 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

DARRELL BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000779

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 18

ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to challenge the trial court's reliance on the wrong legal standard when it refused to excuse Juror No. 72, Joseph Emanuel, who revealed to the court before the jury had been sworn that he was the supervisor of murder victim David Slice's brother-in-law, thereby failing to provide the trial court with an opportunity to issue a ruling based on the correct legal standard and ultimately preserve the issue for appellate review?

STATEMENT

A Lexington County Grand Jury indicted Petitioner at the December 5, 2005 term of General Sessions for two counts of murder and possession of a weapon during the commission of a violent crime. App. 1045-1050. His case was called to trial on January 28, 2008 before the Honorable R. Knox McMahan, and a jury. App. 1. Assistant Solicitors Samuel R. Hubbard, III and Robert N. Madsen represented the state, and J. Bradley Baker represented Petitioner. App. 1.

On February 1, 2008, the jury found Petitioner guilty. App. 792, l. 17 – 793, l. 1. He was sentenced by Judge McMahan to life without parole for each count of murder and five years concurrent for the weapons offense. App. 810, l. 16 – 811, l. 4.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Burgess, 391 S.C. 15, 703 S.E.2d 512 (2010); See App. 876-884. On May 25, 2012, this Court denied the petition for writ of certiorari to review the Court of Appeals' decision. App. 956.

On July 9, 2012, Petitioner filed an application for post-conviction relief (PCR) raising the issue argued in this petition. App. 957-964. The state filed a return to this application dated June 12, 2013. App. 965-969. The matter proceeded to an evidentiary hearing on November 12, 2013 before the Honorable R. Lawton McIntosh. App. 970. Assistant Attorney General J. Walter Whitmire represented the state, and Charles Brooks represented Petitioner. App. 970. By order dated March 27, 2014, Judge McIntosh denied Petitioner relief. App. 1032-1044.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to challenge the trial court's reliance on the wrong legal standard when it refused to excuse Juror No. 72, Joseph Emanuel, who revealed to the court before the jury had been sworn that he was the supervisor of murder victim David Slice's brother-in-law, thereby failing to provide the trial court with an opportunity to issue a ruling based on the correct legal standard and ultimately preserve the issue for appellate review.

Relevant Trial Facts

After the solicitor called the case for trial, the court read the indictments to the jury panel. The panel was told that Petitioner, along with Michael T. Wise, was charged with the unlawful killing of David Slice and Kim Fauscette with malice aforethought. App. 16, l. 3 – 17, l. 17. During qualification, the following colloquy took place between the court and the panel:

The Court: Is any member of the jury panel or a member of your immediate family . . . close personal friends of the victims named in the indictment, either David Slice or Kim Fauscette? If so, please stand.

(There is no response).

The Court: These indictments allege an incident that occurred in Lexington County, on or about September 5, 2005, allegedly involved a handgun. Does any member of the jury panel have any knowledge about the case? If so, please stand.

(Juror stands).

The Court: Ms. Sawyer, I have set you aside. Thank you so much. Any others?

(There is no response).

The Court: Does any member of the jury panel have any bias or prejudice towards the parties, that being either the State or the

Defendant, or the subject matter involved in this case? If so, please stand.

(There is no response).

The Court: Has any member of the jury panel heard or know anything about the case from any source whatsoever? If so, please stand.

(There is no response).

App. 20, l. 22 – 21, l. 20.

As seen above, Juror No. 72, Joseph E. Emanuel, did not respond to any of these questions, including whether he knew or had heard anything about the case “from any source whatsoever.” At the time Juror No. 72 was accepted as a juror, defense counsel had only used five of his ten peremptory challenges. App. 14-15; See App. 41, l. 19 – 42, l. 5.

Prior to opening statements and the jury being sworn, the clerk informed the court that Juror No. 72 approached her in the hallway and said he recognized “a lady in the audience.” The clerk said “[h]e didn’t recognize the name, but he did recognize her face, that it’s either her son or her husband [that was the victim], but some kind of kin of hers works with him, and he wanted to speak with the judge about it.” App. 140, l. 13 – 141, l. 2; See App. 151, ll. 18-21. The solicitor said they were having the victim’s family come back into the courtroom in case the relationship happened to be with “one of the victims.” App. 141, ll. 3-9.

The court had Juror No. 72 enter the courtroom to explain further. The juror said “yesterday evening I realized that I knew somebody that worked with me that was a family member here . . . I recognized somebody I knew. Her brother actually works with me.” App. 141, ll. 16-23. The juror explained that the person he recognized was Georgette Slice, a member of victim David Slice’s family, and that “I work with her brother. He actually works for me.” App. 141, l. 24 – 142, l. 14. He confirmed that the brother of “a member of the victim’s family” worked for him and he is the

brother's supervisor. When asked by the court if he "could still be a fair and impartial juror to both the State and the defense in this case," then juror answered, "Yes, sir." App. 142, ll. 15-24. The judge then asked the juror to "step back to your jury room," and instructed him not to talk about the matter with the other jurors. App. 142, l. 25 – 143, l. 4.

Defense counsel immediately asked the court to excuse the juror. App. 143, ll. 11-12. The judge inquired of the solicitor "[w]hat relationship is Georgette Slice to the victim David Slice?" The solicitor explained that Georgette Slice was **victim David Slice's "estranged wife."** The solicitor added that he thought Georgette Slice was still married to David Slice, even though they were not living together at the time of the murder. App. 143, ll. 16-21 (emphasis added). The solicitor and defense counsel both stated that they understood the juror actually supervised David Slice's brother-in-law rather than his brother. App. 243, l. 22 – 144, l. 1. Defense counsel continued to request that the juror be removed for cause under these circumstances. App. 143, ll. 13-15.

Juror No. 72 was then brought back into the courtroom. He told the court that Eugene Ford was the man he supervised and that Ford was David Slice's brother-in-law. App. 144, ll. 2-19. The judge again asked the juror, "[T]he fact that you work with one of the victim's brothers-in-law, could you still be a fair and impartial juror to both the State and the defense in this case?" The juror maintained that he could. App, 144, ll. 20-24.

In response to questioning by the court, the juror claimed he had not "heard anything about the case . . . [p]rior to being selected for jury service." He said he "didn't even know that it had happened," and that he "put names and faces together, Slice. I just recognized a face." App. 144, l. 25 – 145, l. 11.

Defense counsel Baker then renewed his motion that the juror be removed for cause. Baker stated, "He [the juror] has indicated that he is a supervisor for one of the victim's family members."

App. 145, ll. 22-25. He argued further:

I think it's human nature that he could not be impartial in this matter and [I] would ask that he be removed for cause from the jury. I think it would be proper for that to happen at this point.

The Court: Yes, sir.

Mr. Madsen [Assistant Solicitor]: I just think he gave appropriate answers that he could be fair and impartial. This is obviously a murder case, and he hasn't even heard from this fellow that works for him that there is an estranged brother-in-law who has been murdered.

I think that is telling, and he has answered the court, was solid in his answers, that he would be fair and impartial and had not heard anything or discussed anything about the case.

The Court: Yes, sir. I would have to deny your motion based on State v. Elmore.¹ In that case actually a relative of one of the prosecutor's was selected for [the] jury and was authorized to be a member of that jury.

I think I have to take jurors at their word. I can't second-guess that. That's why I even went and asked him once he put the face and name together if he recollected anything about the facts of the case, and he says he knows nothing. I can't sit up here and decide that jurors won't follow the law.

Mr. Baker: Just to put a couple of things on the record, Your Honor.

The Court: Certainly.

Mr. Baker: Obviously, *had I known this prior to selection of the jury. I would have struck Mr. Emanuel from the jury. I have been denied that right at this point.*

He has indicated he works with a family member of the victim. I think he would be - - it's just prejudice to my client for us to go forward with him on the jury.

¹ 279 S.C. 417, 308 S.E.2d 781 (1983).

The Court: All right. Thank you. Thank you, Mr. Baker.

App. 146, l. 1 – 147, l. 13 (emphasis added).

Later during the trial, the court indicated that it had received a note stating, “I, Allen Pinner, juror number one eighty-four am friends with the family of David Slice. I am just now realizing how much I already know about this case.” The juror maintained in the note that “I do not think that I am able to make a fair decision.” App. 253, ll. 9-19. After the attorneys said they did not have any questions for the juror, the judge excused him. App. 254, ll. 3-25.

Defense counsel Baker then moved for a mistrial stressing that Juror No. 72 had already informed the court that “he works with a member of victim’s family.” Counsel argued the court now had a second revelation from Juror No. 184 of direct ties to the family of victim David Slice. Defense counsel asked the judge to declare a mistrial or at least poll the jurors to find out “if there was anybody else on the panel who may know of something else about the case.” App. 256, l. 10 – 257, l. 10. The judge denied the motion for a mistrial. App. 257, l. 11 – 258, l. 13.

At the conclusion of the trial, defense counsel moved for a new trial based on the failure of the trial court to excuse Juror No. 72 based on the fact that he was a supervisor of a family member of the victim and had not disclosed this relationship until after the jury was selected. He argued this was a denial of due process and of Petitioner’s right to a fair and impartial jury. App. 796, l. 22 – 797, l. 11. The court denied the motion for a new trial. App. 797, l. 12 – 798, l. 6.

Direct Appeal

Petitioner argued on direct appeal that the trial court abused its discretion by refusing to excuse Juror No. 72, Joseph Emanuel, from the jury when the juror revealed to the court after jury selection that he was the supervisor of victim David Slice’s brother-in-law since defense counsel

told the court that he would have used one of his peremptory strikes had he known of the relationship. In his Final Brief of Appellant, appellate counsel, Robert M. Dudek, argued:

Moreover, the judge's ruling that he had "to deny your motion based on State v. Elmore," and that he was bound by the juror's answers was an error of law. *The judge had the discretion, upon a motion, to remove the juror if he thought the juror might be being affected or influenced despite the juror's hopeful view that he would remain fair.* Judges commonly excuse jurors where it appears by family or friendship that they may be too close to the situation despite their assertions that they would still be fair. *The failure to recognize discretionary authority where it in fact exists is reversible error.* State v. Alexander, 309 S.C. 495, 424 S.E.2d 526 (1992).

App. 824-825 (emphasis added).

In its opinion affirming Petitioner's convictions and sentence, the Court of Appeals noted that Petitioner "argues the trial judge applied the wrong legal standard in deciding not to remove the juror. In making this argument, Burgess [Petitioner] focuses on one comment made by the judge immediately after he denied the motion to remove the juror: 'I think I have to take jurors at their word. I can't second guess that . . . I can't sit up here and decide that jurors won't follow the law.'" Burgess, 391 S.C. at 20, 703 S.E.2d at 515; App. 880. The Court of Appeals found this argument not preserved for review. Id.

The Court of Appeals reasoned:

Burgess's failure to challenge the judge's comment and seek clarification of the basis of his ruling leaves the issue unpreserved for two reasons. First, we cannot determine the correct context in which to interpret the comment. Burgess argues the judge was stating the legal standard he had used in deciding not to remove the juror. The State argues, however, the comment simply indicates the judge expected jurors to follow his instructions on the law. Second, even if he was addressing the standard for removing the juror, we cannot determine that he applied the wrong standard. The judge made the comment immediately after he ruled. In the ruling itself, however, he stated: "I would have to deny your motion based on State v. Elmore." While the comment cited by Burgess would

indicate the judge used an incorrect standard, the reference to *Elmore* indicates he used the correct standard.

If Burgess had sought correction of the alleged error at trial, we would be able to determine which issue the trial judge was addressing, and whether he was correct. Because we cannot determine either, *the issue is not preserved*.

Id. at 20-21, 703 S.E.2d at 515 (internal citations omitted) (emphasis added).

In addition to finding this argument not preserved, the Court of Appeals also found that because Juror No. 72's failure to disclose the information was innocent, "the removal of the juror would have been error." Id. at 19-20, 703 S.E.2d at 514. The court noted this Court's opinion in State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), where this Court held: "When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, *and* that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Id. at 19, 703 S.E.2d at 514 (quoting Woods, 345 S.C. at 587-588, 550 S.E.2d at 284) (emphasis in original).

Based on this Court's holding in Woods and State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), the Court of Appeals held, "If the judge finds both of the *Woods* criteria exist the judge must remove the juror. However, *if either of the criteria is absent, the judge may not remove the juror* on that basis." Burgess, 391 S.C. at 19, 703 S.E.2d at 514 (emphasis added). As noted above, because the Court of Appeals found Juror No. 72's failure to disclose his relationship with the victim's brother-in-law was innocent, it said that removal of the juror would have been error. Id. at 20, 703 S.E.2d at 514. The Court of Appeals never considered how material the information would have been to the parties in exercising their peremptory challenges. See State v. Coaxum, 410 S.C. 320, 330, 764 S.E.2d 242, 247 (2014).

PCR Hearing

During his testimony at the PCR hearing, Petitioner explained the background facts related to Juror No. 72's disclosure after jury selection that he supervised victim David Slice's brother-in-law. He explained, "And the judge basically ruled that he had to deny the motion based on State versus Elmore and that he didn't - - he couldn't - - he said that he couldn't sit up there and decide that jurors won't follow the law." App. 980, l. 19 – 981, l. 3. Petitioner added that the trial judge "further ruled that 'I think I have to take jurors at their word. I can't second guess that. I can't sit up here and decide that jurors won't follow the law.'" App. 981, ll. 14-17.

Petitioner testified that his appellate counsel on direct appeal "raised the issue that the trial judge had abused [his] discretion [by failing to excuse Juror No. 72] based on the fact that we still had preemptory strikes left and [trial] Counsel had told the judge that, you know, had he known the information prior to selecting the jury he would have removed him [Juror No. 72], but the appellate court [the Court of Appeals] denied the argument." App. 981, l. 20 – 982, l. 1. He explained that the Court of Appeals "blamed [trial] Counsel" and found trial counsel "failed to challenge the judge's ruling and seek clarification on the basis of the ruling." App. 982, ll. 3-5; App. 982, l. 23.

Moreover, Petitioner explained that he was prejudiced by the trial court's refusal to remove Juror No. 72 and trial counsel's failure to properly preserve the issue for appellate review because he "had a constitutional right to a fair jury, to a fair trial, and I feel that . . . with him [Juror No. 72] being on the jury he was - - he continued to have a job with the victim's brother-in-law . . . I don't know how he felt about going back to work . . . looking at this guy [the brother-in-law] or whatever and finding me not guilty versus finding me guilty." App. 983, l. 6 – 984, l. 4.

Trial counsel, Brad Baker, testified that there was an individual who was placed on the jury who later indicated that "the brother-in-law . . . of Mr. Slice [the victim] worked for him." App.

1020, ll. 16-25. He explained that the juror realized this relationship after he recognized a family member in the gallery. Baker said that he made a motion to have this juror removed for cause and that his understanding of the trial judge's ruling was "basically that - - as I understood it at that time, it was this man is telling me he can be impartial." App. 1021, l. 1-20. He explained that his understanding of the Court of Appeals' opinion was that the trial judge "cited the right case, but I think their issue was I didn't point out to the Judge that he had made - - he cited the right case, but made the wrong statement about the law." App. 1022, ll. 6-11. Moreover, trial counsel testified that "frankly, I was a little bit perplexed by that language [used by the trial judge during his ruling]" and that he "truly felt the juror should have been removed." App. 1023, ll. 10-12.

At the end of the testimony, PCR counsel argued that, with regards to the "juror issue" where the juror indicated that he was a supervisor of a family member of the deceased, trial counsel was ineffective because "there should have been greater clarification [of the trial court's ruling] as indicated by the Court of Appeals." He argued further that if "things had been done properly, then . . . my client would have had a different outcome with his case." App. 1028, ll. 7-18.

Order of Dismissal

In the Order of Dismissal, the PCR court found Petitioner "failed to meet his burden to prove counsel was ineffective for failing to tailor his motion to disqualify juror Emanuel in a manner to preserve [the argument] advanced by appellate counsel on appeal. In viewing the entire bench colloquy with juror Emanuel, this Court notes that the Trial Judge rendered his judgment pursuant to the correct legal framework." The court further found that the "creative logic employed by Appellate counsel to further extend [Petitioner's] argument on appeal does not reflect poorly on [trial] counsel's effective performance here when the Court of Appeals found the argument to be unpreserved." App. 1040-1041.

Regardless, the PCR court found Petitioner “failed to meet his burden to prove Strickland’s² prejudice prong.” App. 1042. During its analysis, the court addressed the merits of the direct appeal issue regarding the trial judge’s refusal to remove Juror No. 72 after he revealed that he was the supervisor of David Slice’s brother-in-law. The PCR court found Juror No. 72’s failure to disclose this relationship was unintentional and that he did not incorrectly answer any of the trial judge’s questions asked during jury qualification. App. 1042. Specifically, the PCR court stated, “While the trial judge did ask whether any venireman or a member of the venireman’s ‘immediate family were . . . close personal friends of the victims,’ neither this question nor the trial judge’s other inquires asked whether any venireman had a business or working relationship with either victim’s family members.” App. 1042. The PCR court further found that there was “nothing in the record to refute juror Emanuel’s representations that he did not know anything about the case and that he did not even know that the murders had occurred. App. 1042-1043. Therefore, the PCR court found the trial judge “ruled within the ambit of his discretion.” App. 1043.

Discussion

Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to challenge the trial court’s reliance on the wrong legal standard when it refused to excuse Juror No. 72, Joseph Emanuel, from the jury after he revealed he was the supervisor of murder victim David Slice’s brother-in-law. Petitioner was prejudiced by trial counsel’s deficient performance because his failure to properly challenge the trial court’s erroneous ruling prevented the trial court from making a ruling based on the correct legal standard and caused the issue to be unpreserved for appellate review. Moreover, based on this Court’s opinion in

² Strickland v. Washington, 466 U.S. 668, 686 (1984).

Coaxum, Petitioner would have been granted relief on direct appeal if trial counsel had properly preserved this issue.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that “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; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

In this case, trial counsel’s performance was deficient as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Specifically, trial counsel was ineffective because he failed to challenge the trial judge’s reliance on the wrong legal standard when he refused to excuse Juror No. 72 and the judge’s failure to consider trial counsel’s statements that he would have used one of his remaining peremptory challenges to strike Juror No. 72 if he would have been aware of the concealed relationship.

During his ruling, the trial judge made the following erroneous statements: “I think I have to take jurors at their word. I can’t second guess that. . . . I can’t sit up here and decide that jurors

won't follow the law." See App. 146, ll. 20-25. These comments were incorrect statements of the law because, as appellate counsel argued on direct appeal, the court had the discretion to determine whether to replace the juror with an alternate after considering "whether the information concealed would have supported a challenge for cause or would have been a material factor in a party's exercise of its peremptory challenges." Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246; See App. 824-825. Therefore, trial counsel was ineffective for failing to properly challenge the trial court's ruling.

Moreover, there is a reasonable probability that but for trial counsel's deficient performance, the outcome of Petitioner's trial or his direct appeal would have been different. Specifically, if trial counsel would have properly challenged the trial court's erroneous statements and corrected the court's misunderstanding, then it is likely the trial judge would have recognized that he had the discretion to determine whether to replace Juror No. 72 with one of the two available alternates after considering whether the concealed relationship would have supported a challenge for cause or would have been a material factor in the defense's exercise of its peremptory challenges. See Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246. If the trial court would have recognized its discretionary authority, it would have excused Juror No. 72.

In the alternative, if the trial court still failed to recognize that it could exercise its discretion, it is likely Petitioner would have been granted relief on direct appeal if trial counsel had properly preserved the issue for review.

In Coaxum, this Court held that when a juror intentionally conceals information that would have supported a challenge for cause or would have been a material factor in the use of a party's peremptory challenges, it may be inferred that the juror is not impartial. Id. at 328, 764 S.E.2d at 245-246 (citing State v. Woods, 345 S.C. 583, 587-588, 555 S.E.2d 282, 284 (2001)). In this

situation, if the trial court refuses to replace the juror or grant a mistrial, “the party need not show prejudice, as the bias against the moving party is inferred, and prejudice from the moving party’s inability to strike the juror is apparent.” Id. (citing Woods, 345 S.C. at 589, 550 S.E.2d at 285).

However, when the concealment is unintentional, the trial court may exercise its discretion in determining whether to replace the juror with an alternate and “*must* determine whether the information concealed would have supported a challenge for cause or would have been a material factor in a party’s exercise of its peremptory challenges.” Id. at 328-329, 764 S.E.2d at 246 (citing State v. Stone, 350 S.C. 442, 448, 567 S.E.2d 244, 247-248 (2002) and Woods, 345 S.C. at 587-588, 550 S.E.2d at 284) (emphasis added). Unlike where the concealment is intentional, “where the failure to disclose is innocent, no inference of bias can be drawn.” Id. at 329, 764 S.E.2d at 246 (citing Woods, 345 S.C. at 589, 550 S.E.2d at 285).

Here, Juror No. 72’s failure to disclose his supervisory relationship with David Slice’s brother-in-law was likely unintentional. Therefore, the trial court was required to determine whether this relationship would have supported a challenge for cause or would have been a material factor in trial counsel’s exercise of his peremptory challenges. Trial counsel stated that had he known of Juror No. 72’s relationship with David Slice’s family, he would have used a peremptory challenge to remove him from the jury. Nothing in the record refutes this assertion. At the time Juror No. 72 was accepted as a juror, trial counsel had five remaining peremptory challenges. App. 14-15. It is reasonable to conclude that a juror’s relationship with the murder victim’s brother-in-law would be a material factor in the use of a criminal defendant’s peremptory challenges. See Woods, 345 S.C. at 590, 550 S.E.2d at 285.

Based on this analysis, it is clear that if the trial judge would have been informed of the correct legal standard by trial counsel, he would have removed Juror No. 72 from the jury and

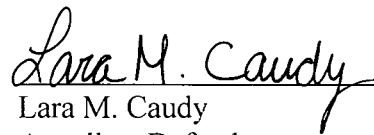
replaced him with one of the two available alternates. However, if by chance, the trial court still refused to exercise its discretion after being properly apprised of the correct legal standard and refused to remove Juror No. 72 from the jury, Petitioner would have been granted relief on direct appeal by either the Court of Appeals or this Court. Therefore, Petitioner was prejudiced by trial counsel's deficient performance.

The PCR court erred in finding trial counsel provided effective assistance of counsel because "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989) (internal citations omitted); See Strickland, 466 U.S. 668.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
R. Lawton McIntosh, Circuit Court Judge

DARRELL BURGESS,

PETITIONER,

V.

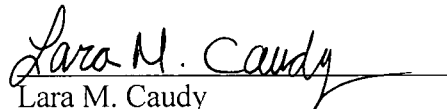
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RESPONDENT

APPELLATE CASE NO. 2014-000779

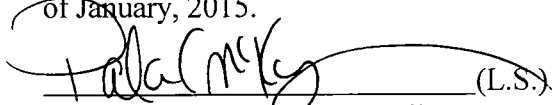
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on John Walter Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of January, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day
of January, 2015.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.