

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County  
Court of Common Pleas  
The Honorable George C. James Jr., Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2016-002409

MICHAEL WEATHERSPOON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_  
**RETURN TO PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

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DEC 06 2017

S.C. SUPREME COURT

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## RESPONDENT'S QUESTIONS PRESENTED

- I. Did Petitioner preserve four of the five arguments he attempts to raise in this Petition for Writ of Certiorari for appellate review as they were neither raised nor ruled upon by the PCR court?
- II. Did the PCR court properly deny Petitioner's application because Petitioner received the exact plea deal he bargained for?
- III. Did the PCR court properly deny Petitioner's application because Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object?
- IV. Did the PCR court properly deny Petitioner's application because Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object?
- V. Did the PCR court properly deny Petitioner's application because there was no evidence the case would have been dismissed with prejudice?
- VI. Is there evidence of probative value to support the PCR judge's finding Petitioner was not entitled to an appeal of his guilty plea?

## 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 October 2013 term, the Greenville County Grand Jury indicted Petitioner for murder (2013-GS-23-004778), and attempted armed robbery (2013-GS-23-004779). Alex Stalvey, Esquire represented the Petitioner. On November 12, 2014, Petitioner pled guilty to voluntary manslaughter and attempted armed robbery before the Honorable Edward W. Miller. Judge Miller sentenced Petitioner to concurrent terms of fifteen years for attempted armed robbery and fifteen years for voluntary manslaughter. Petitioner did not appeal.

On September 17, 2015, Petitioner filed an application for post-conviction relief. Respondent made its return on February 3, 2016, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 14, 2016, at the Greenville Courthouse before the Honorable George C. James Jr. Petitioner was present at the hearing and was represented by Brian P. Johnson, Esquire. Respondent was represented by Patrick L. Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. Petitioner testified at the hearing. Petitioner's plea counsel, Alex Stalvey, Esquire, also testified. Thereafter, Judge James denied Petitioner's PCR application by written order filed November 18, 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 PCR History

During the evidentiary hearing, the PCR judge heard testimony from Petitioner and his plea counsel. Petitioner testified he had gone to trial but the trial was stopped and he was forced

to take a plea. (App.p.49). Petitioner testified he believed his guilty plea was not intelligently, knowingly and voluntarily entered into. (App.p.49). He then testified he was sentenced to voluntary manslaughter but pled guilty to involuntary manslaughter and the plea judge failed to give him proper instructions of the maximum and minimum sentences the charge carried. (App.p.51). Petitioner further testified the plea judge accepted his guilty plea pursuant to an Alford plea but at the time of his guilty plea he did not know what this meant and his attorney never discussed it with him. (App.p.54-55). Petitioner also testified he wanted to appeal his guilty plea. (App.p.55). He testified prior to leaving his guilty plea he asked his attorney about his appeal. (App.p.55).

Furthermore, plea counsel testified they started trial and a few witnesses had been called. (App.p.76). He then testified that after the first day of trial was over, he was notified by the state there were some photographs of the crime scene that had not been provided to Petitioner in discovery. (App.p.76). Plea counsel testified he felt this missing discovery being given over after the trial had started gave them a good opportunity to ask for a mistrial. (App.p.77). Plea counsel testified that due to the fact the case could result in a mistrial, the state was willing to offer Petitioner a negotiated plea of fifteen years. (App.p.77). Plea counsel testified considering the fact this was a murder case which Petitioner was looking at thirty years to life and that he felt there was a very good chance Petitioner would get convicted, he thought this was a good plea to take. (App.p.77). Plea counsel testified he explained to Petitioner the sentencing range for voluntary manslaughter. (App.p.77-78). Plea counsel testified he never told Petitioner he was pleading guilty to involuntary manslaughter and that Petitioner ultimately agreed to take the plea. (App.p.78). Additionally, plea counsel testified Petitioner signed the sentencing sheet which indicated voluntary manslaughter. (App.p.79). Plea counsel testified he thought there was a

substantial benefit provided from Petitioner pleading guilty. (App.p.81). Plea counsel further testified he could not remember if Petitioner ever asked him to file an appeal and he did not remember ever talking to Petitioner about filing an appeal of his guilty plea. (App.p.82). On cross-examination, plea counsel testified the plea was accepted pursuant to Alford. (App.p.83). He testified he never discussed an Alford plea with Petitioner and became aware of the Alford plea at the same time Petitioner did when the plea judge said he was going to accept it under North Carolina v. Alford 400 U.S. 25 (1970). (App.p.83). Plea counsel testified that the plea transcript did note correctly that the plea judge misspoke and said involuntary manslaughter instead of voluntary manslaughter. (App.p.86). On redirect, plea counsel testified he had conversations with Petitioner and Petitioner knew he was pleading guilty to a fifteen year sentence for both voluntary manslaughter and attempted armed robbery. (App.p.88).

The PCR court found Petitioner had failed to prove his guilty plea was involuntary because the plea judge referred to the manslaughter charge as involuntary manslaughter instead of voluntary manslaughter. (App.p.107). The PCR court found the penalties for these two offenses are certainly much different, but it is clear from reading the record that the Petitioner was advised by the court that the maximum time he faced was thirty years, which is the maximum sentence for voluntary manslaughter. (App.p.107). Additionally, the PCR court noted the negotiated sentence was for fifteen years, which is far in excess of the five year maximum for involuntary manslaughter. The PCR court found it was abundantly clear that whatever label was put on the offense by the plea judge, Petitioner knew exactly what he was pleading to. (App.p.107). The PCR court went on to find the record established that Petitioner entered a plea to attempted armed robbery, which carried a maximum of twenty years. (App.p.107). The PCR court noted the negotiated plea was to fifteen years, to be served concurrently with the voluntary

manslaughter sentence.(App.p.107). The PCR court concluded even if the plea judge misstated the voluntary manslaughter offense as involuntary manslaughter that did not affect the voluntariness of Petitioner's plea to attempted armed robbery. (App.p.107).

## 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, 442, 334 S.E.2d 813,814 (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. 668,686, (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. 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. at 117, 386 S.E.2d at 625. 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. Four of the five arguments Petitioner attempts to raise in this Petition for Writ of Certiorari are not preserved for appellate review because they were neither raised nor ruled upon by the PCR court.**

Petitioner asserts the PCR judge erred in its finding in the following respects: (1) that Petitioner's plea counsel was not ineffective for failing to request that the plea be stood aside or discontinued prior to its acceptance by the court due to Petitioner's clear statements that he did not understand the parameters of his plea, (2) that plea counsel was not ineffective for failing to object to the plea court's sua sponte decision to shift the plea from a straight guilty plea to a plea made pursuant to NC v. Alford without consultation with the parties, (3) that plea counsel was not ineffective for failing to object to the plea court's persistent, repetitive, and inappropriate questioning of the Petitioner in a clear attempt to get the Petitioner to change his responses, and (4) that plea counsel was not ineffective for failing to make a motion for mistrial followed by a motion barring further prosecution pursuant to the US Constitutional bar against Double Jeopardy prior to advising his client to plead guilty. These arguments are without merit as they are not preserved for appellate review.

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 (1) whether Petitioner's plea counsel was ineffective for failing to request that the plea be stood aside or discontinued prior to its acceptance by the court due to Petitioner's clear statements that he did not understand the parameters of his plea, (2) whether plea counsel was ineffective for failing to object to the plea court's sua sponte decision to shift the plea from a straight guilty plea

to a plea made pursuant to NC v. Alford without consultation with the parties, (3) whether plea counsel was ineffective for failing to object to the plea court's persistent, repetitive, and inappropriate questioning of the Petitioner in a clear attempt to get the Petitioner to change his responses, and (4) whether plea counsel was ineffective for failing to make a motion for mistrial followed by a motion barring further prosecution pursuant to the US Constitutional bar against Double Jeopardy prior to advising his client to plead guilty. Accordingly, these issues are 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 the four allegations made in Petitioner's petition were not ruled upon by the PCR judge and Petitioner failed to make the proper motion under Rule 59. Accordingly, the issues are not preserved for appellate review and should be dismissed.

The current case is similar to Marlar because Petitioner did not make a Rule 59(e) motion asking the PCR judge to rule on the specific allegations. Petitioner's arguments to this Court

claim plea counsel was ineffective for failing to take various specific actions during the plea. However, in the order from the PCR judge, the only issues ruled on were: (1) whether Petitioner's guilty plea was involuntary, (2) whether plea counsel was ineffective for failing to move to quash the indictment and (3) whether plea counsel was ineffective for failing to file a direct appeal. (App.p.105). None of the four specific allegations now made in this petition were addressed in the PCR order. Additionally, Petitioner did not make a 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law on his current allegations he now is attempting to raise for appellate review. Therefore, under Marlar's holding the current issues raise was not preserved for appellate review.

**II. Even if preserved, the PCR court properly denied Petitioner's application because Petitioner received the exact plea deal he bargained for.**

Notwithstanding any preservation concerns, Petitioner failed to meet his burden of proof in showing plea counsel was ineffective for failing to request that the plea be stood aside or discontinued prior to its acceptance by the court due to Petitioner's clear statements that he did not understand the parameters of his plea. The PCR judge correctly found Petitioner received the exact plea deal he bargained for and therefore received effective assistance of counsel and suffered no prejudice. (App.p.109).

Moreover, the record reflects that when the solicitor read the facts of the case during the plea colloquy, Petitioner did not agree with them. (App.p.108). The plea judge then decided on his own he would accept the plea pursuant to North Carolina v. Alford, sentencing the Petitioner to fifteen years concurrent on both charges. (App.p.108). The PCR court found Petitioner was ignorant as to what an Alford plea was and trial counsel admitted he never discussed an Alford plea with Petitioner. (App.p.109). However, the PCR court found Petitioner wanted to plead guilty to get the benefit of a very good sentencing deal, i.e., the avoidance of a thirty year to life

sentence for murder in exchange for a negotiated sentence of only fifteen years. (App.p.109). The PCR court went on to note while the plea colloquy does not reflect the plea was initially presented as an Alford plea, it is abundantly clear that the Petitioner wanted to plead guilty and avoid a potential thirty year to life sentence. (App.p.109). Furthermore, plea counsel testified he explained to Petitioner the sentencing range for voluntary manslaughter. (App.p.77-78). Additionally, during the guilty plea colloquy Petitioner was advised that he could continue with his jury trial, that he had the right to confront witnesses, that he had the right to remain silent. (App.p.107). Petitioner testified to the plea judge that he understood those rights and wanted to give them up and plead guilty. (App.p.107). Moreover, there was no need for plea counsel to request that the plea be stood aside or discontinued as Petitioner got the deal he bargained for when he pled guilty. Accordingly, while this issue is not preserved for appellate review, Petitioner has also failed to show plea counsel was ineffective for failing to request that the plea be stood aside or discontinued prior to its acceptance by the court due to Petitioner's clear statements that he did not understand the parameters of his plea as additionally Petitioner has failed to show he suffered any prejudice.

**III. Even if preserved, the PCR court properly denied Petitioner's application because Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object.**

Notwithstanding any preservation concerns, Petitioner failed to meet his burden of proof in this regard as Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object. As the PCR court noted in Alford, the United States Supreme court recognized the right of someone who is accused of a crime to negotiate with the State. (App.p.109). If an Alford plea is entered, the defendant tells the court he is not guilty but that he wants to plead guilty to get the benefit of a deal. (App.p.109). The defendant is sentenced as if he

had admitted guilt (App.p.109). Here, Petitioner was pleading guilty pursuant to a negotiated plea to fifteen years concurrent to both charges. However, when the solicitor read the facts of the case the Petitioner did not agree with them. (App.p.108). The plea judge then decided to take Petitioner plea pursuant to Alford. Petitioner was allowed to plead without professing guilt. As the PCR court correctly noted Petitioner wanted to plead guilty to get the benefit of a very good sentencing deal. (App.p.109). Accordingly, while this issue is not preserved for appellate review, plea counsel effectively secured the benefit of the bargain by not objecting to the plea court's shift to an Alford plea. Petitioner has failed to show plea counsel was ineffective for failing to object to the plea court's sua sponte decision to shift the plea from a straight guilty plea to a plea made pursuant to North Carolina v. Alford without consultation with the parties. Because he got the benefit of the bargain of this deal, Petitioner also failed to show he suffered any prejudice.

**IV. Even if preserved, the PCR court properly denied Petitioner's application because Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object.**

Notwithstanding, any preservation concerns, Petitioner failed to meet his burden of proof in this regard as Petitioner can show no ineffective assistance of counsel or prejudice as a result of counsel's failure to object. As previously noted, the PCR judge found Petitioner was ignorant as to what an Alford plea was. (App.p.109). However, Petitioner received the exact plea bargain he sought. (App.p.109). Plea counsel testified he explained to Petitioner the sentencing range for voluntary manslaughter. (App.p.77-78). Plea counsel testified he never told Petitioner he was pleading guilty to involuntary manslaughter and that Petitioner ultimately agreed to take the plea. (App.p.78). Additionally, plea counsel testified Petitioner signed the sentencing sheet which indicted voluntary manslaughter. Moreover, Petitioner's plea deal was a negotiated sentence and the duration of the sentence would not have changed regardless if the guilty plea was a straight

plea or an Alford plea. Plea counsel effectively represented Petitioner by not jeopardizing the plea with objections to the court's proper questions. Accordingly, while this issue is not preserved for appellate review, Petitioner has failed to show plea counsel was ineffective for failing to object to what he describes as the plea court's persistent, repetitive, and inappropriate questioning of the Petitioner in a clear attempt to get the Petitioner to change his responses. Similarly, Petitioner has failed to show he suffered any prejudice.

**V. Even if preserved, the PCR court properly denied Petitioner's application because there was no evidence the case would have been dismissed with prejudice.**

Notwithstanding any preservation concerns, Petitioner has still failed to meet his burden of proof that the PCR judge erred in this regard. Here, plea counsel testified that once the trial began, he discovered that the state had not produced some photographs that should have been produced during discovery (App.p.108). He testified that based on this mistake he saw an opportunity to get a pretty good plea deal or get a mistrial. (App.p.108). The PCR court found there was no evidence the case would have been dismissed with prejudice for discovery abuse. (App.p.108). Moreover, while plea counsel could have made a motion for a mistrial, he did not make that motion because he saw an opportunity to get a good plea deal for his client. Plea counsel testified considering the fact this was a murder case for which Petitioner was looking at thirty years to life and he felt there was a very good chance Petitioner would get convicted, he thought this was a good plea to take. (App.p.77). The PCR judge found plea counsel performed extremely effectively in securing this deal for the Petitioner. (App.p.109). The PCR court went on to note when it became apparent that the State had not complied with discovery rules, counsel saw and took advantage of the opportunity to get a good result for his client and concluded that plea counsel would have been ineffective if he had not sought this deal for the Petitioner.

(App.p.109). Additionally, Petitioner's argument that plea counsel could have made a subsequent motion barring prosecution pursuant to double jeopardy is without merit as the PCR judge concluded a mistrial may not have been granted. Additionally, the state omission of the photographs was not meant to goad Petitioner. The Double Jeopardy Clauses of the United States and South Carolina Constitutions protect citizens from being twice placed in jeopardy of life or liberty. See U.S. Const. amend. V; S.C. Const. art. I, § 12; Harden v. State, 360 S.C. 405, 410, 602 S.E.2d 48, 50 (2004) (citation omitted). "Under the law of double jeopardy, a defendant may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial." State v. Coleman, 365 S.C. 258, 263, 616 S.E.2d 444, 446 (Ct.App.2005). "Prosecutorial conduct that might be viewed as harassment or overreaching, even if sufficient to justify a mistrial on defendant's motion ... does not bar retrial absent intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause." Oregon v. Kennedy, 456 U.S. 667 (1982). Hence, a properly granted mistrial poses no double jeopardy bar to a subsequent prosecution. "Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." Id. at 676 ; see also State v. Mathis, 359 S.C. 450, 460, 597 S.E.2d 872, 877 (Ct.App.2004) (noting that a defendant who has moved for and been granted a mistrial may invoke the Double Jeopardy Clause to prevent a second prosecution when the prosecutor's conduct giving rise to the mistrial was intended to provoke him into moving for the mistrial). Hence, the determination of whether double jeopardy attaches depends upon whether the prosecutorial conduct was undertaken with the intent to subvert the Double Jeopardy Clause. State v. Coleman, 365 S.C. 258, 263, 616 S.E.2d 444, 447 (Ct.App.2005) (citation omitted). "The trial court's finding concerning the

prosecutor's intent is a factual one and will not be disturbed on appeal unless clearly erroneous.” Id. (citation omitted). Here, the state was not trying to provoke Petitioner and as such, a double jeopardy violation would not have flowed from this result. Accordingly, while this issue is not preserved for appellate review, Petitioner has failed to show plea counsel was ineffective for failing to make a motion for mistrial followed by a motion barring further prosecution pursuant to the US Constitutional bar against Double Jeopardy prior to advising his client to plead guilty. On the contrary, plea counsel was effective for securing the plea deal and not jeopardizing that deal by making objections on motions with no likelihood of success. Similarly, Petitioner has failed to show he suffered any prejudice.

**VI. There is evidence of probative value to support the PCR judge’s finding  
Petitioner was not entitled to an appeal of his guilty plea.**

There is evidence of probative value to support the PCR court’s finding Petitioner was not entitled to an appeal of his guilty plea. 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). Here, Petitioner alleges he wanted to appeal his guilty plea. The PCR court found credible plea counsel’s testimony that he did not recall Petitioner asking him to appeal his guilty plea and also found credible plea counsel testimony that if Petitioner had asked him to appeal, he would have filed an appeal. (App.p.111). The PCR court concluded since plea counsel did not file an appeal, Petitioner did not ask him to do so. (App.p.111)

The United States Supreme Court has rejected a “bright-line rule that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either

(1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id. Here, Petitioner argues that he wanted to appeal after his plea was entered. (App.p.111). However, plea counsel testified had Petitioner asked him to appeal his guilty plea he would have. (App.p.82). Because, there is evidence of probative value to support the PCR court’s finding Petitioner did not request an appeal, he was not entitled to an appeal of his guilty plea and the PCR was properly denied.

**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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S.C. SUPREME COURT

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Appellate Case No. 2016-002409  
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Michael Weatherspoon, ..... 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:

**Arie D. Bax, Esquire**  
**The Bax Law Firm**  
**69 Robert Smalls Parkway; Suite 3-C**  
**Beaufort SC 29902**

I further certify that all parties required by Rule to be served have been served. This 6<sup>th</sup> day of December, 2017.



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