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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari to Aiken County
Court of Common Pleas
The Honorable Robert E. Hood, Post-Conviction Relief Court Judge
The Honorable Doyet A. Early, III, Trial Judge

Appellate Case No. 2016-002458

ANTHONY MARQUESE MARTIN, SCDC #345836

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES PRESENTED ON APPEAL

- I. The post-conviction relief court properly determined Petitioner failed to establish counsel was constitutionally ineffective in his handling of Petitioner's mother as a defense witness where he failed to present any probative evidence in support of this allegation and there is no reasonable probability the outcome of the trial would have been different had counsel elicited additional information from Petitioner's mother.
 - A. Petitioner failed to present any probative evidence to support this allegation, and therefore, he failed to meet his burden of proof.
 - B. There is no reasonable probability the outcome of the trial would have been different had counsel elicited additional information from Petitioner's mother.

- II. The post-conviction relief court properly determined Petitioner failed to establish counsel was constitutionally ineffective in failing to object to testimony from a detective that Petitioner did not give a statement to law enforcement and a portion of the State's closing argument referencing no prior knowledge of an alibi defense.
 - A. Petitioner failed to establish counsel was deficient for failing to object to a non-responsive utterance by Detective Sherman that Petitioner did not provide a statement to law enforcement.
 - B. Petitioner failed to establish counsel was deficient for failing to object to a portion of the State's closing argument referencing no prior knowledge of an alibi defense.
 - C. Petitioner failed to establish any resulting prejudice from either portion of his trial.

STATEMENT OF THE CASE

In April of 2010, Petitioner Anthony Marquese Martin was arrested in Atlanta, Georgia, following an investigation into the armed robbery of a North Augusta branch of Bank of America in April of 2009. Shortly after Petitioner was arrested, the Aiken County grand jury indicted him for one count of armed robbery. In June of 2010, the Aiken County grand jury additionally indicted Petitioner for one count of criminal conspiracy.

On April 25, 2011, a jury trial was commenced in the Aiken County Court of General Sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. C. David Hayes, Esquire, and DeGrant Gibbons, Esquire, represented Petitioner. Assistant Solicitors Suzanna M. Ringler and Elizabeth B. Young of the Second Circuit Solicitor's Office prosecuted the case. At the conclusion of trial, the jury convicted Petitioner as indicted. The trial judge sentenced Petitioner to concurrent terms of imprisonment of twenty years for armed robbery and five years for criminal conspiracy.

Petitioner then timely filed a notice of appeal. Appellate Defender LaNelle C. Durant of the South Carolina Commission on Indigent Defense filed a brief on Petitioner's behalf, alleging the trial court erred in denying his motion to suppress evidence of flight. Following oral argument, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences in a published opinion. State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013). In affirming his convictions, the Court of Appeals found the evidence of flight was inadmissible because "the State failed to establish a nexus between the robbery of the Bank of America in Aiken and Martin's deceitful answers" nearly a year later. Id. at 30, 742 S.E.2d at 47-48. Despite finding error in the admission of the flight evidence, the Court of Appeals found the admission harmless

based on “ample competent evidence of Martin’s guilt.” Id. at 31, 742 S.E.2d at 48. The Court elaborated,

Harmon, Johnson, and Dixon testified consistently that Martin had served as the mastermind and the gunman in the robbery for which each of them faced a charge of bank robbery and a possible prison sentence of thirty years. Eyewitness descriptions of the gunman’s attire and pillowcase-style money bag comported with the co-conspirator’ descriptions of the clothing and bag Martin carried on the day of the robbery. Furthermore, Jacob McKie, a disinterested party, recalled loaning Martin a small, black pellet gun the night before the robbery. In view of this evidence, Officer Poythress’s testimony likely had no effect on the jury’s determination of guilt. Therefore, any error the trial court committed in admitting the challenged evidence was harmless.

Id.

Petitioner and the State both filed petitions for rehearing, and once those were denied, both filed petitions for certiorari with this Court. By order dated July 25, 2014, this Court denied both petitions. The Remittitur was returned to the circuit court on July 30, 2014.

On March 16, 2015, Petitioner filed a *pro se* application for post-conviction relief, alleging the following grounds for relief:

1. Ineffective Assistance of Trial Counsel
 - a. Counsel failed to object to constructive amendment of armed robbery indictment
 - b. Counsel failed to object to solicitor’s improper closing argument.

Respondent made its return on April 15, 2015, and requested an evidentiary hearing. Petitioner subsequently amended his application on May 12, 2016, to include additional allegations.

Petitioner alleged he was being held unlawfully based on the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. Counsel failed to object to constructive amendment or armed robbery indictment.
 - b. Counsel failed to object to solicitor’s improper closing argument.
 - c. Counsel failed to investigate telephone records to establish alibi defense.

- d. Counsel failed to call additional alibi witnesses at trial.
- e. Counsel failed to request a curative instruction regarding Detective Poythress' testimony that Applicant did not want to provide a statement.

An evidentiary hearing was held on September 20, 2016, at the Aiken County Courthouse before the Honorable Robert E. Hood, circuit court judge. Petitioner was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. At the start of the hearing, Petitioner orally amended his applicant to include an allegation of ineffective assistance of counsel for failure "to utilize State's witnesses effectively" and failure "to put forth an alibi defense as it relates to actual witnesses that were called on his behalf." Petitioner testified on his own behalf. Respondent presented testimony from trial counsels Hayes and Gibbons. At the conclusion of the hearing, Judge Hood took the matter under advisement.

On October 26, 2016, Judge Hood denied and dismissed the application in full by written order. This order was subsequently filed with the Aiken County Clerk of Court on November 9, 2016.

On December 6, 2016, Petitioner filed a notice of appeal. On July 26, 2017, Appellate Defender Laura Baer of the South Carolina Commission on Indigent Defense filed the petition for a writ of certiorari and appendix on Petitioner's behalf. On December 13, 2017, Respondent, through Assistant Attorney General Coleman, filed its return to the petition. On January 26, 2018, Petitioner filed a reply to the return. On May 24, 2018, this Court granted certiorari and instructed parties to file briefs as provide by Rule 243(i), SCRCR.

STATEMENT OF FACTS

At around 12:00 p.m. on April 23, 2009, Mona Floyd, a teller at a Bank of America branch in North Augusta, South Carolina, was working at her counter when a man entered the bank. (App. pp. 37-38; p. 40). The man approached her at the counter, asked a few questions about different types of accounts, looked around the bank, and then left after only a minute or two. (App. pp. 40-41). After the man left, Floyd requested more money to handle the needs of any customers who might come in and received \$12,000 in cash from the vault. (App. pp. 41-42). A few minutes later, another man entered the bank, ordered everyone inside to get onto the floor, pointed a gun, threw a pillow case at Floyd, and stated: "Put the money in the bag, [b]itch." (App. pp. 43-45; p. 52; p. 54; p. 115). Floyd put the money from the vault into the man's pillow case, and the robber, who was wearing a dark hoodie and something over his face, demanded more money in larger denominations. (App. pp. 44-45; p. 54; p. 112; p. 116). In response, Floyd tried to remove the smaller denominations from the pillow case, but the robber grabbed it and fled. (App. p. 44; p. 56; pp. 112-113). Floyd then triggered an alarm, and another bank employee called 911 to report the robbery. (App. p. 46; pp. 55-56).

Meanwhile, Tammy Murphy, another teller at the Bank of America branch, was getting into her car in the parking lot when she observed a man wearing black hooded clothing and something over his face run out of the bank. (App. pp. 58-61). Murphy realized the man just robbed the bank, and she saw a customer in the parking lot yell at the robber and then fire shots at him when the robber did not stop. (App. pp. 61-62; p. 211). Patricia Christopher, who was at a car wash next to the bank, heard the gunshots, believed the sound was from firecrackers, and

then observed a red Ford Mustang quickly leaving the area.¹ (App. p. 77; pp. 153-154). Christopher saw two men in the front seats of the car, but she was unable to see if anyone was in the rear seats because the vehicle was moving too rapidly. (App. p. 155).

Shortly thereafter, Detective Luke Sherman of the North Augusta Department of Public Safety responded to the scene of the robbery and spoke with the witnesses inside of the bank. (App. pp. 208-209). He learned a black male wearing all black clothing, a hoodie, and gloves entered the bank, pointed a gun, demanded money, and absconded with \$12,000 in cash. (App. p. 209). The detective further learned a person behaving in a suspicious manner came into the bank shortly before the robbery and a red Ford Mustang was observed leaving the scene. (App. p. 210; p. 213). Detective Sherman then obtained a photograph of the suspicious person and released it to the media. (App. p. 210).

Subsequently, Detective Sherman went to the home of Roosevelt Johnson, who owned a red Ford Mustang and was stopped by law enforcement officers on two separate occasions on the day of the crime, and attempted to speak to him about the robbery. (App. pp. 215-216). However, Johnson claimed he was at the mall during the relevant time frame and requested to speak with an attorney. (App. pp. 215-216). Detective Sherman then left Johnson's home but saw a red Ford Mustang that appeared to have been recently washed in Johnson's driveway. (App. p. 216).

On the day after the robbery, Quinton Harmon, the suspicious man who entered the bank shortly before the robbery, learned his photograph was printed in the newspaper in connection to the robbery. (App. p. 87). In response, Harmon spoke with a friend in law enforcement and then went to the police headquarters to discuss the robbery. (App. pp. 87-88; p. 92; pp. 213-214). At

¹ Murphy also observed the red Ford Mustang, and she was able to obtain the vehicle's license plate number. (App. pp. 63-64; p. 213).

the police headquarters, Harmon met with Detective Sherman and initially claimed he was brought to the bank by his girlfriend in order to open an account. (App. pp. 87-88; pp. 92-93; p. 214). However, Detective Sherman called Harmon's attention to some inconsistencies in his version of events, and Harmon confessed to being involved in the robbery. (App. pp. 93-96; p. 214). Additionally, Harmon implicated Johnson, David Dixon, and a man who went by "T-Money" in the crime. (App. pp. 214-215). Thereafter, Harmon, Johnson, and Dixon were all arrested and charged for their roles in robbing the bank. (App. p. 69; p. 127; p. 158; p. 215).

During the course of the investigation into the incident, Detective Sherman learned "T-Money" attempted to purchase a bus ticket to Atlanta immediately after the robbery but his grandmother still lived near Harmon. (App. pp. 218-219). Through that information, Detective Sherman discovered the mother of "T-Money" lived in Snellville, Georgia. (App. p. 219). In response, he asked officers in Georgia to go to the mother's home, and they were able to obtain Petitioner Anthony Marquese Martin's name and date of birth from Petitioner's grandmother, who was at Petitioner's mother's home. (App. pp. 219-220). Detective Sherman then acquired a photograph of Petitioner and showed it to Harmon and Johnson. (App. p. 220). Both of the men identified Petitioner as "T-Money." (App. p. 220).

Thereafter, on April 13, 2010, Officer Christopher Poythress of the DeKalb County Police Department in Atlanta, Georgia, was notified Petitioner might be staying at an apartment complex in the area. (App. p. 200). Officer Poythress went to the apartment complex looking for Petitioner, did not get a response when he knocked on the door to the apartment Petitioner was believed to be staying at, and left for the day. (App. pp. 200-201). However, Officer Poythress returned the next day, spoke with an employee at the apartment complex, confirmed Petitioner stayed there, and learned Petitioner was seen earlier walking up a nearby street. (App.

p. 201). The officer then observed Petitioner walking back towards the apartment complex and stopped him. (App. pp. 201-202). After stopping him, Officer Poythress asked Petitioner what he was doing at the apartment complex, and Petitioner claimed to live there. (App. p. 202). The officer then asked Petitioner for his name, date of birth, and identification. (App. pp. 202-203). Petitioner claimed his name was "Troy Brown" and provided a false date of birth. (App. pp. 202-203). The officer then again asked Petitioner what he was doing at the apartment complex, and Petitioner offered a different explanation than he originally provided, claiming he was there to visit his sister. (App. pp. 202-203). In response, Officer Poythress detained Petitioner until his identity could be verified, used a photograph of Petitioner to confirm his identity, and discovered Petitioner had provided a false name and date of birth. (App. p. 203). Petitioner was subsequently arrested, transported to South Carolina, and indicted for armed robbery and criminal conspiracy, and he proceeded to trial. (App. p. 6; pp. 526-532).

At the outset of trial, the solicitor noted she intended to introduce testimony and evidence establishing Petitioner fled to Atlanta after the robbery and provided false information to law enforcement officers in Atlanta several months later when they went to arrest him. (App. pp. 24-25). The solicitor further asserted she intended to introduce evidence establishing Petitioner was on probation at the time of the robbery and fled to Georgia without providing notice and without transferring his probation. (App. p. 25). In response, Petitioner objected to the admission of any evidence related to his flight to Georgia. (App. pp. 25-26). Initially, Petitioner argued he was convicted of giving a false name and information to the officer in Georgia and, therefore, that particular evidence was inadmissible character evidence. (App. pp. 24-25). Furthermore, Petitioner argued the flight evidence itself was inadmissible because there was no evidence establishing that he knew the investigation into the robbery was taking place or the police in

Georgia were seeking him in connection to the robbery. (App. pp. 26-27). However, Petitioner acknowledged he was alleged to have fled to Georgia on the same day as the robbery. (App. p. 26). After considering the arguments of counsel, the trial judge denied the motion to exclude the evidence.² (App. p. 27).

Thereafter, during trial, Petitioner's accomplices testified about their involvement in the robbery and implicated Petitioner as the mastermind of the crime. (App. pp. 69-70; p. 127; p. 129; p. 158; p. 160). Harmon testified Petitioner approached him the day before the robbery and told him he wanted to "hit a lick," which meant commit a robbery. (App. pp. 70-71). Harmon stated they subsequently met up with Johnson and Dixon along with several other people and determined which bank they were going to rob. (App. pp. 71-73). The next day, Harmon indicated Johnson picked him up, and Petitioner and Dixon were already in Johnson's red Ford Mustang. (App. pp. 73-74). He testified they then went to a Popeye's restaurant, and Petitioner went inside and returned with some clear plastic gloves.³ (App. pp. 74-75). Harmon stated they then went to Dixon's house, Petitioner got a pillow case and a white t-shirt from Dixon, and Petitioner assigned each of them a role in the robbery. (App. pp. 76-77). Harmon indicated his role was to go into the bank before the robbery and determine how many people were inside. (App. pp. 76-77). Thereafter, Harmon testified they went to a car wash next to the bank, he went into the bank to determine how many people were inside, and he spoke with a teller about opening a bank account. (App. pp. 77-79). After he returned from the bank, Harmon stated

² However, during trial, the trial judge declined to allow the solicitor to admit any testimony related to the fact Appellant was on probation at the time of the robbery because the trial judge concluded such evidence was unduly prejudicial, cumulative, and unnecessary. (App. pp. 205-207).

³ The surveillance footage of the robbery showed the robber was wearing clear plastic gloves. (App. p. 75).

Petitioner changed into all black clothing, put the white t-shirt he got from Dixon over his face, and then went into the bank. (App. pp. 79-80). A few seconds later, Harmon indicated they heard gunshots and saw Petitioner running back to the car with a black handgun. (App. pp. 80-83). Harmon testified Petitioner jumped into the car, told them he did it, and ordered Johnson to drive. (App. pp. 81-82). As they were driving away from the bank, Harmon stated Petitioner divided the money between them, put his share into the backpack, transferred the other items from his backpack into the pillow case, and gave it to a friend they encountered on the street. (App. pp. 83-84). Harmon testified they then went to a bus station because Petitioner stated he was going to go to Atlanta, the bus station was closed because the power was off, and they went to the mall and stayed there until Petitioner was able to obtain a ride away from the area.⁴ (App. pp. 85-87). As Petitioner was leaving the mall, Harmon indicated Petitioner again stated he was going to Atlanta. (App. pp. 86-87). Harmon testified he then left the mall with Johnson and Roosevelt and was subsequently arrested for the robbery. (App. pp. 87-88).

Following Harmon's testimony, Johnson and Dixon testified about the planning and execution of the robbery in a substantially similar manner to Harmon and confirmed Petitioner stated he was going to Atlanta after the crime. (App. pp. 128-141; pp. 159-174). In addition to the testimony of Petitioner's accomplices, Detective Sherman testified about his investigation into the robbery and his discovery of Petitioner's identity, and Officer Poythress recounted the details of his encounter with Petitioner in Atlanta during which Petitioner provided a false name and date of birth.⁵ (App. pp. 200-204; p. 208; pp. 218-220). Additionally, Jacob McKie,

⁴ During trial, Anthony Costello, an electrical contractor, testified he was working on the Greyhound bus station on April 23, 2009, and the power was out at the station from around 10:30 a.m. or 11:00 a.m. until 6:00 p.m. or 7:00 p.m. (App. pp. 120-121).

⁵ During Officer Poythress' testimony, Petitioner renewed his earlier objection, and the trial judge overruled the objection. (App. p. 202).

Harmon's cousin, confirmed Petitioner was present at Harmon's house on the night before the robbery and stated he provided Petitioner with a pellet gun that looked like a black handgun on the morning of the robbery. (App. pp. 194-196; pp. 198-199). McKie further testified the pellet gun was never returned to him and he did not see Petitioner in the area again after the robbery. (App. pp. 196-197). Furthermore, Harmon's brother testified he overheard Petitioner discussing the bank robbery with Harmon on the day before the incident, and Harmon's sister stated Petitioner attempted to sleep at their home on the night before the robbery until he was forced to leave by her mother.⁶ (App. pp. 183-184; p. 186; pp. 188-189; p. 191).

At the close of the State's case, Petitioner presented two witnesses on his behalf. Dora L. McKenney, Petitioner's grandmother, testified Petitioner lived with her on Belvedere Terrace to attend school at Augusta Tech from January of 2009 until April 12, 2009. (App. p. 240; p. 241). On April 12, which was Easter Sunday, Petitioner's mother came to get him to take him back to Snelville, Georgia, to live with her. (App. p. 240). McKenney did not see Petitioner in Aiken County at any time after April 12, 2009. (App. p. 241).

Alba Fumbah, Petitioner's mother, confirmed McKenney's testimony that Petitioner lived with his grandmother from January of 2009 until Easter Sunday, 2009, when Fumbah picked him up and brought him back to Atlanta. (App. p. 243). On April 23, 2009, Fumbah, woke up, got her three children ready for school, and dropped Petitioner off in Atlanta so he could catch the bus and look for work. (App. p. 244). She did not know of any time when Petitioner left Atlanta to go back to Aiken County. (App. pp. 244-245). On cross-examination, Fumbah admitted that she never contacted law enforcement to give them this information during the year that Petitioner was awaiting trial. (App. p. 245).

⁶ Like the other witnesses, neither Harmon's sister nor brother saw Petitioner in the neighborhood again after the robbery. (App. p. 185; p. 192).

Thereafter, the trial judge instructed the jury on the law and included an alibi charge. (App. p. 278). At the conclusion of trial, the jury convicted Petitioner as indicted. (App. p. 286). The trial judge then sentenced Petitioner to an aggregate term of imprisonment of twenty years. (App. p. 297).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. 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).

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Petitioner must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner 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.

ARGUMENT

- I. The post-conviction relief court properly determined Petitioner failed to establish counsel was constitutionally ineffective in his handling of Petitioner's mother as a defense witness where he failed to present any probative evidence in support of this allegation and there is no reasonable probability the outcome of the trial would have been different had counsel elicited additional information from Petitioner's mother.**

Petitioner asserts trial counsel was constitutionally ineffective in his handling of his mother, Alba Fumbah, as a defense witness during his trial. Specifically, Petitioner asserts trial counsel should have elicited time-specific testimony from Fumbah as to when she dropped him off near a bus stop in an Atlanta, Georgia, suburb on the day of the crime in furtherance of his alibi defense. In support of this allegation, Petitioner elicited testimony from trial counsel, who read from a statement purportedly from Fumbah that she dropped Petitioner off at "11:15, 11:30" a.m. the day of the robbery. Petitioner did not present Fumbah as a witness at the hearing or otherwise offer sworn testimony or probative evidence in support of this allegation.

The post-conviction relief court properly found Petitioner failed to meet his requisite burden of proof as to this allegation, noting Fumbah did not testify at the hearing and there was overwhelming evidence establishing Petitioner's guilt. These findings are supported by the record and do not constitute an error of law, and accordingly should be affirmed by this Court.

- A. Petitioner failed to present any probative evidence to support this allegation, and therefore, he failed to meet his burden of proof.**

As previously discussed, Petitioner, like all post-conviction relief applicants, had the burden of establishing he was entitled to relief based on probative evidence. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted) ("In order to receive relief for ineffective assistance of counsel, a defendant must make two showings. First, he must show that his trial counsel's performance was deficient, meaning that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by

the Sixth Amendment. Second, he must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable.”); Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). (internal citations omitted) (“In a PCR proceeding, the burden is on the applicant to prove the allegations in his application. This Court will uphold factual findings of the PCR court if there is any evidence of probative value to support them.”); Pauling v. State, 331 S.C. 606, 609, 503 S.E.2d 468, 470 (1998) (“In a post-conviction proceeding, the burden is on the applicant to prove the allegations in his application.”); Glover v. State, 318 S.C. 496, 497, 458 S.E.2d 538, 539 (1995) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). While an applicant need not call a live witness to meet this burden of proof in all cases, his or her evidence must meet some threshold requirements establishing it is credible and probative. See Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (finding petitioner presented probative evidence to support his allegation when he produced both the written copy of Kestner’s statement to law enforcement, as well as affidavits from individuals attesting to have heard Kestner state the victim was armed at the time of the shooting); Glover, 318 S.C. at 498–99, 458 S.E.2d at 540 (“In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.”).

In the present case, Petitioner fell short of that burden by failing to present any probative

evidence to support his allegation—that his mother would have testified he was with her at such a time that it would have been impossible for him to commit the crime but for counsel’s failure to properly question her. Notably, Petitioner failed to present any probative evidence, either by way of live testimony at the hearing, affidavit, or previously signed statement, to support his assertion that she would have testified as to the specific time he avers but for counsel’s purported errors. Such testimony or other credible evidence is essential to establish an applicant is entitled to relief, undo a criminal conviction by a jury of his peers and remand the matter for a new trial. Rather than presenting this, Petitioner elicited testimony from counsel, who was shown an unknown statement taken at an unknown time by an unknown individual purportedly from Petitioner’s mother, that indicated she dropped him off near a bus stop at “11:15, 11:30 a.m.” This simply is not enough to satisfy his burden of proof.

From a public policy standpoint, it only makes logical sense that the probative evidence required for a finding of constitutional ineffectiveness must be accompanied by some assurance of veracity. Otherwise, family members and friends of defendants could easily provide false statements to a loved one’s attorney to be used at a future proceeding, such as a subsequent post-conviction relief hearing, without any fear of perjury charges or other repercussions that accompany lying under oath if he or she testified falsely during trial. In the present case, it is telling that Petitioner’s mother testified at trial, was asked open-ended questions by trial counsel that easily allowed her to provide such detail and specificity as Petitioner claims should have been elicited, and she declined to do so while under oath. For unknown reasons, she similarly failed to appear for his post-conviction relief hearing, present an affidavit, or otherwise provide any testimony or evidence to support Petitioner’s version of events. Without such probative evidence, Petitioner failed to meet his requisite burden of proof to establish that his mother

would have provided him with the testimony he desires but for counsel's alleged deficient performance.

Petitioner urges this Court to ignore his failure to provide competent evidence to support his allegation and asks this Court to find the testimony from counsel regarding a purported statement from Fumbah to qualify as the probative evidence necessary for relief. In support of this argument, Petitioner cites to Pauling and Rutland, both of which are distinguishable from the present case.

In Pauling, the applicant, who was convicted of first-degree criminal sexual conduct following a jury trial, alleged his trial counsel was ineffective for failing to call a triage nurse who treated the victim to support his defense that no sexual battery occurred. Pauling, 331 S.C. 606, 503 S.E.2d 468. Pauling did not present the triage nurse at his evidentiary hearing, but did introduce her triage notes in support of his allegation. Id. The post-conviction relief court denied relief, in part noting he failed to present the nurse as a witness at his hearing. Id. This Court reversed, finding the applicant met his burden of proof by presenting "evidence as to the nature of the nurse's testimony by introducing her triage notes." Id. at 611, 503 S.E.2d at 471. In the present case, unlike Pauling, Petitioner failed to present "evidence as to the nature of [his mother]'s testimony." Rather, the only "evidence" presented was testimony from trial counsel that it appeared based on a statement shown to him at the evidentiary hearing that at some unknown time, Fumbah told an unknown individual that she thought she dropped him off near the bus stop at 11:15 to 11:30 a.m. This "evidence" lacks the indicia of reliability that the triage notes had in Pauling and is insufficient to meet Petitioner's burden of proof.

Petitioner's case is also distinguishable from Rutland, 415 S.C. 570, 785 S.E.2d 350. In Rutland, the applicant, who was convicted of murder, possession of a firearm during the

commission of a violent crime, and pointing a firearm following a jury trial, alleged his trial counsel was ineffective for failing to cross-examine one of the State's key witnesses regarding prior inconsistent statement that the victim was armed at the time of the shooting. Id. Rutland did not present this key witness at his evidentiary hearing, but did produce her signed police statement wherein she stated the victim was armed at the time of the shooting, as well as affidavits by several individuals swearing that after the incident, the key witnesses stated to them the victim was armed when he was shot. Id. The post-conviction relief court denied relief, noting that although trial counsel was deficient for failing to impeach the witness with her prior inconsistent statements, Rutland failed to establish he was prejudiced because he did not produce extrinsic evidence of her statements. Id. This Court reversed, finding:

Principally, the PCR judge was incorrect in finding petitioner failed to produce extrinsic evidence of Kestner's statements at the PCR hearing. To the contrary, petitioner produced both the written copy of Kestner's statement to law enforcement, as well as affidavits from individuals attesting to have heard Kestner state the victim was armed at the time of the shooting. Accordingly, there is no evidence of probative value supporting the PCR judge's ruling that petitioner failed to present extrinsic evidence of Kestner's prior inconsistent statements.

Id. at 577, 785 S.E.2d at 353. In the present case, unlike Rutland, Petitioner failed to present any extrinsic or probative evidence to support his assertion that his mother's testimony would have been that she dropped him off near a bus stop in suburban Atlanta on the day of the robbery but for counsel's failure to properly question her. Moreover, when she was afforded that opportunity while testifying under oath a trial, she declined to do so.

The post-conviction relief court properly determined Petitioner failed to meet his requisite burden of proof by failing to provide any probative evidence to support his allegation. This Court should affirm this ruling.

B. There is no reasonable probability the outcome of the trial would have been different had counsel elicited additional information from Petitioner's mother.

Regardless of Petitioner's failure to provide probative evidence to support his assertion that his mother would have provided sufficient testimony to support his alibi defense but for counsel's failure to properly question her, there is no reasonable probability the result of the trial would have been different but for counsel's alleged error.

"In determining whether the applicant has proven prejudice, the post-conviction relief court should consider the specific impact counsel's error had on the outcome of the trial." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). "[T]he strength of the evidence must be considered along with the specific impact of counsel's errors." Id. "In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial. In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury. In general, the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice. Id. (internal citations omitted).

In the present case, assuming arguendo that Petitioner had established trial counsel was deficient for failing to elicit time-specific testimony from Petitioner's mother to support his alibi defense, such an error had no impact on the jury's verdict when compared to the strong, independent evidence establishing his guilt. On direct appeal, the Court of Appeals found that, although the trial court erred in admitting evidence of Petitioner's flight and attempt to avoid arrest, the error was harmless because "the State presented ample competent evidence of Martin's guilt." Martin, 403 S.C. at 31, 742 S.E.2d at 48. Specifically, the Court of Appeals

Harmon, Johnson, and Dixon testified consistently that Martin had served as the mastermind and the gunman in the robbery for which each of them faced a charge

of bank robbery and a possible prison sentence of thirty years. Eyewitness descriptions of the gunman's attire and pillowcase-style money bag comported with the co-conspirators' descriptions of the clothing and bag Martin carried on the day of the robbery. Furthermore, Jacob McKie, a disinterested party, recalled loaning Martin a small, black pellet gun the night before the robbery.

Id. at 31, 742 S.E.2d at 48. The Court then concluded, "In view of this evidence, Officer Poythress's testimony likely had no effect on the jury's determination of guilt. Therefore, any error the trial court committed in admitting the challenged evidence was harmless." Id.

The post-conviction relief court similarly reviewed the evidence presented at Petitioner's trial and determined there was no reasonable probability the outcome would have been different based on the substantial evidence establishing Petitioner's guilt. The Order of Dismissal noted that Petitioner's co-defendants all testified against him and gave statements placing him at the bank robbery and identifying him as the gunman. The post-conviction relief court relied on this overwhelming evidence of guilt in making its finding that Petitioner could show no prejudice from any alleged deficiency by counsel.

Because there is strong, independent evidence establishing Petitioner's guilt, he cannot establish any resulting prejudice to meet his burden of proof. Multiple co-defendants testified the same account of Petitioner's involvement as the mastermind of the crime. Witnesses that were not involved in the crime corroborated details that matched their testimony and the evidence presented of the robbery, including Petitioner's clothing, pillowcase money bag, and black pellet gun. Other disinterested witnesses testified that they overheard Petitioner discussing his plan to rob the bank the night before the crime. The State also presented evidence which matched the testimonial accounts of Petitioner's plan to return to Atlanta after the crime was committed, and Petitioner was eventually found and arrested in Atlanta. All of this evidence supports the findings by both the Court of Appeals and the post-conviction relief court.

Petitioner compares his case with Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014), where this Court granted post-conviction relief based on counsel's failure to investigate and present a potential alibi witness at trial. Although this Court held in Walker that the potential alibi witness could have affected the outcome of the trial, the circumstances of that case differ from Petitioner's case. Here, unlike in Walker, counsel did investigate and present the only two alibi witnesses available, Petitioner's mother and grandmother. Both witnesses testified Petitioner lived in Atlanta and was in Atlanta the morning of the crime. Petitioner's mother, who saw him every day once he moved to her home in Georgia, was specifically asked if she knew of Petitioner ever traveling back to Aiken and she testified "no." (App. pp. 244-245). The alibi was discussed and argued at trial, and an alibi charge was given to the jury. In contrast, in Walker, the court was forced to speculate that an alibi defense may have altered the outcome of the case because it was not presented to the jury. Here, the alibi was presented to the jury, and it is unlikely that one further detail of the alibi would have swayed the jury, who clearly did not find Fumbah credible in her accounts that Petitioner did not leave Atlanta on the day of the incident when compared to the strong evidence establishing Petitioner's guilt. .

In conclusion, the post-conviction relief court properly determined Petitioner failed to meet his requisite burden of proof. Because the post-conviction relief court's findings were supported by the probative evidence and are not controlled by an error of law, this Court should affirm the post-conviction relief court's denial of the application.

II. The post-conviction relief court properly determined Petitioner failed to establish counsel was constitutionally ineffective in failing to object to testimony from a detective that Petitioner did not give a statement to law enforcement and a portion of the State's closing argument referencing no prior knowledge of an alibi defense.

Petitioner also asserts trial counsel was constitutionally ineffective for failing to object to two portions of his trial that he argues infringed on his right to remain silent—a non-responsive

statement from Detective Sherman that Petitioner did not provide a statement to law enforcement and a portion of the State's closing argument referencing its lack of prior knowledge about Petitioner's alibi defense.

Under the United States and South Carolina Constitutions, criminal defendants have a constitutional right not to be compelled to incriminate themselves during trial. See U.S. Const. amend. V (prohibiting a criminal defendant from being "compelled in any criminal case to be a witness against himself[.]"); S.C. Const. art. I, § 12 ("[N]or shall any person be compelled in any criminal case to be a witness against himself."). Pursuant to that right, both comments by the prosecution on a defendant's silence and instructions by the trial judge indicating a defendant's silence constitutes evidence of guilt are prohibited. Griffin v. California, 380 U.S. 609, 615 (1965); see Doyle v. Ohio, 426 U.S. 610, 618 (1976) ("[W]hile it is true that the Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.").

"In particular, the State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent[.]" Edmond v. State, 341 S.C. 340, 346, 534 S.E.2d 682, 685 (2000); see McFadden v. State, 342 S.C. 637, 640, 539 S.E.2d 391, 393 (2000) ("Specifically, the solicitor must not comment, either directly or indirectly, on a defendant's silence, failure to testify, or failure to present a defense."); State v. Weaver, 361 S.C. 73, 88-89, 602 S.E.2d 786, 794 (Ct. App. 2004) ("As a corollary of this right, a prosecutorial comment, whether direct or indirect, upon a defendant's failure to testify at trial is constitutionally impermissible."). "The obvious purpose [of that prohibition] is to try to prevent

jurors from improperly inferring the accused is guilty simply because he exercised rights guaranteed him by the state and federal constitutions.” Edmond, 341 S.C. at 346, 534 S.E.2d at 685; see Wainwright v. Greenfield, 474 U.S. 284, 292 (1986) (“The point of the Doyle holding is that it is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony.”).

“In a direct appeal, the admission of comments or evidence of the defendant’s exercise of a constitutional right is a ‘trial error’ subject to harmless error analysis.” Edmond, 341 S.C. at 346, 534 S.E.2d at 685 (citing State v. Pickens, 320 S.C. 528, 530-31, 466 S.E.2d 364, 367 (1996); see also Arizona v. Fulminante, 499 U.S. 279, 306-10 (1991) (a “trial error” occurs during the presentation of case to jury and is amenable to harmless-error analysis because it may be quantitatively assessed in the context of other evidence presented in order to determine the effect it had on the trial; these are distinguished from structural defects in the constitution of the trial mechanism, which defy harmless error analysis).

In a post-conviction relief proceeding, Petitioner must establish that trial counsel was ineffective for failing to object to the complained testimony or argument and that the result of the proceeding would have been different. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003); Edmond, 341 S.C. at 346-47, 534 S.E.2d at 685. Counsel’s failure to object to improper comments or arguments on a defendant’s invocation of constitutional rights does not automatically entitle an applicant to relief, as the applicant must also establish that he was prejudiced by such deficiency. Payne, 355 S.C. at 645, 586 S.E.2d at 859 (“But Strickland’s prejudice prong is not satisfied because there was overwhelming evidence that Payne murdered the victim.”); see also Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001) (“improper comments on

a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant."'). When determining if an applicant has established the requisite prejudice for relief, the court should consider the strength of the State's case against Petitioner. Payne, 355 S.C. at 645, 586 S.E.2d at 859.

In the present case, Petitioner failed to meet this burden of proof, and accordingly, the post-conviction relief court properly denied both allegations. These findings are supported by the record and do not constitute an error of law, and accordingly should be affirmed by this Court.

A. Petitioner failed to establish counsel was deficient for failing to object to a non-responsive utterance by Detective Sherman that Petitioner did not provide a statement to law enforcement.

Petitioner complains counsel should have objected to the following testimony from Detective Sherman:

Q: Did [Dixon] ever give a statement?

A: He never gave a statement to me. And Mr. Martin also with his attorney present didn't want to provide a statement.

(App. p 229). Immediately following this non-responsive statement, the State questioned Detective Sherman about the lack of forensic evidence linking Petitioner to the crime. The State never elicited or otherwise attempted to exploit Petitioner's invocation of his right to remain silent or any other constitutionally protected rights.

When questioned about this allegation at the evidentiary hearing, counsel Gibbons testified it was a strategic decision not to object to avoid bringing unnecessary attention to the non-responsive utterance of Detective Sherman in hope that it would "fade away" as quickly as possible:

Q: Did you see any reason to object to Investigator [Sherman]'s testimony about how the [Petitioner] did not give him a statement in this case?

A: I don't think that he was responding to the actual question. I asked him and he happened to blurt out that information, if I remember correctly. And when something like that happens, I always ask myself am I going to call more attention to this by making a big deal about it, or am I going to fix it in the jury's mind. It was a kind of tactical decision at that point just to try and let that fade away as quickly as we could.

Q: Do you believe that if you had objected to these things that it would have changed the outcome of the trial?

A: I don't. I think it would have brought more attention to that particular unresponsive answer than we wanted anybody to give.

App. 513, line 9 – App. 514, line 2.

Here, counsel gave a valid strategic reason for failing to object to this non-responsive comment made in passing—to minimize its effect in the jury's conscious by not highlighting it with an objection or curative instruction. Courts have repeatedly held that where counsel articulates a valid trial strategy behind his actions or inactions, "such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an objective standard of reasonableness." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (Internal citations omitted). See, e.g., Buckson v. State, 423 S.C. 313, 320–21, 815 S.E.2d 436, 440 (2018) (discussing the deference given to trial counsel's strategic considerations in whether to call a witness at trial); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71 (1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same). The post-conviction relief court's analysis of counsel's strategic decisions must be "highly deferential" to counsel's judgment, and "a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id.

The post-conviction relief court found trial counsel articulated a valid, reasonable objective strategy behind not objecting. This finding is supported by counsel's testimony at the evidentiary hearing and does not constitute an error of law. This Court should affirm the post-conviction relief court's findings.

B. Petitioner failed to establish counsel was deficient for failing to object to a portion of the State's closing argument referencing no prior knowledge of an alibi defense.

Petitioner also asserts trial counsel should have objected to the following portion of the State's closing argument, "And there has been some discussion of an alibi and – but we didn't hear about this alibi until today. Until yesterday." (App. pp. 267-268).

Petitioner asserts this argument was an improper comment on Petitioner's choice not to give a statement to law enforcement and choosing to exercise his Fifth Amendment right to remain silent. However, this argument is not objectionable under the circumstances because it was not a comment on Petitioner's silence, but rather, an attempt to call the credibility of Petitioner's alibi witnesses into question by arguing that there were no prior statements from any of these witnesses, including Petitioner's mother and grandmother, to confirm their testimony. Nothing in this comment is a reference to Petitioner's choice to remain silent. This is supported by the State's cross-examination of Petitioner's mother, Alba Fumbah:

Q: And you also said that the police came out and talked to you. But you didn't give them this information when they came out to your residence, did you? You didn't tell them everything that you've testified here today?

A: They did not talk to me. I was in school at the time.

Q: But your son was arrested over a year ago; is that correct?

A: Yes.

Q: And in that year plus time, you never once contacted law enforcement to give them this information, did you?

A: I did not.

(App. 245, line 14-25). The solicitor's statements in closing argument were simply a reference back to the incredible testimony of Fumbah as an alibi witness, not a comment on Petitioner's right to remain silent as Petitioner now argues on appeal. See Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974) (“[A] court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.”)

At the evidentiary hearing, counsel testified he saw no reason to object to the solicitor's closing argument, as it was a routine argument often made by the prosecution in an attempt to cast doubt on the alibi defense raised. (App. pp. 506-507).

The post-conviction relief court found Petitioner failed to establish any constitutional ineffectiveness as to this allegation, noting there was no reasonable probability this comment impacted the outcome of the trial. (App. p. 524). This finding is supported by counsel's testimony at the evidentiary hearing and does not constitute an error of law. This Court should affirm the post-conviction relief court's findings.

C. Petitioner failed to establish any resulting prejudice from either portion of his trial.

Notwithstanding his inability to establish any deficiency as to either of these allegations, Petitioner also failed to establish “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 defendant bears the burden of demonstrating that improper comments on his refusal to testify deprived him of a fair trial.” Gill v. State, 346 S.C. 209, 221, 552 S.E.2d 26, 33 (2001) (citing Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)). Petitioner has not satisfied his requisite

burden of demonstrating that either instance deprived him of a fair trial.

First, the trial judge specifically instructed the jury not to consider the fact that Petitioner's assertion of his constitutional right to remain silent must not be considered in deliberations, thereby curing any potential negative inference the jury might glean from these two quick comments. (App. pp. 273-274). Gill explains that a jury instruction such as the one given here cures any possible error:

It is impermissible for the prosecution to comment directly or indirectly upon the defendant's failure to testify at trial. However, even improper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant. The defendant bears the burden of demonstrating that improper comments on his refusal to testify deprived him of a fair trial. Furthermore, even if the solicitor makes an improper comment on the defendant's failure to testify, a curative instruction emphasizing the jury cannot consider defendant's failure to testify against him will cure any potential error.

Gill, at 209, 221, 552 S.E.2d at 33 (citing Johnson, 325 S.C. 182, 480 S.E.2d 733). Because the trial court's jury instruction cured any potential defect caused by the detective's testimony or the solicitor's closing argument, Petitioner can show no prejudice.

Most importantly, as stated in the first issue above, the post-conviction relief court properly found there was strong, independent evidence establishing his guilt, negating any impact from there purported errors on the outcome of his trial. Even if counsel were deficient for failing to object to these comments, counsel's deficiency for failing to object to a comment on the defendant's silence is harmless error in light of overwhelming evidence of guilt. Payne v. State, 355 S.C. 642, 586 S.E.2d 857 (2003). In Payne, this Court held trial counsel was deficient for failing to object to his co-defendant's argument that indirectly commented on the fact that the defendant chose to invoke his Fifth Amendment right to remain silent. Payne, at 645, 586 S.E.2d at 859. However, this Court found there was no prejudice because of the overwhelming evidence of the defendant's guilt. Id. In making this finding, this Court relied only on the testimony of

Payne's two co-defendants, who explained exactly how Payne raped and murdered the victim, and the evidence presented which corroborated their testimony. Id. The overwhelming evidence finding in Payne is based on the same circumstances as the strong, independent evidence establishing Petitioner's guilt in this case, where three co-defendants testified exact details about Petitioner's involvement in the crime. Any alleged deficiency by counsel on these grounds was had no impact on the outcome of his trial.

In conclusion, the post-conviction relief court properly determined Petitioner failed to meet his requisite burden of proof. Because the post-conviction relief court's findings were supported by the probative evidence and are not controlled by an error of law, this Court should affirm the post-conviction relief court's denial of the application.

CONCLUSION

Because Petitioner failed to meet his requisite burden of proof as to either allegation of ineffective assistance of counsel, this Court should affirm the post-conviction relief court's denial of his application for relief.

Respectfully submitted,

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December 17, 2018

STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari to Aiken County
Court of Common Pleas
The Honorable Robert E. Hood, Post-Conviction Relief Court Judge
The Honorable Doyet A. Early, III, Trial Judge

Appellate Case No. 2016-002458

ANTHONY MARQUESE MARTIN, SCDC #345836

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.


PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within **Brief of Respondent** on Petitioner by depositing two copies of the same in the interagency mail to be delivered to Petitioner at the address below:

Appellate Defender David Alexander
South Carolina Commission on Indigent Defense—Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 17th day of December, 2018.


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