration letter, and trial counsel's alleged conflict of interest? (Q1-5, Q8-11, Q14, Q17, Q18(D)-(F), Q19, Q28, Q32; Br. 2).

IV. Whether Petitioner's remaining questions are procedurally barred because they assert trial court error, re-raise the self-representation issue decided on direct appeal, challenge the sufficiency of the evidence, or were never raised to and ruled upon by the post-conviction relief court? (Q12, Q13, Q15, Q16, Q18(C), Q20-27, Q29-31; Br. 1; Br. 2).

[1] Petitioner's pro se filings present thirty-two questions in the petition and five additional questions in two documents styled "Brief: Abuse of Discretion." Many overlap. Respondent has grouped and rephrased the questions as permitted by Rule 243(g), SCACR, and cites the petition's questions as "Q" and the two briefs as "Br. 1" and "Br. 2." Respondent's failure to address any particular sub-argument should not be construed as a concession.

STATEMENT OF THE CASE

In April 2016, the South Carolina State Grand Jury indicted Petitioner and five co-conspirators under a multi-count indictment stemming from an investigation into a drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Petitioner was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, between four and fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine; and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Petitioner and codefendant Justin Hunter[2] proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Petitioner, and Assistant Attorneys General Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Petitioner as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each distribution of heroin charge; fifteen years for trafficking in heroin, four grams to fourteen grams; fifteen years for PWID methamphetamine; and five years for the weapon charge.

Petitioner filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Petitioner argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed January 29, 2020). Petitioner filed a petition for a rehearing, which was denied. Petitioner also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

On June 2, 2020, Petitioner filed his PCR application. On April 18, 2023, an evidentiary

[2] Hunter was tried in his absence; he was represented by Theresa Johns, Esquire.

hearing convened before the Honorable R. Kirk Griffin. Petitioner was present and proceeded pro se. Assistant Deputy Attorney General Taylor Z. Smith Represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Judge Griffin denied and dismissed the application by written order filed August 29, 2024. Petitioner subsequently filed motions pursuant to 59(e) and 60(b) SCRCP, which were denied by Judge Griffin by written order filed February 18, 2026. On November 12, 2024. Petitioner timely filed his notice of appeal. Petitioner filed his Petition for Writ of Certiorari on July 2, 2026.

This Return to Petition for Writ of Certiorari follows.

STATEMENT OF THE FACTS

Trial

In September 2015, SLED joined a Dorchester County Sheriff's Office investigation into a heroin trafficking organization involving Justin Hunter, known as "Mo," and Petitioner, known as "Q." (Supp. App'x p. 799)[3]. Working with a confidential informant, Thomas Sekula, SLED Agent Justin Wingo and Detective Daniel Lundberg conducted a series of recorded controlled purchases. (Supp. App'x pp. 799–801). Agent Wingo described the procedure for each buy: the informant was strip-searched, fitted with audio and video recording equipment, and given documented funds; after the buy, the drugs were turned over to Wingo, who sealed them in a SLED BEST kit and submitted them to the SLED laboratory for analysis. (Supp. App'x pp. 801–804). One such buy occurred on February 2, 2016, when Sekula purchased heroin from Petitioner inside Petitioner's trailer; Wingo testified the video "clearly" showed the transaction. (Supp. App'x pp. 828–29). On February 8, 2016, agents executed a search warrant at Petitioner's trailer on Summer Creek, where Petitioner was found toward the back of the residence; agents seized heroin, cell phones, and a handgun, among other items. (Supp. App'x pp. 779–95).

Before the presentation of evidence, the State advised the court that both defense attorneys were willing to stipulate that the chain of custody for all the evidence had been established, which "would greatly truncate the list of witnesses." (Supp. App'x p. 191). Hunter's counsel confirmed she had reviewed everything provided and "the chain of custody has been met." (Supp. App'x p. 191). Petitioner's counsel, "having reviewed the same document provided by Mr. Underwood," stated he would not challenge the chain. (Supp. App'x p. 192).

[3] Respondent is filing a Supplemental Appendix with this Return as Petitioner did not file an Appendix with his Petition.

During Agent Wingo's testimony, the State introduced each BEST kit, and Wingo identified the corresponding SLED laboratory report by matching laboratory numbers and stated the reported result. For example, as to the February 2, 2016 buy from Petitioner, Wingo testified that State's Exhibit 133 was the laboratory report for the BEST kit in State's Exhibit 122 and that the results were "heroin found in sample tested, net weight 3.35 grams." (Supp. App'x p. 830; see also Supp. App'x pp. 804–05; 808). On cross-examination, trial counsel questioned Wingo about what the reported "confidence level" measured (Supp. App'x p. 853) and elicited that Wingo never personally observed Petitioner hand drugs to anyone. (Supp. App'x pp. 853; 856).

Agent Wingo also testified about a statement codefendant Hunter gave after his arrest. Hunter said he had trafficked heroin since the winter of 2015, initially buying from individuals known as "R" and "B.K.," and later flying to New York to buy heroin from an individual known as "Fresh"; he identified three customers, "Parker," "Chuck," and "Tom." (Supp. App'x pp. 838–39). Hunter's statement, as related by Wingo, did not mention Petitioner. (Supp. App'x pp. 838–39). Trial counsel returned to the statement on cross-examination. (Supp. App'x pp. 855–56).

The Post-Conviction Relief Hearing

At the PCR hearing, Petitioner asked trial counsel why he had not objected when Agent Wingo "read the lab reports from lab technicians that wasn't present in court." (Supp. App'x pp. 1630–31). Counsel responded that the defense had reviewed the State's chain-of-custody documentation and stipulated to the chain. (Supp. App'x p. 1631). In response to the court's questions, counsel testified he had no concerns about any defect in the chain and saw no grounds to move to suppress any evidence. (Supp. App'x pp. 1632–33). Counsel explained that his practice is to stipulate when the State's documentation shows the chain was not broken and none of the

client's rights were violated. (Supp. App'x p. 1669). The defense theory at trial was that Petitioner "didn't do it" and lacked knowledge of the drug transactions. (Supp. App'x p. 1669).

Assistant Attorney General Underwood testified that the prosecution provided every item in the trial exhibits in discovery well before trial. (Supp. App'x p. 1729). Before trial he met with both defense attorneys, went over all of the chain-of-custody documents, "includ[ing] the certified chains from SLED," identified the witnesses involved in the chain, and "demonstrated that all of them were available to testify should they be needed to if there were any concerns about the chain of custody." (Supp. App'x pp. 1729–30).

As to Hunter's statement, trial counsel testified he did not recall any portion of Wingo's testimony that was prejudicial to Petitioner, did not believe it harmed Petitioner's defense, and would have objected had he thought it was problematic. (Supp. App'x pp. 1637–38, 1672).[4]

Underwood also testified he was present when the State Grand Jury met and indicted Petitioner; that the State Grand Jury's proceedings were transcribed by Creel Reporting under a contract separate from Court Administration; that he provided trial counsel information about obtaining the State Grand Jury transcripts; and that he did not withhold discovery or conceal the empanelment documents. (Supp. App'x pp. 1721–23, 1727–28).

[4]Trial counsel's post-conviction relief testimony that Hunter "was present to testify" (Supp. App'x p. 1672) appears to have been mistaken; Hunter was tried in his absence. (Supp. App'x p. 1728). The post-conviction relief court did not rely on that testimony, and it does not affect the analysis, which turns on the content of the statement.

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 there is any probative evidence in the record to support 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 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Appellate courts give great deference to a PCR court's credibility findings because appellate courts lack the opportunity to directly observe the witnesses. Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). 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. 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

I. The post-conviction relief court correctly found trial counsel was not ineffective for failing to raise a Confrontation Clause objection to Agent Wingo's testimony regarding the results reflected in the SLED laboratory reports, where trial counsel reviewed the certified chain-of-custody documentation, the State's forensic witnesses were available to testify, and Petitioner presented no evidence that any test result was inaccurate.

Petitioner contends trial counsel was ineffective for failing to object, on Confrontation Clause grounds, when Agent Wingo testified to the results reflected in the SLED laboratory reports. (Q6, Q7, Q18(A)-(B); Br. 1). Petitioner raised this claim at the hearing (Supp. App'x pp. 1630–31), and the post-conviction relief court addressed it in its order denying Petitioner's Rule 59(e) motion. (Supp. App'x p. 1589). Petitioner failed to prove either deficient performance or prejudice.[5]

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result. 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). Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Strategic choices made after investigation of the law and facts "are virtually unchallengeable." Strickland, 466 U.S. at 690. Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531

[5]Petitioner also contends the trial court was required to conduct an on-the-record colloquy before trial counsel stipulated to the chain of custody. (Br. 1). To the extent this is a claim of trial court error, it is not cognizable in post-conviction relief. See Section IV.A, *infra*. To the extent it is a claim against trial counsel, the post-conviction relief court correctly rejected it. (Supp. App'x p. 1589).

(1992). To establish prejudice, the applicant must show "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.

A. Trial counsel's decision not to require live testimony from the SLED analysts was a reasonable strategic choice.

Trial counsel did not overlook the forensic evidence. He reviewed the State's chain-of-custody documentation, including the certified SLED chains, before trial; he had no concerns about the chain; and he saw no basis to challenge the evidence. (Supp. App'x pp. 1631–33; 1669; 1729–30). The State showed trial counsel that every witness in the chain was available to testify if the defense wanted them. (Supp. App'x pp. 1729–30). With that knowledge, trial counsel elected not to put the State to its proof on the identity and weight of the drugs. That decision was consistent with the defense theory, which did not dispute that the substances were heroin and methamphetamine but instead disputed Petitioner's knowledge of and participation in the transactions. (Supp. App'x pp. 1669; 853; 856).

Trial counsel's decision on this matter was an objectively reasonable strategic choice. The Confrontation Clause right "may, of course, be waived, including by failure to object to the offending evidence." Melendez-Diaz v. Massachusetts, 557 U.S. 305, 313 n.3 (2009). In Melendez-Diaz, the Supreme Court recognized that defense counsel will often forgo requiring the analyst's presence for sound tactical reasons, observing that "[i]t is unlikely that defense counsel will insist on live testimony whose effect will be merely to highlight rather than cast doubt upon the forensic analysis." Id. at 328. Decisions about whether to object to evidence are matters of trial tactics entrusted to counsel. See Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.");

cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

Here, requiring the State to call the SLED analysts would have done nothing to advance the defense theory; it would only have added a series of forensic witnesses to confirm, before the jury, the same results the reports reflected. Trial counsel's decision, made after reviewing the State's documentation and learning the witnesses were available, falls well within the range of reasonable professional judgment. Strickland, 466 U.S. at 690-91.

B. Petitioner failed to prove prejudice.

Even assuming trial counsel should have objected, Petitioner did not establish a reasonable probability of a different result. Underwood's unrefuted testimony established that the State's chain-of-custody and forensic witnesses were available to testify. (Supp. App'x pp. 1729–30). A Confrontation Clause objection would therefore have required the analysts to testify in person to produce the same results. Petitioner presented no evidence at the post-conviction relief hearing that any substance was misidentified or incorrectly weighed, offered no independent testing, and called no forensic witness. A post-conviction relief applicant's speculation about what testimony would have shown cannot satisfy his burden of proving prejudice. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding an "applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Because the record contains no evidence that live testimony from the analysts would have differed in any respect from the results Agent Wingo related, Petitioner cannot show the outcome of his trial would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The post-conviction relief court correctly concluded that, once trial counsel reasonably stipulated to the chain of custody, there was no basis to object. (Supp. App'x p. 1589). Respondent

submits that the post-conviction relief court's ruling is correct and, in any event, is supported by the additional sustaining grounds set forth above, which appear in the record. See Rule 220(c), SCACR; Rule 243(g), SCACR. This Court should deny certiorari on this issue.

II. The post-conviction relief court correctly found trial counsel was not ineffective for failing to object to Agent Wingo's testimony regarding codefendant Justin Hunter's statement, where the statement did not mention or implicate Petitioner.

At the post-conviction relief hearing, Petitioner contended trial counsel was ineffective for failing to object when Agent Wingo testified to the statement codefendant Hunter gave after his arrest. (Supp. App'x pp. 1635–38). To the extent the petition's reference to "out-of-court statements" (Q18(B)) encompasses this claim, the post-conviction relief court correctly denied relief. (Supp. App'x pp. 1558–59).

Trial counsel testified he did not believe the testimony was prejudicial to Petitioner and would have objected had he believed it harmed Petitioner's defense. (Supp. App'x pp. 1637–38; 1672). The post-conviction relief court found this testimony credible and found trial counsel articulated a valid reason for not objecting. (Supp. App'x p. 1558). That finding is supported by the record and entitled to deference. Foye, 335 S.C. at 589, 518 S.E.2d at 267; Whitehead, 308 S.C. at 122, 417 S.E.2d at 531.

The post-conviction relief court further correctly found Petitioner suffered no prejudice because the statement did not implicate him. (Supp. App'x p. 1559). Hunter described his own heroin trafficking, his suppliers "R," "B.K.," and "Fresh," his trips to New York, and his customers "Parker," "Chuck," and "Tom." (Supp. App'x pp. 838–39). He never mentioned Petitioner. A non-testifying codefendant's statement that does not incriminate the defendant on its face does not violate the defendant's confrontation rights under Bruton v. United States, 391 U.S. 123 (1968).

Indeed, trial counsel returned to the statement on cross-examination (Supp. App'x pp. 855–56), consistent with a defense that Petitioner was not part of the activities Hunter described. Because the statement did not implicate Petitioner, there is no reasonable probability that an objection would have changed the outcome. This Court should deny certiorari on this issue.

III. There is probative evidence supporting the post-conviction relief court's denial of Petitioner's remaining claims concerning the State Grand Jury, the empanelment documents, alleged Brady violations, the Court Administration letter, and trial counsel's alleged conflict of interest.

The majority of Petitioner's questions rest on his contention that the State Grand Jury never met to indict him and that he was wrongly denied the State Grand Jury empanelment documents. He frames these claims as ineffective assistance of counsel (Q1-3, Q5, Q8, Q9, Q17(A)-(D), Q18(D)-(F)), as freestanding due process, notice, and Brady v. Maryland, 373 U.S. 83 (1963) violations (Q10, Q14, Q19, Q28, Q32), and as an abuse of discretion by the post-conviction relief court (Br. 2). The post-conviction relief court considered these claims on the merits and denied them based on credibility findings that are supported by probative evidence. (Supp. App'x pp. 1547–52; 1557–58; 1560–62; 1588–94).

A. The State Grand Jury met and indicted Petitioner.

The post-conviction relief court found credible Underwood's testimony that he was present when the State Grand Jury met and indicted Petitioner, and found Petitioner presented no credible evidence of any irregularity. (Supp. App'x pp. 1550; 1721; 1723; 1727). The post-conviction relief further found, based on Underwood's credible testimony, that the Court Administration letter on which Petitioner relies does not show the State Grand Jury failed to meet; it shows only that Court Administration did not handle the State Grand Jury's transcripts, which were prepared by Creel Reporting under a separate contract. (Supp. App'x pp. 1550; 1722–23). "The regularity of grand

jury proceedings is presumed absent clear evidence to the contrary." Evans v. State, 363 S.C. 495, 514, 611 S.E.2d 510, 520 (2005). These findings defeat every claim premised on the theory that Petitioner was never indicted, including his claims of lack of notice (Q14, Q19, Q28), his claims that trial counsel should have challenged the legality of the grand jury (Q3, Q17(D), Q18(E)), and his claims that the Court Administration letter was exculpatory evidence trial counsel should have introduced (Q11). (Supp. App'x pp. 1550–51; 1560). Moreover, the indictment gave Petitioner sufficient notice of the charges. (Supp. App'x p. 1550); see Evans, 363 S.C. at 508, 611 S.E.2d at 517; State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005).

B. Petitioner was not denied due process, and trial counsel was not ineffective, with respect to the empanelment documents.

Empanelment documents "may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding." Evans, 363 S.C. at 504, 611 S.E.2d at 515. The post-conviction relief court found Petitioner produced no evidence of a timely request; that Underwood did not withhold discovery or conceal the empanelment documents, which were available for trial counsel's review; and that Underwood would have provided them had they been requested. (Supp. App'x pp. 1552; 1562; 1722–23; 1728). The post-conviction relief court also credited trial counsel's testimony that he had the indictment and the discovery and did not need the empanelment documents to prepare the defense. (Supp. App'x pp. 1552; 1558; 1619; 1626). Because the State Grand Jury in fact met and indicted Petitioner, there is no reasonable probability that obtaining the empanelment documents would have changed the outcome. (Supp. App'x p. 1558). Nor were the documents exculpatory or material under Brady as the post-conviction relief court found. (Supp.

App'x pp. 1562; 1589–91).[6] Petitioner's contention that prejudice should be presumed (Q8) fails as a matter of law because the alleged denial of empanelment documents is not structural error. (Supp. App'x p. 1552 at n.8).

C. Counsel did not labor under a conflict of interest or collude with the prosecution.

Petitioner's claims that counsel labored under a conflict of interest and collaborated with the prosecution (Q17) rest on the same theory. Trial counsel testified he represented no one with interests competing with Petitioner's and had no divided loyalties (Supp. App'x p. 1663), and that he was not part of any conspiracy against Petitioner (Supp. App'x p. 1673). The post-conviction relief court found this testimony credible and found no evidence of collusion. (Supp. App'x pp. 1557; 1594). Petitioner's generalized assertion that trial counsel's errors deprived him of a fair trial (Q4) likewise fails because he has not established any deficiency that prejudiced him. This Court should deny certiorari on these issues.

IV. Petitioner's remaining questions are not properly before this Court because they raise trial court error, re-raise issues decided on direct appeal, challenge the sufficiency of the evidence, or were never raised to and ruled upon by the post-conviction relief court.

"[A]n application for post-conviction relief is not a substitute for an appeal." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). "[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993). Several of Petitioner's questions allege

[6]The post-conviction relief court further noted that, although Petitioner could have obtained the empanelment documents during the post-conviction relief action, he did not introduce them at the hearing. (Supp. App'x p. 1552 at n.7). Indeed, at the outset of the hearing, the State informed the court it had brought the State Grand Jury documents and transcripts, subject to the existing protective order, for Petitioner to review if he wished. (Supp. App'x p. 1603).

error by the trial judge: that she wrongly denied disclosure of the empanelment documents despite a protective order (Q31; Br. 3), that her rulings constituted extrinsic fraud and fraudulent concealment (Q25-27), that she infringed his rights and was not impartial (Q12), and that she failed to conduct a colloquy before counsel's stipulation to the chain of custody (Br. 1). Each of these alleged errors occurred on the record at trial and could have been raised on direct appeal. The post-conviction relief court correctly dismissed them as not cognizable (Order at 12-13), and, to the extent they could be construed as due process claims, correctly found Petitioner presented no credible evidence supporting them. (Supp. App'x pp. 1555–56; 1595; 1597–98).

A. Petitioner's self-representation claims were decided on direct appeal.

Petitioner raised claims that the trial court violated his right to self-representation (Q13, Q29, Q30), and the Court of Appeals decided them on direct appeal, affirming on the merits. State v. Roberts, Op. No. 2020-UP-017. Issues decided on direct appeal may not be "reasserted" in post-conviction proceedings. Drayton, 312 S.C. at 8, 430 S.E.2d at 519. Further, the post-conviction relief court did not rule on any self-representation claim, and Petitioner did not raise the omission in his Rule 59(e) motion; the issue is therefore unpreserved. See Section IV.D, *infra*.

B. Petitioner's sufficiency-of-the-evidence claims are barred by statute.

The Uniform Post-Conviction Procedure Act "shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction." S.C. Code Ann. § 17-27-20(A). Petitioner's questions challenging whether the State proved he purchased or brought heroin into the State and proved the actual amount of heroin (Q21-24) are sufficiency challenges. The post-conviction relief court correctly dismissed them. (Supp. App'x p. 1553). Trial counsel moved for a directed verdict, and any challenge to the denial of that motion was a matter for direct appeal. (Supp. App'x p. 1553). Insofar as Q21-23 recast these claims as ineffective assistance,

Petitioner did not raise that claim below, as the post-conviction relief court noted. (Supp. App'x p. 1595). In any event, the record reflects trial counsel challenged the drug weights on cross-examination. (Supp. App'x p. 853).

C. The remaining questions were not raised to and ruled upon by the post-conviction relief court.

An issue must be raised to and ruled upon by the post-conviction relief court to be preserved for appellate review. See Pruitt v. State, 310 S.C. 254, 255, 423 S.E.2d 127, 128 (1992) ("[W]e are not abandoning the general rule that ***issues must be raised to***, and ruled on by, the post-conviction judge to be preserved for appellate review.") (emphasis added). Petitioner's claim that Agent Wingo and others are guilty of kidnapping (Q16) was not raised in his applications, and it is not a ground for relief under S.C. Code Ann. § 17-27-20(A) in any event. (Supp. App'x p. 1593). His claims that trial counsel should have objected to hearsay testimony by Officer Misael Vasquez (Q18(C)) and that drug quantity must be found by a jury under Alleyne v. United States, 570 U.S. 99 (2013) (Q20), were raised for the first time in his Rule 59(e) motion, and the post-conviction relief court declined to consider them on that basis. (Supp. App'x pp. 1594–96). In any event, the Vasquez claim concerns Agent Vasquez reading SLED laboratory results into the record (Supp. App'x p. 792), and it fails for the same reasons set forth in Section I. Likewise, the post-conviction relief court found Petitioner's Fourth Amendment claim (Q15) was not clearly raised in his applications or at the hearing; alternatively, the post-conviction relief court found it without merit because it rests on Petitioner's contention that he was not properly indicted. (Supp. App'x pp. 1591; 1593–94). These questions are not preserved and, alternatively, lack merit for the reasons stated by the post-conviction relief court.

D. Materials outside the record.

Petitioner's appendix includes materials that were not presented to the post-conviction relief court, including an affidavit attributed to Justin Hunter dated December 30, 2025, an "Addendum/Supplement" received March 20, 2026, and correspondence the PCR court struck from the record. (Supp. App'x p. 1588). These materials are not part of the record on review and should not be considered. See Rule 210(h), SCACR.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

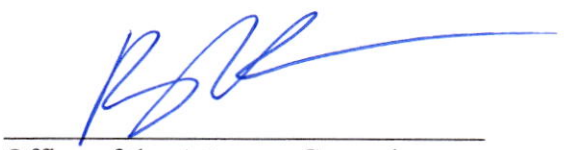
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