STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Letitia H. Verdin, Circuit Court Judge

MICHAEL LAMAR COUCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000159

PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUES PRESENTED

I. **Was trial counsel ineffective in abandoning self-defense and admitting Petitioner's guilt in closing argument?**

II. **Was trial counsel ineffective in failing to object to the admission of the recording of the 911 call?**

STATEMENT

On February 16, 2011, Petitioner was with his common-law wife, Sommer Grant, at Garry McCall's house. McCall consumed vodka and seven "Natural Light" beers. App. 131 ll. 6 – 15. Petitioner, Grant, and McCall ate dinner together before everyone fell asleep. App. 132 ll. 2 – 24. Petitioner woke up at 3:00 a.m. to see McCall and Grant kissing. When Petitioner made his presence known, McCall "turned, surprised, and pulled his knife" on Petitioner. McCall approached Petitioner with a knife and cut Petitioner in two places as well as kicked him. Petitioner acted in self-defense and disarmed McCall. McCall was cut on the cheek in the process. App. 261 ll. 10 – 20.

During the tussle, Grant jumped on Petitioner's back and was inadvertently struck. App. 261 ll. 21 – 23. A 9-1-1 call was allegedly made to the Oconee County Sheriff's Office around 3:00 or 3:30 a.m. the same morning. App. 81 l. 25 – App. 82 l. 25. Matt Patterson and Nina McKey, officers with the Walhalla Police Department, were dispatched to McCall's house. App. 83 ll. 4 – 9; App. 168 ll. 6 – 7. At that time, McCall stated to Patterson that Petitioner had cut him. App. 181 ll. 11 – 25. Patterson subsequently arrested Petitioner. App. 198 l. 21 – App. 199 l. 3.

On May 16, 2011, an Oconee County Grand Jury indicted Petitioner for attempted murder, criminal domestic violence of a high and aggravated nature, and possession of a weapon during a violent crime. App. 478 – 482. Represented by Blair Stoudemire, the State called Petitioner's case for trial before the Honorable Alexander S. Macaulay and a jury on October 17, 2011. R. Delane Rosemond represented Petitioner during the three-day trial.

Grant was unable to remember the details of the early morning incident at trial. App. 112 ll. 7 – 10; App. 116 ll. 14 – 20; App. 118 ll. 11 – 16. She also sought to claim spousal immunity

in order to avoid testifying against Petitioner. App. 107 ll. 8 – 25. A statement she provided to law enforcement following the incident alleged that Petitioner had a knife in his hand and hit her in the head with a glass coffee pot. App. 126 ll. 3 – 9.

The State attempted to authenticate a 911 call which was supposedly made on February 16, 2011. App. 80 l. 12 – App. 81 l. 20. Using Jeremy Kerr, an operator at the Oconee County Sheriff's Office, the State sought to admit this tape, even though Kerr neither heard the caller identify himself or herself nor was able to understand what was happening on the other end of the phone. App. 82 l. 5 – App. 86 l. 23. Counsel for Petitioner neither objected to the admission of the tape nor cross-examined Kerr. App. 86 l. 18 – App. 87 l. 5.

During closing arguments, counsel for Petitioner offered the following:

> And the burden of proof that we talked about comes from this table and that chair, and they have the responsibility to give you enough information that you can say, you know, I don't have a reasonable doubt in my mind that [Petitioner] tried to kill Harry McCall. And I do believe that there is reasonable doubt out there. **He may be guilty of something else, but it's not attempted murder.**
>
> ...
>
> Ladies and gentlemen, this particular case is important because [Petitioner] is charged with attempted murder. But he didn't do it. **He may be guilty of something else**, one of those lesser-includeds that you're going to hear about.

App. 309 ll. 4 – 11; App. 311 ll. 7 - 11 (emphasis added).

The jury found Petitioner guilty as indicted on the criminal domestic violence of a high and aggravated nature as well as the possession of a weapon during a violent crime. App. 359 ll. 10 – 20. On the attempted murder charge, the jury found Petitioner guilty of the lesser-included offense of assault and battery of a high and aggravated nature. App. 359 ll. 4 – 9.

Judge Macaulay sentenced Petitioner to twenty years' imprisonment on the assault and battery conviction, suspended to fifteen years with probation for five years. App. 373 ll. 19 – 25.

On the criminal domestic violence charge, Petitioner was sentenced to ten years' imprisonment suspended to five years with probation for five years. App. 374 ll. 5 – 10. On the possession of a weapon charge, Petitioner was sentenced to a term of five years' imprisonment. App. 374 ll. 1 – 4. Judge Macaulay structured the sentences to run concurrently. App. 374 ll. 11 – 19.

Petitioner's convictions were affirmed by the Court of Appeals. State v. Couch, Op. No. 2013-UP-313 (filed July 10, 2013).

Petitioner filed a timely application for post-conviction relief on July 29, 2014. App. 377. Petitioner's application contained allegations of ineffective assistance of counsel. The State made its Return on or about October 29, 2014. App. 384. PCR Counsel for Petitioner, Hugh Welborn, subsequently amended the application via letter dated October 29, 2015. App. 390.

An evidentiary hearing was conducted on October 24, 2016 before the Honorable Letitia H. Verdin. App. 392. R. Mills Ariail assumed representation of Petitioner due to health concerns of prior counsel, and Johanna C. Valenzuela represented the State. App. 397 ll. 15 – 17. Petitioner and trial counsel testified during the hearing. Petitioner's notes were included as an exhibit to the hearing. App. 483 – 496.

On December 28, 2016, Judge Verdin issued her order denying Petitioner relief. App. 466 – 476. She found that Petitioner failed to prove that Counsel rendered ineffective assistance. App. 474.

The undersigned initially filed a petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) on or about October 6, 2017. Following an Order from this Court dated May 24, 2018, this Petition follows.

ARGUMENT

I. Trial counsel was ineffective in abandoning self-defense and admitting Petitioner's guilt in closing argument.

"The right to defend is personal," and a defendant's choice in exercising that right "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Illinois v. Allen, 397 U.S. 337, 350-351, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). The decision of whether to concede guilt at trial is ultimately the defendant's to make. The concept of maintaining one's innocence goes to heart of the right to put up a defense, and that right belongs personally to the accused.

Trial counsel was appointed to represent Petitioner. App. 402 ll. 11 – 17. Petitioner only met with Counsel on one or two occasions before trial. App. 403 ll. 22 – 24. They never spoke of the elements of the crimes for which Petitioner was charged. App. 404 ll. 6 – 8. Counsel did not discuss the discovery materials with Petitioner; rather he sent to Petitioner who looked over them alone. App. 403 l. 22 – App. 406 l. 5. Initially, counsel communicated a plea offer of twenty years to Petitioner. App. 405 ll. 17 – 22.

During trial, counsel set the stage for self-defense. App. 40 ll. 13 – 16; App. 261 l. 18 – App. 262 l. 3; App. 311 l. 23 – App. 312 l. 2. Petitioner was therefore understandably surprised when Counsel abandoned the self-defense argument during his closing argument:

> I said [McCall] came at me with a knife. It was just instinct. It was self-defense. It wasn't, I'm guilty of something else. It was self-defense. I was not guilty of anything. It was self-defense.

App. 421 ll. 8 – 23.

Counsel and Petitioner had never discussed this strategy. App. 422 ll. 4 – 8. As Petitioner stated:

> [I]t was not only ineffective, but [Counsel] abandoned the required duty of loyalty to me. He did not simply make poor strategic choices, he acted with reckless disregard for my best interests and, at times, apparently, with the intention to weaken my case.

App. 422 ll. 15 – 22.

Counsel failed to consult with Petitioner regarding a change in strategy before closing arguments. Counsel "gave up" the idea of self-defense which he had set forth during trial. App. 421 ll. 8 – 23. Counsel stated at the evidentiary hearing that he and Petitioner spent "some time" discussing self-defense. App. 443 ll. 13 – 21. A jury charge was drafted in this vein. Id. Counsel admitted Petitioner "was pretty adamant about self-defense trial strategy." App. 443 l. 22 – App. 444 l. 5. Counsel even discussed this trial strategy:

> We started out arguing that - - well, not started out, but we argued that Mr. McCall had the knife. It was in his house. And certainly, Mr. Couch, in a struggle with Mr. McCall, obtained that knife, I believe.

App. 449 ll. 2 – 12.

As Petitioner noted:

> Defense counsel's performance was not only ineffective, but counsel abandoned the required duty of loyalty to his client; counsel did not simply make poor strategic choices; he acted with reckless disregard for my best interest and at times, apparently, with the intention to weaken his client's case.

App. 492.

Discussion

To prove ineffective assistance of counsel, a PCR applicant must establish that (1) counsel failed to render reasonably effective assistance under prevailing professional norms and (2) he was prejudiced by counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). To establish prejudice, the applicant must show, but for counsel's errors, there is a

reasonable probability the result of the trial would have been different. Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). Where counsel articulates a valid reason for employing certain strategy, the conduct will not be deemed ineffective. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). If there is any probative evidence to support the findings of the PCR judge, those findings must be upheld. Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000).

A defendant does not surrender control entirely to counsel, for the Sixth Amendment, in "grant[ing] to the accused personally the right to make his defense," "speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant." Faretta v. California, 422 U.S. 806, 819-820, 95 S.Ct. 2525, 45 L.2d.2d 562 (1975). As set forth in McCoy v. Louisiana, a recent case from the Supreme Court:

> The lawyer's province is trial management, but some decisions are reserved for the client—including whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. Autonomy to decide that the objective of the defense is to assert innocence belongs in this reserved-for-the-client category.

McCoy v. Louisiana, 138 S. Ct. 1500, 1503 (2018). In McCoy, trial counsel told the jury during the guilt phase of a capital case that McCoy "committed [the] three murders" in an attempt to concede guilt while arguing that McCoy lacked the mental state to form intent. Id. This was done against McCoy's wishes. Id. The Supreme Court held that "when a client makes it plain that the objective of 'his defence' is to maintain innocence of the charged criminal acts and pursue an acquittal, his lawyer must abide by that objective and may not override it by conceding guilt." Id.

According to McCoy, an analysis under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 is inapplicable because "the violation of McCoy's protected autonomy right **was complete when the court allowed counsel to usurp control within**

McCoy's sole prerogative." McCoy, supra. (emphasis added). Violation of a defendant's Sixth Amendment-secured autonomy ranks as structural error and is not subject to harmless-error review. See, e.g., McKaskle v. Wiggins, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944, 79 L.Ed.2d 122; United States v. Gonzalez–Lopez, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409; Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31. An error is structural if it is not designed to protect defendants from erroneous conviction, but instead protects some other interest, such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." Weaver v. Massachusetts, 582 U.S., at ——, 137 S.Ct., 1899, 1908, 198 L.Ed.2d 420 (2017) (citing Faretta, 422 U.S., at 834, 95 S.Ct. 2525).

Counsel's admission of a client's guilt over the client's express objection is error structural in kind, for it blocks the defendant's right to make a fundamental choice about his own defense. That holding extends to Petitioner's case, because the counsel for Petitioner in the matter *sub judice* likewise sidestepped Petitioner's Sixth Amendment-secured autonomy. The resulting violation should afford him a new trial without any need to first show prejudice.

"Implying a client's guilt by repeatedly lending support to the state's version of events... is virtually tantamount to a concession of guilt." Fisher v. Gibson, 282 F.3d 1283, 1304 (10th Cir. 2002). Counsel must develop a trial strategy and discuss it with the client, explaining why conceding guilt would be the best option, in counsel's opinion.

Once Petitioner communicated to the trial court his innocence, counsel should have realized that a concession of guilt was removed from the realm of possible trial strategies. The trial court's allowance of counsel's admission of Petitioner's guilt was incompatible with the Sixth Amendment. Because the error was structural, a new trial is the correct remedy.

Assuming, *arguendo*, that this Court does not apply a structural error analysis to Petitioner's case, prejudice is abundantly evident from counsel's departure from the previously established trial strategy. Petitioner provided a statement to law enforcement. App. 260 l. 4 – App. 262 l. 14. Very plainly, it set forth: "I acted in self-defense and was not trying to kill this man." Id.

When a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 544-45, 500 S.E.2d 489, 492-93 (1998). A person is justified in using deadly force in self-defense when: (1) the defendant was 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 prudent man or ordinary firmness and courage would have entertained the same belief ... ; and (3) the defendant had no other probable means of avoiding the danger and losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. Id. at 545, 500 S.E.2d at 493 (citing State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

In Petitioner's case, the State did not disprove these elements beyond a reasonable doubt. Rather, Petitioner's counsel accomplished that in closing.

Counsel's prejudicial remarks violated the duty of loyalty to Petitioner and constituted an unwarranted concession of guilt. Without discussing the concede guilt approach with Petitioner, Counsel admitted Petitioner's guilt at a critical stage of trial and breached the duty of loyalty. Viewed in light of the facts of Petitioner's case and the strategy of self-defense pursued by counsel, these remarks were prejudicial to Petitioner.

Although Petitioner pleaded not guilty and denied being the aggressor, counsel improperly conceded his guilt. These actions did not further a trial strategy and constituted a complete surrender to the State. Admitting Petitioner's guilt, in a case where self-defense has been asserted repeatedly, is not a reasonable trial strategy. Petitioner was not informed of the strategy and did not consent to such a tactic.

II. Trial counsel was ineffective in failing to object to the admission of the recording of the 911 call.

At the evidentiary hearing, counsel was unable to recall whether he played the 911 tape for Petitioner: "I can't remember whether or not I actually played that 911 call for him prior to the trial. As I looked on my outline here, I don't see where it was saved to my iPad or my laptop to take with me." App. 440 l. 22 – App. 441 l. 4; App. 454 l. 19 – App. 455 l. 9. Petitioner indicated that the 911 tape was never mentioned by counsel. App. 407 ll. 1 – 12. Notably, counsel roundabout complained about listening to the tape during the State's closing arguments when Petitioner asked to leave:

> What stands out about that call, that call was played during the closing arguments and Mr. Couch leaned over to me and said, 'This is just terrible. Can I leave?' I said, 'No, you can't leave. If I've got to sit there and listen to it, you gotta sit there and listen to it.'

App. 441 ll. 5 – 18. Counsel characterized the 911 tape as graphic: "every time you heard that smack, you heard it." App. 455 ll. 14 – 18.

Counsel recalled that the 911 call was entered through the 911 operator. Counsel was unable to formulate a reason for objecting, claiming that "911 tapes routinely come in in courts throughout South Carolina." App. 441 l. 21 – App. 442 l. 4; App. 455 ll. 19 – 24. Making a second concession, in addition to Petitioner's guilt, counsel testified at the evidentiary hearing

that the 911 call "was a fair and accurate representation of - - which was testified by the 911 operator that particular night. There was no doubt in my mind that that 911 tape was not coming in." Id. Petitioner, however, performed the legal research that counsel did not. App. 407 l. 13 – App. 411 l. 18; App. 483 – App. 497.

Similar to the uncertainty surrounding whether the tape was played for Petitioner prior to trial, counsel could likewise not recall whether the two even discussed grounds for suppressing the recording:

> Q: Okay. Did you discuss with him - - I know one of [Petitioner's] big things today is that's not - - nobody authenticated the tape. Nobody could prove that was [his] voice. Nobody could prove that was Summer on the tape. Any of those issues. Did you go over that with him and have a discussion with him about that?
>
> A: I look at my trial outline that I created. Certainly, there was a portion on here that we would have talked about. It's under the strong parts, weak parts. The weak parts that we went over was the 911 tape, and how bad it was. Now, I've seen worse 911 tapes, but for this particular case, it was pretty, pretty bad.

App. 455 l. 25 – App. 456 l. 12. Interestingly, counsel did not respond to the portion of the question regarding possible means for suppression; he only spoke to how it weakened Petitioner's case. As prejudicial as the 911 call was, counsel did not seek to suppress it. He resigned himself, and Petitioner's intertwined fate, to the incorrect notion that no objection could have been made to keep the tape out.

Counsel indicated that the 911 operator testified that the call "came up on his screen coming from the city of Walhalla" and the particular address where law enforcement was dispatched. App. 442 ll. 5 – 10. The 911 call is a jumbled mess of yelling and the dispatcher who answered the phone repeatedly saying "Hello?" At no point in time does the caller provide a name or address.

Kerr, the operator, testified as follows:

> I got the call, I said, Oconee County 9-1-1. I could hear a lot of screaming in the background, yelling. I kept saying, Oconee County 9-1-1, hello, hello. I tried to stay quiet for a minute and listen to the background, get background noise. **Still couldn't get anybody to the phone at the time**. Listened.
>
> And then I tried to go to phase two, which all cell phones, they have, most cell phones nowadays that are 9-1-1 capable, which the cell phone companies make it where if you are in an emergency you don't know where you are at, you can get a GPS location. So, at that point I transmitted to phase two and they gave me a location **or about a location**.

App. 82 ll. 5 – 19. (emphasis added). Kerr indicated during direct examination that the approximate location was eight to thirteen feet from an address on South Laurel Street. App. 82 ll. 20 – 25. Kerr then dispatched two officers to the address. App. 83 ll. 1 – 9.

Counsel's understanding of evidence law failed to take into account multiple objections which could have been raised. In addition to objecting on the grounds that the call's probative value was substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE, counsel could have attacked the authenticity of the tape at a pre-trial hearing, at trial, or during cross-examination. Because none of these steps were taken, the call came in uncontested, and Petitioner was left with no recourse on direct appeal.

Discussion

Rule 901(a) of the South Carolina Rules of Evidence requires authentication "as a condition precedent to admissibility ... by evidence sufficient to support a finding that the matter in question is what its proponent claims." For this purpose, the rule provides a list of ten examples illustrating how a party can properly authenticate evidence. See Rule 901(b), SCRE. However, Rule 901 explicitly states that that the examples listed in subsection b are "by way of illustration only" and are not intended to be an exhaustive list of the ways to properly authenticate evidence. The rule provides a voice maybe identified "by opinion based upon

hearing the voice at any time under circumstances connecting it with the alleged speaker." Rule 901(b)(5), SCRE. Additionally, telephone conversations with an individual can be authenticated "by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if ... circumstances, including self-identification, show the person answering to be the one called." Rule 901(b)(6), SCRE.

The first note under the rule is relevant to Petitioner's matter:

> In considering the rules in Article IX, it is important to remember that these rules relate to how a party authenticates evidence to show it is what the party claims. Even when evidence is properly authenticated, it must still be admissible under the other rules of evidence. See State v. Jeffcoat, 279 S.C. 167, 303 S.E.2d 855 (1983).

Counsel in Petitioner's case did not challenge the authenticity of the tape or its admissibility, even though both should have been called into question. Since the tape was inadmissible and unauthenticated, counsel's failure to object to the introduction of that evidence fell below an objective standard of reasonableness. See Strickland v. Washington, supra.

The South Carolina Court of Appeals has held that "[a]uthentication of a 911 caller's identify can be accomplished by combining the caller's self-identification with circumstances surrounding the call. State v. Thompson, 420 S.C. 386, 387, 803 S.E.2d 44, 51 (Ct. App. 2017). However, the 911 call in Petitioner's case did not have a self-identifying caller. As a result, the call could not be authenticated, and counsel was ineffective for failing to challenge the call. Petitioner was correct in his contentions: "While [the] record includes evidence that the 9-1-1 telephone call was properly recorded, evidence is lacking as required by [SCRE] 901 to identify the voice of the person making the call as that of the alleged victim in this case." App. 483 – App. 497. Additionally, as set forth by Petitioner:

> No cell phone was found ... or collected and put into evidence.

> Neither Officer Kerr [n]or Sgt. Patterson had any personal knowledge of who made the cell phone call and there was no evidence linking a cell phone that supposedly made the call, therefore the officers lacked any personal knowledge of the origin or the 'condition precedent' and the recording should not have been admitted.

App. 487.

In Thompson v. State, this Court held that counsel's failure to object to inadmissible evidence was deficient performance and that Thompson demonstrated the prejudice required to establish ineffective assistance of counsel. Op. No. 27785 (S.C. Sup. Ct. filed March 21, 2018) (Shearouse Adv. Sh. No. 12 at 14). Thompson's trial counsel failed to object to inadmissible hearsay and improper bolstering testimony in a criminal sexual conduct case. Id. This Court held that the "testimony was patently inadmissible, and there was no strategic reason for trial counsel not to object."

The same can be said for Petitioner's matter. Counsel testified that he did not object simply because he believed all 911 tapes were admissible and that a trial judge would not exclude this one. He did not offer a strategic reason for not objecting; there was no testimony that he was attempting to maintain favor with the jury. He simply stayed silent based upon the mistaken belief that the 911 tape was admissible. He failed to fill the adversarial role required by the Sixth Amendment.

As to the prejudice prong of Strickland v. Washington, supra, Petitioner was prejudiced by counsel's deficient performance because the improperly admitted tape was one of only a few pieces of evidence that the State had against Petitioner. To satisfy the prejudice prong of Strickland, Petitioner must demonstrate a "reasonable probability" that the outcome of the trial would have been different had trial counsel not committed the deficiencies outlined

above. See Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id.

The 911 call was referenced repeatedly by both parties at trial. Undoubtedly, the screaming and yelling heard on the tape is graphic. The Order of Dismissal devoted two paragraphs to summarizing testimony surrounding the 911 call. App. 468. Under the findings of fact and conclusions of law heading, the Order of Dismissal devoted six sentences to discussing zero law. App. 472. Bizarrely, the testimony summary appears to have been transplanted into the findings of fact and conclusion of law section, with a single sentence added: "Applicant has failed to prove counsel was deficient or that he suffered any prejudice." App. 472. This contention is not supported by any law and therefore cannot stand. Additionally, there is no evidence in the Order of Dismissal, under the 911 call section, that can support the PCR judge's findings.

This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court 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). In this instance, there is no probative value to support the PCR court's findings.

Without the tape, the jury likely would have agreed with Petitioner's repeated assertions that he was innocent and issued a not guilty verdict. Counsel failed to object to the admission of the highly prejudicial and graphic recording. Had counsel objected, the trial court would have had the opportunity to rule on the admissibility of the evidence. Had the evidence been admitted over counsel's objection, this issue could have been raised on direct appeal. However, Petitioner was not afforded any of those protections.

Much like counsel's complete and total surrender in the form of admitting Petitioner's guilt, counsel resigned himself to the fact that there was no way to prevent the admission of the 911 tape. He failed to object to the improper admission of the tape. The PCR court's assertion that Petitioner "has failed to prove counsel was deficient or that he suffered any prejudice" is an error of law, and the Order should be reversed.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on this issue.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of June, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Letitia H. Verdin, Circuit Court Judge

MICHAEL LAMAR COUCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Michael L. Couch, #282654, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 25th day of June, 2018.

Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me this 25th day of June, 2018.

ATTORNEY FOR PETITIONER

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022