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December 27, 2018

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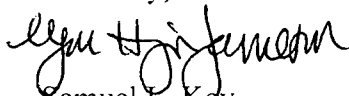
The Honorable Daniel E. Shearouse  
Clerk of Court — SC Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: James R. Rose v. State of South Carolina**  
**Appellate Case No.: 2017-002052**

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the **Return to Petition for Writ of Certiorari** in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

*for*   
Samuel L. Key  
Assistant Attorney General  
S.C. Bar # 103206

SLK/trb  
Enclosures

cc: Robert M. Dudek, Esquire  
Victim Advocacy Division

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
William H. Seals, Jr., PCR Judge

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Appellate Case No. 2017-002052

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RECEIVED  
DEC 27 2018  
S.C. SUPREME COURT

JAMES R. ROSE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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## STATEMENT OF ISSUES ON APPEAL

- I. Whether the PCR court properly found trial counsel was not ineffective for failing to request an alibi jury charge is not preserved for appellate review, and trial counsel articulated a reasonable strategy for not requesting the charge?
  
- II. Whether the PCR court properly found trial counsel was not ineffective in determining Rose's girlfriend's statement to the police did not constitute an alibi and she did not testify at the PCR hearing?

## STATEMENT OF THE CASE

James Rose was indicted for murder in June 2012. The case proceeded to a jury trial with Judge Stephanie P. McDonald (trial court) presiding December 9–12, 2013. Public defenders Martha Kent Runey and Megan Ehrlich represented Rose. Rose was convicted as indicted and sentenced to life imprisonment. Rose appealed. The issue raised in Rose’s direct appeal concerned the admission of a recorded phone call from Rose while he was in jail. The court of appeals affirmed in an unpublished decision. *See State v. Rose*, 2015-UO-286 (S.C. Ct. App. filed June 17, 2015).

Rose commenced this action for post-conviction relief (PCR) on July 7, 2015, alleging claims of ineffective assistance of trial and appellate counsel, prosecutorial misconduct, and violation of due process. The State filed its return; thereafter, Rose amended his application. An evidentiary hearing was convened before the Honorable William H. Seals, Jr. (PCR court). Rose was represented at PCR by James Falk (PCR counsel). At the outset of the hearing, the PCR court dismissed Rose’s due process allegation as a direct appeal issue improper for PCR. The PCR court denied relief and dismissed the action with prejudice by written order September 15, 2017. (App. 770–96). Rose initiated this appeal October 5, 2017.

## STATEMENT OF THE FACTS

James Rose<sup>1</sup> was arrested in connection to the murder of Leland Shannon. Shannon was murdered January 24, 2012. The day of the incident, Rose went to Shannon's mobile home three times to buy marijuana. (App. 163–64, 191–92). Clarence Hush,<sup>2</sup> drove Rose and a third person to Shannon's home for the second buy. (App. 342). At the end of the second visit, Rose became heated and stated he would be back. (App. 163–64, 191–93, 364–65). Testimony at trial shows that Rose returned a third time that night in a gray, white, or silver four-door sedan. (App. 195). The record shows a shootout occurred during this third visit. Shannon died as a result of the shootout. (App. 203, 526–27, 578). In addition to Shannon, his daughter (Joy Mills), cousin (Antoine Aiken), girlfriend (Tawana Alston), and neighbor (Ishmal Weston) were at the home and witnessed the events. (App. 191).

Antione Aiken, testified at trial that when Rose arrived the third time, Rose visited briefly, then left out the back door of the mobile home. (App. 197–98). Shannon followed to lock the door behind Rose, at which point Aiken heard a gunshot. (App. 198). "For a brief second," Aiken saw a tall male, dressed in black and wearing a ski mask, confront Shannon at the time of the gunshot. (App. 199). Aiken reached for a rifle usually stored in a corner of the home, but it was not there. (App. 200). Aiken heard two more gunshots, saw Shannon fall, then fled through the front door. (App. 200). Once outside, Aiken ran to the nearby tree line for cover. While he fled, Aiken heard Rose instructing, "[G]o to the back room, everything in the back room," and "ya'll hurry up, come on, you're taking too long." (App. 202–03). Finally, Aiken saw the tall masked man exit the trailer's back door, get into the getaway car, and leave. Rose drove the getaway car.

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<sup>1</sup> A/k/a "Onyx," a/k/a "O," a/k/a "Black."

<sup>2</sup> A/k/a "Unk."

(App. 204–05). Thereafter, Aiken called 911 to report Shannon’s injuries and described the getaway car as gray with four doors. (App 206–07).

Tawana Alston, testified that she and Rose exited the back door of the trailer to smoke a cigarette. (App. 250). She watched Rose get in the driver’s seat of the getaway car. (App. 251–52). Alston pivoted back towards the trailer when a man dressed in a black ski mask was holding a shotgun to her face. (App. 251). Alston watched a “short, chunky guy” run up the stairs and enter the trailer. The man in the ski mask followed, and she fled. As she fled, Alston heard three gunshots. (App 252–53).

Ishmal Weston testified that he was in the living room when Rose and Alston exited the back door. (App. 167–68). Weston heard Alston scream, heard and saw people enter the house, then heard “stomping and stuff.” (App. 168–70). Weston then saw a black shadow resembling a shotgun pointed at Shannon and heard a “fuss.” (App. 168–69). Weston ran to the back bathroom to hide, heard a gunshot, and closed the door. (App. 173). While hiding, Weston heard people ransacking the house. Then, Weston heard the intruders move down the hallway towards Joy Mills’s bedroom. (App. 173). Weston heard muffled voices ask “where the money and stuff at.” (App. 175). Finally, he heard them rummaging through the back room, exit the house, and speed off in the getaway car. (App. 176).

Joy Mills testified that she was in her bedroom on the phone when she heard scuffling, gunshots, and two people run past her room to the back of the trailer. (App. 368–69). Mills jumped in her bed and pretended to be asleep. (App. 370). The intruders came into her room armed with a double barrel shotgun and a single barrel shotgun. The intruders pointed one shotgun at her chest and the other at her head. (App. 371). Mills testified as to hearing Rose’s voice command her to pull back the covers and tell her “where [it was] at.” (App. 371). She further identified Rose as

wearing a red shirt, navy blue jacket, dark-colored jeans, and a ski mask. (App. 371–72). The intruders left Mills unharmed. (App. 372).

Alston, Aiken, and Hill gave statements to law enforcement regarding the events, and identified Rose to law enforcement. (App. 210, 226, 379–85). Aiken and Alston identified Rose in a photo lineup. (App. 214, 260–61). Alston identified the getaway car as a gray or silver Dodge Neon. (App. 259, 261). Alston further described the clothing worn by Rose that night as a “red T-shirt, blue jeans, [and] blue or black Nikes.” (App. 256). Law enforcement set out looking for Rose and a gray Dodge Neon. (App. 403).

The morning after the incident, Rose met with Deanna Henderson at her home, nervously asking her to tell anyone who asks that he did not stay with her. (App. 302–03). Law enforcement arrived to apprehend him. (App. 304). From the backseat of the patrol car, Rose held down his head, or nodded, when Henderson asked if he shot Shannon. (App. 305). Rose testified that he went to Henderson’s home because of the news broadcast regarding the shooting. (App. 571). “So [he] told her [he] was going to turn [him]self in.” (App. 576).

Law enforcement seized the Dodge Neon pursuant to a search warrant. (App. 421, 444). Everlina Bickman, Rose’s girlfriend’s cousin, owned the Neon. (App. 445–46, 566). Law enforcement recovered two cell phones from the car. (App. 467). Law enforcement collected a red shirt, black tennis shoes, and a red hooded sweatshirt from the residence the car was parked outside. (App. 449–51). According to Rose, he wore a red shirt, jeans, and black athletic shoes the night of the murder. (App. 565).

Rose also testified as to his pattern of cell phone use. When his food stamp phone would run out of minutes and shut off, he used Amber Wiley’s—his girlfriend’s phone. (App. 570). Others contacted Rose by calling Amber Wiley’s phone. (App. 570). When he needed to get in

touch with Amber Wiley, he would call Bickman's cell phone. (App. 571). When he got arrested, he wanted to get in touch with Amber Wiley, but he "knew she didn't have a phone . . . ." (App. 575).

Rose was convicted of murder and sentenced to life imprisonment. Rose appealed and his conviction was affirmed. Rose commenced an action for PCR, and an evidentiary hearing was held. At the hearing, Martha Kent Runey (trial counsel), Rose, and Susan Hackett (appellate counsel) testified. The PCR court denied relief and dismissed the action with prejudice by written order September 15, 2017. (App. 770–96). Rose initiated this appeal October 5, 2017. Rose only challenges the PCR court's findings and conclusions as to trial counsel.

## ARGUMENT

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law and reviews those conclusions de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "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 (quoting *Strickland*, 466 U.S. at 694).

I. **Whether the PCR court properly found trial counsel was not ineffective for failing to request an alibi jury charge is not preserved for appellate review, and trial counsel articulated a reasonable strategy for not requesting the charge?**

Rose argues the PCR court erred by ruling trial counsel was not ineffective for failing to request an alibi charge. The Court should deny certiorari on this issue because the issue is not preserved for appellate review. However, even if this argument was preserved, trial counsel was not deficient for failing to request an alibi charge because trial counsel reasonably determined not to request an alibi charge because the defense offered no corroborating alibi witnesses. Rose was not prejudiced by trial counsel failing to request an alibi charge because the trial court's charge on determining credibility was sufficient. The jury received a credibility charge, and weighed the witnesses' testimonies accordingly.

a. **Preservation**

As an initial matter, whether the PCR court erred in finding trial counsel was not ineffective for failing to request an alibi charge is not preserved for appellate review.

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). A PCR court’s order must “make specific findings of fact and state expressly the conclusions of law relating to each issue presented.” *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266, 266 (2007). “[A]fter an order is filed, [PCR counsel] has an obligation to review the order and file a Rule 59(e), SCRCPP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by [section] 17-27-80 [of the South Carolina Code] and Rule 52(a), SCRCPP.” *Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992). “[A] Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review.” *Marlar*, 375 S.C. at 410, 653 S.E.2d at 267. “An issue that was not preserved for review should not be addressed by [appellate courts].” *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694.

Rose states the PCR court noted that he “alleged his attorney was ineffective for failing to . . . request an alibi instruction.” (Pet. 8). Rose also states:

Citing *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980), *the judge wrote* “to be successful, a defendant's alibi must cover the entire time when his presence was required for the accomplishment of the crime . . . since an alibi derives its potency as a defense from the fact that it involves physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.”

(Pet. 8) (emphasis added). This is a mischaracterization of the PCR court’s order. The PCR court did not write the above quoted material and cite to *Robbins*; rather, the PCR court quoted the language from *Robbins* for general provisions of law pertaining to an alibi defense. *See Robbins*, 275 S.C. at 375, 271 S.E.2d at 320 (quoting 21 Am.Jur.2d Criminal Law § 136); (App. 785).

Whether trial counsel was ineffective for failing to request an alibi instruction was raised to the PCR court; however, the PCR court did not rule on this issue. (App. 785–86). Rose did not make a motion to alter or amend the PCR court’s order. Therefore, the issue is not preserved for appellate review. Certiorari should be denied.

**b. Merits**

Rose’s argument, that trial counsel was ineffective for failure to request an alibi charge, fails on the merits because trial counsel did not request an alibi charge because the defense did not call any corroborating alibi witnesses. As explained in section II below, trial counsel articulated a reasonable strategy for not calling any corroborating alibi witnesses. Trial counsel was not deficient for failing to request an alibi charge, and Rose suffered no prejudice from trial counsel not requesting the charge. The Court should deny certiorari as to this issue.

“[T]he trial [court] is required to charge only the current and correct law . . . and the law to be charged to the jury is determined by the evidence at trial.” *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (internal citations omitted). “[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Jury instructions should be considered as a whole. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994).

“A charge on the defense of alibi is not required when an accused person merely denies committing the criminal act.” *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980). “Alibi means elsewhere, and the charge should be given when the accused submits that he could not have performed the criminal act because he was in another place at the time of its commission.” *Id.*

“[F]ailure to request an alibi charge is deficient representation where there is evidence presented the defendant was in another place at the time the crime was committed.” *Roseboro v.*

*State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Trial counsel must articulate a valid reason for not requesting an alibi instruction to avoid a finding of deficiency. *Id.* “An alibi charge places no burden on a criminal defendant but emphasizes that it is the State's burden to prove the defendant was present and participated in the crime.” *Id.*

On appeal, Rose does not allege trial counsel was ineffective in relation to the trial court charging the jury on accomplice liability. Because it is unchallenged, the trial court's charge on accomplice liability is proper and is the law of the case. As such, the trial court properly charged accomplice liability, and the State had to prove Rose was sufficiently present, not actually present, at the time of the incident. See *State v. Blackwell*, 220 S.C. 342, 67 S.E.2d 684 (1951) (affirming a guilty verdict when the defendant planned the commission of the crime with others and waited out of town during the commission of the crime by the physical perpetrators); *State v. Chavis*, 277 S.C. 521, 290 S.E.2d 412 (1982) (affirming a guilty verdict under accomplice liability where the defendant met with three other men to plan a robbery, supplied two of them with masks, guns, and gloves, and drove them to the scene and then left).

Rose argues the evidence presented at trial supports an alibi charge. Specifically, Rose argues that his testimony at trial—that he never returned to the house a third time but was dropped off at his girlfriend's house and went to sleep—supports the trial court giving an alibi charge. Rose likens his case to *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1995), and *Riddle v. State*, 308 S.C. 361, 418 S.E.2d 308 (1992). However, Rose's reliance on these two cases is misplaced.

The instant case is distinguishable from *Roseboro* and *Riddle*, because in those cases, the defendants' alibi testimonies were corroborated by additional alibi witnesses. *Roseboro*, 317 S.C. at 294, 454 S.E.2d at 313; *Riddle*, 308 S.C. at 363, 418 S.E.2d at 309. Here, there was no such

corroborating alibi witness. Trial counsel testified that she did not request an alibi charge because the defense did not present any alibi witnesses.

At the PCR hearing, trial counsel explained her trial strategy as follows:

Our theory was that Mr. Rose had been at this house earlier that day, but he never came back. And the State alleged that he had come back and this is when this incident occurred. But Mr. Rose testified, and he told the jury that he had been there. He knew the victims. He knew the people there, but he had not come back.

(App. 742). When asked whether she felt there was a valid alibi defense available, trial counsel explained, “Not from the [potential witnesses] I had talked to. I didn’t have contact or was able to interview the [potential witnesses] that could have been possible alibi witnesses.” (App. 742). Trial counsel stated that she did not ask for an alibi charge because the defense did not put up any alibi witnesses. (App. 743).

There is evidence to support an alibi jury charge; however, trial counsel stated she did not request the charge because the defense did not produce any alibi witnesses. Rose makes much of this statement. However, it can reasonably be inferred that trial counsel did not request the charge because the defense did not present any *corroborating* alibi witnesses. Trial counsel’s reasoning for not requesting an alibi charge was reasonable because there was no corroborating alibi testimony. Trial counsel was not deficient for failing to request an alibi jury charge.

As for prejudice, Rose was not prejudiced by trial counsel’s alleged deficiency because overall, the trial court’s charge was proper. “In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed ‘in its entirety and not in isolation.’” *State v. Gibbs*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (quoting *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009)).

The trial court’s jury charge can be found at pages 649–63 in the Appendix. The trial court charged the jury on assessing credibility:

The credibility of witnesses is a matter for you the jury to determine. You are the judges and the sole judges of the credibility or believability of the witnesses who have testified and the evidence in this case. In passing upon credibility you may take into consideration many things such as the demeanor or the manner of the witness testifying, whether a witness had a reason to be biased or prejudiced in some way, whether a witness's testimony was contradict[ed] on the one hand or supported and corroborated on the other hand, whether a particular witness has a motive to testify favorably for one party versus the other. You may believe a small portion of a witness's testimony and disregard the larger or vice versa. You may believe one witness against many or many against one. All of these things you will consider bearing in mind that you should give the benefit of any reasonable doubt. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth.

(App. 650–51). The trial court charged the jury on: the State's burden of proof (App. 653–55), evidence of prior bad acts can only be used to impeach the witness (App. 655), the elements of murder (App. 655–57), and the law of accomplice liability (App. 557–60).

Even though trial counsel did not request an alibi jury charge, Rose's testimony, that he was not present when the incident occurred, ultimately was a credibility determination for the jury. The trial court properly charged the jury on issues of credibility; therefore, Rose was not prejudiced by the jury not receiving an alibi charge.

**II. Whether the PCR court properly found trial counsel was not ineffective in determining Rose's girlfriend's statement to the police did not constitute an alibi and she did not testify at the PCR hearing?**

Rose argues Amber Wiley's testimony at trial could have corroborated his testimony that he was at home when the incident occurred. Rose cannot prove he was prejudiced by trial counsel failing to call Amber Wiley, because Wiley was not present to testify at his PCR hearing. Certiorari should be denied because Rose cannot establish he was prejudiced. However, even if Amber Wiley had testified at the PCR hearing, trial counsel was not deficient for failing to call her

as a witness because Wiley gave conflicting statements to the police, and would not cooperate with trial counsel.

When an applicant alleges counsel was ineffective for failing to present an alibi witness, counsel has a reasonable duty to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (citing *Strickland*, 466 U.S. at 691; *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir.1991)). Moreover, when an applicant claims counsel was ineffective for failing to call an alibi witness at trial, the applicant must present the witness at the evidentiary hearing to establish his requisite burden of proof. *See Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (“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.”).

Trial counsel was not deficient because she articulated a reasonable strategy for not presenting Wiley as an alibi witness. Trial counsel testified she used an investigator that spoke with Amber Wiley, who had previously given a statement to law enforcement and was included in discovery materials, but that Wiley was uncooperative, denied being home on the night in question, and refused to cooperate. (App. 724–26). Additionally, trial counsel testified Amber Wiley’s original statement to law enforcement indicated she had taken a Tylenol PM at approximately 11:00 p.m. and then went to bed shortly thereafter. (App. 738–39). Trial counsel testified she

ultimately elected not to call Amber Wiley as a witness because of her conflicting statements and refusal to cooperate with defense counsel. (App. 726).

Here, trial counsel investigated the purported alibi witness identified by Rose, and after obtaining a second statement from the witness and determining she was uncooperative, trial counsel elected not to call Amber Wiley as a witness. Rose argues that trial counsel should have called Amber Wiley as a defense alibi witness because of the statement Wiley gave to the police. Rose argues that if Wiley tried to change her testimony at trial, the trial counsel could have, and should have impeached her own witness with the police statement. This argument seems illogical to call a witness in Rose's defense, and then impeach that witness. The unreasonableness of the argument is expounded when Rose's alibi defense rested on his, and any alibi witness's credibility.


Trial counsel's strategy not to present a questionably credible, uncooperative alibi witness was reasonable. Therefore, trial counsel was not deficient. Additionally, Rose failed to present testimony from Wiley at the hearing, and, therefore, cannot meet his requisite burden of proof of establishing any purported prejudice. *See 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.”). Rose argues that Amber Wiley's testimony at the PCR hearing is not needed because of the statement she originally gave to the police. However, this argument ignores the fact that Wiley gave a differing statement to trial counsel's investigator. The PCR court could not determine which statement Wiley gave was credible without having the ability to

observe her testify. Amber Wiley needed to testify at PCR for Rose to establish he was prejudiced by any alleged deficiency for failing to call her as an alibi witness.

Trial counsel was not deficient for reasonably deciding not to call a questionably credible and uncooperative alibi witness, Amber Wiley, and Rose cannot show he was prejudiced because Wiley did not testify at the PCR hearing as to which statement she gave was the truth; therefore, the PCR court properly denied relief as to this allegation. Certiorari should be denied.

CONCLUSION

Based on the foregoing argument, trial counsel was not ineffective. Trial counsel did not render deficient performance, nor did Rose suffer prejudice from any of the alleged deficiencies. Therefore the State requests certiorari be denied.

  
for SAMUEL L. KEY  
Assistant Attorney General

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas  
Honorable William H. Seals Jr., Circuit Court Judge

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Appellate Case No. 2017-002052

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JAMES R. ROSE,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by mailing two copies in the United States mail, postage prepaid, addressed to:

**Robert M. Dudek, Esquire**  
**Chief Appellate Defender**  
**Post Office Box 11589**  
**Columbia, SC 29201**

This 27<sup>th</sup> day of December, 2018.



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Tamiaka Russell-Brown  
Legal Assistant for Respondent

RECEIVED  
DEC 27 2018  
S.C. SUPREME COURT