STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Fairfield County
Court of Common Pleas
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2016-001810

CAMERON HAMMONDS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

RESPONDENT'S QUESTIONS PRESENTED

I. Is there evidence of probative value in the record to support the PCR judge's finding Petitioner failed to meet his requisite burden of proof of establishing trial counsel was not prepared for Petitioner's trial where he utilized a trial strategy based on self-defense?

II. Did Petitioner preserve the issue of whether trial counsel was ineffective for failing to request a lesser-included jury charge of voluntary manslaughter for appellate review where the PCR court did not rule on this issue and Petitioner failed to file a rule 59(e) motion asking trial court to make specific findings of fact and conclusions of law on this allegation?

STATEMENT OF THE CASE

Procedural History

Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. During its November 2007 term, the Greenville County Grand Jury indicted Petitioner for murder (2007-GS-23-9564, count 1) and possession of a weapon during commission of a violent crime (2007-GS-23-9564, count 2). E.P. "Bill" Godfrey, Esquire represented Petitioner. On November 30, 2009, Petitioner proceeded to trial before the Honorable Edward W. Miller and a jury. The jury convicted Petitioner of all charges. Judge Miller sentenced Petitioner to concurrent terms of life imprisonment for murder and five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Petitioner's convictions and sentences. State v. Hammonds, Op. No. 2012-UP-440 (S.C. Ct. App. filed July 18, 2012). The South Carolina Supreme Court denied Petitioner's subsequent petition for writ of certiorari by order dated March 19, 2014. The Remittitur was sent on April 1, 2014.

On June 17, 2014, Petitioner filed an application for post-conviction relief. Respondent made its return on October 21, 2014, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 19, 2016, at the Greenville County Courthouse before the Honorable R. Knox. McMahon. Petitioner was present and represented by Brian P. Johnson, Esquire. Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Petitioner testified at the hearing. Additionally, prosecuting solicitors Sylvia Harrison, Esquire, and George Campbell, Esquire of the Thirteenth Solicitor's Office also testified.[1] Thereafter, Judge McMahon denied Petitioner's PCR application by written order filed August 23, 2016.

Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his Petition for Writ of Certiorari and Appendix. This Return to Petition for Writ of Certiorari follows.

Factual History

On June 21, 2007, Petitioner Cameron Hammonds shot and killed the victim, Lee Kanard, in Kanard's front yard. The victim was shot nine times, and he died as a result of multiple gunshot wounds. (App.p.141-46).

The Shooting

Kelvin Harris, a neighbor[2] of the victim who saw the shooting, testified the saw Petitioner and Stephon Brewster[3] on June 21, 2007. (App.p.114). Petitioner and Brewster drove up to Kanard's home in a gray Impala.[4] (App.p.122). Harris testified Kanard was standing in Kanard's front yard when Brewster and Hammond pulled up. (App.p.115). Kanard initially walked towards the car when it pulled up. (App.p.115, 124). However, he never walked all the way to the car. (App.p.124). Petitioner and Kanard "had a few words" with one another while Petitioner was in the car. (App.p.115, 124). Harris could not hear what the two said to one another, and he could neither confirm nor deny they were arguing. (App.p.115, 124).

Shortly thereafter, Petitioner got out of the car. (App.p.115, 124-25). Harris testified Petitioner started shooting when he exited the car. (App.p.115). Kanard was trying to get back

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[1] Petitioner's trial counsel was not available to testify as a result of serious health concerns. (App.p.353).
[2] Kanard lived across the street and two houses down from Harris. (App.p.118).
[3] Stephon is Harris' cousin. (App.p.114).
[4] Several witnesses, including Brewster, indicated that Brewster's car was gray because it had been primed for painting. (App.p.103, 104, 122, 166).

to his house. (App.p.115, 116). Petitioner fired several shots. Kanard fell over into the hedges off of his front porch. (App.p.116). Harris testified after Kanard fell over, Petitioner stopped shooting with one gun. (App.p.116). However, Petitioner then pulled out another gun and fired it at Kanard multiple times. (App.p.116-17). Harris did not know the total number of shots fired. (App.p.115, 117).

Harris did not see Kanard with a gun that afternoon. (App.p.115, 117, 125). He also did not see anyone else with a gun at the scene before Petitioner started shooting. (App.p.115). Harris indicated there was a third person in the vicinity of the victim's house that afternoon. (App.p.115-16). He did not know who the person was, but he watched the man ran to where Kanard was laying in the bushes, and then ran back either onto Kanard's porch or inside Kanard's house. (App.p.116).

Detectives Conroy and Flavell of the Greenville Police Department testified that Brewster stopped by the police department and talked with law enforcement about the shooting. (App.p. 60, 72-73, 84). A couple days later, Brewster told law enforcement that Petitioner was the shooter.[5] (App.p.62-63,85). Brewster later identified Petitioner in a photo lineup. (App.p.62-3, 85). At trial, Brewster admitted that he talked with the detectives, gave them a statement, and identified Petitioner as the shooter. (App.p.96, 97). However, he testified he did not really see the murder, and he initiated contact with the police because he did not want them to think he was involved. (App.p.96-97). Brewster was concerned because his car was associated with the shooting on the news. (App.p.96, 103).

On July 2, 2007, Detectives Conroy and Flavell took Petitioner's statement. (App.p.64-70, 80-83).

[5] Detective Conroy testified that Brewster admitted in his second visit with police that some of the facts in his first statement were incorrect. Brewster told Conroy that everything in his first statement was correct except that Petitioner did not hold a gun on him and make him drive away. (App.p.74).

Petitioner's Testimony and Statement Regarding the Shooting

Petitioner testified his stepbrother, Tyrone, was attacked on the early morning of June 21, 2007, and his car was stolen. (App.p.165). After Tyrone was taken to the hospital by ambulance, Brewster drove Petitioner to the hospital. (App.p.166). On the way to the hospital, the two passed Tyrone's car. (App.p.167). The car was ransacked, but nothing appeared to be missing. (App.p.167). Petitioner testified he called police. (App.p.167). While he waited for police to arrive to process his stepbrother's car, he saw a beige car with a temporary license tag circle the block twice around the block where the car was located. (App.p.168-169). Petitioner saw the same beige car later that morning, when he was parking his stepbrother's car at Petitioner's house. (App.p.169-170). Petitioner recognized the car, and he remembered seeing it parked at the victim's address. (App.p.170).

At approximately 1 p.m. on June 21, Petitioner started walking towards Brewster's grandmother's house. (App.p.172). Petitioner indicated when he left his house, he was wearing a tank top, a pair of pants, and black house shoes. (App.p.172). He also carried a High Point .380 semiautomatic pistol in his waistband. (App.p.175). During the walk, he passed by the victim's house. (App.p.173). He noticed two guys were home: one was on the porch and the other was standing in the yard. (App.p.173). Petitioner stated he did not know either of them. When Petitioner saw the guy in the yard, he started asking them, "Why y'all rob my little brother?" (App.p.173). Petitioner indicated the victim responded by saying, "Fuck your little brother, he know how I get down." (App.p.174). Hammond and the victim then engaged in a verbal exchange. The guy who was standing on the porch pulled a gun. Petitioner and the victim moved to the side. Then, according to Petitioner, the victim tried to pull his gun. (App.p.176). "He fumbled it, and I caught it . . . As I caught it with my left hand, I turned and I pulled my gun

too. I turned and I started running and shooting." (App.p.176). Petitioner gave law enforcement a similar recount of the events in his statement to police.

Petitioner testified he was scared, and he just wanted to get home to his children. (App.p.176). He indicated that he dropped the guns in the yard. (App.p.176). He ran home. Eventually, he left Greenville and drove to Knoxville, Tennessee. (App.p.177). Petitioner noted he did not have a concealed weapons permit for his pistol, but he carried the gun because of the dangerousness of the community. (App.p.175).

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief decision is whether "**any** evidence of probative value" exists to sustain the lower court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). However, appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624. Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or

omission of counsel was unreasonable. Strickland, 466 U.S. at 689. "[E]very 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 counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant 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, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant 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. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

ARGUMENT

I. There is evidence of probative value in the record to support the PCR judge's finding Petitioner failed to meet his requisite burden of proof of establishing trial counsel was not prepared for Petitioner's trial where he utilized a trial strategy based on self-defense.

Petitioner asserts the PCR judge erred in finding trial counsel, retained on the eve of trial, was sufficiently prepared for Petitioner's trial where counsel undertook an objectively unreasonable trial strategy based on self-defense when the evidence in Petitioner's case did not support a self-defense claim and where counsel also failed to request a lesser-included jury charge of voluntary manslaughter despite the evidence in Petitioner's case supporting such a charge. This argument is without merit.

At the evidentiary hearing, Petitioner proceeded on the following allegations: trial counsel was ineffective for failing to adequately prepare; for advising him that he was eligible for a charge on self-defense; for failing to inform him that he was not likely to be acquitted on self-defense; and failing to move for a sentencing reconsideration. Initially, the PCR court found Petitioner failed to meet his burden of showing trial counsel was not adequately prepared for trial. The court noted Petitioner's self-serving testimony regarding the amount of time spent with counsel was not credible. (App.p.387). Petitioner alleged trial counsel only met with him once and counsel handled his case for only five days before trial. (App.p.387). However, the PCR court found trial counsel was Petitioner's first attorney and the solicitor's office initially sent discovery to trial counsel. (App.p.387). Thereafter, Petitioner was appointed one or more different attorneys, and trial counsel was apparently relieved.[6] (App.p.387). Shortly before trial, Petitioner retained trial counsel to represent him again. The PCR court found trial counsel handled the case for more than five days as alleged by Petitioner and Petitioner could not

[6] It is not entirely clear from the record how Mr. Godfrey's initial representation of Petitioner came to an end.

competently speculate as to the extent of counsel's preparations. (App.p.387). Moreover, the PCR court found even assuming Petitioner's testimony regarding the number of meetings was true, brevity of time spent in consultation with Petitioner, without more, did not establish trial counsel was ineffective. Furthermore, the PCR court found there was no credible evidence or testimony in the record in support of Petitioner's assertion that counsel was not adequately prepared for trial. (App.p.388). Finally, the PCR court found Petitioner had failed to show prejudice resulting from counsel's alleged failure to adequately prepare. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1994) (noting mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial). The PCR court concluded Petitioner had not presented any evidence as to how additional preparation would have affected the outcome of the proceeding; instead, he simply alleged that counsel should have prepared more. (App.p.388).

Moreover, the PCR court also found Petitioner failed to meet his burden in proving trial counsel was ineffective for advising him he was eligible for self-defense and failing to advise Petitioner he was not likely to be acquitted for murder on self-defense grounds. At the evidentiary hearing, Petitioner alleged trial counsel was ineffective for telling him he qualified for the elements of self-defense. (App.p.389). He testified he learned that he did not qualify for self-defense because his "showing up to the [victim's] property asking some questions brought on a difficulty to the situation." (App.p.389). The PCR court found Petitioner did indeed qualify for a charge on self-defense, as evidenced by the fact the trial judge charged the jury on self-defense prior to deliberations. (App.p.389). The PCR court concluded after independently reviewing the facts of the case, Petitioner was entitled to a charge on self-defense based on his testimony at trial. (App.p.389). Additionally, Petitioner alleged trial counsel was ineffective for

failing to advise Applicant that he was not likely to be acquitted for murder on self-defense grounds. In finding Petitioner failed to meet his burden, the PCR court noted trial counsel correctly informed Petitioner that he was eligible for self-defense. (App.p.390). Further, the PCR court found even assuming Petitioner's depiction of trial counsel's advice to proceed to trial was believable the PCR noted the advice itself was not objectively unreasonable because Petitioner had a viable self-defense claim, particularly in light of the discrepancies in the State's case.(App.p.391). Lastly, the PCR court found Petitioner was unable to show prejudice as Petitioner failed to show counsel's advice induced his decision to proceed to trial where the evidence and testimony in the record indicates Petitioner rejected the State's plea offer prior to trial counsel being hired to represent him for the second time. (App.p.392).

It is clear from the PCR record there is evidence of probative value to support the PCR court's finding that trial counsel did not render Petitioner ineffective assistance of counsel. As previously mention, trial counsel's strategy was to argue self-defense. He executed this strategy by placing the Petitioner on the stand who testified about his encounter with the victim. Petitioner testified he noticed two people were home when he walked by the victim's house with one of them being the victim. (App.p.173). Petitioner proceeded to ask them why they robbed his little brother. Petitioner testified the victim responded with a derogatory remark. (App.p.173-174) Once this happened, Petitioner and the victim started to engage in a verbal confrontation. Petitioner then said the other man pulled a gun and thereafter the victim tried to pull his gun as well. Petitioner testified the victim "fumbled" the gun and he caught it. (App.p.176). Petitioner then testified he pulled a gun he had been carrying and started to run and shoot simultaneously. (App.p.176). Through Petitioner's testimony, trial counsel was able to establish that Petitioner was indeed protecting himself from imminent danger.

This Court has held in Dickey a person is justified in using deadly force in self-defense when: 1) the defendant is without fault in bringing on the difficulty; 2) the defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; 3) if the defense is based upon the defendant's actual belief of imminent danger, a reasonable man of ordinary firmness and courage would have entertained the same belief; and 4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Here, Petitioner argues trial counsel was deficient because he took an unreasonable position in asserting self-defense as Petitioner failed to meet the first prong of the self-defense test. However, this argument runs afoul of the fact the trial judge instructed the jury with the charge of self-defense. If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error. State v. Frazier, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013). While it is true a defendant cannot be at fault and profess a claim of self-defense, in this instance had Petitioner not be eligible for the charge of self-defense, the trial judge would not have instructed the jury on it. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). An accused who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary. Id. State v. Jackson, 384 S.C. 29, 35-36, 681 S.E.2d 17, 20-21 (Ct. App. 2009). Here, given the facts as testified by Petitioner, trial counsel employed

a trial strategy that was plausible. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Additionally, the PCR court made the following finding about trial counsel preparation for Petitioner's trial.

> Petitioner cannot competently speculate as to the extent of counsel's preparations. Moreover, even assuming Petitioner's testimony regarding the number of meetings was true, brevity of time spent in consultation with Petitioner, without more, does not establish that trial counsel was ineffective. Harris at 75, 659 S.E.2d at 145 (*citing* Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (*citing* Strickland, supra). In this Court's mind, Petitioner has failed to overcome that presumption, particularly when taking into account the fact that counsel was a seasoned criminal defense attorney with over two decades of experience at the time he tried this case.[7] See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (reversing PCR judge's finding that counsel's preparation inadequate, citing counsel's experience as a criminal defense attorney). Accordingly, there is no

[7] Sylvia Harrison, of the Greenville County Solicitor's Office, testified that she had known counsel since 1991 or '92, and that he had been a criminal defense attorney that entire time.[7] PCR Tr. p. 22, l. 25 - p. 23, l. 5.

> credible evidence or testimony in the record in support of Petitioner's assertion that counsel was not adequately prepared for trial. This Court therefore finds Applicant has failed to meet his burden to show deficiency.(App.p.387-388).

Moreover, Petitioner did not present any evidence to show trial counsel was unprepared for trial at the evidentiary hearing. Accordingly, there is evidence of probative value to support the PCR court's ruling.

II. Petitioner did not preserve the issue of whether trial counsel was ineffective for failing to request a lesser-included jury charge of voluntary manslaughter for appellate review where the PCR court did not rule on this issue and Petitioner failed to file a rule 59(e) motion asking trial court to make specific findings of fact and conclusions of law on this allegation

Pursuant to S.C. Code Ann. § 17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues. Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). In the present case, the PCR court did not address whether trial counsel was ineffective for failing to request a lesser-included jury charge of voluntary manslaughter. Accordingly, the issue is not preserved for this Court's review.

In Marlar v. State this court held the Applicant's failure to file a Rule 59 (e), SCRCP, motion asking post-conviction relief judge to make specific findings of fact and conclusions of law as to rejected post-conviction challenges rendered those challenges waived for appellate review, precluding further review on the merits. Marlar v. State 375 S.C. 407, 653 S.E. 2d 266 (2007)

This Court in Marlar concluded by stating "[c]ounsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and

file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by 17-27-80 and Rule 52(a), SCRCP." Marlar, at 410, 653 S.E. 2d at 267. In the current case appellant failed to make the proper motion under Rule 59. Accordingly, the issue is not preserved for appellate reviewed and should be dismissed.

The current case is similar to Marlar because Petitioner did not make a Rule 59(e), SCRCP, motion. One of Petitioner's arguments to this Court is trial counsel was ineffective for failing to request a lesser-included jury charge of voluntary manslaughter. However, the PCR judge did not rule on this issue. The only issues ruled upon by the PCR court were: whether trial counsel was ineffective for failing to adequately prepare; for advising Petitioner that he was eligible for a charge on self-defense; for failing to inform Petitioner that he was not likely to be acquitted on self-defense; and failing to move for a sentencing reconsideration all of which the judge found to have no merit (App.p.385-395). Additionally, Petitioner did not move pursuant to Rule 59(e), SCRCP asking the PCR judge to make specific findings of fact and conclusions of law on his current allegation he now raises for appellate review. Therefore, under Marlar's holding the current issue raise was not preserved for appellate review.

Notwithstanding any preservation concerns, Petitioner has still failed to meet his burden of proof in showing trial counsel was ineffective for failing to request a lesser-included jury charge of voluntary manslaughter as trial counsel strategy was to show Petitioner acted in self-defense and a potential voluntary manslaughter charge would have allowed for a compromised verdict.

Moreover, at the PCR hearing, Sylvia Harrison, one of the assistant solicitors who prosecuted the case testified. (App.p.372-377). Assistant solicitor Harrison testified trial counsel really stressed the self-defense aspect. (App.p.372). Additionally, the PCR court found Petitioner

had a viable self-defense claim, particularly in light of the discrepancies in the State's case. (App.p.391). The PCR court noted one of the State's key witnesses, Stephon Brewster, recanted his prior statement to law enforcement, and refused to implicate Petitioner on the stand and the State's other eyewitness, Kelvin Harris, testified that he could not see the porch from his vantage point during the shooting, and was therefore unable to fully refute Petitioner's self-defense claim. (App.p.391). Here, trial counsel's strategy was to argue Petitioner acted in self-defense. A strategic or tactical decision does not have to be articulated by counsel on the record; counsel does not have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. Wood v. Allen, 558 U.S. 290 (2010). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 691. Counsel's decision not to request jury instructions on lesser-included offenses was a valid trial strategy. Abney v. State, 408 S.C. at 46-47, 757 S.E.2d at 546–47 (Ct. App. 2014) (recognizing counsel's decision not to request a jury instruction on lesser included offenses can be a valid trial strategy). Accordingly, while this issue is not preserved for appellate review, Petitioner has failed to show trial counsel was ineffective for failing to request a jury charge of voluntary manslaughter.

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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September 22, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
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Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2016-001810

Cameron Hammonds, ...Petitioner,

v.

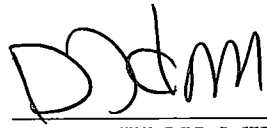
State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, DeShawn H. Mitchell, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in inter-agency mail and addressed to:

John H. Strom, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia SC 29211-1589

I further certify that all parties required by Rule to be served have been served. This 22nd day of September, 2017.



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