

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Greenville County  
Court of Common Pleas  
The Honorable Perry H. Gravely, Circuit Court Judge

---

Appellate Case No. 2018-000627

---

TITUS L. ROUSE,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

---

**PETITION FOR WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General  
SC Bar No. 101813

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR PETITIONER

**INDEX**

INDEX ..... i

STATEMENT OF ISSUE ON CERTIORARI.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....4

ARGUMENT .....6

The PCR court erred in granting Rouse post-conviction relief and remanding the matter to the Court of General Sessions for a new trial, where there is no evidence of probative value to support the PCR court’s finding that Rouse’s guilty plea was induced by counsel’s handling of canine evidence.....6

CONCLUSION.....9

## STATEMENT OF ISSUE ON CERTIORARI

Did the PCR court err in granting Rouse post-conviction relief and remanding the matter to the Court of General Sessions for a new trial, where there is no evidence of probative value to support the PCR court's finding that Rouse's guilty plea was induced by counsel's handling of canine evidence?

## STATEMENT OF THE CASE

Titus L. Rouse (Rouse) is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. In February of 2014, the Greenville County Grand Jury indicted Rouse for trafficking heroin (2012-GS-23-6017), habitual traffic offender (2012-GS-23-6417), and driving under suspension (2013-GS-23-0846). Richard H. Warder, Esquire and C. Rauch Wise, Esquire represented Rouse. Joyce K. Monts, Esquire represented the State. On August 6, 2014, Rouse pled guilty before the Honorable Edward W. Miller. Judge Miller sentenced Rouse to concurrent terms of twelve years for trafficking heroin (more than four grams), five years for habitual traffic offender, and six months for driving under suspension (third or subsequent offense). Applicant did not appeal his guilty plea or sentence.

On February 9, 2015, Rouse filed an application for post-conviction relief (2015-CP-23-0995) alleging ineffective assistance of counsel. Rouse filed additional amendments to his application on April 15, 2015, February 4, 2016, October 5, 2016, and April 12, 2017. Petitioner made its Return on June 3, 2015 requesting an evidentiary hearing be held. An evidentiary hearing was convened on April 21, 2017, at the Greenville County Courthouse before the Honorable Perry H. Gravely. Tricia Blanchette, Esquire, represented Rouse. DeShawn Mitchell, Esquire of the South Carolina Attorney General's Office, represented Petitioner. At the hearing, Rouse testified on his own behalf. The following people also testified: C. Rauch Wise, Esquire, Richard H. Warder, Esquire, the Honorable Robert F. Simms, Edward Cooper, John Redman and Michael Gould who testified via Skype videoconference. By an order filed December 1, 2017, PCR court denied Rouse relief. On January 8, 2018, Rouse filed a Motion to Reconsider. After reconsideration, on March 29, 2018, the PCR court issued an order granting relief for Rouse.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari and appendix follows.

## STANDARD OF REVIEW

The standard of review in post-conviction relief (PCR) cases depends on the specific issue before the reviewing court. It will defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). In a PCR proceeding, the petitioner bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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. at 441, 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. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. An applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel, and both prongs must be established by an applicant to receive relief. Strickland, 466 U.S. at 687. First, an applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, at 688. 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

**The PCR court erred in granting Rouse post-conviction relief and remanding the matter to the Court of General Sessions for a new trial, where there is no evidence of probative value to support the PCR court's finding that Rouse's guilty plea was induced by counsel's handling of canine evidence.**

In granting Rouse's application for post-conviction relief, the PCR judge found Rouse had met his burden of proof and he was deprived of constitutionally effective assistance of counsel. Specifically, in granting Rouse' application for post-conviction relief, the PCR judge concluded that trial counsel was ineffective for advising Rouse to enter a guilty plea due to canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence prior to trial. Here, the PCR court improperly granted Rouse's application for post-conviction relief as there was no evidence of probative value to support the court's findings on this issue.

In its order of dismissal, the PCR court noted Rouse entered his guilty plea as a result of counsel's advice to forego the trial due to the strength of the evidence, specifically the canine evidence and that the advice to forego trial was in complete contrast to counsel's pre-trial strategy to obtain a directed verdict due to the insufficiency of the evidence. The PCR court found as a result of a thorough review of the record, testimony and evidence offered that this advice was deficient and amounted to ineffective assistance of counsel. Finally, the court found Rouse wanted to proceed to trial and only chose to forego trial based upon the advice of counsel.

There is no probative evidence to establish plea counsels were constitutionally deficient in advising Rouse to plead guilty. Rouse was represented by two plea counsels, C. Rauch Wise, Esquire, and Richard H. Warder, Esquire. Mr. Wise represented Rouse for only a few months prior to the guilty plea while Mr. Warder was Rouse's counsel since the inception of his case. During the evidentiary hearing, Mr. Warder testified he thought there was a lot of evidence

against Rouse including shoes which Rouse claimed ownership of that were found next to the drugs. (App.p.273). He also testified there was other evidence like Rouse jumping out of his car that he had admitted to police he was driving and the car being parked diagonally with the engine left running. Mr. Warder testified Rouse's shoes had come off at the sidewalk and his statement to the police was that he ran out of them. (App.p.273). Concerning the canine evidence, Mr. Warder testified he had not placed much weight on it. He testified he had assumed that the dog track had not produced anything and this was a case that neither dog had played a particular role so he was not concerned with the dog. (App.p.274). Additionally, Mr. Warder testified the dog was a non-issue in that he did not lead to either the drugs or Rouse. (App.p.275).

Here, from Mr. Warder's testimony it appears he believed there was other substantial evidence against Rouse. Furthermore, it can be gleaned from Mr. Warder's testimony that he knew the canine evidence was not strong and in his words a "non-issue". Because of this, there is no probable evidence in the record to support the PCR's court ruling as Rouse only became aware of concerns with the canine evidence after he pled guilty and even before the guilty plea his primary plea counsel had concluded the canine evidence was insignificant in terms of the evidence in Rouse's case.

In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, (1985), "[I]n order to satisfy the

'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

Here, there is no evidence of probable value to support the PCR court's decision. A review of Rouse's testimony from the evidentiary hearing reveals that Rouse did not learn about concerns with the canine evidence until after he had pled guilty and therefore, there is no possible way it could have induced his guilty plea. When asked at the evidentiary hearing about it the following exchange took place:

PCR Counsel: And at that time were you -- was it conveyed to you the concern about the K-9 evidence?

Rouse: Well, that didn't come til afterwards because I asked Mr. Wise what went wrong? Why -- what happened? And that's when he wrote me the letter telling me that it's because of the dog. If it wasn't for that, you know, we would have went on to trial. That's why we told you to plead guilty.<sup>1</sup>

(App.p.270)

In finding prejudice in its order of dismissal, the PCR court found it is clear that Rouse wanted to proceed to trial and only chose to forego trial based upon the advice of counsel. However, the testimony presented by Rouse at the evidentiary hearing does not bear out that Rouse's decision to plead guilty was a result of bad advice about the canine evidence as his testimony indicated he did not consider this advice until after he plead guilty. Therefore, there is no probable evidence in the record to support the PCR court's finding that there was a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial.

Based on the foregoing, the post-conviction relief court erred in granting Rouse relief. Therefore, Petitioner asks this Court to grant certiorari and ultimately reverse the lower court's grant of post-conviction relief.

---

<sup>1</sup> Mr. Wise testified at the evidentiary hearing he sent Rouse a letter after he had pled guilty.

**CONCLUSION**

For all the foregoing reasons, the State requests that this Court grant this petition for a writ of certiorari and reverse the post-conviction relief court's grant of a new trial.

Respectfully submitted,

ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General  
SC Bar No. 101813

By:   
\_\_\_\_\_  
ATTORNEYS FOR PETITIONER

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

August 10, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Greenville County  
Court of Common Pleas  
The Honorable Perry H. Gravely, Circuit Court Judge

---

Appellate Case No. 2018-000627

---

TITUS L. ROUSE,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

---


**CERTIFICATE OF SERVICE**

---

I, DeShawn H. Mitchell, certify that I have today served the within **Petition for Writ of Certiorari** upon Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**Tricia A. Blanchette, Esquire**  
**Post Office Box 2147**  
**Leesville SC 29070**

I further certify that all parties required by Rule to be served have been served. This 10<sup>th</sup> day of August, 2018.



---

DESHAWN H. MITCHELL  
Assistant Attorney General  
S.C. Bar # 101813

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEY FOR PETITIONER



RECEIVED

AUG 10 2018

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

August 10, 2018

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

**Re: Titus L. Rouse v. State of South Carolina**  
**Appellate Case No.: 2018-000627**  
**Lower Court Case: 2015-CP-23-0995**

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies of the **Petition for Writ of Certiorari** along with the Appendix in the above-referenced case.

Sincerely,

DeShawn H. Mitchell  
Assistant Attorney General  
SC Bar #101813

DHM/jacc  
Enclosures

cc: Tricia A. Blanchette, Esquire  
Victim Advocacy Division (without enclosure)