

STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAY 27 2015

CERTIORARI TO YORK COUNTY  
Court of Common Pleas

S.C. Supreme Court

The Honorable John C. Hayes, III, Circuit Court Judge

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Appellate Case No.: 2014-001189

Jaleel Vaughn Page..... Petitioner,

v.

State of South Carolina..... Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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### **QUESTION PRESENTED**

Did the PCR court properly hold that Petitioner failed to meet his burden of proving that he was prejudiced by Counsel's failure to object to Detective Robbins' testimony, especially in light of the fact that the South Carolina Court of Appeals ruled on this exact issue on direct appeal?

## **STATEMENT OF THE CASE**

The Respondent adopts the procedural history presented by the Petitioner.

## 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 Petitioner failed to meet his burden of proving that he was prejudiced by Counsel's failure to object to Detective Robbins' testimony, especially in light of the fact that the South Carolina Court of Appeals ruled on this exact issue on direct appeal.**

Petitioner asserts trial counsel erred by failing to object to Detective Sara Robbins' testimony concerning a non-testifying co-defendant's statement and that this testimony was "highly prejudicial and compounded the Confrontation Clause violation at trial." This issue has already been ruled upon on Petitioner's direct appeal and therefore, it is not properly before this Court.

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); Butler, 334 S.E.2d 813.

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. Strickland, *supra*. 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.

Moreover, post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). “Error is harmless where it could not reasonably have affected the trial's outcome.” State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). “No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” Id. “In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.”

Id. at 484, 663 S.E.2d at 360 (citing State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 635 (1994)).

On Petitioner's direct appeal, the Court of Appeals held:

While we recognize the discretionary authority of the trial judge in this area, we believe he erred in finding that Page's counsel's zealous representation of his client required the admission of this inadmissible evidence in order to rehabilitate Detective's investigative techniques. Nevertheless, we find any error resulting from the admission of the unredacted statement was harmless.

Id. at 483, 663 S.E.2d at 360.

The Court of Appeals then held, “[a]pplying the Van Arsdall<sup>1</sup> factors to the case at hand, we note that all of McKnight's statement mentioning Page was either cumulative or corroborated by other witnesses.” Id. at 484, 663 S.E.2d at 361. The Court of Appeals also stated, “[a]s the Supreme Court has stressed on several occasions, the Constitution entitles a criminal defendant to a fair trial, not a perfect one.” Id. at 485, 663 S.E.2d at 361. The Court of Appeals lastly held “that any error allowing the introduction of Page's nontestifying co-defendant's statement implicating Page to the police was harmless beyond a reasonable doubt.” Id.

After a full evidentiary hearing, the PCR court found that the Court of Appeals “has already ruled upon this issue and therefore it is not properly before this Court.” (App. p. 822). It also found, “While [Petitioner] has carried his burden of proof as to trial counsel’s error in “opening the door” for Ms. Robbins testimony, [Petitioner] has failed to prove that he was prejudiced thereby. In fact, an Appellate Court of this State has affirmatively found Applicant was not prejudiced by the introduction of McKinght’s unredacted statement.” (App. p. 823).

As this issue was ruled upon during Petitioner’s direct appeal, the PCR court properly found this issue was not properly before it. As a result, the PCR court properly concluded Petitioner failed to meet his burden of proving he was prejudiced by the admission of McKnight’s statement through testimony from Detective Robbins. Accordingly, there is clear “evidence of probative value” to support the PCR judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Therefore, the Petitioner has failed to meet his burden of proof as to this argument.

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<sup>1</sup> Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431 (1986).

**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,

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SC Bar # 78871

By:

  
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May 27, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

The Honorable John C. Hayes, III, Circuit Court Judge

JALEEL V. PAGE, 309433

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

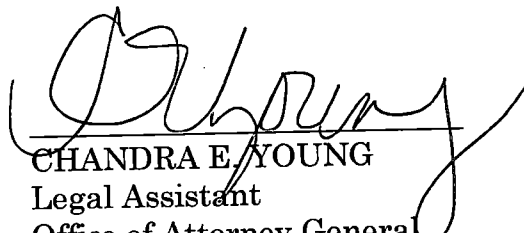
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**PROOF OF SERVICE**  
\_\_\_\_\_

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:

Tiffany L. Butler, Esquire  
SC Commission of Indigent Defense  
1330 Lady Street; Suite 401  
Columbia, SC 29211

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

This 27<sup>th</sup> day of May 2015.

  
\_\_\_\_\_  
CHANDRA E. YOUNG  
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ATTORNEY GENERAL

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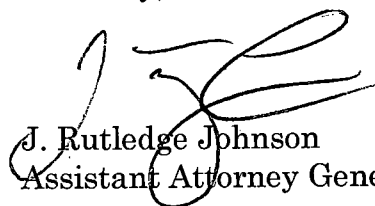
The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: Jaleel Page, #309433 v. State of South Carolina  
2014-001189**

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: Tiffany L. Butler, Esquire  
Trisha Allen, Victim Services