STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

RECEIVED
DEC 28 2016
S.C. SUPREME COURT

2014-CP-37-0133
Appellate Case No. 2016-001099

MATTHEW HINTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTIONS PRESENTED

I. Was counsel ineffective for allowing the introduction of redacted text message conversation where the redaction allowed the applicant's statements to be viewed out of context, making the applicant's comments to appear to be solely for the purpose of concealing the injuries of the child?

II. Was counsel ineffective for failing to cross-examine witness as to the redacted / omitted portion of text conversation which would have shown an innocent basis for the applicant's comments?

III. Was counsel ineffective for failing to ask questions of the applicant on direct about the missing portion of the text conversation, and to otherwise explain the basis for his comments to show the jury a non-incriminating reason for those comments?

IV. Was counsel ineffective for failing to object to the solicitor's violation of the golden rule when she called upon the jury to speak for the deceased child?

V. Did the PCR Court err in failing to consider the cumulative effect of constitutional errors in its application of the Strickland test?

RESPONDENT'S QUESTIONS PRESENTED

I. Did Hinton meet his burden to show deficiency or prejudice from the redacted portion of the text message regarding the victim's grandmother where his attorneys' focus on other aspects of his defense was reasonable; those specific text messages were cumulative to other evidence in the record; and the evidence against Hinton was overwhelming?

II. Is there any probative evidence in the record to support the PCR Court's finding that counsel was not ineffective for failing to object to the solicitor's argument where Hinton failed to meet his burden to prove any resulting prejudice where the improper argument consisted of only one comment and the evidence of guilt was overwhelming?

III. Is certiorari warranted to review the PCR Court's finding with respect to cumulative error where 1) cumulative error analysis is inappropriate in the context of a Strickland claim of ineffective assistance of counsel; 2) there was only one instance of deficient performance in this case; and 3) there is no resulting prejudice given the overwhelming evidence of guilt.

STATEMENT OF THE CASE

Hinton is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Hinton was indicted at the December 2009 term of the Oconee County Grand Jury for homicide by child abuse (2009-GS-37-1347). He was represented by Gordon Senerius, Esquire, and Brittney Senerius, Esquire. On February 28, 2011, Hinton proceeded to trial before the Honorable Alexander S. Macaulay. On March 3, 2011, Hinton was convicted as charged. Judge Macaulay sentenced him to imprisonment for a period of forty-one (41) years.

A timely Notice of Appeal was filed on Hinton's behalf and perfected pursuant to Anders v. California[1] by Robert M. Dudek, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Hinton, Op. No. 2013-UP-104 (S.C. Ct. App. filed March 13, 2013).

Hinton filed a PCR application on March 4, 2014, (2014-CP-37-0133), alleging he was being held in custody unlawfully due to over one hundred violations of his right to the effective assistance of trial and appellate counsel.

An evidentiary hearing was convened on February 9 and 10, 2015, at the Oconee County Courthouse. Hinton was represented by Robert C. Childs, III, Esquire. The Honorable R. Lawton McIntosh denied and dismissed the PCR application by order filed March 22, 2016.

Hinton filed a notice of appeal. J. Faulkner Wilkes, Esquire, submitted a petition for writ of certiorari and appendix on August 25, 2016. This return follows.

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[1] Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

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. Hinton failed to meet his burden to show deficiency or prejudice from the redacted portion of the text message regarding the victim's grandmother where his attorneys' focus on other aspects of his defense was reasonable; those specific text messages were cumulative to other evidence in the record; and the evidence against Hinton was overwhelming.[2]

Deficiency

Given the high level of deference afforded his attorneys' decisions, Hinton clearly failed to meet his burden to show any actual error. In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

The record reflects that both attorneys had a reasonable general theory and understanding of how they wanted to try Hinton's case based on the evidence. According to Mr. Senerius

> [t]he theory of our case was that our client did not do anything intentionally to hurt the child. We tried to play it out that way. That's the only information that we had, the only theory that we could go on that he was not guilty. No one was pointing fingers at anybody else. Nobody had any alibi witnesses. Most of the fact

[2] Given the format and structure of Hinton's brief, Respondent construes his first three issues as a single claim regarding his attorneys' performance in failing to elicit testimony or introduce evidence which would have explained why he did not want the victim's grandmother visiting the day the victim was killed. To the extent these are treated as individual claims, Respondent submits the appropriate method of analysis would be to address prejudice as to each claim individually. See Cumulative Error, infra. Regardless, as discussed throughout this section, Hinton has failed to show deficiency or prejudice under either analysis given his attorneys' credible testimony and the overwhelming evidence of guilt.

> statements as to what occurred on the day of the injury were undisputed. You know, you go with what you've got."

App. p. 302, l. 4-12.

Additionally, given the lack of third party guilt evidence, Ms. Senerius emphasized that her strategy was not to be "extremely harsh" toward Ms. Bright – a very sympathetic grieving mother – but to try and bring out evidence and other issues through other witnesses and through other cross-examination. App. p. 146, l. 15-24.[3]

While acknowledging the potential corroborative value of the omitted text portion, Ms. Senerius explained she did not "specifically go into [whether the victim's grandmother was using pills] because she was not there that day. [The State was] focusing on the time line from that day. And there was no way that us introducing her being on pills proves that anybody else potentially did anything." App. p. 172, l. 2-8. There was also no factual basis for either attorney to challenge Ms. Bright's testimony that it was unusual that Hinton did not want the victim's grandmother coming over. Ms. Senerius testified that in her conversations with Hinton the victim's grandmother was "over there quite a bit." App. p. 171, l. 14-16.

Regarding Hinton's testimony at trial, Respondent again submits he did not meet his burden to prove counsel ineffective for failing to specifically question him about the text messages during direct examination. See Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1, 5 (2003) (When counsel focuses on some issues to the exclusion of others, there is a strong presumption of doing so for tactical reasons rather than sheer neglect). Instead, Hinton has

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[3] Hinton appeared to concede during the evidentiary hearing that counsel may not have wanted to cross-examine Ms. Bright about the text messages "as a matter of discretion." App. p. 173, l. 11-14.

merely alleged that there was *some* corroborative value,[4] and counsel should have taken advantage of it. Given the clear testimony as to their general focus and trial strategy, Hinton failed to meet his burden to prove either attorney was actually deficient.

Prejudice

Even assuming deficiency, there is ample probative evidence in the record to support the PCR Court's finding that Hinton was not prejudiced due to the cumulative nature of the evidence in question, as well as the fact that the state's case against him was utterly overwhelming.

The text messages were cumulative

Hinton's chief complaint about counsel's failure to request the omitted portion of the text message be introduced[5] appears to be that the redacted message improperly implied he was attempting to cover up the victim's injuries by keeping her grandmother from coming over. Even if, however, the omitted portion were introduced *and* the jury chose to make the appropriate inference in Hinton's favor – that he did not want her there because she was abusing prescription drugs – there was still a substantial amount of evidence that strongly suggested he was trying to cover up his involvement in the victim's injuries and death. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("We previously have held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward.") (citations omitted).

[4] Certainly counsel could have concluded any corroborative value would have been outweighed by the detrimental impact of Hinton further shifting blame by accusing his daughter's grandmother of abusing pills. This would have been consistent with counsels' general strategy of focusing on Hinton's actions, rather than pointing the finger towards others.

[5] Including the failure to elicit such information from Ms. Bright or Hinton.

In addition to the text regarding the victim's grandmother, Hinton sent a separate text message to Ms. Bright asking her not wake him or the victim when she returned from work. Ms. Bright testified that the request seemed "odd" because Hinton "had never told [her] not to wake them." App. p. 510, l. 7-12. There was also evidence that Hinton ignored a concerned neighbor's attempts to speak with him sometime after the victim was initially injured. Desmond Holland, Hinton's downstairs neighbor, testified at trial that around 2:45 p.m. the day of the incident he

> heard a boom and it sounded like a TV or something falling. That's when I turned around and walked upstairs, because usually they make noise but it wasn't that loud. So I walked upstairs and knocked on the door and nobody came, so I knocked again. I stayed there for about three minutes. All I heard was the dog scratching and the baby whimpering. So by this time I was, like, forget it. And I walked downstairs. I got back downstairs and I didn't even make it past the kitchen again where I heard it again. So this time I went back up there. I was a little aggravated because they didn't come to the door. So I knocked even harder, harder and harder, and this time all you heard was the dog, no baby, no nothing, nobody still came to the door.

App. p. 632.

Testimony from law enforcement officers and Ms. Bright established that Hinton's story evolved over the course of their investigation of the victim's death, further indicating he was trying to cover up his involvement. Officer Ted Roundy testified that "as more information came out about the injuries of the child, [Hinton's] stories would . . . start matching the injuries." App. p. 555, l. 9-13. Hinton's initial statements to law enforcement, Ms. Bright, and the treating physicians did not reference any "falls or accidents." App. p. p. 518, l. 14 - p. 519, l. 8; 576, l. 16 - p. 577, l. 2. According to Ms. Bright, the "shower story" from Hinton's second statement to law enforcement, in which he disclosed that he dropped the victim in the bathtub, did not emerge until "probably four or five o'clock in the morning after we had talked to the detective." App. p.

519, l. 9-12.;[6] p. 550, l. 13 - p. 551, l. 2. Hinton told Paige Williams that the victim possibly hit her head on the sink while he was getting her out of the bathtub, and asked her "if the police were gonna make an arrest, when would they make the arrest." App. p. 588, l. 17 - p. 589, l. 4.[7]

The following night, Ms. Bright noticed Hinton looking up "stories that could be with similar injuries" that could have "medically explained what was wrong" with the victim. App. p. 520, l. 23 - p. 521, l. 10. Hinton told Ms. Bright at one point that "if [she] would take the rap for this, that [she] wouldn't get very much jail time because [she] had no previous criminal history." App. p. 521, l. 11-17.

Given the substantial evidence that Hinton was trying to cover up his role in causing the victim's injuries, particularly the suggestion that the victim's mother "take the rap," Respondent submits the probative value of the contested text message was too cumulative, from the State's perspective, to call the outcome of the trial into question.

The state's case against Hinton was overwhelming.

The PCR Court also correctly found no prejudice where the evidence against Hinton was overwhelming. See, e.g., Harris v. State, 377 S.C. 66, 79, 569 S.E.2d 140, 147 (2008) (reversing PCR court's decision to grant relief where applicant unable to show prejudice due to overwhelming evidence of guilt); Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 772 n. 3 (2001), *cert denied*, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result defendant's trial); Geter v. State, 305 S.C. 365, 367, 409

[6] Ms. Bright noted it would have been unusual for Hinton to shower with the victim. App. p. 519, l. 18-21. She said he had given her a bath, but "never a shower." Id.

[7] Hinton denied telling Ms. Williams the victim may have hit her head on the sink. App. p. 773, l. 18-20.

S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

The PCR Court noted that even if Hinton's story were believable, the State still presented "compelling and substantial evidence that he committed the offense of homicide by child abuse." App. p. 8-9. As recited above, there was substantial evidence that Hinton tried to cover up his part in the victim's injuries rather than seek medical care. Several experts testified that given the victim's injuries, the effect would have been immediate and readily apparent to a caregiver.[8] Hinton was alone with the victim from right before noon until sometime after five o'clock pm. App. p. 113, l. 21-23; 506, l. 25 - p. 9.

Hinton's version of events also had severe credibility problems at trial. The expert medical testimony thoroughly refuted his explanations of how the victim was injured. Dr. Earl Troup, one of the treating physicians,[9] classified each of the victim's injuries as "high-specificity injuries," noting that they were each hard to accidentally create" individually, but "when you put them all together, there is nothing other than an intentional child abuse that can cause this pattern of injuries together." App. p. 669, l. 2-7. He further testified that the injuries should not have been caused by a fall or accident in the shower. App. p. 669, l. 8-10.

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[8] Dr. [Gwyn] testified that given the victim's injuries, the effect would have been immediate and readily apparent to a caregiver. App. p. 687, l. 2-9. He further testified that immediate medical attention may have changed the outcome. App. p. 668, l. 4-10. Dr. Woodard said the injury would have been "instantly" apparent, and it would be "obvious to a layperson that there is something seriously wrong with this child." App. p. 711, l. 23 - p. 712, l. 6. He said that once the injury occurred the victim would have gone quiet, and "would have been essentially unconscious, and within a short time period coma would occur where she would be unarousable." App. p. 711, l. 12-22.

[9] Dr. Troup was qualified as an expert pediatric neurosurgery. App. p. 657, l. 13-18.

Dr. Daryl Gwyn, another treating physician,[10] testified that the chest compressions – as demonstrated by Hinton – were "not even close" to the amount of force to cause the injuries to the victim's chest. App. p. 690, l. 24 - p. 691, l. 2. He said that nothing explained the "constitution of [the victim's] symptoms" other than "non-accidental trauma." App. p. 691, l. 8-12.

Dr. Brett Woodard conducted the victim's autopsy,[11] and testified that the injury to the victim's sternum was "most consistent with blunt force," and "very unlikely to have been a C.P.R. injury." App. p. 704, l. 20-24. He said it was not at all consistent with a sternum rub. App. p. 704, l. 25 - p. 705, l. 8. Dr. Woodard described "fingertip-like bruises" consistent with "an intentional very forceful gripping." App. p. 706, l. 9-17. Dr. Woodard said the victim's head injury would have required "some component of torsion or twisting of the head, coupled with a sudden blow to the head," or "some sort of rapid motion." App. p. 711, l. 1-11. Dr. Woodard testified that in his opinion the victim's injuries were not consistent with any sort of fall or mishap. App. p. 713, l. 10-12. He explained that her injuries would "require the baby to literally bounce during this accident. And babies don't bounce. The baby would have to strike itself on multiple body surface areas and produce injuries that take different mechanisms to be produced during this single incident." App. p. 713, l. 12-17. He said the victim's injuries were consistent with "inflicted trauma." App. p. 713, l. 21-24. Dr. Woodard testified it was very possible that immediate medical intervention could have changed the result. App. p. 714, l. 13-15.

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[10] Dr. Gwyn was qualified as an expert in the field of pediatric neurology. App. p. 683, l. 12-23.
[11] Dr. Woodard was qualified as an expert in the field of forensic pathology. App. p. 701, l. 17-22.

Given the medical findings with respect to the cause of the injuries, the immediate visibility of the resulting symptoms, and lack of any evidence of third party guilt, there was substantial evidence from which a jury could find Hinton, as the victim's sole custodian leading up to her death, guilty of homicide by child abuse. Taking further into account Hinton's evasive behavior and utterly discredited explanation for the victim's injuries, Respondent submits the evidence was overwhelming.

II. There is probative evidence in the record to support the PCR Court's finding that counsel was not ineffective for failing to object to improper argument where Hinton failed to meet his burden to prove any resulting prejudice as the improper argument consisted of only one comment and the evidence of guilt was overwhelming.

Hinton next argues counsel was ineffective for failing to object to the solicitor's "golden rule" -type argument. In assessing the propriety of remarks made during the State's closing argument, appellate courts must determine "whether the solicitor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Tappeiner v. State, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016).

While the court has indicated their strong disapproval of Golden Rule arguments, an applicant for post-conviction relief still has the burden to prove resulting prejudice. See Von Dohlen v. State, 360 S.C. 598, 613, 602 S.E.2d 738, 746 (2004). Proper considerations in determining prejudice include the number of improper Golden Rule -type comments throughout the argument, as well as whether there was overwhelming evidence of guilt. Id. (finding that the solicitor's single comment, although improper, did not so infect the trial with unfairness as to make the resulting conviction a denial of due process); c.f., State v. Reese, 370 S.C. 31, 39, 633 S.E.2d 898, 902 (2006) (*overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)) (applicant was prejudiced by multiple improper Golden Rule type comments during closing argument where the evidence of guilt was not overwhelming).

The PCR Court took into account both factors in determining Hinton was not prejudiced by counsel's failure to object to the solicitor's improper Golden Rule -type comment. First, it noted that there was only one such comment. App. p. 53. Additionally, as discussed above, the evidence against Hinton was overwhelming. Id.

Hinton argues the evidence was not overwhelming, citing specifically to Tappeiner. 416 S.C. 239, 785 S.E.2d 471. Tappeiner, which involved no physical evidence that an actual crime took place,[12] is clearly distinguishable from the case at bar. There is substantial evidence here that a crime took place – namely, the existence of a dead, infant child, as well as the fact that medical experts attributed her injuries to "intentional child abuse," and "non-accidental" or "intentional" trauma. Expert medial testimony, discussed supra. Further, there is clear evidence that Hinton, the sole caretaker throughout the vast majority of the window the injuries were shown to have occurred, was the perpetrator.[13] Taking into account Hinton's efforts to conceal the victim's injuries and deflect the blame away from himself, as well as the fact that his ultimate explanation for how the victim was injured – initially undisclosed to law enforcement, the victim's mother, *and the physicians treating his daughter* – was thoroughly refuted by expert medical testimony, there is no basis for determining that the solicitor's single inappropriate comment` "so infected the trial with unfairness as to make the proceeding a denial of due process." Tappeiner, supra. The PCR Court therefore properly concluded Hinton failed to meet his burden to prove ineffective assistance of counsel. Certiorari should therefore be denied.

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[12] Tappeiner was convicted criminal sexual conduct, second degree, rising out of her alleged sexual assault of a fourteen year old boy. 416 S.C. at 243, 785 S.E.2d at 473.

[13] There was no evidence of third party guilt presented at the trial.

III. Certiorari is not warranted to review the PCR Court's finding with respect to cumulative error where 1) cumulative error analysis is inappropriate in the context of a Strickland claim of ineffective assistance of counsel; 2) there was only one instance of deficient performance in this case; and 3) there is no resulting prejudice given the overwhelming evidence of guilt.

The PCR Court correctly determined cumulative error analysis was not warranted in this case. In Green v. State, 351 S.C. 184, 196-97, 569 S.E.2d 318, 324-25 (2002), the Court expressly declined to address whether a PCR applicant is entitled to relief based upon the supposed cumulative effect of trial counsel's alleged errors. See also Simpson v. State, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (recognizing that "[w]hether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina" and holding that "[b]ecause the PCR court found that only one of Simpson's allegations had merit, there was no need to conduct a cumulative-error analysis").

A number of other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative effect analysis is inappropriate and that the correct analysis focuses upon each individual allegation of ineffective assistance. See Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995). As the Fourth Circuit Court of Appeals explained in Fisher v. Angelone:

> Fisher argues that the cumulative effect of his trial counsel's individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel's actions could be considered constitutional error, see Lockhart v. Fretwell, 506 U.S. 364, 369 n. 2 (1993) ("[U]nder Strickland v. Washington, 466 U.S. 668 674 (1984), an error of constitutional magnitude occurs in the Sixth Amendment context only if the defendant demonstrates (1) deficient performance and (2) prejudice, it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of the Fourth Circuit individually to

assess claims under Strickland v. Washington." See, e.g., Hoots v. Allsbrook, 785 F.2d 1214, 1219 (4th Cir. 1986) (considering ineffective assistance claims individually rather than considering their cumulative impact). In fact, in Arnold v. Evatt, 113 F.3d 1352 (4th Cir 1997), cert. denied, ___ U.S. ___, 118 S. Ct. 715 (1998), the Fourth Circuit recently rejected a similar request to review the alleged errors of a trial court cumulatively rather than individually. See Id. at 1364 ("Based on the findings of this court concerning the individual claims of error, we reject this claim.').

> To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. In so holding, we are in agreement with the majority of our sister circuits that have considered the issue.

Id. (footnote omitted). See also Meuller v. Angelone, 181 F.3d 557, 586n.22 (4th Cir. 1999) ("Petitioner also urges us to consider the cumulative effect of his ineffective assistance of counsel claims rather than whether each claim, considered alone, establishes a constitutional violation. This argument is squarely foreclosed by our recent decision in Fisher, 163 F.3d [...at] 852-53 [...]"). Therefore, the Federal bench has correctly decided that prejudice must be considered on an individual, not a collective basis. Fisher, 163 F.3d at 852.

Respondent would also note that in this case, as in Simpson v. Moore, the PCR Court only found one actual instance of deficient performance. App. p. 51-53. Given the strong presumption that counsel's performance was reasonable, combined with both attorneys' credible testimony regarding their trial strategy, discussed supra, Respondent submits Hinton failed to meet his burden to show any additional deficiencies.[14] As a result, cumulative error analysis

[14] In making his argument for cumulative error review, Hinton has raised a number of additional alleged errors in this section, including "counsel's failure to impeach Desmond Holland who concealed that he knew Bright from high school," "[c]ounsel's failure to realize that the audio recording of Desmond Holland the state provided in discovery cut off halfway through his interview," [c]ounsel's failure to object to the testimony of Bright indicating that the applicant had a prior criminal history," and "[c]ounsel's failure to introduce evidence of the wet towel

would be inappropriate on these facts under any interpretation of the law. Because Hinton has failed to meet his burden to show deficiency and prejudice in any of his allegations, he is not entitled to relief in this forum.

In any event, no prejudice occurs, despite counsel's alleged deficient performance, "where there is otherwise overwhelming evidence of the defendant's guilt." Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010). Certiorari should therefore be denied, and the PCR Court's findings should be affirmed.

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which corroborated applicant's testimony of an accident occurring during a shower." PWC, p. 19. This approach mirrors that taken during the evidentiary hearing, where the PCR Court noted that post-conviction relief is not supposed be "a microcosm or a replay of the prior trial, play by play," but that instead there needed to be "a standard articulated," and "show deviation of that standard and prejudice suffered by the defendants a result of the deviation of the standard." App. p. 208, l. 6-14. In arguing this issue, Hinton has resurrected several allegations, stripped them of any context, and simply *stated* that they constitute deficient performance, without citing to any evidence or applicable standard. Such an approach blatantly ignores the applicable standard of review on PCR appeal.

CONCLUSION

For the foregoing reasons, the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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December 28, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO OCONEE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2016-001099
Lower Court Case No. 2014-CP-37-0133

MATTHEW HINTON, PETITIONER,

v.

THE STATE OF SOUTH CAROLINA, RESPONDENT,

CERTIFICATE OF SERVICE

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:

J. Falkner Wilkes, Esquire
114 Whitsett St.
Greenville, SC 29601

This 28th day of December, 2016

DEONNA ROGERS
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
DEC 28 2016
S.C. SUPREME COURT

December 28, 2016

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

Re: **<u>Matthew Hinton v. State of South Carolina</u>**
Appellate Case No. 2016-001099
Lower Court Case No. 2014-CP-37-0133

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General
SC Bar No. 102100

PS/dr
Enclosures

cc: J. Falkner Wilkes, Esquire (2 copies)
Trisha Allen, Victim Services