

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO YORK COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable J. Michael Baxley, Circuit Court Judge

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Appellate Case No.: 2014-000712

Douglas Hall.....Petitioner,

v.

State of South Carolina.....Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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<sup>1</sup> Batson v. Kentucky, 476 U.S. 79 (1986).

## QUESTION PRESENTED

Did the PCR court properly hold that, while Counsel was arguably ineffective for failing to file a timely Batson motion, Petitioner failed to provide any credible evidence that the juror was impartial or any resulting prejudice from Counsel's alleged error, especially in the light of overwhelming evidence of Petitioner's guilt?

## STATEMENT OF THE CASE

Douglas Hall, (Petitioner), was indicted at the August 2010 term of the Union County Grand Jury for possession of crack cocaine with intent to distribute (2010-GS-44-0887). Petitioner was represented by Melinda Butler, Esquire. On April 6, 2011, Petitioner proceeded to a jury trial pursuant to which he was found guilty of simple possession of crack cocaine as a lesser included offense. The Honorable John C. Hayes, III sentenced Petitioner to confinement for ten (10) years for possession of crack cocaine, 3<sup>rd</sup> offense. Petitioner appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed pursuant to Petitioner withdrawing his appeal.

Petitioner filed his application for Post-Conviction Relief (PCR) on March 22, 2013 (2013-CP-44-0095). Respondent made its Return and Motion to Dismiss on June 26, 2013. An evidentiary hearing was subsequently convened at the Moss Justice Center in York County, South Carolina on January 21, 2014. Petitioner was present and was represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. The Honorable J. Michael Baxley denied and dismissed the Petitioner's application by written Order on March 6, 2014.

A timely notice of appeal from the Order of Dismissal was filed on Petitioner's behalf. Petitioner subsequently filed a Petition for Writ of Certiorari on November 12, 2014. This Return to the Petition for Writ of Certiorari follows.

## STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

## ARGUMENT

- I. The PCR court properly held, while Counsel was arguably ineffective for failing to file a timely Batson motion, Petitioner failed to provide any credible evidence that the juror was impartial or any resulting prejudice from Counsel's alleged error, especially in the light of overwhelming evidence of Petitioner's guilt.

Petitioner asserts "[t]rial counsel erred in making an untimely Batson in petitioner's case, which the PCR judge ruled was arguably ineffective legal assistance, because the challenge to the seating of the juror in question was not raised until the venirepersons had been dismissed." This argument is without merit. Further, Petitioner has failed to show any resulting prejudice from counsel's alleged ineffective assistance.

In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Petitioner must prove that Counsel's performance was deficient. Under this prong, attorney

performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland). Second, Counsel’s deficient performance must have prejudiced Petitioner such that “there is 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.

Additionally, “this Court has held that a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.” Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). In PCR, the Petitioner must provide credible evidence that Counsel’s failure to strike a juror prejudiced the defense. Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). Where there is overwhelming evidence of guilt, a trial counsel’s deficient representation will not be prejudicial. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State 305 S.C. 365, 409 S.E.2d 344 (1991).

Further, “[t]his Court gives great deference to the post-conviction relief (PCR) court’s findings of fact and conclusions of law.” Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 528 (2007) (quoting Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005)).

At the PCR hearing, Counsel testified she challenged Juror #74 because the State had struck a similarly situated black male but did not strike a similarly situated white male. (App. p. 365-366). Counsel also stated she reviewed her notes over the lunch break and realized the two jurors were more alike than previously thought. (App. p. 365). Counsel admitted that the trial judge explained her motion was not timely made. (App. p. 366). However, Petitioner failed to

present any witnesses to state that Juror #74 was biased or prejudicial to Petitioner's case. In fact, the PCR court stated:

Mr Hall, to be successful at PCR you have to prove two things. Number one, that your lawyer as was said earlier today, your lawyer's performance was below the standard that we require lawyers practicing criminal law in South Carolina. So in other words that her performance was deficient, and not or, and number two, that by that poor performance you were prejudiced. And prejudice has been defined by our Supreme Court to mean that but for your lawyer's poor performance the outcome of the trial would have been different. That's the standard that you have to meet and I will say to you, Mr. Hall, respectfully I find that you have failed to meet either prong of proof. I will say you(sic) there is some question about whether or not your lawyer made a timely Batson motion and the Court does accept the fact the judge, Judge Hayes perceived that the the(sic) motion came too late. But the Court finds there has been absolutely no showing of prejudice on that specific point because there is no evidence before this Court that one juror would have supported you versus another juror that would have opposed you. That is speculation at best. There is no on(sic) evidence in the record to support prejudice on that point and so, while I find that there generally is not a deficient performance the Court realizes there may be an exception on that point, but that there is no prejudice to it.

(App. p. 373 line 13- p. 374 line 14).

The PCR court then held in its Order:

This Court finds that Petitioner has failed to meet either prong of the Strickland test as to this allegation. Although Counsel was arguably ineffective for not challenging Juror #74 during the selection process, Petitioner provided no evidence whatsoever that he was prejudiced by the seating of Juror #74. It was not until the medically-excused juror was excused from the trial that Juror #74 was even going to be part of the jury. As such, Counsel had no initial reason to strike him. Only until the prior juror was excused did Counsel bring this challenge to the Court's attention. Nevertheless, Petitioner presented no testimony or other evidence showing but for Juror #74 being seated on the jury, the outcome of Petitioner's trial would have been different.

Petitioner is entitled to a fair and impartial jury, not a perfect one. Petitioner provided no evidence that these jurors were anything but fair and impartial. Additionally, all twelve jurors agreed that Petitioner was guilty of possessing crack cocaine. As jurors are presumed to follow the law as given by the judge, Petitioner has failed to meet his burden of proving resulting prejudice.

(App. p. 387).

Further, the PCR court found there was overwhelming evidence of guilty in Petitioner's case. (App. pp. 387-388).

Respondent submits the PCR court correctly found Petitioner failed to produce any credible evidence that Juror #74 prejudiced his case. Additionally, Petitioner failed to show that but for Counsel's failure to timely strike Juror #74, the outcome of his case would have been different. There were eleven other jurors that found him guilty. Further, Petitioner admitted at trial that he possessed crack cocaine and had sold crack cocaine to the confidential informant earlier that same day. (App. p. 225; p. 232). Clearly, there is overwhelming evidence of Petitioner's guilt in this case. Therefore, Petitioner has failed to meet his burden of establishing any resulting prejudice from Counsel's alleged deficiency. Thus, sufficient evidence exists to affirm the PCR court's order.

**CONCLUSION**

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

Respectfully submitted,

ALAN WILSON  
Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General  
SC Bar # 78871

By:

  
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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March 4, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to York County

The Honorable J. Michael Baxley, Circuit Court Judge

\_\_\_\_\_  
DOUGLAS HALL, 144917

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.


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**PROOF OF SERVICE**  
\_\_\_\_\_

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire  
South Carolina Office of Indigent Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 4<sup>th</sup> day of March 2015.

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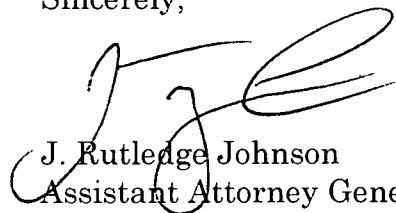
The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: Douglas Hall, #144917 v. State of South Carolina  
2014-000712**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,



J. Rutledge Johnson  
Assistant Attorney General

JRJ:cey  
Enclosures

cc: Laura R. Baer, Esquire  
Trisha Allen, Victim Services