STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
JAN 08 2019
S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2018-000184
Lower Court Case No. 2014-CP-16-875

BREYON TONEY, #346126,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

JEREMY A. THOMPSON
Attorney and Counselor at Law
Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
803-779-2555
803-753-9732 FAX
jeremyatlaw@yahoo.com

TRICIA A. BLANCHETTE
Attorney at Law
P.O. Box 2147
Leesville, SC 29070
803-908-3266

ATTORNEYS FOR RESPONDENT.

INDEX

QUESTIONS PRESENTED

I.

Whether the lower court erred in concluding that defense counsel was ineffective for failing to object to the trial court's malice instruction?

II.

Whether the lower court erred in concluding that defense counsel was ineffective in numerous ways during his closing argument to the jury?

STATEMENT OF THE CASE

For purposes of this Return, the Respondent agrees with the Petitioner's statement of the case. The Petitioner served its certiorari petition on September 5, 2018. This Return follows.

STATEMENT OF FACTS

The murder charge in this case arose out of the death of James Tucker during the early morning hours of March 24, 2009, in Darlington County. Tucker died of a stab wound during an altercation with the Respondent. At trial, the central disputes were the circumstances of the homicide and the Respondent's state of mind during the homicide; namely, whether or not he acted in self-defense in killing Tucker.

Four witnesses to portions of the altercation testified at trial for the State: Crystal Robinson, Marcus Brunson, Phillip Franklin,[1] and LaVincent Hankins. Robinson and Brunson testified that the Respondent and Tucker met up for a fight over Tucker purchasing diapers for the Respondent's child's mother. App. 146, lines 7-24 (Robinson); p. 177, line 22-p. 178, line 1 (Brunson). All four witnesses testified that they heard Tucker shout that he had a knife. App. p. 147, lines 14-21 (Robinson); p. 178, lines 2-7 (Brunson); p. 207, lines 2-12 (Franklin); p. 239, lines 11-18 (Hankins). Robinson testified that Tucker began to run away from the Respondent and that Tucker threw a couple of beer bottles at the Respondent. App. p. 148, line 17-p. 149, line 7. According to the witnesses, the Respondent gave chase and it was during this second interaction that Tucker was stabbed. App. p. 149, lines 8-11 (Robinson); p. 179, lines 4-20 (Brunson); p. 207, line 13-p. 209, line 25 (Franklin); p. 240, lines 1-10 (Hankins).

The Respondent, who testified in his own defense at trial, gave a starkly different account of the night's events. According to the Respondent, he knew that Tucker was angry with him because Tucker had discovered that the Respondent had a sexual encounter with Tucker's girlfriend India Grimes. App. pp. 343-347. Importantly, throughout the course of the day of March 23, 2009, Tucker sent the Respondent threatening messages and told the Respondent to meet him at the incident location. App. pp. 345-347. When the Respondent went to meet him to talk about

[1] The Respondent would note that Franklin gave a somewhat different version of the facts of the altercation at the PCR hearing. See App. pp. 571-575.

their problems, Tucker instead raised his arms in a fighting stance. App p. 348, lines 4-9. The Respondent took out his knife in response to Tucker picking up a jacket he had dropped. App. p. 348, lines 11-15. Tucker then ran to get two beer bottles, one of which was broken, and charged at the Respondent. App. p. 348, line 19-p. 350, line 1. When Tucker grabbed the Respondent's shirt, the Respondent stabbed at Tucker, which proved to be the fatal blow. App. p. 350, lines 1-8.

An ancillary dispute arose between Hankins and the Respondent two years following the incident where the two encountered each other at a park. According to Hankins, he was at the park with his girlfriend when the Respondent approached him, pulled him out of his vehicle, and tried to fight him. App. p. 241, lines 9-22. He further testified that the Respondent told him, as he was walking away, that "I read your statement and I'm gonna kill you bitch." App. p. 242, line 23-p. 243, line 8. The Respondent disputed this account, and testified that Hankins approached him in a threatening manner and that he shoved Hankins in response. App. p. 353, lines 9-19. He further testified that a physical altercation then occurred but only after Hankins tried to punch him. App. p. 353, lines 21-25.

ARGUMENT

Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to prove a claim of ineffective assistance of trial counsel, the moving party must show that defense counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id. In other words, the petitioning party must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.

On appeal, a PCR court's factual findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). A PCR court's legal findings are afforded no deference and questions of law are reviewed *de novo*. Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839-840 (2018). "The appellate court will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law." Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011).

I. Certiorari should be denied because the PCR court properly determined that defense counsel was ineffective for failing to object to the trial court's incomplete malice charge.

A. How the Issue Arose Below

At trial, the trial court charged the jury on murder, the lesser-included offense of voluntary manslaughter, and the defense of self-defense. The trial court's instruction on malice reads:

> Let's talk about the charge of murder. The defendant is charged with murder, as you are aware. In order to prove this charge, the state must prove that the defendant killed another person with malice aforethought.
>
> Malice is hatred, or ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law ill infer an evil intent.
>
> Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act itself.
>
> Malice aforethought may be expressed or it may be inferred. Now, these terms express and inferred do not mean different kinds of malice, but merely the manner in which it may be shown to exist. That is either by direct evidence, or by inference from the facts and circumstances which are shown to have existed and which are proved here by the state. Express malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepares beforehand to do some act which was later accomplished, for example, lying in wait for someone, or some other act of preparation going to show that the deed was within the defendant's mind. That would be expressed malice.
>
> Malice may also be inferred from conduct that shows a total disregard for human life. And ladies and gentlemen, that is the charge of murder.

App. p. 453, line 15-p. 454, line 22. Defense counsel did not object to this portion of the jury charge. Although no discussion on the record took place about the jury's requests, the jury sent a

note back to the trial court requesting the definitions of murder and manslaughter during deliberations. App. p. 646, lines 8-20.

In the Respondent's Amended Application for Post-Conviction Relief, he alleged that "trial counsel was ineffective for failing to object to the trial court's failure to charge the jury on the general permissive malice inference instruction." App. p. 562. At the PCR hearing, defense counsel testified that the general permissive inference instruction was not contained within the trial court's charge. App. p. 644, lines 5-16. He further testified that this instruction should have been included and that he should have objected to the charge on that basis. App. p. 644, lines 17-22.

The PCR court granted relief on this claim. With regard to Strickland's performance prong, the PCR court found that "[a] trial attorney's failure to object to the lack of a general permissive inference instruction when it is warranted constitutes deficient conduct," and that "[d]efense counsel's failure to object to the lack of the charge is, therefore, deficient conduct." App. pp. 720-721. With regard to Strickland's prejudice prong, the PCR court found that the trial court's erroneous inclusion of the instruction that "[m]alice may also be inferred from conduct that shows a total disregard for human life" without the general permissive instruction prejudiced the Respondent because the jury needed "context in which to evaluate an inferred charge and the general permissive inference instruction provides that context." App. p. 721. The PCR court also noted that the jury struggled with the malice inquiry and that "[t]his case came down to whether or not [the Respondent's] actions constituted malice, and the Applicant's testimony provided a complete defense to the charge." App. p. 722. The Petitioner challenges the prejudice findings on appeal. The Respondent respectfully asserts that the PCR court's findings were correct and that this Court should deny certiorari.

B. Discussion

Any inferred malice charge has two components, the charge detailing the circumstances under which malice may be inferred and "the general permissive inference instruction: 'If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.'" State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009) (footnote 9). A defense attorney's failure to object to the lack of a general permissive instruction, where it is warranted, constitutes ineffective assistance of counsel. Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016).

The PCR court's findings were correct and are amply supported by the record. While the Petitioner appears to concede deficient conduct on the part of defense counsel, as the Petitioner's argument centers entirely on Strickland's prejudice prong, the Respondent will begin its analysis of this issue with Strickland's performance prong. The trial court specifically instructed the jury that they could infer malice from conduct that shows a total disregard for human life. Stabbing at an individual while armed with a knife, as the Respondent did in this case, is conduct that shows a total disregard for human life. This Court has concluded that the inference of malice from the use of a deadly weapon is "half-truth" because "[o]ther facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of [malice's] component parts" which "include[] the absence of justification, excuse and mitigation." Belcher, 385 S.C. at 609-610, 685 S.E.2d at 808. Similarly, the blanket instruction that malice can be inferred from conduct that shows a total disregard for human life conveys a half-truth because there are circumstances where an individual would act in such a way with justification, excuse, or mitigation. Accordingly, the permissive inference instruction is required when the "total disregard" inference charge is given,

just as it is when the "deadly weapon" inference charge is given. Here, the trial court gave no such instruction. The PCR court, therefore, appropriately found defense counsel deficient for failing to object to the trial court's failure to include the permissive inference language in its charge to the jury.

Turning to the PCR court's analysis of Strickland's prejudice prong, the Respondent respectfully submits that substantial evidence supports the PCR court's ruling. As the PCR court correctly found, the evidence presented at trial "came down to whether or not [the Respondent's] actions constituted malice." PCR App. p. 722. The Respondent, in particular, testified that he acted in self-defense when he stabbed Tucker, and only did so once Tucker grabbed him and tried to stab him with a broken beer bottle. Consequently, the Respondent's testimony, standing alone, provides substantial evidence for the PCR court's prejudice findings.

The fact that the jury sent a note to the trial judge requesting the definitions of murder and manslaughter also indicates that the jury had doubts as to whether or not the Respondent acted with malice. Had the evidence of malice been so overwhelming, as the Petitioner posits, then there would be no reason for the jury to make such a request. While the Petitioner attempts to dismiss the jury's note by coming up with alternative explanations for the note, even stating that the verdict "arguably suggests they could find no way around Toney's express declarations of malice," the fact that the note is subject to multiple interpretations shows that this Court should uphold the PCR court's findings. After all, there must be *no* probative evidence to support the PCR court's conclusions in order for this Court to reverse. See Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). A factual finding—such as the import of the jury's note—that is subject to multiple interpretations must be given deference by this Court. Id.

Instead of looking to the impact of the inferred malice instruction or the Respondent's testimony, the Petitioner focuses its argument on one aspect of the case: whether or not there was

overwhelming evidence of express malice such that defense counsel's deficient conduct could not have prejudiced the Respondent. The Respondent contends that this argument misses the point both legally and factually. Legally, "the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." Smalls v. State, 422 S.C. at 189, 810 S.E.2d at 844. To the contrary, "the strength of the State's case ... is one significant factor the court must consider ... in determining whether the applicant has met his burden of proving prejudice." Id. at 190. It is not the only factor, however, as courts are required to consider "the specific impact of counsel's error and other relevant considerations." Id. The Petitioner's argument does not take into account defense counsel's error or other considerations because it concludes that "[t]he implicit inversion of the Court's logic is that where there is evidence of malice aside from that which was subject to deficient treatment by counsel, there is no prejudice to a PCR applicant." Certiorari Petition at 15. As has been just shown, that specific argument is wrong as a matter of law. Evidence of express malice, even if overwhelming, does not end the inquiry. Concordantly, defense counsel's error must be taken into account, and cannot be ignored.

Even if the Petitioner's legal argument was sound, as a factual matter, there is simply not overwhelming evidence of express malice. The Petitioner lists a number of statements made by the State's witnesses at trial that indicate express malice. See Certiorari Petition at 15-16. These include: (1) Robinson's statement to police that she heard the Respondent state that he was going to kill Tucker; (2) Hankins' testimony that he heard the Respondent say that Tucker was going to die; (3) Franklin's "corroborat[ion]" of "Robinson's written statement by testifying that Toney 'was talking loud, and probably out of anger' as he approached the scene." Certiorari Petition at 15-16. This argument does not hold water as the only arguable evidence of express malice came from Hankins. Contrary to her written statement, Robinson specifically testified that she didn't remember the Respondent saying anything as he approached Tucker. App. p. 156, line 22-p. 157,

line 14. Consequently, her trial testimony does not provide for express malice, and certainly not to the degree that it would become overwhelming of all other malice considerations for the jury. Furthermore, Franklin's testimony does not corroborate Robinson's written statement as Franklin's testimony does not match Robinson's written statement in any way. Instead, Franklin was pointedly asked "what specifically was he saying that you heard" and Franklin testified that "I don't exactly remember because it was too long ago." App. p. 206, lines 3; 23-24. Even his further testimony that the Respondent "was talking loud, and probably out of anger," is not evidence of express malice, does not corroborate Robinson's written statement, and hedges on even whether or not the Respondent was angry.

Consequently, when the testimony at trial is taken into consideration, the only evidence of express malice came from Hankins, an individual whom the Respondent asserted approached him and attempted to fight him at a park shortly before trial. One witness of questionable credibility whose account is not corroborated by the three other witnesses to the incident (four if the Respondent is taken into consideration) does not provide overwhelming evidence of express malice such that defense counsel's deficient performance is overcome. Hankins' testimony certainly does not do so when "the specific impact of counsel's error and other relevant considerations," such as the jury's note and the Respondent's testimony at trial providing for the defense of self-defense, are also included in the analysis. Smalls v. State, 422 S.C. at 190, 810 S.E.2d at 844. Accordingly, the Respondent respectfully submits that the Petitioner's argument fails legally and factually and that the PCR court's findings should be upheld by this Court. Certiorari should be denied.

II. The PCR court properly concluded that defense counsel was ineffective in multiple respects during his closing argument.

A. How the Issues Arose Below

During his closing argument, defense counsel made three arguments found to be ineffective by the PCR court. First, defense counsel tried to argue to the jury that a quotation by Friedrich Nietzsche—"[n]o one is such a liar a[s] the indignant man"—was comparable to the Book of Proverbs and that Nietzsche's quotation explained the State's witnesses' testimony. App. p. 395, line 15-p. 396, line 15. Second, defense counsel argued to the jury that the Respondent was wrong to go to a park while out on bond, and that the Respondent bore a portion of the blame for the subsequent fight with Hankins:

> And yeah, you know, he probably shouldn't have gotten into that petty little scuffle at a park where kids play. It shouldn't have happened. But it has nothing to do with what happened on Marion Avenue and Chaplin Circle as far as whether or not he is guilty of these crimes or not. It doesn't have anything to do with that. It makes him look bad. All right. And it does. I wish you didn't hear about it, and I wish he hadn't gotten in this altercation with Quintell. And it may not have been all Breyon's fault, and it may not have been all of Quintell's fault, but he shouldn't have been there. We all know that. All right?

App. p. 405, lines 9-20. Third, defense counsel only addressed one of self-defense's elements—whether or not the Respondent was at fault in bringing on the difficulty—during his closing argument, and did not address any of the other three elements. App. pp. 410-412.

During the PCR hearing, defense counsel testified that this was his first murder trial and that he had only had the "lunch period to prepare for closing." App. p. 647, lines 20-21. He further testified that he would not have made these arguments again if given the opportunity. See App. p. 647, line 22-p. 648, line 5 (Nietzsche); p. 648, line 6-p. 649, line 1 (Hankins); p. 649, lines 2-13 (self-defense).

The PCR court found that these aspects of defense counsel's argument, taken together, constituted ineffective assistance of counsel. With regard to Strickland's performance prong, the PCR court found that

> [D]efense counsel began his argument with a tone-deaf quotation from Friedrich Nietzsche, proceeded to place blame on his client for being in a location he had every right to be, and failed to argue how the Applicant's primary defense was shown through his testimony. In each instance, defense counsel admitted his error to this Court. This closing argument was clearly deficient, especially given that the argument contravened the Applicant's own account of his encounter with Hankins.

App. p. 724. With regard to Strickland's prejudice prong, the PCR court concluded that defense counsel's performance prejudiced the Respondent because "[t]he evidence of guilt was not overwhelming and the Applicant's testimony provided a complete defense to the crime charged." App. p. 724. The PCR court further found that defense counsel's specific errors contributed to the guilty verdict as defense counsel should "not [have] admitted fault on the part of the Applicant and [should have] actually argued that self-defense was met by the Applicant's testimony." App. p. 725. The Petitioner challenges these findings on appeal. The Respondent respectfully asserts that the PCR court's findings were correct and that this Court should deny certiorari.

B. Discussion

The PCR court properly concluded that defense counsel was ineffective during his closing argument. Each individual error, taken alone, constitutes deficient conduct. Taken as the whole of their component parts, however, it becomes readily apparent that defense counsel's closing argument did far more harm than good to the Respondent.

Beginning with the Nietzsche quotation, the Respondent rejects the Petitioner's bombastic proclamations regarding the PCR court's finding. The PCR court did not, as the Petitioner claims, "establish through the judiciary a policy that ... attorneys in this state must recognize and structure their arguments to reflect and respect certain prejudices." Certiorari Petition at 17. Instead, the

PCR court recognized, as was proper, that defense counsel's comparison of Nietzsche to the Book of Proverbs was a very poor way to begin his closing argument. Nietzsche is well-known as an atheist philosopher and thus any similarity in his views to the Book of Proverbs would likely be understood by the jury to be inapt. The PCR court's finding does not mean that attorneys should cater to prejudices and stereotypes. Instead, the PCR court's finding means that attorneys should not begin their closing argument by drawing from two ideologically contrary sources and mistaking them for the same. Defense counsel's closing argument in this case is comparable to one where a defense attorney argues that the policies pursued by Joseph Stalin against his people shared much in common with the ideals expressed by the Founding Fathers of the United States. A bad comparison is a bad comparison, and lawyers *should* avoid those in their closing arguments. This is particularly true when the defense attorney had little to no knowledge of the underlying principles he was advocating for, as defense counsel admitted that he did poorly in philosophy both before the jury (App. p. 395, lines 20-25) and before the PCR court (App. p. 647, line 24-p. 648, line 2).

Turning next to the Hankins argument, defense counsel actually harmed the Respondent by arguing that the Respondent should not have been at the park. That argument directly implies that the Respondent knew that Hankins was going to be at the park and went there on purpose. Otherwise, the Respondent would have had no reason not to go to that park while out on bond. That statement is the fatal admission by defense counsel found deficient by the PCR court. The Respondent does not advocate for a standard, and the PCR court did not find, where defense counsel must "firmly [stand] by Toney's testimony as to what occurred." Certiorari Petition at 19. What Respondent does advocate for, and what the PCR court correctly found, is that an attorney should not directly contradict their client nor implicate their client in any wrongdoing during a closing argument when there is no reason to do so. See Lounds v. State, 380 S.C. 454, 465, 670

S.E.2d 646, 651 (2008) (finding defense counsel ineffective where the "form of argument did not advocate in petitioner's favor, but rather tended to support the State's theory on kidnapping.") That action taken by defense counsel in this case constituted deficient conduct.

Lastly, with regard to the self-defense argument, the Petitioner argues that "Toney failed to show what it was that Counsel was supposed to argue as to each of the elements, but only vaguely indicates that some argument should have been made." Certiorari Petition at 20. While the Respondent submits that it's self-evident what defense counsel should have argued, the Respondent contends that defense counsel erred by not arguing:

- **Second Element—Imminent Danger:** That the Respondent was in imminent danger when he acted by stabbing Tucker as Tucker had grabbed him by the shirt and had a broken beer bottle in his hand that he could use to stab the Respondent. Furthermore, that the Respondent had been charged by Tucker with that broken beer bottle. Finally, that the Respondent testified that he was in fear for his life when he struck at Tucker.
- **Third Element—Reasonable Person Standard:** That anyone in the Respondent's position would have felt threatened for their life given the circumstances leading up to the altercation, the presence of the broken beer bottle, and the violent way in which the Respondent was approached by Tucker.
- **Fourth Element—Duty to Retreat:** That the Respondent did not have any other probable means to avoid the altercation as Tucker had threatened to come to the Respondent's home, he did not come to the location of the altercation looking for a fight, and that there were multiple people around who were supporting Tucker that would have made it difficult for the Respondent to flee the scene.

These are not exhaustive arguments, but merely examples of the arguments that defense counsel could have made on the Respondent's behalf. Instead of making these or similar arguments,

defense counsel made none. Contrary to the Petitioner's position, defense counsel did not do "the best he could with the facts he had." Certiorari Petition at 20. Instead, defense counsel ignored the central aspect of the Respondent's defense and failed to support the primary basis for the Respondent's case or any possibility of a not guilty verdict. That can be nothing less than deficient performance.

Given all of the above, the PCR court correctly found that defense counsel's performance during his closing argument was deficient. The Respondent would again note that defense counsel admitted with regard to each of these portions of his closing argument that he would not have made the same argument again if given the opportunity. Consequently, the Petitioner's challenges to the PCR court's performance findings should be rejected.

Finally, turning to the question of prejudice, the Respondent would note that the Petitioner does not raise much of a prejudice argument with regard to the PCR court's findings, but the Respondent would respectfully assert that the PCR court's finding that the Respondent was prejudiced is well-supported by the record. Defense counsel's errors either made the defense's case worse (in the case of the Nietzsche quotation and the Hankins argument) or ignored the strengths of the defense's case (in the case of the self-defense argument). The Respondent's case would have been significantly stronger had an argument which focused on the strengths of his case and did not actively hurt him been made by defense counsel. Furthermore, the evidence against the Respondent was not overwhelming, and the jury clearly had doubts about whether or not the State had met its burden of proof with regard to the murder charge. There is certainly a reasonable likelihood that a stronger closing argument, or at least an argument which did not admit wrongdoing on the part of the Respondent, would have tipped the scales in favor of the Respondent. Accordingly, the Respondent respectfully submits that the PCR court properly

concluded that he was prejudiced by defense counsel's deficient conduct. Certiorari should be denied.

CONCLUSION

For the reasons stated, the Respondent asks this Court to deny the certiorari petition with regard to the arguments raised by the Petitioner.

Respectfully submitted,

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

TRICIA A. BLANCHETTE
Attorney at Law

P.O. Box 2147
Leesville, SC 29070
803-908-3266

ATTORNEYS FOR RESPONDENT.

This 4th day of January, 2019.

RECEIVED
JAN 08 2019
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2018-000184
Lower Court Case No. 2014-CP-16-875

BREYON TONEY, #346126,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the Return to the Petition for Writ of Certiorari in the above-captioned action have been served upon opposing counsel, Johnny E. James, Jr., Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 4th day of January, 2019.

JEREMY A. THOMPSON
ATTORNEY FOR RESPONDENT

SWORN TO BEFORE me this 4th day
of January, 2019.
Lisa L. Boozer (L.S.)
Notary Public for South Carolina
My Commission Expires:

LISA L. BOOZER
Notary Public - State of South Carolina
My Commission Expires April 9, 2023

LAW OFFICE OF
JEREMY A. THOMPSON
LLC

January 4, 2019

RECEIVED
JAN 08 2019
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Breyon Toney, #346126 v. State of South Carolina; 2018-000184

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Return to Petition for Writ of Certiorari. I would appreciate your filing the original and six copies of the certiorari petition, clocking the extra copy, and returning the clocked copy to me in the enclosed self-addressed, stamped envelope. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures
cc: Johnny E. James, Jr., Assistant Attorney General (w/ enclosure)
Tricia A. Blanchette, Esquire (w/ enclosure)
Breyon Toney, #346126 (w/ enclosure)
Tiffany Huggins (w/ enclosure)

: 803-779-2555
: 803-753-9732
: jeremyatlaw@yahoo.com

Mailing Address:
P.O. Box 1834, Irmo, SC 29063
Physical Address:
1201 Main Street, Suite 1980, Columbia, SC 29201