STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2018-000185

Ricky Sherod Bowman, ...Respondent,

v.

State of South Carolina, ...Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the PCR court correctly find trial counsel was not ineffective for failing to object to the testimony of the lead investigator regarding statements made by a non-testifying witness where the testimony was harmless because it was cumulative to the testimony of the victims and the codefendant?

II. Did the PCR court correctly find trial counsel was not ineffective in failing to object to the partial closure of the courtroom during Petitioner's trial as a violation of Petitioner's Sixth Amendment right to a public trial because Petitioner's constitutional rights were not violated by the partial closure, and therefore, Petitioner was not reasonably likely to prevail on this issue on appeal?

STATEMENT OF THE CASE

Ricky Sherod Brown (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2010, the Richland County Grand Jury indicted Petitioner for assault and battery of a high and aggravated nature (ABHAN) (2010-GS-40-1108), possession of a weapon during the commission of a violent crime (2010-GS-40-1110), armed robbery (2010-GS-40-1110), kidnapping (2010-GS-40-1111), and first-degree burglary (2010-GS-40-1112). Mark E. Schnee, Esquire, represented Petitioner. On November 7-9, 2011, Petitioner proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury. The jury found Petitioner guilty as indicted. Judge Cooper sentenced Petitioner to imprisonment for concurrent terms of twenty years each for first-degree burglary, armed robbery, and kidnapping; ten years for ABHAN; and five years for possession of a weapon during the commission of a violent crime.

Petitioner filed a timely notice of appeal. Benjamin J. Tripp (Tripp), Esquire, of the South Carolina Commission on Indigent Defense - Appellate Defense Divison, perfected the appeal. Tripp raised two issues: (1) whether the closure of the courtroom violated Petitioner's Sixth Amendment right to a public trial, and (2) whether the photo line ups were unduly suggestive. The South Carolina Court of Appeals denied Petitioner's appeal on April 2, 2014, finding the Sixth Amendment issue unpreserved and no error in the admission of the lineup. State v. Bowman, Op. No. 2014-UP-132 (Ct. App. filed April 2, 2014). Petitioner's request for rehearing was denied on June 2, 2014. Petitioner subsequently timely submitted a petition for writ of certiorari. The South Carolina Supreme Court denied the petition on January 15, 2015. The remittitur was returned to the circuit court on February 17, 2015.

Petitioner then timely filed an application for post-conviction relief on March 17, 2015.

Respondent made its Return on July 8, 2015. The circuit court convened an evidentiary hearing into the matter on January 30, 2017, before the Honorable Jocelyn Newman at the Richland County Courthouse. Petitioner was present at the hearing and represented by Anna Good, Esquire. Jessica Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Petitioner's trial counsel, Mark Schnee, Esquire, and appellate counsel, Benjamin J. Tripp, Esquire, testified. Judge Newman issued an order on January 31, 2018, denying and dismissing the application with prejudice. Petitioner filed a notice of appeal from the denial of his claim for relief, and, through counsel, filed a petition for writ of certiorari on October 5, 2018. This return follows.

STATEMENT OF THE FACTS

On the evening of November 25, 2008, Petitioner and three accomplices, including codefendant Sean Toran (Toran), decided to rob a drug dealer called "Black Shawn" in retaliation for Black Shawn's recent robbery of Toran at gunpoint and because Petitioner had engaged in unsatisfactory dealings with Black Shawn in the past. App. pp. 356-57, 391-92. Petitioner and his three accomplices donned bandannas and hoodies, armed themselves with guns, and proceeded to the apartment they believed belonged to Black Shawn. App. pp. 358-61.[1] Unfortunately for the victims, Petitioner went to the wrong apartment. App. pp. 359-60. When Petitioner and his accomplices burst the door, they instead encountered the apartment's rightful occupant, Deloris Dennis; Deloris's cousin, Regina; Deloris's friend, Shamael; Shamael's three-year-old daughter; and Shamael's brother, Korey. App. pp. 314-15. The robbers questioned the occupants about the whereabouts of Black Shawn and the "guns and drugs and weed," but the occupants all denied any knowledge of Black Shawn and any illicit items. App. p. 285, 320. Some of the robbers then took the personal property of the occupants, including cell phones and purses. App. pp. 262-63, 273, 343-44.

Before Petitioner was satisfied he had indeed picked the wrong apartment, he questioned both Deloris and Shamael at gunpoint. App. pp. 288-89, 322. Petitioner held Deloris at gunpoint in her bedroom and told her he "could take [her] breath away." App. p. 322. When Deloris told him she wasn't afraid to die, Petitioner hit her twice in the head with his gun, fracturing Deloris's pinky when she tried to block the second blow with her hand. App. p. 322. Petitioner also held Shamael at gunpoint in the living room while Shamael's three-year-old daughter sat in her lap.

[1] All of the robbers also wore masks, except for Toran. App. pp. 271, 265, 324.

App. pp. 211-13. Petitioner ordered Shamael to tell him where Black Shawn was and asked her if she wanted her child to see her bleed. App. p. 289-90.

Toran told Petitioner to leave the child alone and apologized for "hit[ting] the wrong spot." App. pp. 291-92. Toran then rounded up all the robbers, and they left the apartment. App. p. 292-93. However, before leaving, the men told the victims that if they called the police, they would come back and kill them. App. p. 295, 264. Shortly after the robbers left, Deloris and her guests heard several gunshots from outside and, in response, they "hit the floor." App. pp. 293-94, 325. After waiting a brief period of time to be sure the robbers had left, Shamael took Deloris to the hospital where Deloris received three staples in the top of her head and had a splint placed on her broken finger. App. pp. 294, 325-26. Deloris was released from the hospital the next day, and she then returned to her apartment and called the police to report the incident. App. pp. 251-53.

Investigator Pegram (Pegram) of the Columbia Police Department was assigned to the case, and he immediately realized there was a connection between the burglary and robbery at Deloris's apartment and the previous robbery of Toran by Black Shawn. App. pp. 400-01. About nine days after the robbery at Deloris's apartment, Pegram helped execute a search warrant for an unrelated case at 716 Washington Street, the same apartment complex where Toran lived. App. p. 402-03. During a search of the apartment of Torrell Johnson, police discovered items stolen from male victim, Korey, during the robbery at Deloris's apartment. App. p. 404. Investigator Pegram then had a conversation with Torrell Johnson, who "just started giving it up," telling Investigator Pegram what he knew about the robbery at Deloris's apartment and naming Petitioner and Toran, as being involved. App. pp. 404-05. According to Pegram, Johnson knew details about the crime that had not been released to the public, so Pegram believed Mr. Johnson knew what he was talking about. App. pp. 405-06.

After receiving Petitioner's and Toran's names from Johnson, Investigator Pegram immediately put together a photo lineup for both Petitioner and Toran. App. p. 407. The next day, December 5, 2008, the victims came to the police station to give written statements and view the photo lineups. App. p. 408. Both Deloris and Shamael identified Petitioner after using pieces of paper to cover up all but the eye area of the persons in the photographs. App. p. 409. Both Deloris and Shamael also identified Sean Toran from the other photo lineup.[2] App. pp. 409-10.

Based on the identifications by the victims, Investigator Pegram obtained arrest warrants for Petitioner and Sean Toran. App. p. 410. Petitioner was arrested about a year later after United States Marshals located him in Savannah, Georgia. App. p. 411. Sean Toran, who was already in jail on drug charges, was also arrested, and he eventually decided to cooperate with the State to testify against Petitioner at trial. App. pp. 350-95, 411. The jury convicted Petitioner of armed robbery, burglary in the first degree, kidnapping, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime after rejecting the alibi testimony presented by Petitioner. App. 477-88, 561-65. The trial judge sentenced Petitioner to a total of twenty years. App. pp. 561-65.

[2] Regina Dennis also testified and identified Toran. App. p. 269, 271. Korey Coit did not testify. App. p. 85-86.

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 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839 (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. Id. 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).

In a post-conviction relief action, a Petitioner has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When a Petitioner alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The Petitioner must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Petitioner must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 688.

ARGUMENT

I. The PCR court correctly found trial counsel was not ineffective for failing to object to the testimony of the lead investigator regarding statements made by non-testifying witness where the testimony was harmless because it was cumulative to the testimony of the victims and the codefendant.

The PCR court correctly found Petitioner was not prejudiced by trial counsel's failure to object to Investigator Pegram's testimony regarding Torrell Johnson's identification of Petitioner as a participant in the robbery. The identification of Petitioner was cumulative to the testimony of Petitioner's codefendant, Toran, and the victims. Whether trial counsel was deficient in his handling of this testimony is immaterial where there is no prejudice to Petitioner, and therefore, certiorari should be denied as to this issue. Strickland, 466 U.S. 668.

The Sixth Amendment's Confrontation Clause guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The United States Supreme Court has held the admission of testimonial hearsay against an accused violates the Confrontation Clause if the declarant is unavailable to testify at trial, and the accused has not had a prior opportunity to cross-examine the declarant. Crawford v. Washington, 541 U.S. 36, 59 (2004).

In this case, Investigator Pegram testified he first heard Petitioner's name from a man named Torrell Johnson. Pegram made the connection between the robbery at Deloris's apartment where the robbers were looking for someone called "Big Shawn," and Petitioner's codefendant, Toran, because Pegram was also the investigator assigned to the case in which Toran was the robbery victim and Big Shawn was the alleged perpetrator. This connection lead Pegram to be present for the service of an unrelated search warrant on Torrell Johnson's residence, where Pegram then discovered identification documents belonging to the victims of the robbery at

Delores's apartment. Pegram explained Johnson claimed to have obtained the items from Petitioner and Toran, so Pegram had lineups prepared with their pictures.

Trial counsel did not object to this testimony, despite it being objectionable as testimonial hearsay prohibited by Crawford. See State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007) ("The general rule is that hearsay is not admissible."); see Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."). However, even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006); see also State v. Dinkins, 339 S.C. 597, 603, 529 S.E.2d 557, 560 (Ct. App. 2000), aff'd, 345 S.C. 412, 548 S.E.2d 217 (2001) ("A violation of the Confrontation Clause is not *per se* reversible error. . . . We must consider several factors to determine whether the error is harmless or requires reversal. These factors include the importance of the challenged evidence to the State's case, whether the evidence was cumulative, whether the evidence was materially corroborated or contradicted by other evidence introduced at trial, the extent of cross-examination otherwise permitted, and the overall strength of the State's case.") (internal citations omitted). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). In this case, the testimony of the officer was cumulative to the testimony of three other witnesses and was not reasonably likely to have influenced the jury's verdict. Therefore, Petitioner was not prejudiced by its admission.

When Pegram gave the testimony at issue, both victims had already testified regarding their identification of Petitioner via the photo lineup and identified Petitioner in court. App. pp. 279-

347. Additionally, Toran had testified and named Petitioner as one of the codefendants in the robbery. App. pp. 350-95. Petitioner claims the victims' identifications were "weak" because all of the robbers except Toran wore masks. PWC p. 10. However, Dolores testified she would never forget Petitioner's eyes, and she made her identification by covering the lineup with another piece of paper so only the area around the eyes was visible. App. p. 333. Dolores testified she was "100 percent" sure Petitioner was one of the robbers, specifically the one who hit her over the head with the gun. App. p. 333. Similarly, Shamael testified she also covered the lineup photos with pieces of paper because she could identify the perpetrator by his eyes, and she was "sure" of her identification of Petitioner as one of robbers. App. pp. 297-98, 301. Lastly, Toran testified and corroborated the victims' version of events, and identified himself and Petitioner as two of robbers. App. pp. 357-64. Toran also testified he witnessed Petitioner strike Doloris on the head. App. p. 363.

Thus, the identification by Torell Johnson, through Pegram, of Petitioner as one of the perpetrators was cumulative, and any error on trial counsel's part in failing to object to the testimony regarding Johnson's identification was harmless and would not have changed the outcome at trial. See, e.g., State v. Chisholm, 395 S.C. 259, 274, 717 S.E.2d 614, 622 (Ct. App. 2011) (finding any error in the admission of hearsay evidence to be harmless where the improper hearsay comment was fleeting, it was unclear if the jury understood the comment to be a reference to Chisholm, and Chisholm was identified as the perpetrator of the crime through the testimony of two other witnesses); Dinkins, 339 S.C. at 604, 529 S.E.2d at 560 (finding Confrontation Clause violation arising from admission of statement given to police by non-testifying witness was harmless where each victim identified defendant at trial and defendant made voluntary admission to police); State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996) (finding improper

hearsay testimony by police officer regarding witness identification of defendant as driver of vehicle in DUI case was harmless because the testimony was cumulative to other identifications of defendant). Accordingly, certiorari should be denied as to this issue.

II. The PCR court correctly found trial counsel was not ineffective in failing to object to the partial closure of the courtroom during Petitioner's trial as a violation of Petitioner's Sixth Amendment right to a public trial because Petitioner's constitutional rights were not violated by the partial closure, and therefore, Petitioner was not reasonably likely to prevail on this issue on appeal.

In a pre-trial motion, the State requested that the courtroom be cleared during the Neil v. Biggers hearing. App. pp. 105-06. The solicitor explained the victims had received e-mails from Petitioner's sister offering them money not to testify and asking them not to send Petitioner to jail. App. p. 105. The solicitor inform the court that, consequently, the victims were in fear of retaliation for their testimony, and asked "the court be cleared just while they testify." App. pp. 105-06. In response, trial counsel objected, arguing it would be unfair to clear the courtroom in front of the jury and doing so would prejudice Petitioner by making it look like he and his family were being singled out. App. p. 106-07. The trial judge granted the State's motion, and cleared the courtroom during the Neil v. Biggers pre-trial hearing testimony of Delores, Shamael, and Regina. App. pp. 107, 128, 196-97.

Later, just before the trial began, the State again raised the issue of clearing the courtroom during the testimony of some of the victims. App. p. 221. The solicitor presented the judge with affidavits from these two victims detailing their fears about testifying. App. p. 222. Trial counsel objected to the sufficiency of the allegations in the affidavits, but the judge ruled he would clear the courtroom "over the objection of the defendant." App. p. 222. The judge reiterated the clearing of the courtroom would be for two witnesses only. App. p. 222.

Following the parties' opening statements, the judge excused the jury, and the State made a formal request to clear the courtroom during the testimony of its first two witnesses. App. p. 206. Trial counsel once again objected and moved for a mistrial on the ground that the solicitor's opening statement mentioned "an alleged fear of retaliation" on the part of the victims and argued if the courtroom were cleared at that point, it would "validat[e] the arguments to the jury that [Petitioner] and his family are somehow a threat." App. p. 248. The trial judge overruled the motion and cleared the courtroom, outside the presence of the jury, for the testimony of the first two witnesses only.[3] App. p. 249. However, the judge allowed an attorney seeking to obtain his Rule 403, SCACR, trial experiences to remain in the courtroom, as well as a victim's advocate from the Solictor's Office. App. p. 249.

After the close of all the testimony, trial counsel renewed his motion for a mistrial based upon the solicitor's comments in her opening statement regarding the victims' fear, arguing those comments, coupled with the fact Petitioner's family members were removed during the testimony of two of the victims, warranted a mistrial. App. pp. 496-97. In response, the solicitor pointed out that the courtroom was cleared "without the jury even knowing what had happened," and therefore, Petitioner had not been prejudiced. App. p. 497. The trial judge denied the motion for mistrial for the reasons he stated on the record previously. App. p. 497. This issue was raised on appeal as a violation of Petitioner's Sixth Amendment right to a public trial, but the Court of Appeals found it was not preserved because trial counsel did not make a specific constitutional argument. State v. Bowman, Op. No. 2014-UP-132 (Ct. App. filed April 2, 2014).

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[3] The State moved to also clear the courtroom during Toran's testimony. App. p. 348-49. Toran also completed an affidavit detailing the threats he had received, including threatening phone calls. App. p. 348. The trial judge denied the request, finding Toran and the two victims were in different positions since the victims were "women with children," and Toran was a codefendant whose identity did not need to be protected. App. p. 349.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. Further, "[a]fter an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better. . . . Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind." Harrington v. Richter, 562 U.S. 86, 109-10 (2011). Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. . . . Strickland, 466 U.S. at 689. As noted in Harrington, "there is no expectation that competent counsel will be a flawless strategist or tactician. . . ." 562 U.S. at 109.

Although trial counsel did not make the Sixth Amendment argument, the record clearly reflects he fought to protect Petitioner's interests on this issue by raising a prejudice argument instead and moving for a mistrial. At the evidentiary hearing, trial counsel explained he was not aware of the State's intention to make the motion to clear the courtroom ahead of time, he had never dealt with this specific issue before, and the trial judge made an immediate ruling without allowing trial counsel any time to research the law. App. pp. 45-46, 56-57. In this case, trial counsel objected to the motion to clear the courtroom, made a cogent argument based on prejudice, and moved for a mistrial. Although it might have been a better strategy to make the constitutional argument, the objection raised by counsel was reasonable under the circumstances and clearly falls within the range of competent assistance.

In any event, in order for Petitioner to prevail on this issue, he has to prove he was prejudiced by showing he would have been likely to prevail on this issue on appeal had it been preserved. An issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013) (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003); Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999)). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability. McHam, 404 S.C. at 475-76, 746 S.E.2d at 47 ("Since the Fourth Amendment issue was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in McHam's PCR claim.").

The denial of a defendant's right to a public trial is a structural error. Waller v. Georgia, 467 U.S. 39 (1984) ("The parties do not question the consistent view of the lower courts that the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee. We agree with that view. . . ."). "When a structural error is preserved and raised on direct review, the balance is in the defendant's favor, and a new trial generally will be granted as a matter of right. When a structural error is raised in the context of an ineffective-assistance claim, however, finality concerns are far more pronounced." Weaver v. Massachusetts, ___ U.S. ___, 137 S. Ct. 1899, 1913 (2017). "Thus, when a defendant raises a public-trial violation via an ineffective-assistance-of counsel claim, Strickland prejudice is not shown automatically. Instead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or... to show that the particular public-trial violation was so serious as to render his or her trial fundamentally unfair." Id. at 1911.

Here, Petitioner has not shown either a reasonable probability of a different outcome or that the violation was fundamentally unfair. The Sixth Amendment public-trial right is not absolute, and courts have long recognized there may be exceptions where "[t]he presumption of openness may be overcome. . .by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501, 510 (1984). The interest being protected should be articulated in the record with specific findings to enable the reviewing court to determine if the closure was warranted. Id. In Petitioner's case, the overriding interest was the victims' concern for their safety and their ability to testify freely without intimidation. Thus, in this instance, the partial closure of the courtroom was actually calculated to help advance the usual aims of an open trial. See Waller, 467 U.S. at 46 ("[A] public trial encourages witnesses to come forward and discourages perjury."). Further, two members of the public were allowed to remain, and the closure lasted only as long as necessary to protect the identified overriding interest, as it was limited only to the testimony of two victims, rather than the entire trial. Accordingly, because the trial court engaged in a proper analysis of the rights of both the State and Petitioner and narrowly crafted its remedy of a partial courtroom closure, Petitioner cannot prove prejudice. The PCR court correctly denied Petitioner's application on this ground, and this court should deny certiorari on this issue.

CONCLUSION

For all the foregoing reasons, the State requests this Court deny the petition for a writ of certiorari and affirm the post-conviction relief court's dismissal of Petitioner's application for relief.

Respectfully submitted,

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March 6, 2019

ATTORNEYS FOR PETITIONER

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
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The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2018-000145

RICKY BOWMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Clarence Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

This 6th day of March, 2019

CARMEN NORD
Legal Assistant

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAR 08 2019
S.C. SUPREME COURT

March 6, 2019

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

Re: **Ricky Bowman v. State of South Carolina**
Appellate Case No. 2018-000145
Lower Court Case No. 2015-CP-40-01658

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey McCallister
Assistant Attorney General
SC Bar No. 79054

LM/can
Enclosures

cc: C. Rauch Wise, Esquire (2 copies)