

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001303

State of South Carolina,Petitioner-Respondent,

v.

Nathaniel Charles Teamer,Respondent-Petitioner.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General
SC Bar #78225

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTION PRESENTED.....3

STATEMENT OF THE CASE.....4

STANDARD OF REVIEW.....6

ARGUMENT

 The PCR court correctly denied Respondent’s application as to the issue of the search of the vehicle, which led to discovery of a cell phone, where evidence of probative value supports the PCR court’s finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel’s performance resulted in prejudice.....7

 The PCR court correctly denied Respondent’s application as to the issue of Counsel’s failure to object to marijuana found during a search of the vehicle, where evidence of probative value supports the PCR court’s finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel’s performance resulted in prejudice.....8

 The PCR court correctly denied Respondent’s application as to the issue of Counsel’s failure to call witnesses to discuss jail layout in order to call Kelvin McKinney’s testimony into question, where evidence of probative value supports the PCR court’s finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel’s performance resulted in prejudice.....9

 Respondent’s argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error should not be considered as it was never raised or ruled upon by the lower court10

CONCLUSION.....11

QUESTIONS PRESENTED

1. Did the PCR court correctly deny Respondent's application as to the issue of the search of the vehicle, which led to discovery of a cell phone, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
2. Did the PCR court correctly deny Respondent's application as to the issue of Counsel's failure to object to marijuana found during a search of the vehicle, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
3. Did the PCR court correctly deny Respondent's application as to the issue of Counsel's failure to call witnesses to discuss jail layout in order to call Kelvin McKinney's testimony into question, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
4. Should this Court consider Respondent's argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error when it was never raised or ruled upon by the lower court?

STATEMENT OF THE CASE

Respondent¹ is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Respondent was indicted at the May 2006 term of the Spartanburg County Grand Jury for murder (07-GS-42-1407) and assault and battery with intent to kill (07-GS-42-1408). E. Joshua Schultz, Esquire, represented him. On January 16, 2008, Respondent was convicted of these charges by a jury. The Honorable J. Derham Cole sentenced him to confinement for life for murder and a consecutive sentence of twenty years for assault and battery with intent to kill.

A timely Notice of Appeal was filed on Respondent's behalf and an appeal was perfected. An Anders brief was filed on Respondent's behalf by the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Respondent's conviction and sentence. State v. Teamer, Op. No. 2010-UP-062 (filed January 28, 2010). A Petition for Rehearing was filed by the Respondent and denied by the Court on April 21, 2010; however, the Court withdrew its earlier opinion (2010-UP-062) and substituted an opinion dated April 21, 2010. Respondent then filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, which was denied on May 18, 2010. The Remittitur was sent on May 19, 2010.

The Respondent filed his application for post-conviction relief on August 2, 2010 (2010-CP-42-4181), and an amendment to the application on October 8, 2012. An evidentiary hearing was held on October 29, 2012, at the Spartanburg County Courthouse. The Respondent was present and represented by Counsel, Tricia Blanchette, Esquire, and Jeremy Thompson, Esquire. The State of South Carolina was represented by Suzanne H. White, Assistant Attorney General. The Honorable Brooks P. Goldsmith granted the application by written Order on February 8,

¹ For purposes of this Return to the Petition for Writ of Certiorari, "Respondent" will be used for Respondent-Petitioner and "Petitioner" for Petitioner-Respondent.

2013. Petitioner filed a 59(e) Motion and a hearing was held on the Motion on April 18, 2013. Judge Goldsmith denied the Motion by written Order on May 6, 2013. Petitioner filed a timely notice of appeal and Respondent filed a timely notice of cross-appeal. This Return to Petition for Writ of Certiorari is in response to Respondent's Petition for Writ of Certiorari pursuant to his cross-appeal.

STANDARD OF REVIEW

In a post-conviction relief (PCR) proceeding, an Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The reviewing Court may reverse the PCR judge's factual findings where the record lacks "any evidence of probative value" to sustain them. See Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (citing Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996)) ("[A] PCR judge's findings should not be upheld if there is no probative evidence to support them"). Further, where the PCR court's decision is premised on an error of law, this Court must reverse. Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 596 ("this Court will reverse the PCR court's decision when it is controlled by an error of law.").

ARGUMENT

- I. The PCR court correctly denied Respondent's application as to the issue of the search of the vehicle, which led to discovery of a cell phone, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.**

Prior to the beginning of trial, Counsel objected to the introduction of the cell phone found in the Chevy Caprice that Respondent was driving based on an invalid search and subject to the exclusionary rule under the Fourth Amendment. (App. p. 39). Investigator Guthro testified and was cross-examined by Counsel as to the search warrants obtained and his processes of searching the vehicle. (App. p. 40-56). Following the extensive testimony, Counsel made a full argument to exclude the cell phone evidence. (App. p. 58). The trial court found the evidence admissible since it was done for inventory purposes. (App. p. 59-62). Counsel testified that a copy of the inventory policy could have bolstered his pre-trial argument. (App. p. 875). Counsel also renewed his objection to the cell phone being entered as evidence during trial. (App. p 174-5).

The PCR court properly denied Respondent's request for a new trial on this issue, when Respondent failed to meet his burden of proof. (App. p. 1558). The PCR Court reviewed the pertinent portions of the record, examined the exhibits, heard the testimony and considered State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010), which was submitted by PCR counsel. (App. p. 1559). The PCR court found that Respondent failed to offer any evidence or testimony to prove that had the motion been made differently or had Counsel had a copy of the inventory policy at the time of the motion, the outcome of Respondent's trial would have been different. (App. p. 1559). As a result, the PCR Court found that Counsel's performance did not fall below professional norms. (App. p. 1559).

Accordingly, probative evidence in the record supports the PCR court's finding that

Respondent failed to meet his burden of proof of establishing ineffectiveness.

II. The PCR court correctly denied Respondent's application as to the issue of Counsel's failure to object to marijuana found during a search of the vehicle, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.

At the PCR hearing, Respondent argued that Counsel was ineffective for failing to object to the introduction of 4.24 grams of marijuana, which was found on the passenger floor board of the vehicle when it was processed following the accident which led to the charges of felony DUI resulting in great bodily injury.

Counsel testified that he did not believe the marijuana had much relevancy to the crimes charged and did consider making an objection to the introduction of the marijuana as a prior bad act, but chose not to because he determined that it was one of the least of his concerns. (App. p. 886).

In order to satisfy his burden of proving that Counsel was ineffective, Respondent would have had to prove that Counsel's election not to object to the marijuana amounted to a failure to provide "reasonably effective assistance under prevailing professional norms," and that such failure prejudiced him. Brown, 340 S.C. at 593, 533 S.E.2d at 309 (citing Strickland v. Washington, 466 U.S. 668 (1984)). Additionally, in order to prove that Counsel's performance prejudiced him, Respondent must have shown that "but for counsel's errors, there is a reasonable probability the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. at 593, 533 S.E.2d at 309-10 (citing Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)) (citations omitted). The PCR court was correct when it found that the Respondent failed to prove that this failure to object affected the outcome of Respondent's trial. (App. p. 1570).

Petitioner submits that there is clear evidence of probative value in the record which supports the PCR court's finding that Respondent failed to satisfy his burden.

III. The PCR court correctly denied Respondent's application as to the issue of Counsel's failure to call witnesses to discuss jail layout in order to call Kelvin McKinney's testimony into question, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.

Respondent alleged that Counsel was ineffective for failing to call Captain Teresa Speller from the Spartanburg County Sheriff's office and his prior detention center roommate, James Humphries, as witnesses to support his claim that he could not have had a conversation with Kelvin McKinney in the jail.

The PCR Court was correct in finding that Counsel was not ineffective for failing to call Cpt. Speller or James Humphries as witnesses. (App. p. 1567). Cpt. Speller's testimony did not support the Respondent's allegation that he could not have had a conversation with McKinney in the jail. Speller testified that because of the layout of the jail, number of inmate, rotations, and other reasons, inmates were able to communicate with other inmates in a separate pod. (App. p. 626-8). Speller also testified that inmates had worked out various systems to ensure the doors would not fully lock or latch. (App. p. 628).

James Humphries also testified that he knew Respondent from "the streets" and because they were locked up together both at the Spartanburg County Detention Center and Tyger River Correctional Facility. (App. p. 597). Humphries testified that McKinney never came and had a conversation with Respondent. (App. p. 599; 600). However, Humphries acknowledged that he was only Respondent's roommate for a period of three months and had no knowledge of whether or not Respondent went to McKinney's cell. (App. p. 601-2).

Counsel testified that he investigated this angle prior to trial and recalled speaking with Cpt. Speller, as well as people in pods four, five and six. (App. p. 870). Respondent confirmed that he discussed the issue of access in the jail with Counsel. (App. p. 653, lines 10-13). Counsel also reviewed the diagrams of the detention center layout. Because of his own familiarity with how inmates accessed other inmates and pods, Counsel testified that he did not want to call Cpt. Speller and possibly open the door to other issues, but he did have her under subpoena. (App. p. 870-1; p. 908). Counsel testified that he spoke with Respondent, discussed the concerns with Speller's possibly testimony and the fact that Counsel did not intend to call her as a witness. (App. p. 871). Counsel testified that he did not speak with James Humphries, as Mr. Humphries was only the Respondent's roommate for a very short time. (App. p. 910).

The PCR Court found Counsel to be more credible than Respondent on this issue and found that neither Speller, nor Humphries' testimonies would have affected the outcome of trial and that Counsel made an informed strategic decision to not utilize the testimony. (App. p. 1567). For the foregoing reasons, Petitioner submits that the PCR judge was correct when he denied Respondent's request for a new trial because Respondent failed to meet his burden of proof, and probative evidence exists to support the court's decision.

IV. Respondent's argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error should not be considered as it was never raised or ruled upon by the lower court.

Petitioner submits that this issue is not properly before the Court. The argument was never brought before the lower court and ruled upon; therefore, this argument is unpreserved for appellate review. See State v. Sheppard, 391 S.C. 415 --, 706 S.E.2d 16, 20 (2011) ("Our law is clear that an issue may not be raised for the first time on appeal."); On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellate must present both

his issues and arguments to the lower court and obtain a ruling before presenting issues and arguments on appeal). Therefore, Petitioner submits that this issue was not properly preserved and should not be considered.

CONCLUSION

For the reasons stated above, this Court should deny the Respondent's Petition for Writ of Certiorari and affirm the PCR Court's ruling on these issues. Should this Court grant Certiorari, the Petitioner requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General
SC Bar #78225

By: 
ATTORNEYS FOR THE RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

September 24, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Court of Common Pleas
The Honorable Brooks P. Goldsmith, Circuit Court Judge

NATHANIEL TEAMER,

RESPONDENT-PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Petitioner-Respondent's Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Mr. C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

This 24th day of September, 2014


ASHLEY HA WORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

September 24, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Nathaniel Teamer v. State of South Carolina
Lower Court Case No: 2010-CP-42-4181
Appellate Case No. 2013-001303

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Petitioner-Respondent's Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Suzanne H. White
Assistant Deputy Attorney General
SC Bar No. 78225

SHW/ah
Enclosures

cc: C. Rauch Wise (2 copies)
Trisha Allen, Victim Services (1 copy)