THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Horry County
George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-176 (S.C. Ct. App. filed April 1, 2015)

CHARLES RAY DEAN,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

CERTIFICATE OF COUNSEL

The undersigned counsel for the State hereby certifies that a Petition for Rehearing was made on April 8, 2015, and was denied by the South Carolina Court of Appeals on May 18, 2015. This order was served on the parties on June 25, 2015.

CHRISTINA CATOE BIGELOW
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ISSUE PRESENTED

The Court of Appeals erred in reversing the PCR judge's denial of relief where Dean failed to credibly prove he relied on erroneous advice from his counsel that a thirty-year sentence required only 85% service since it was undisputed that Dean pled guilty without recommendations or negotiations and he was never promised a thirty-year sentence.

STATEMENT OF THE CASE

Respondent Charles Ray Dean was indicted in January 2008 for the murder of his wife, Jill Dean. On August 2, 2010, Respondent pled "guilty but mentally ill" before the Honorable Larry B. Hyman, Jr. Judge Hyman imposed a sentence of thirty years. No direct appeal was filed. Respondent filed an Application for post-conviction relief on June 16, 2011. The State made a Return on July 21, 2011. An evidentiary hearing was convened before the Honorable George C. James, Jr., on January 23, 2012. On May 1, 2012, Judge James issued an order denying post-conviction relief.

A timely notice of appeal was served and filed, and, subsequently, a Petition for Writ of Certiorari was submitted. The State's Return followed on April 4, 2013. On July 29, 2013, the case was transferred to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. The Court of Appeals granted certiorari on April 11, 2014. Respondent submitted his Brief on July 11, 2014, and the State's submitted its Brief on August 11, 2014. Oral argument was held on February 3, 2015, and, on April 1, 2015, the Court of Appeals issued an unpublished opinion reversing the PCR judge's denial of relief. The State submitted a Petition for Rehearing pursuant to Rule 221, SCACR, on April 8, 2015. On April 17, 2015, an improper remittitur was issued, which was later recalled by order dated April 24, 2015. On May 18, 2015, the Court of Appeals issued an order denying the State's Petition for Rehearing; however, neither party received a copy of this order. Upon receipt of a remittitur dated June 23, 2015 the State filed a motion to recall the remittitur on June 24, 2015, based upon the fact that neither party had, to date, received a copy of the order

denying the Petition for Rehearing. The next day, the Court of Appeals issued an order recalling the remittitur. On that same date, June 25, 2015, the Court of Appeals served the parties with a copy of the order denying the State's Petition for Rehearing. This Petition for Writ of Certiorari follows.

ARGUMENT

The Court of Appeals erred in reversing the PCR judge's denial of relief where Dean failed to credibly prove he relied on erroneous advice from his counsel that a thirty-year sentence required only 85% service since it was undisputed that Dean pled guilty without recommendations or negotiations and he was never promised a thirty-year sentence.

Background Facts

One morning in October of 2007, Respondent Charles Ray Dean's wife, daughter, and daughter's boyfriend came home between 5:30 and 6:00 am. (App. p. 29, lines 2-5). Dean entered the house from the backyard area and subsequently engaged in an argument with his wife. (App. p. 29, lines 5-8). During the argument, Dean's daughter stabbed Dean in the back with a knife in an attempt to get Dean to stop fighting her mother. (App. p. 29, lines 8-10). Shortly thereafter, Dean stabbed his wife multiple times with a knife and slit her throat. (App. p. 29, lines 19-20). At some point, Dean's daughter and her boyfriend left the home and went across the street to call 911. (App. p. 29, lines 10-16). When police arrived, Dean was sitting on the front porch and he was taken into custody. (App. p. 29, lines 16-18). Dean's wife died on the scene, and Dean was charged with murder. (App. p. 125-26).

Counsel was thereafter appointed to represent Dean. (App. p. 72; p. 126). On August 2, 2010, a hearing was held regarding Dean's competency. (App. p. 1-18). At this hearing, Dr. Richard Frierson testified that, because of a previous car accident and resulting frontal lobe brain injury, Dean had difficulty controlling his anger. (App. p. 12-17). Dr. Frierson concluded that, although Dean was competent to stand trial, Dean's condition had substantially impaired his capacity to conform his conduct to the requirements of law at the time he killed his wife. (App. p. 10-14). After the competency hearing, Dean pled guilty but mentally ill to murder without recommendations or

negotiations. (App. p. 20-40). At the plea hearing, Dean's counsel affirmed that he had explained the possible penalties to Dean. (App. p. 23). Dean told the judge that he was aware he was facing a sentence range of thirty years up to life in prison and that he understood the State was making no recommendations as to the sentence and was leaving the sentence up to the judge. (App. p. 31-32). After accepting the plea as free and voluntary, Dean's attorney spoke on behalf of Dean and requested the minimum sentence. (App. p. 37). Following this request, Dean's attorney stated as follows: "Thirty years is 30 years as I understand it and I believe that would be appropriate . . . ." (App. p. 37, lines 14-15). The plea judge interrupted and confirmed that the sentence was "day for day." (App. p. 37, line 16). After hearing from Dean and a family member, the judge imposed the minimum sentence of thirty years and noted on the record again that the sentence would require "day for day" service and that Dean was not eligible for parole. (App. p. 40, lines 8-13).

Dean's Post-Conviction Relief Claims

Dean did not file a direct appeal but did file a PCR application. (See App. p. 42-50). At his PCR hearing, Dean stated that at the time of his plea, he was "under the impression" that a thirty-year sentence was an 85% sentence. (App. p. 57, lines 5-8). When his PCR counsel asked if he would have gone to trial had he known the correct sentence information, Dean responded, "Correctly, sir." (App. p. 57, lines 15-21). Later in the hearing, Dean testified that his counsel never explained how voluntary manslaughter and self-defense charges might have impacted his case. (App. p. 61). He also testified that he did not recall his attorney ever telling him that a thirty-year murder sentence was "day for day." (App. p. 65, line 23 – p. 66, line 1). He acknowledged he did hear the judge mention day-for-day service at the plea hearing. (App. p. 66, lines 2-10). Dean again

testified that had he known that he "had to do the full thirty years" he would not have "taken this." (App. p. 65, lines 20-22). He stated that in his mind, he "could get work credits and work and things like that and be eighty-five percent but it wasn't." (App. p. 66, lines 23-25).

Dean's plea counsel also testified at the PCR hearing. (See App. p. 71-96). Contrary to Dean's testimony, plea counsel stated he and Dean fully discussed voluntary manslaughter and self-defense, and, in fact, he told Dean he thought it was a manslaughter case. (App. p. 76-78; p. 81-82). He confirmed Dean was fully aware of the fact that the plea judge could have sentenced him anywhere from thirty years up to life in prison. (App. p. 79). When asked whether he and Dean discussed collateral consequences of the plea, counsel responded:

> Okay, I, keep in mind that we were trying to get this case into a manageable time or sentence for him and if the Solicitor thought twenty-five years was fine we weren't necessarily agreeing with that but twenty-five would certainly be better than life, and towards the end of our trial preparations another lawyer who I trust had made the comment that it would only be eighty-five percent under the new law so we did talk about that.

(App. p. 79-80). When asked if he specifically told Dean that a thirty-year sentence would be "eighty five percent," counsel stated, "I don't remember the exact words but that was discussed." (App. p. 80, lines 9-12). He also stated he never talked to Dean about parole or work credits. (App. p. 80, lines 16-19). Counsel testified that in hindsight, he wished he had taken Dean's case to trial. (App. p. 82, lines 19-21). He stated that as soon as the plea was over, they began having second thoughts about it. (App. p. 82, lines 16-18). However, he affirmed that it had been Dean's decision to plead guilty that day and that he counseled Dean "[t]o the best of [his] ability" regarding whether or not he should plead guilty. (App. p. 87, lines 14-25). He also noted that in a chambers conference, the plea

judge indicated the sentence would likely be much greater than thirty years if Dean were convicted following a trial. (App. p. 78-79; p. 86-87).

Despite counsel's comment at the plea hearing that "thirty years is 30 years as I understand it" (App. p. 37, lines 14-15), counsel stated he did not hear the judge's remark that a thirty-year sentence would be "day for day." (App. p. 95, lines 1-4). He stated that he and Dean did hear the judge's day-for-day comment at the end of the plea and "it caught us all by surprise" and Dean was "highly upset" with counsel. (App. p. 95, lines 4-8). He further stated: "If the judge would have said that at the beginning of the plea there is no doubt in my mind that the plea would have never taken place." (App. p. 95, lines 9-11). Counsel stated that Dean wanted to "go back out there" but counsel decided not to because he did not believe the judge would allow Dean to withdraw the plea. (App. p. 95, lines 13-17). When the PCR judge asked if Dean would have been willing to do twenty-four-and-a-half or twenty-five-and-a-half years but not thirty, counsel responded, "I think that's what it all boiled down to, Judge." (App. p. 95, lines 18-22). He stated that "if it would have been eighty five percent he would be good to go." (App. p. 96, lines 5-6).

In closing argument to the PCR judge, Dean's PCR attorney argued that "there may have been some confusion" regarding whether a thirty-year sentence was an eighty-five percent sentence and Dean "thought he was going to get less time." (App. p. 96-97). However, PCR counsel stated that his "more important" argument was that "in all fairness and especially towards [the] judicial system I think he should have his day in court" because his plea counsel should have convinced Dean to go to trial by telling him that "at your age you really don't have anything to lose" by going to trial. (App. p. 97, lines 13-23). PCR counsel argued that plea counsel should have told Dean he had "a pretty good case for either self-defense or manslaughter and you shouldn't take this plea." (App. p.

100, lines 20-22).

After taking the matter under advisement, the PCR judge issued an order denying post-conviction relief. (See App. p. 104-109; p. 111-122). With respect to Petitioner's claim that he would not have pled guilty had he known that a thirty-year sentence was a day-for-day sentence, the PCR judge was "not convinced by a preponderance of the evidence that counsel provided any actual misadvice upon which [Dean] relied." (App. p. 119). The PCR judge pointed out that counsel did not testify that he expressly assured Dean that a thirty-year sentence would necessarily be an eighty-five percent sentence and that Dean's testimony suggested he might have received information regarding an eighty-five percent sentence from other inmates in the county jail. (App. p. 119; see p. 70, lines 9-19).

The PCR judge also found that, even assuming counsel did provide actual misadvice that a thirty-year sentence was an eighty-five percent sentence, Dean did not prove prejudice where it was undisputed that he pled "straight-up," without recommendations or negotiations as to the sentence. (App. p. 119). The judge noted that there was no question Dean was fully aware of the sentence range of thirty years up to life without parole, and no testimony that Dean was promised a thirty-year sentence as opposed to any other possible sentence up to life without parole. (App. p. 119-120). In fact, the judge noted, Dean never even testified he was expecting or hoping for a thirty-year sentence. (App. p. 120). The PCR judge concluded that if, at the time of the plea, Dean was satisfied with receiving any sentence up to and including life without parole, then misinformation regarding whether or not a thirty-year sentence – only one possible sentence of many – was not a critical distinction and did not affect the voluntariness of the plea. (App. p. 120). The PCR judge thus rejected Dean's claim, stating: "It would strain

credulity to suggest that if [Dean] had been told that the thirty-year minimum sentence was to served day for day, that he would not have pled guilty." (App. p. 120). Later in the order, the PCR judge noted that the record reflected reasons Dean decided to plead guilty which were unrelated to obtaining a particular sentence; specifically, that Dean wanted to accept responsibility for his actions, did not wish to go to trial or put his family through a trial, and just wanted "closure." (App. p. 121; see also p. 37, lines 8-12).

The Court of Appeals' Reversal

Dean appealed from the PCR judge's order, arguing it was error to deny relief when it was "undisputed" plea counsel gave Dean erroneous advice regarding sentencing and Dean would have gone to trial but for plea counsel's error. (See App. p. 133-39; p. 160-71). Following oral argument, the Court of Appeals issued an unpublished opinion on April 1, 2015, reversing the PCR judge's denial of relief. (See App. p. 191-98). With respect to deficient performance, the court held that the PCR testimony revealed that Dean received erroneous sentencing advice. (App. p. 193-94). The court also held that the plea judge's remarks about day-for-day sentencing did not cure the error where the remarks came only after Dean's plea had already been accepted. (App. p. 195). With respect to prejudice, the court found Dean was prejudiced by the misadvice as to a thirty-year sentence. (App. p. 196-97). The court found that to meet his burden to show prejudice, Dean "need only testify that had plea counsel not misinformed him of the potential sentence, he would not have pled guilty." (App. p. 196). The court held that since both Dean and plea counsel expressed that Dean would have gone to trial had he known that a thirty-year sentence was day-for-day, and because "the PCR court did not make a credibility finding, but only acknowledged it did not agree with Dean's argument that he would have proceeded to trial but for counsel's misadvice," Dean satisfied his burden to

show prejudice. (App. p. 197). Thus, the court concluded "the appendix contains no evidence to support the PCR court's ruling that Dean was not prejudiced by counsel's erroneous advice." (App. p. 197). The court subsequently rejected the State's Petition for Rehearing. (App. p. 199-203).

Applicable Law and Standard of Review

In a PCR proceeding, a criminal defendant bears the burden of establishing that he is entitled to relief. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citations omitted). Strickland v. Washington established a two-prong test for evaluating claims of ineffective assistance of counsel. Strickland, 466 U.S. 668 (1984). The first prong of the test requires that a defendant prove his counsel's deficiency by demonstrating counsel's performance fell below an objective standard of reasonableness. Bennett v. State, 371 S.C. 198, 203, 638 S.E.2d 673, 675 (2006) (citing Strickland). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Morris v. State, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006).

The second part of the test requires a defendant to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. In a case involving a guilty plea, the "prejudice" requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words, a defendant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber, 371 S.C. at 558, 640 S.E.2d at 886. Critically, failure to establish prejudice is fatal to a PCR applicant's claim. Taylor v. State, 404 S.C. 350, 362, 745 S.E.2d 97, 103

(2013). "To satisfy the prejudice prong, [a defendant] must prove, *through the presentation of probative and credible evidence*, that he would have gone to trial instead of pleading guilty but for counsel's deficient advice." Id. (emphasis added) (citation omitted).

On certiorari in a PCR action, the appellate court applies an "any evidence" standard of review. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). An appellate court gives great deference to the PCR court's findings of fact and conclusions of law. Shumpert v. State, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008). Any evidence of probative value in the record is sufficient to uphold the PCR court's ruling. Caprood v. State, 338 S.C. 103, 109-10, 525 S.E.2d 514, 517 (2000). Significantly, if matters of credibility are involved, the appellate court gives deference to the PCR court's findings because the appellate court lacked the opportunity to directly observe the witnesses. Solomon v. State, 313 S.C. 526, 529, 443 S.E.2d 540, 542 (1994). "The PCR court's findings on matters of credibility are given great deference by this Court." Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

The Court of Appeals Erred in Reversing the PCR Judge

In this case, the Court of Appeals erred in reversing the PCR judge's denial of relief because Dean failed to credibly establish prejudice.[1] This erroneous reversal was the result of the court's failure to appreciate that Dean could not prove his reliance on erroneous advice regarding a thirty-year sentence where he failed to establish he was relying on a thirty-year sentence in the first place. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (even if trial counsel actively misinforms the defendant about collateral consequences of a plea, the defendant must prove he actually relied on the misinformation to receive post-conviction relief). Dean might have had a valid claim for

[1] Although not the primary focus of this Petition, the State also maintains its argument that the PCR judge's finding that Dean failed to prove deficient performance should have been upheld. (See App. p. 182-83).

reversal but for two critical facts: (1) the fact that Dean pled guilty without recommendations or negotiations, and (2) the fact that Dean was never promised a thirty-year sentence. It was undisputed below and on appeal that Dean pled guilty without recommendations or negotiations and that he was facing a sentence *range* of anywhere from thirty years up to life. Neither Dean nor plea counsel ever testified that Dean was promised a thirty-year sentence, and, in fact, Dean never even testified he was expecting or hoping for a thirty-year sentence. At the time Dean pled, he did not know what sentence the plea judge would impose. Consistent with the "straight-up" plea, the judge could have sentenced Petitioner to thirty years, forty years, fifty years, seventy-five years, or any sentence up to and including life in prison. According to the record, however, the *sole* misconception Petitioner allegedly had regarding the potential sentence was with respect to a thirty-year sentence – which, again, he was not guaranteed to receive under the terms of his straight-up plea and had no reason to even expect to receive.

Petitioner sought to prove he was relying on a thirty-year sentence at 85% but utterly failed to prove he was ever relying on a thirty-year sentence in the first place. It is clear that Dean's claim regarding misinformation as to a thirty-year sentence was influenced by hindsight, since Dean had no idea he would receive a thirty-year sentence until the sentence was actually imposed. See Strickland v. Washington, 466 U.S. 668, 669 (1984) (cautioning against allowing the "distorting effects of hindsight" to influence subsequent post-conviction relief determinations). Because this logical fallacy discredited Petitioner's claim of prejudice, it was within the PCR judge's discretion to deny relief based upon the lack of credibility inherent in the claim. Contrary to the suggestion in the Court of Appeals' opinion, the PCR judge was *not* required to accept Petitioner and plea counsel's conclusory testimony regarding prejudice at face value and could instead

evaluate whether or not this testimony was credible and reasonable in light of the non-negotiated nature of Petitioner's plea and considering the very obvious taint of hindsight. See Taylor v. State, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) ("To satisfy the prejudice prong, Petitioner must prove, through the presentation of *probative and credible evidence*, that he would have gone to trial instead of pleading guilty but for counsel's deficient advice." (emphasis added & citation omitted)); see also Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (holding that the "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial" and adding that a defendant usually needs to explain why and how the particular deficiency would have affected his thought process at the time he entered the plea); see also Shumpert v. State, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008) (an appellate court gives great deference to the PCR court's findings of fact and conclusions of law).

Two additional errors in reasoning also contributed to the Court of Appeals' improper reversal. First, in discussing Dean's burden to prove he suffered prejudice, the Court of Appeals stated that "[t]o meet this burden, the petitioner need only testify that had plea counsel not misinformed him of the potential sentence, he would not have pled guilty." (App. p. 196). While this statement may be technically correct based upon some of the case law cited, it ignores the procedural posture present in *this* case: here, the PCR judge *denied* relief because he did not find the testimony purporting to establish prejudice to be credible. (App. p. 119-21). Consequently, on appeal, the court was limited to determining whether "any evidence" supported the PCR judge's ruling and was required give "great deference" to the PCR's judge's credibility findings. Cherry v. State, 300 S.C. at 119, 386 S.E.2d at 626; Goins v. State, 397 S.C. at 573, 726 S.E.2d at 3. However,

instead of adhering to the deferential standard of review that was required considering the posture of the case, the Court of Appeals instead committed a second error and ruled that the PCR judge did not make a credibility finding. It then improperly used its own view of the evidence to determine that "Dean has satisfied his burden to prove the prejudice prong of the *Strickland* test." (App. p. 197).

Contrary to the Court of Appeals' findings, the PCR judge did clearly indicate that he found Dean's prejudice claim not credible. At the conclusion of the PCR hearing, the judge pointed out that plea counsel may have "fallen on his sword" and that "it's not an altogether unusual thing for a defense lawyer to have some type of buyer's remorse." (App. p. 97, lines 10-11; p. 107, lines 1-3). He later noted that the two-prong test he was required to follow did not have a component for "Monday morning quarterbacking." (App. p. 107, lines 8-10). Subsequently, in his written order denying relief, the PCR judge stated, with respect to prejudice, that:

> In any event, even assuming that counsel provided actual misadvice that a thirty-year sentence was an 85% sentence rather than a day-for-day sentence, this Court cannot find that such misadvice rendered the Applicant's guilty plea involuntary where it is undisputed that the Applicant pled "straight-up," with no recommendations or negotiations. The Applicant pled guilty facing a potential sentence of thirty years up to a sentence of life without parole. Counsel stated there was no question that the Applicant was aware of the potential sentence range, and the plea judge clearly told the Applicant he was facing thirty years to life pursuant to his plea. (See Plea Transcript, p. 13, lines 14-17). Further, the Applicant specifically told the judge that he understood the solicitor was making no recommendations as to the sentence and that the sentence was left up to the judge. (See Plea Transcript, p. 13, lines 10-13). The Applicant also told the judge that no one made any promises to get him to plead guilty and that no one threatened or coerced him. (See Plea Transcript, p. 14, lines 8-16).
>
> At the PCR hearing, the Applicant never testified that he was promised a thirty-year sentence; in fact, he never even expressly stated that he was *hoping* for thirty years. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially

> where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). It necessarily follows that if the Applicant pled guilty knowing he could receive a sentence of life without parole, then whether a thirty-year sentence was 85% or 100% was not a critical distinction, and misinformation regarding this could not have affected the voluntariness of his plea. **It would strain credulity to suggest that if the Applicant had been told that the thirty-year minimum sentence was to be served day for day, that he would not have pled guilty**. See Roscoe v. State, 345 S.C. 16, 21, 546 S.E.2d 417, 419 (2001). Accordingly, this Court must reject the Applicant's claim of involuntary guilty plea on this basis.

(App. p. 119-120) (bold emphasis added, other emphasis in original). The Court later added:

> The fact that the Applicant and plea counsel later regretted the Applicant's decision to plead guilty does not retroactively negate the voluntariness of the plea. See Brady v. U. S., 397 U.S. 742, 757 (1970) ("The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision."). As counsel stated at the guilty plea hearing, the case was ready for trial, but the Applicant did not wish to go to trial; instead, the Applicant wanted to accept responsibility, did not want to put the family through a trial, and just wanted "closure." (See Plea Transcript, p. 18, lines 8-12). Considering the testimony at the PCR hearing and the Applicant's sworn statements at the guilty plea, this Court must conclude that the Applicant failed to meet his burden of proof to show that his guilty plea was unknowing or involuntary at the time it was made. See Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.") (citations omitted).

(App. p. 121).

Despite the numerous statements indicating the PCR judge did not find Dean's claim credible under the circumstances – and despite his explicit statement that Dean's prejudice claim "strained credulity" – the Court of Appeals found that the PCR judge "did not make a credibility finding, but only acknowledged it did not agree with Dean's argument that he would have proceeded to trial but for counsel's misadvice." (App. p. 197). Respectfully, however, in the State's view, the PCR judge's failure to "agree" with

Dean's argument was, in fact, a credibility finding. Accordingly, it was error for the Court of Appeals to conclude the PCR judge did not make a credibility finding and it was likewise error for the Court of Appeals to take its own view of the evidence instead of deferring to the PCR judge, as was required by the standard of review of a denial of relief.

As this Court is aware, there are high societal costs to awarding a retrial to a defendant several years after the crime took place. See Calderon v. Coleman, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced. . . ."); see also Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) ("Retrying defendants whose convictions are set aside also imposes significant 'social costs,' including the expenditure of additional time and resources for all the parties involved, the 'erosion of memory' and 'dispersion of witnesses' that accompany the passage of time and make obtaining convictions on retrial more difficult, and the frustration of 'society's interest in the prompt administration of justice.'") (citation omitted). It is for this reason that PCR applicants bear the burden to establish their claims. Here, Dean bore the burden to credibly establish, by a preponderance of the evidence, that, but for some misadvice of counsel, he would not have pled guilty but would have elected to go to trial; however, at most, Dean merely established that both he and plea counsel, *in hindsight*, regretted Dean's decision to plead guilty and wanted another chance at a trial. Since Dean failed to establish, to the PCR judge's satisfaction, that he suffered prejudice, the Court of Appeals should have affirmed the denial of relief. See Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2009) (great deference must be given to the PCR court's findings of fact and conclusions of law, and the appellate court is only concerned with whether "any evidence" of probative value exists to support the PCR court's decision). The Court of

Appeals' erroneous reversal must be overturned.

CONCLUSION

Based upon the foregoing, the State respectfully requests that this Court grant the Petition for Writ of Certiorari and ultimately reverse the Court of Appeals' opinion.

Respectfully submitted,

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July 27, 2015

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PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Petition for a Writ of Certiorari to the Court of Appeals** in the above-referenced case has been served upon **David Alexander,** South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **27th** day of **July, 2015.**

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