

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Colleton County  
Court of Common Pleas  
The Honorable James R. Barber, III, Circuit Court Judge

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Appellate Case No.: 2014-001602  
Lower Court Case No.: 2010-CP-15-0222

**RECEIVED**

JUN 19 2015

**S.C. Supreme Court**

LEONARD STANFIELD, #235306,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General  
SC Bar # 101254

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ATTORNEYS FOR RESPONDENT

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### **PETITIONER'S QUESTION PRESENTED**

Whether trial counsel erred by failing to object to testimony from Petitioner's co-defendant, Leonard Pinckney, that he and Petitioner "smoked a blunt" while discussing the robbery and Petitioner gave Pinckney a "bag of cocaine" before driving to Patrice Ford's apartment, where the testimony was not relevant and was unduly prejudicial to Petitioner?

## STATEMENT OF THE CASE

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Colleton County Clerk of Court. Petitioner was indicted at the October 2003 term of the Colleton County Grand Jury for armed robbery (2003-GS-15-0734), first-degree burglary (2003-GS-15-0735), kidnapping (2003-GS-15-0736), and murder (2003-GS-15-0731). He was represented by David Mathews, Esquire.

Petitioner proceeded to a jury trial. He was acquitted of murder and found guilty of the other three charges. On May 24, 2007, the Honorable R. Ferrell Cothran, Jr., sentenced Petitioner to concurrent terms of imprisonment for thirty years for first-degree burglary and kidnapping. Judge Cothran sentenced Petitioner to a consecutive term of thirty years for armed robbery, provided upon the service of twelve years the balance is suspended.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Joseph Savitz, III, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Petitioner's appeal. State v. Stanfield, Op. No. 2009-UP-498 (S.C. Ct. App. filed October 26, 2009). The Remittitur was issued on November 12, 2009.

On February 22, 2010, Petitioner filed an application for post-conviction relief (PCR), alleging ineffective assistance of trial and appellate counsel. Respondent made its Return on December 6, 2010, requesting that an evidentiary hearing be held. Petitioner filed an amended PCR application on March 7, 2012. An evidentiary hearing was convened on February 19, 2014, at the Beaufort County Courthouse before the Honorable James R. Barber, III. Petitioner was present at the hearing and represented by William C. Bennett, Esquire. Ashleigh R. Wilson,

Esquire, of the South Carolina Office of the Attorney General represented Respondent. By an Amended Order of Dismissal signed July 1, 2014 and filed July 11, 2014 Judge Barber denied and dismissed Petitioner's application with prejudice.

## STANDARD OF REVIEW

The proper standard of review of a post-conviction relief 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 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).

## ARGUMENT

**There is evidence of probative value to support the post-conviction relief court's ruling that trial counsel was not ineffective regarding testimony by Petitioner's co-defendant about Petitioner's drug use.**

Petitioner asserts that his trial counsel erred by failing to object to testimony from Petitioner's co-defendant (Leonard Pinckney) that that the two "smoked a blunt" while discussing the robbery and that Petitioner gave him a "bag of cocaine" before driving to Patrice Ford's apartment to commit the robbery. This argument is without merit.

In a PCR action, the Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, *supra*.

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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. Second, counsel's deficient performance must have prejudiced the

Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id.

This Court has held that "when counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (quoting Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)).

The relevant testimony at trial concerns several comments made by co-defendant Pinckney. On direct examination, the Solicitor asked Pinckney if he had a chance to meet with Petitioner on the day of the robbery. Pinckney testified that he and Petitioner met at Chase Lounge and the Solicitor asks the following:

Solicitor:	What were y'all doing there?
Witness:	Having a couple drinks, you know.
Solicitor:	Couple drinks. Anything else?
Witness:	No, that's all. That was all.
Solicitor:	Didn't smoke no blunt?
Witness:	That was — yeah, a couple in the —
Solicitor:	Okay. That's right. That's right. You talk with [Petitioner]?
Witness:	Just frequently on and off, just on and off.

(App. 125, lines 15-23).

Pinckney testified that he and Petitioner talked about their plan to rob the victim that night. He testified that they left lounge and rode together to a gas station near some apartments.

(App. 128, lines 11-16). Next, the Solicitor asked:

Solicitor: Okay. What did y'all do when you got there?  
Witness: We set up and smoked a blunt.  
Solicitor: Smoked the blunt. Okay. Did you see anybody out there in  
the yard?  
Witness: Other fellow named Peanut.

(App. 128, lines 17-21).

The Solicitor asked what Petitioner and Pinckney did after they finished the blunt and Pinckney responded that Petitioner "gave me a bag of cocaine and I hid it, and after that we went to the apartment." (App. 129, lines 3-4). No other mention of drug use by Petitioner or Pinckney was testified to by Pinckney or any other witnesses throughout the trial.

At the PCR hearing, Petitioner testified that his trial counsel (hereinafter "Counsel") did not discuss with him the possible consequences of witnesses testifying to his prior bad acts. (App. 368, lines 16-20). Counsel testified that he would normally object to testimony such as Pinckney's testimony about Petitioner's use of drugs, unless he thought it was a small issue and did not want to draw the jury's attention to it. (App. 388, lines 12-13). The PCR Court found Counsel's testimony to be credible and did not find Petitioner's testimony to be credible. (App. 408). Where matters of credibility are involved, the Court gives great deference to a judge's findings, because the Court lacks the opportunity to directly observe the witnesses. See Drayton v. Evatt, 312 S.C. 4, 13, 430 S.E.2d 517, 522 (1993) (finding great deference is given to the PCR judge's findings on the credibility of witnesses); see also Menne v. Keowee Key Prop. Owners' Ass'n, Inc., 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006) ("Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved.").

The PCR Court properly found that Petitioner did not carry his burden of proving that his trial counsel was ineffective for failing to object to Pinckney's testimony about Petitioner's drug

use. The PCR Court found that Counsel articulated a strategic reason for not objecting to Pinckney's brief references to drug use, and further found Counsel's concerns were valid "that objecting to small testimony about drug use tended to highlight the testimony to the jurors." (App. 413). Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. See Edwards. In context, Pinckney's brief testimony at issue was his timeline of events, casually mentioning smoking marijuana and Petitioner handing him a bag of cocaine before the robbery. These events were not expounded upon by the Solicitor during Pinckney's direct examination and were not reiterated by another witness. Thus, the PCR Court did not err in finding that Counsel made a valid strategic decision to not object to such brief, passing testimony rather than emphasize these facts to the jury.

Next, the PCR Court found it unlikely that Petitioner was prejudiced by the testimony, given that Petitioner was not on trial for drug charges, the brief testimony was the only testimony heard regarding drug use, and it was unlikely that the testimony contributed to the guilty verdict in light of the other evidence. The brief testimony at issue were merely pieces of Pinckney's chronology of the incident and in no way insinuated that Petitioner lived a life of drugs. Given the totality of the evidence presented at trial, the result of Petitioner's trial would not have been different had Counsel objected to the testimony at issue. See Cherry.

Accordingly, there is clear "evidence of probative value" to sustain the PCR judge's findings. Id.

**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 issue discussed above fully.

Respectfully submitted,

ALAN WILSON  
Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General  
S.C. Bar # 101254

By:



ATTORNEYS FOR RESPONDENT

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19 June, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Colleton County  
The Honorable James R. Barber, III, Circuit Court Judge

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LEONARD STANFIELD, #235306,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **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:

**Tiffany L. Butler, Esq.**  
**SC Commission of Indigent Defense**  
**Post Office Box 11589**  
**Columbia, SC 29201**

This 19<sup>th</sup> day of June, 2015

  
ELIZABETH MCLELLAN  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

June 19, 2015

The Honorable Daniel E. Shearouse  
Clerk of Court, Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

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JUN 19 2015

S.C. Supreme Court

**Re: Leonard Stanfield #235306 v. State of South Carolina**  
**Appellate Case No. 2014-001602**  
**Lower Court Case No. 2010-CP-15-0222**

Dear Mr. Shearouse:

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

Sincerely,

Justin J. Hunter  
Assistant Attorney General  
SC Bar No. 101254

JJH/em  
Enclosures

cc: Tiffany L. Butler, Appellate Defender  
Trisha Allen, Victim Services