

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge
—————

Appellate Case No. 2017-000231

RECEIVED

FEB 16 2018

S.C. SUPREME COURT

MAXWELL E. SIPES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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RETURN TO PETITION FOR WRIT OF CERTIORARI
—————

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II. There is probative evidence in the record to support the PCR Court’s finding Counsel did not render ineffective assistance by failing to renew his request for a curative instruction after the trial judge denied his motion for a mistrial, thus rendering his objection to the victim’s mother’s testimony unpreserved, because Counsel articulated a reasonable trial strategy for not doing so. Even if the issue had been preserved, it is not reasonably likely to have changed the outcome on appeal or at trial. 13

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RESPONDENT'S QUESTIONS PRESENTED

- I. Is there any probative evidence in the record to support the PCR Court's finding Counsel did not render ineffective assistance in his handling of victim's medical records at trial, even though Counsel did not receive a full copy until after both medical experts had testified, because Counsel had valid strategic reasons for not introducing them?

- II. Is there any probative evidence in the record to support the PCR Court's finding Counsel did not render ineffective assistance by failing to preserve for appellate review the issue of whether the trial court erred by refusing to grant a mistrial after the victim's mother's testimony commenting on his assertion of his Fifth Amendment rights?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Petitioner was indicted at the March 2005 term of the Court of General Sessions for Anderson County for criminal sexual conduct – first degree (2005-GS-04-0382). App. 831-32. Petitioner was represented by David Stoddard, Esquire. App. 1. On March 5-9, 2007, Petitioner proceeded to trial the Honorable Alexander Macaulay and a jury, after which he was convicted as indicted. App. 1, 607. Judge Macaulay sentenced Petitioner to thirty years imprisonment. App. 615.

Petitioner filed a timely Notice of Appeal to the South Carolina Court of Appeals on March 16, 2007. Tara Dawn Shurling, Esquire, represented Petitioner on appeal. App. 810. The South Carolina Court of Appeals affirmed Applicant's sentence and conviction on November 2, 2009. State v. Sipes, Op. No. 2009-UP-540 (S.C. Ct. App. filed November 2, 2009). Petitioner thereafter filed a Petition for Rehearing on December 3, 2009, which was denied by an order dated January 20, 2010. App. 813. On April 20, 2012, Petitioner filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. Respondent made a Return on May 11, 2010. App. 813. The South Carolina Supreme Court, in an order dated May 2, 2011, denied the petition, and the matter was remitted to the lower court. App. 813.

Petitioner then filed a post-conviction relief (PCR) application on January 13, 2012. App. 617-23. An evidentiary hearing into the matter was convened on June 9, 2016, at the Anderson County Courthouse before the Honorable R. Scott Sprouse. App. 631. Petitioner was present at the hearing and was represented by J. Faulkner Wilkes, Esquire. App. 631. Respondent was represented by Johanna Valenzuela, Esquire, of the South Carolina Attorney General's Office. App. 631. Petitioner; Petitioner's trial counsel, David Stoddard, Esquire; and Petitioner's experts

Dr. Christopher Rubel and Gaye Allen-Cook testified at the hearing. App. 632. Judge Sprouse ultimately denied Petitioner's application by order filed January 30, 2017. App. 812-30. Petitioner filed a timely notice of appeal on February 9, 2017, and a Petition for Writ of Certiorari on August 16, 2017. This Return follows.

STATEMENT OF THE FACTS

Petitioner, who was married to the victim's mother (Goodwin), is the victim's adoptive father. App. 183-84. Petitioner and Goodwin were married in 1992, and Petitioner adopted the victim in 1995. App. 184-85. Goodwin and Petitioner had another daughter during the marriage. App. 183-85. Goodwin and Petitioner divorced in 1999, but renewed their relationship in 2002. App. 185-86. In early 2002, Goodwin discovered she was pregnant with twins, and she and Petitioner began living together again. App. 187-88. In October 2002, Goodwin gave birth to the twins. App. 187. The parties again separated in September 2003. App. 188. Shortly thereafter, Petitioner filed for custody of the children. App. 192. There is some dispute whether he sought custody of all the children, including the victim, or only those that were his biological children. App. 192. Goodwin filed for an abandonment warrant seeking to collect child support in Georgia. App. 193.

In November 2003, the victim was taken to the emergency room suffering from a rectal prolapse, a condition in which the rectum comes outside the body. App. 61, 137-38. Dr. Dolford Payne, a colorectal surgeon, corrected the victim's rectal prolapse. App. 76-77. The victim spent about a week in the hospital before she was able to return home. App. 138. When she was taken to the emergency room, the victim informed Goodwin of some of the alleged sexual abuse committed by Petitioner, but did not describe the totality of the abuse until later. App. 138, 142-43. She first told her mother Petitioner had inappropriately touched her when she was about eleven years old, and they were still living in Georgia. App. 142-43, 188-89. The victim did not tell her mother about the repeated acts of forcible sodomy Petitioner committed against her until she was in the hospital recovering from surgery to correct the prolapse. App. 189-90. The victim testified she told her mother the whole story because Petitioner had filed lawsuit seeking custody

of her younger siblings. App. 136, 143-44.

At trial, the victim described the acts of criminal sexual conduct by Petitioner. She stated he first touched her when she was eleven. App. 143. She stated she was on the couch, and he pulled her pants down and began fondling her. App. 143-44, 180. The victim then described the acts of forcible sodomy that occurred when her mother was pregnant with the twins and would often sleep downstairs apart from Petitioner and the victim. App. 120-21, 124-29. Petitioner would get into bed with the victim and take her pants off. App. 124-25. She stated he would touch her on the chest and the “bottom.” App. 125. She stated he would touch her with his finger and his “private parts.” App. 125. She told him to stop, and he would say not to tell because no one would believe her. App. 126-27. The victim described how Petitioner would place a pillow over her head so she could not scream and then place his “private” into her “back private.” App. 127-28. The victim also testified she would bleed from her rectum after the assaults, and she would use laxatives and enemas to “clean [herself] out” after the sodomy committed by Petitioner. App. 129, 179-80.

Dr. Payne testified that trauma to the rectum is a primary cause of a rectal prolapse. He testified some instances are caused by long-term constipation or prolonged use of certain drugs. App. 63-64, 73-75. However, he stated neither cause was likely in this case, based on the victim’s medical history. App. 64, 70, 75. He further testified the most probable cause of the victim’s rectal prolapse was numerous occasions of forcible sodomy. App. 66, 74. He stated consensual sodomy would not cause the rectal prolapse because it would not lead to the trauma caused by the involuntary sodomy. App. 64-66. He further testified that in his twenty years of practice he has had two patients, including the victim, present with rectal prolapse caused by forcible sodomy. App. 70-71. Finally, he reiterated the only medically valid cause for the

victim's rectal prolapse was forcible sodomy. App. 74-75.

Petitioner presented the testimony of Dr. Carl Lund in an effort to rebut the testimony of Dr. Payne. App. 290-91. Although Dr. Lund could not rule out forcible sodomy as the cause in this case, he repeatedly emphasized that, statistically, the cause for rectal prolapse is constipation. App. 297, 302, 306, 311-12, 313-14. In support of this theory, Dr. Lund indicated the victim noted constipation on one of her medical forms. App. 302-05. This notation was made on a form related to a doctor's visit several months after the surgery, although the form referred to constipation in the victim's history. App. 320. However, there was no indication on the notation as to the severity or longevity of the constipation. App. 320. Dr. Lund repeated several times that rectal prolapse is caused by trauma to the rectum, and constipation is the most common cause of trauma. App. 306, 310, 312, 313-14. Additionally, Dr. Lund testified constipation was the only cause he has seen in his six or so prolapse cases as serious as the victim's. App. 302. However, Dr. Lund could not testify to a reasonable degree of medical certainty that forcible sodomy did not cause the victim's prolapse. App. 311-12, 315-16.

Finally, Petitioner called Cindy Stichnoth, a "forensic therapist" who specialized in "assessing and treating sexual behavior issues," including conducting forensic interviews. App. 359-61. Stichnoth was employed as a therapist at the Carolina Center for Behavioral Health during the time the victim was admitted there, and Stichnoth was involved in her treatment. App. 362. Stichnoth testified the Carolina Center diagnosed the victim as having "borderline traits," which include "self-injurious behavior related to over-dramatizing incidents, . . . highly manipulative and intrusive behavior, . . . hearing characteristics or symptoms disclosed by one person and then adopting those symptoms as your own." App. 363. Stichnoth also testified the victim never reported or showed any signs of pain in her colon or rectum during her time at the

Carolina Center, and the victim admitted to a history of abusing laxatives. App. 365-67. Additionally, Stichnoth testified, given her review of the victim's records and mental health history, and her personal observations of the dynamics between the victim and Goodwin, it was possible the victim had made a false allegation "if [she] felt the report of [Petitioner] abusing her would solidify her relationship with her mother and make her more important to her mother. . . ." App. 405-06. Stichnoth further testified a child making an allegation of abuse against a parent during divorce and custody proceedings is not an unusual occurrence. App. 400, 406.

However, Stichnoth also testified, the victim made a disclosure of sexual abuse by her biological father, which the staff at the Carolina Center discounted because it occurred on the same day her roommate made a similar disclosure and because Goodwin told the staff the victim's biological father did not have access to her. App. 373-74. On cross-examination, Stichnoth conceded it is not unusual for a victim of sexual abuse to "test the waters" by naming a "safe" perpetrator when making the initial disclosure of abuse and then make a further disclosure once the abuser is no longer part of the victim's life. App. 376, 399-400. Additionally, Stichnoth acknowledged the victim's behavior was consistent with that of a sexual abuse victim. App. 382-83, 412-13.

STANDARD OF REVIEW

The PCR 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 in a PCR action is whether "any evidence of probative value" exists to sustain the post-conviction relief court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). The reviewing court will affirm if there is any evidence to support the post-conviction relief court's ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012). This Court will reverse the PCR court's decision when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007) (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004)).

ARGUMENT

- I. **There is probative evidence in the record to support the PCR court's finding Counsel did not render ineffective assistance by failing to obtain the victim's medical records until midway through trial because although the records contain some information that would have been helpful for Counsel's theory of the case, they also contained information corroborating the victim's testimony regarding her injuries. Thus, Counsel had a valid trial strategy for not introducing the records. Additionally, Petitioner's expert at the evidentiary hearing, who did have the benefit of preparing his testimony with the additional records, reached essentially the same conclusion as the defense's medical expert at trial.**

Petitioner contends the PCR court erred in finding Counsel was not ineffective for failing to obtain the victim's medical records until part of the way through trial. PWC, p. 3. At trial, Counsel requested the court's help with obtaining some of the victim's records from the Carolina Center for Behavioral Health. App. 639. Counsel testified at PCR that he did not realize he was missing records until a few weeks prior to trial, when his expert alerted him that more documents should exist. App. 638. Counsel then issued a subpoena for the Carolina Center for Behavioral Health records custodian for trial, but he was informed he needed a court order in order to comply with South Carolina law regarding the production of mental health records. App. 639. The trial court issued an order and procured the records. App. 638-39. At the PCR hearing, Counsel testified he did not receive the records until after the State's medical expert, Dr. Payne, had testified, as well as the defense expert, Dr. Lund. App. 639. However, Counsel turned the records over to his mental health expert, Cindy Stichnoth, who was able to review them prior to her testimony. App. 639-40. Additionally, Counsel testified he had the option of recalling either Dr. Payne or Dr. Lund, but he did not feel it was necessary. App. 680-81.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made

all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “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) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

During the PCR hearing, Petitioner introduced the remaining medical records he contends should have been introduced at trial. App. 632. PCR counsel reviewed the records in detail with Counsel, who ultimately testified he did not believe the records would have changed Dr. Payne’s conclusion that the prolapse was caused by forcible sodomy rather than constipation because Dr. Payne had considered the victim’s history of psychotropic medication and did not believe it was significant. App. 651. Counsel also testified his main goal with the testimony of the defense’s medical expert, Dr. Lund, was to show Dr. Payne’s method of diagnosis was improper and

incomplete due to his failure to perform a muscle tone test on the victim before diagnosing the cause of the prolapse. App. 682. Additionally, Counsel pointed out Dr. Lund was able to establish a history of constipation in the victim's medical records, even without the complete set. App. 654-55. Counsel explained his focus with the medical records was to highlight the victim's psychological history, which suggested an increased potential for a false allegation – a proposition which was supported by the testimony of the defense's mental health expert, Cindy Stichnoth, who had personally treated the victim in this case. App. 711-12.

Further, Counsel testified that while some of the information contained in the records would likely have been helpful for Petitioner, there was also harmful information that would have been introduced. App. 697-98, 701-02. Specifically, the records showed the victim had complained of rectal bleeding during the timeframe the abuse was alleged to have occurred, which corroborated the victim's testimony at trial. App. 665, 668, 701-02. Counsel explained he had reviewed the records and saw “things in the records that [he] thought cut against [the defense] and things that might help [the defense]. And [rectal bleeding] is one of the things I noticed.” App. 697. Counsel testified he would have discussed that with an expert to determine if that symptom is consistent with forcible sodomy or if there is another explanation, but his “layman's opinion is if [he] heard that as a juror. . . [he] would think it corroborates the victim story somewhat.” App. 697. Counsel further explained when evidence can “cut[] both ways,” he does not necessarily want the jury to hear it. App. 697-98. Counsel testified, Dr. Lund opined “chronic constipation is an alternative explanation, and it is very common with teenagers,” so he was “likely to want to just leave it there” as a general explanation rather than get into the details of the medical records. App. 698.

Finally, Dr. Rubel, the medical expert Petitioner retained to review the additional records in preparation for the PCR proceeding, reached essentially the same conclusion as the defense expert, Dr. Lund, at trial – that while chronic constipation was the most likely of a rectal prolapse, forcible sodomy could not be ruled out. App. 761. Dr. Rubel disagreed with the State’s witness, Dr. Payne, when Payne stated the victim’s history with psychotropic drugs was not significant. App. 749-50. However, Dr. Rubel admitted that not everyone who takes psychotropic medication suffers such slowing of the bowel as to have chronic constipation. App. 760-61. Further, Dr. Rubel testified he generally expects to see reports of abdominal pain and less than one stool per week with patients suffering from chronic constipation, neither of which were present in the victim’s medical records he reviewed. App. 761-62. The records introduced by Petitioner showed only one incidence of constipation, with a duration of one day, during the time frame the assaults were alleged to have occurred. App. 670.

Even after reviewing the medical records, Petitioner’s own expert could not say for certain the prolapse was not caused by forcible sodomy. App. 761. Furthermore, Counsel articulated a valid reason for not introducing the records, since they contained information showing the victim was experiencing rectal bleeding during the timeframe the abuse was alleged to have occurred, which corroborated her testimony. App. 665, 668, 701-02. Because Counsel articulated a valid strategy for not introducing the records, because the records do not contain a history of chronic constipation such as to significantly advance the defense theory of causation, and because Petitioner’s expert at PCR reached the same conclusion after reviewing the records as the defense expert at trial, the PCR court correctly found Counsel’s performance was not deficient. Smith, 386 S.C. at 567, 689 S.E.2d at 632 (“[W]hen counsel articulates a valid reason

for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.”). Therefore, the Petition should be denied as to this question.

II. There is probative evidence in the record to support the PCR Court’s finding Counsel did not render ineffective assistance by failing to renew his request for a curative instruction after the trial judge denied his motion for a mistrial, thus rendering his objection to the victim’s mother’s testimony unpreserved, because Counsel articulated a reasonable trial strategy for not doing so. Even if the issue had been preserved, it is not reasonably likely to have changed the outcome on appeal because it was a harmless error in light of the overwhelming evidence against Petitioner.

During cross-examination of the victim’s mother, Tina Goodwin, Counsel asked: “And after your separation, you filed a child abandonment warrant, I understand, against [Petitioner] down in Georgia; is that right?” App. 193. Goodwin answered:

No. That was for child support. When I was going through child support getting my kids medical help because my daughter was needing prolapsed rectum surgery, Max quits his job. When Eddie Colbert went to look for him, he would not come in for the interview. When Eddie Colbert, the investigator, looked for him to question him about the sexual abuse, Max quit his job and left. So I had to go get assistance.

App. 193. After Goodwin completed her answer, Counsel indicated he had a matter of law to discuss, and the jury was sent to the jury room. App. 193-94. Counsel made a motion for a mistrial due to Goodwin’s comment on Petitioner’s assertion of Fifth Amendment rights. App. 194.

After discussions with counsel, the trial court denied the motion for a mistrial, stating, “I don’t think that it has risen to the degree of prejudice that would make it impossible for the [Petitioner] to have a fair trial. . . . However, if [Petitioner] wants, I will give a curative instruction that there’s no need for [Petitioner] to ever present a defense.” App. 198-99. Appellant’s counsel

responded, “I do want that instruction.” App. 199. However, the trial court never gave the instruction to the jury, and Counsel never raised the issue again. On appeal, the Court of Appeals found the issue was not preserved. State v. Sipes, Op. No. 2009-UP-540 (S.C. Ct. App. filed November 2, 2009).

At the PCR hearing, Counsel testified he did not remember this exchange had even occurred until he read the transcript in preparation for the evidentiary hearing. App. 720. Counsel explained that while he could not recall specifically whether he made a conscious, strategic decision not to ask for the instruction or if he simply forgot, his usual practice is not to request one. App. 718-20, 722. Counsel explained, “[I]f I had remembered, I would have had an internal debate of whether I want[ed] the jury to hear that curative instruction.” App. 722. Counsel further stated:

[O]ften I don’t want a curative instruction because it may highlight [the improper testimony] more. I don’t think curative instructions help a whole lot. . . . [W]hen the mother said the police wanted to question him, he ran, I did not like that, and I objected to it, and I think I asked for a mistrial. . . . When I didn’t get the mistrial, I think the damage was done. And, again, I can’t remember, but normally, often on those kinds of issues, I don’t seek the curative instruction because I feel like it just reminds the jurors of what they already heard.

App. 719.

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Gentry, 540 U.S. at 8 (quoting Massaro v. United States, 538 U.S. 500 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith, 386 S.C. at 567, 689

S.E.2d at 632; see also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). Declining to request a curative instruction has been explicitly upheld as valid trial strategy. Caprood, 338 S.C. at 110, 525 S.E.2d at 517 (2000) (finding trial counsel was not ineffective for failing to request a curative instruction when he explained he did not request such instruction as a trial strategy “because they tend to bring into focus precisely the item the objector has kept out”). “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, 308 S.C. at 122, 417 S.E.2d at 531 (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

Further, whether to grant or deny a mistrial is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). The grant of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that the prejudicial effect can be removed in no other way.” State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). This Court favors the exercise of wide discretion of the trial judge in determining the merits of a mistrial motion in each individual case. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988). Among the factors to be considered are the character of the testimony, the circumstances under which it was offered, the nature of the case, and the other testimony. Id. “Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error.” State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005).

Therefore, the PCR court correctly found Counsel articulated a valid trial strategy for not requesting a curative instruction such that his performance was not deficient, and notwithstanding any deficiency in error preservation, it was not reasonably likely this issue would have resulted in a reversal of the trial court's decision on appeal. App. 828-29. "Error in a criminal prosecution is harmless when it could not reasonably have affected the result at trial." State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991). The PCR court considered the "character of the testimony given, the circumstances under which it was offered, the nature of the case, the other testimony offered at the trial," as well as the trial court's "clear ruling that the testimony had not risen to 'the degree of prejudice that would make it impossible for the Defendant to have a fair trial.'" App. 828. The testimony Petitioner complains of was mentioned one time, early in the trial, and it was not brought up again by either the State or the defense. Further, part of Petitioner's defense was that these allegations arose out of a custody dispute, and Petitioner himself testified extensively about the circumstances surrounding his and Goodwin's divorce, reconciliation, and the protracted custody and child support dispute. App. 422-508. Because the Fifth Amendment issue was mentioned only in passing, was relevant to Petitioner's defense, and because Counsel articulated a valid reason for not requesting a curative instruction, the PCR court correctly found there was no deficiency or prejudice. Therefore, the Petition should be denied as to this question.

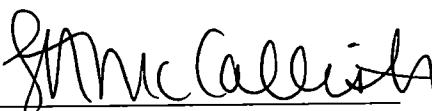
CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 16, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-000231

MAXWELL E. SIPES,

Petitioner,

v.

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:

Wanda H. Carter, Esquire
SC Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

This 16th day of February, 2018.



CAROLINE COLLINS
Administrative Coordinator



ALAN WILSON
ATTORNEY GENERAL

RECEIVED
FEB 16 2018
S.C. SUPREME COURT

February 16, 2018

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

Re: Maxwell E. Sipes v. State of South Carolina
Appellate Case No. 2017-000231
Lower Court Case No. 2012-CP-04-0084

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,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/cc
Enclosures

cc: Wanda H. Carter, Esquire (2 copies)