STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Grace G. Knie, Circuit Court Judge

Appellate Case No. 2018-001839

Calvin Terrell Williams, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUE PRESENTED

The PCR court properly denied relief because Williams was given notice prior to trial of the State's intention to seek a sentence of life-without-parole based upon two prior convictions for armed bank robbery, pursuant to 18 U.S.C. § 2113(a) and (d), and these convictions constitute most serious and serious offenses under S.C. Code Ann. § 17-25-45.

STATEMENT OF THE CASE

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner was indicted at the April 2015 term of the Spartanburg County Grand Jury for armed robbery and bank robbery (2015-GS-42-02312, Ct. II).[1] Matthew W. Shealy, Esq. ("Counsel") represented Petitioner, and Barry J. Barnette, Esq., Solicitor for the Seventh Judicial Circuit, prosecuted the case. On June 6, 2016, Petitioner proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Petitioner guilty as indicted on June 8, 2016. Pursuant to S.C. Code Ann. § 17-25-45, Judge Couch sentenced Petitioner to imprisonment for the remainder of his natural life without the possibility of parole.

Petitioner filed a timely notice of appeal and a direct appeal was perfected by Laura R. Baer, Esq., filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

> Whether the trial court erred in denying Appellant's motion for directed verdict on the charge of accessory before the fact to bank robbery where the solicitor did not present any evidence that Appellant was solely an accessory and the presentation of both charges was confusing to the jury?

The South Carolina Court of Appeals dismissed Petitioner's appeal by unpublished opinion. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed Oct. 18, 2017). The remittitur was issued on November 3, 2017.

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[1] Petitioner was additionally indicted for armed robbery (2015-GS-42-02312, Ct. I), and at the May 2016 term, accessory before the fact to felony bank robbery (2016-GS-42-02368). The armed robbery indictment was dismissed *nolle prosequi* prior to trial. The accessory indictment was dismissed *nolle prosequi* after the jury convicted Petitioner of bank robbery.

Petitioner filed his application for post-conviction relief on January 8, 2018 (2018-CP-42-00057). He alleged the following grounds for relief in his application, as summarized by the State:

1. Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery;

2. Ineffective assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery; and

3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50.

Respondent made its return on April 18, 2018, and an evidentiary hearing into the matter was convened on June 18, 2018, before the Honorable Grace G. Knie. Petitioner was present at the hearing and represented by Susannah C. Ross, Esq. Megan Harrigan Jameson and Jordon Cox, Esqs., of the South Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Petitioner proceeded forward on the above listed allegations, as well as the following two, over Respondent's objections:

4. Ineffective assistance of counsel for failing to require the State to reveal the co-defendant's plea offer; and

5. Ineffective assistance of counsel for failing to properly cross-examine the co-defendant regarding his prior inconsistent statements to law enforcement.

Both parties filed memoranda of law subsequent to the evidentiary hearing. By written order dated August 6, 2018, and filed August 7, 2018, Judge Knie denied and dismissed the application. Petitioner moved to alter or amend the judgment by filing on August 17, 2018, and Respondent filed its return on September 24, 2018. Judge Knie denied the motion to alter or amend by order filed September 28, 2018.

STATEMENT OF THE FACTS

In January 2015, Petitioner Calvin Terrell Williams planned and directed the robbery of a Spartanburg BB&T through the assistance of his sixteen-year-old son.

a. The bank teller received a note demanding money, gave two thousand in cash with an ink pack slipped into the stack, and then bank employees saw the ink explode onto the robber as he fled the scene.

On January 22, 2015, Jennifer Rodriguez was working as a teller at a Spartanburg BB&T on W.O. Ezell Boulevard when a man walked in and, after waiting in line until called to her window, slid a note to her which read:

> This is an armed robbery. This is an armed bank robbery. I demand $40,000 in large bills with no bands around the money. No dye packs. No bait money. No tracking devices. I want all the money placed in my book bag. No silent alarms. If you obey me nobody will get hurt.

(Appx. 166-67; Appx. 170-71). However, the robber had no bookbag, and Rodriguez thought the robber was scared. (Appx. 167-68; Appx. 169-70; Appx. 171, ll. 2-4). Rodriguez communicated to a coworker that she was being robbed, placed $2,000 and a dye pack into bank envelopes, and then gave the "three or four bank envelopes" to the robber. (Appx. 168, ll. 4-21; Appx. 175, ll. 23-25). Bank security cameras captured the exchange inside the teller's lobby. (Appx. 171-75). After the robber left and Rodriguez locked the doors, she saw her boss Robert Cooper across the street returning from lunch as the dye pack detonated on the perpetrator. (Appx. 168-69; Appx. 178, ll. 6-13).

Robert Cooper, the bank manager, was returning from a lunch appointment with a prospective client and walking by the SpeeDee Oil Change & Auto Service when he saw a man walk out from the bank and that red dye was emanating from beneath his clothes. (Appx. 179-83). Cooper realized the man "had probably just robbed the bank[,]" and looked up to see Rodriguez "locking the doors and she was pointing at him." (Appx. 183, ll. 2-7). Cooper

watched the man throw the stolen money beneath a nearby vehicle and then run away. (Appx. 183-84). A curious SpeeDee Oil employee emerged to see what was going on, and Cooper instructed him to "not touch any of the money or anything like that." (Appx. 184, ll. 4-18). The robber fled through a gas station parking lot, after which Cooper lost sight of him. (Appx. 184, ll. 19-25).

b. Petitioner's son admitted to robbing the bank at his father's direction, who told him what to write on the threatening note, and arranged for their transport to and from the bank.

Petitioner's son, Shyquone, met with his father and his father's girlfriend, Leanne Foster, the previous day—January 21, 2015. (Appx. 187-89). It was the first time Shyquone had seen his father in a decade. (Appx. 190, ll. 19-22). The three drove in a silver Dodge Charger to Foster's residence in Jonesville, South Carolina, where they caught up. (Appx. 190, ll. 5-25). Petitioner proposed they rob a bank, but was not specific as to which. (Appx. 191, ll. 1-8). Shyquone stayed overnight, and when all were awake the following morning, January 22, 2015, Petitioner declared it was the day to rob the bank. (Appx. 191, ll. 11-21). Foster dropped Shyquone off at his cousin's house, where he rested until Petitioner woke him and "said you ready[?]" (Appx. 193, ll. 2-11). There, Petitioner wrote Shyquone a note and instructed him to copy it in his own handwriting; his son complied. (Appx. 191-93; Appx. 214-15). Petitioner and Shyquone walked from the house to Union Street, where they met a man driving a van who gave them a ride to East Main Street. (Appx. 193-94). The van parked out of sight of the BB&T. (Appx. 215-16).

Shyquone followed his father's instructions: he walked to the bank, gave the note, got the money, and then walked outside. (Appx. 194-95). The dye pack in the money exploded, and so Shyquone pushed the money out of his pocket, kicked it up under a nearby car, then rushed back to the van. (Appx. 195-96). Petitioner asked Shyquone if he had the money; Shyquone

said no and they pulled off while Shyquone worked to conceal his red dye stains from the unsuspecting driver. (Appx. 196, ll. 4-19). Petitioner asked the van driver to take them back to Union Street, but the driver refused, and dropped them off near the Quail Pointe Apartments instead. (Appx. 196-97). Shyquone exchanged his khaki pants, hoodie, and coat with Petitioner for an orange hoodie, and Petitioner tossed the dye stained clothes into the bushes. (Appx. 197-98). Law enforcement appeared and detained both father and son in the Quail Pointe parking lot. (Appx. 198, ll. 3-10). Shyquone, afraid of his father and hoping to keep him out of trouble, initially told law enforcement he did not know his father and Petitioner had nothing to do with the robbery, but Shyquone ultimately confirmed Petitioner planned the robbery and told him what to do. (Appx. 198-200; Appx. 205, ll. 6-16; Appx. 207-08).

The van driver also testified at trial. Kenneth Blassingame, a disabled Army veteran and former machine operator, just left a convenience store when an acquaintance of his stopped him and indicated "that these two young men was looking for a ride to go pick some money up and they would pay me." (Appx. 232-34, quote at Appx. 234, ll. 12-14; Appx. 241-42). Blassingame explained he could take the men wherever they needed to go, but he would not be returning to that side of town and would not be able to bring them back. (Appx. 234, ll. 14-18). Petitioner explained they were meeting with somebody at the bank to collect some money, and he could give gas money in exchange for a ride. (Appx. 235, ll. 3-6). The men got into his van and the older of the two, who Blassingame identified as Petitioner, directed him to park on the other side of a gas station near the bank. (Appx. 234-36; Appx. 247, ll. 5-24). On a tight schedule, Blassingame questioned if the men saw the person from whom they were supposed to collect, and the younger of the two volunteered to "go up there to see if he there." (Appx. 236, ll. 16-25). After about ten to fifteen minutes, the young man got back into Blassingame's vehicle

and said the contact was not there. (Appx. 237, ll. 1-12; Appx. 244, ll. 19-25). An impatient Blassingame told the men not to worry about the gas money, as he needed to pick up his wife. He refused Petitioner's requests to be taken to Blackstock Road, and instead dropped them off near an apartment complex. (Appx. 237-38). The younger man never said anything except when he got out of the van and when he returned; Blassingame primarily dealt with Petitioner. (Appx. 238, ll. 11-22; Appx. 240-41). Later that day, Blassingame learned the bank was robbed and told his wife about giving the men a ride. That evening, the police appeared at Blassingame's house and asserted he was involved in the robbery. Blassingame explained his involvement. (Appx. 238-39).

c. Public onlookers followed the getaway van to the Quail Pointe Apartments and directed law enforcement there, where Petitioner and his son were captured.

Jason Moore, a resident of Spartanburg, was out with his fiancé Jalessa Burgess after lunch and waiting on a stoplight near the BB&T when they saw a man cutting "through the Jiffy Lube parking lot[,]" with red smoke trailing from him. (Appx. 221-22; Appx. 226-27). Jason and Jalessa took a turn at the light and saw the young man hop into a "tannish gray" Pontiac minivan and leave. (Appx. 222, ll. 12-22). Jalessa called 9-1-1, who instructed them to follow the van, and so they did. (Appx. 222-23). Eventually they watched the van pull into a gas station near the Quail Pointe Apartments and saw two people hop out after the police had just driven by. (Appx. 223, ll. 12-23). Jalessa directed law enforcement into Quail Pointe and reported one of the perpetrators changed into an orange hoodie. (Appx. 223-26).

Bobby Turner, of the Spartanburg County Sheriff's Office, was not far away from the BB&T when dispatch issued a BOLO in reference to the robbery, and reported the suspects were last seen getting out of a van at the Quail Pointe Apartments. (Appx. 277-79). Turner approached the area and saw one man wearing an orange hoodie with khaki shorts, and another

man wearing a dark jacket with blue jeans. (Appx. 279, ll. 1-8). Turner approached and detained Petitioner while another officer detained Shyquone. (Appx. 279, ll. 9-24). Petitioner carried a black book bag, empty but for a couple pairs of boxers, and denied Shyquone was his son. (Appx. 280-81; Appx. 282, ll. 10-13; Appx. 285, ll. 5-18; Appx. 286-87). As Turner checked Petitioner for weapons, the officer activated his body camera, which backed up 30 seconds and recorded the arrest. (Appx. 280-84).

Courtney Burgess, of the Spartanburg County Sheriff's Office, worked the crime scenes at the bank and at the Quail Pointe Apartments. (Appx. 250-51). The money stolen from the bank and the exploded dye pack were recovered from beneath a Dodge Ram pickup in the parking lot of the oil change shop, and other spots nearby. (Appx. 256-57). At the Quail Pointe Apartments, Burgess recovered "a pair of khaki pants, a black hooded sweatshirt, and I think was a dark brown leather type jacket. All of the items had a red dye substance on them." (Appx. 259, ll. 21-25). The clothes were recovered from hedges and bushes behind one of the apartment buildings. (Appx. 260-65).

d. The State originally intended to introduce evidence from Petitioner's two prior federal convictions for armed bank robbery, to show a common scheme or plan, the absence of mistake, and establish intent, but the evidence was never presented to the jury after the federal judge demanded the return of the presentencing report.

Prior to trial, the State introduced as Court's Exhibits records reflecting Petitioner's two prior convictions and proffered the testimony of Jim Lannamann, the retired Federal Bureau of Investigation agent who worked the cases. (Appx. 43-48). Lannamann explained that he investigated the August 7, 2003, robbery of the Central Carolina Bank on East Henry Street in Spartanburg, South Carolina by Petitioner and eighteen-year-old Aderian Fair, as well as the August 12, 2003, robbery of the First Citizens Bank on North Church Street in Spartanburg, South Carolina by Petitioner and sixteen-year-old Anastasia P. (Appx. 48-49). Over Counsel's

strenuous objections, Lannamann testified *in camera* that he interviewed Fair, who explained Petitioner was the mastermind and that he:

> . . . had generated a demand note and had provided a black bag and instructed Aderian Fair how to commit this bank robbery, and Fair committed the robbery and was caught immediately thereafter by the YMCA in a Wendy's on South Pine, and he was transported to Spartanburg.

(Appx. 57-78). The money from the bank was found inside the bag, alongside a prescription pill bottle with Petitioner's name on the label. (Appx. 58, ll. 15-23). Over the same objections, Lannamann further testified *in camera* that Anastasia P. entered the First Citizens Bank with a demand note that threatened explosives. (Appx. 60, ll. 3-8). Anastasia was identified from bank surveillance pictures, located, and interviewed, at which time she implicated Petitioner in the robbery. (Appx. 73, ll. 22-25).

Petitioner appeared before the Honorable Henry Herlong and pled guilty to the two counts of armed bank robbery on October 31, 2003, and was sentenced to concurrent terms of 125 months. (Appx. 50-53; Appx. 74-75). On cross-examination, Lannamann read the substance of each federal count into the record:

> The Grand Jury charges that on or about August the 7th, 2003, in the District of South Carolina, the defendants, Aderian Jawone Fair and Calvin Terrell Williams, with force, violence, and intimidation, did take from the person and presence of employees of Central Carolina Bank, 453 East Henry Street, Spartanburg, South Carolina, money belonging to and in the care, custody, control, management, and possession of said financial institution the funds of which were insured by the Federal Deposit Insurance Corporation and the committing said, said violation did assault and put in jeopardy the lives of other persons *by the use of a dangerous weapon and device, that is explosives,* and did aid and abet each other in the commission of the aforesaid offense in violation of Title 18, United States Code Section 2113(a), 2113(d)(2).
>
> . . .
>
> Grand Jury further charges that on or about August 12, 2003, in the District of South Carolina, the defendant, Calvin Terrell Williams, and a person known to the Grand Jury, by force, violence, and intimidation, did take from the person and presence of employees of First Citizens Bank, 305 North Church

> Street, Spartanburg, South Carolina, money belonging to and in the care, custody, control, management, and possession of said financial institution, the funds of which were insured by the Federal Deposit Insurance Corporation, and in committing said violation did assault and put in jeopardy the lives of other persons *by the use of a dangerous weapon and device, that is explosives*, and did aid and abet each other in the commission of aforesaid offense in violation of Title 18 United States Code Section 2113(a), 2113(d)(2).

(Appx. 77-78) (emphasis added). Lannamann had not seen the plea agreement, nor the facts set forth in that agreement, and he agreed that all he knew was there was an indictment and Petitioner pled guilty to that indictment. (Appx. 83-84).

The State also sought to admit the federal court's presentencing report, and prior to trial called Dean Cook, a federal probation agent, to explain that Judge Herlong had released the sentencing report as a public file. (Appx. 102-04; Appx. 112-13). However, on the morning of the last day of trial, June 8, 2016, the State reported to the trial court that Judge Herlong had ordered all the federal documents be returned to him, and that Cook had "been ordered not to testify or say anything in Court." (Appx. 291, ll. 9-14). The State moved to return the items, and the items were so returned. (Appx. 291-93). Neither Cook, Lannamann, nor anybody else ever testified in front of the jury regarding the underlying facts of Petitioner's prior convictions.

e. The State still relied upon the prior convictions for S.C. Code Ann. § 17-25-45(A), and Counsel did not contest the validity of the prior convictions.

After the jury returned its verdict, the State asserted Petitioner's two prior federal convictions for armed bank robbery would have been classified as "most serious" and "serious" under S.C. Code Ann. § 17-25-45. (Appx. 357-58). The State noted that entering a bank with intent to steal carried a sentence of up to thirty years, such that the federal bank robberies would constitute serious offenses. (Appx. 358, ll. 12-25). Counsel conceded the two armed bank robberies were serious offenses. (Appx. 359, ll. 1-13).

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id.; Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

THE PCR COURT PROPERLY DENIED RELIEF BECAUSE THE FEDERAL ARMED BANK ROBBERY CHARGES TO WHICH PETITIONER PREVIOUSLY PLED WOULD CONSTITUTE BOTH ARMED ROBBERY AND ENTERING A BANK WITH INTENT TO STEAL UNDER SOUTH CAROLINA LAW, SUCH THAT THE PRIOR CONVICTIONS COULD COUNT AS MOST SERIOUS AND SERIOUS "STRIKES" FOR THE PURPOSES OF IMPOSING A MANDATORY SENTENCE OF LIFE-WITHOUT-PAROLE UPON PETITIONER'S CONVICTION FOR HIS LATEST BANK ROBBERY.

The PCR court properly denied the application for post-conviction relief because Counsel could not be deficient for failing to argue that Petitioner's prior admissions and convictions for robbing banks "by the use of a dangerous weapon and device, that is explosives" was not functionally equivalent to armed robbery under S.C. Code Ann. § 17-25-45. Furthermore, even if some distinction could be wedged between "armed bank robbery" and "armed robbery," the prior federal charges could also give rise to charges for "entering a bank with intent to steal," a South Carolina offense for which a court can impose a sentence of up to thirty years, such that it is a "serious" offense under the recidivist statute. Therefore, Counsel exercised reasonable judgment in determining at the time of trial that he had no basis to contest the life-without-parole sentence, his hindsight second-guessing of himself after the fact is of no consequence, and the petition for writ of certiorari should be denied

a. The recidivist statute provides that prior convictions from other jurisdictions may be relied upon for the purposes of the statute where they would be classified as serious or most serious offenses.

South Carolina's recidivist statute provides that where the State gives written notice at least ten days prior to trial, and where a defendant has two prior "serious" or "most serious" convictions, upon a conviction for another "serious" offense, the defendant must be sentenced to a term of imprisonment for life without the possibility of parole. S.C. Code Ann. § 17-25-45(B). Alternately, where notice is given and where a defendant has a *single* prior "most serious"

conviction, or two prior "serious" convictions, upon a conviction for another "most serious" offense, a life-without-parole sentence must be imposed. S.C. Code Ann. § 17-25-45(A).

The offenses classified as "most serious" are specifically listed in the statute, which includes armed robbery. S.C. Code Ann. § 17-25-45(C)(1). As for "serious" offenses, numerous crimes are specifically enumerated, but the law also includes "any offense which is punishable by a maximum term of imprisonment for thirty years or more" which is not already classified as "most serious." S.C. Code Ann. § 17-25-45(C)(2)(a).

The State and the courts may rely upon convictions which occurred in a federal or out-of-state jurisdiction, and look to whether the actions taken by the defendant to satisfy the elements of the crime in the other jurisdiction would satisfy the elements of a crime or crimes qualified as "serious' or "most serious" in the recidivist statute. S.C. Code Ann. §§ 17-25-45(A)(1)(b), -45(A)(2)(b), -45(B)(3); see State v. Washington, 338 S.C. 392, 397-98, 526 S.E.2d 709, 711 (2000) (finding Washington was properly sentenced under the recidivist offender statute where the elements of his prior offense of common law burglary now constituted the offense of first-degree burglary, meaning his prior conviction was the legal equivalent of a "most serious" offense and would have constituted a "most serious" offense pursuant to the statute); Hinton v. South Carolina Dept. of Probation, Parole, and Pardon Services, 357 S.C. 327, 339, 592 S.E.2d 335, 342 (Ct. App. 2004) (noting under the "same-elements" test, when comparing the elements of the offenses, a court 'looks to whether the particular actions taken by the defendant which satisfy the elements of the crime in the other state would satisfy the elements of one of the enumerated crimes.").

Here, the State and the trial court relied upon two prior guilty pleas for conduct in violation of 18 U.S.C. § 2113(a) and § 2113(d), which provide:

> (a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property for money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, credit union, or any savings and loan association; . . . Shall be fined under this title or imprisoned not more than twenty years, or both.
>
> . . .
>
> (d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b)[2] of this section, assaults any person, or puts in jeopardy the life of any person *by the use of a dangerous weapon or device*, shall be fined under this title or imprisoned not more than twenty-five years, or both.

(emphasis added).

"A plea of guilty is an admission or a confession of guilt, and is as conclusive as the verdict of a jury; it admits all matter of fact averments of the accusation." State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973). A guilty plea leaves "no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury." Jamison v. State, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014).

b. The prior federal bank robbery convictions are comparable to entering a bank with intent to steal, such that they would be classified as "serious" offenses.

First, all of the elements of the South Carolina offense of entering a bank with intent to steal are encompassed by the fact averments set forth in the indictments to which Petitioner pled guilty in federal court. "It is unlawful for a person to enter a building or part of a building occupied as a bank, depository, or building and loan association with intent to steal money, securities for money, or property, either by force, intimidation, or threats." S.C. Code Ann. § 16-11-380(A). "Entering a bank with intent to steal is an extremely serious, specialized, theft-related offense. Prior to January 1, 1994, it was punishable by mandatory life imprisonment,

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[2] For the curious, 18 U.S.C. § 2113(b) replaces the "force and violence" element with a "value exceeding $1,000" element, and provides for a lesser sentence.

absent a jury recommendation of mercy, in which event the minimum sentence was imprisonment for five years." McAninch, Fairey & Coggiola, The Criminal Law of South Carolina 376 (6th ed. 2013) (citing State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (1993)). "Effective January 1, 1994, the maximum was reduced to 30 years." Id. (citing S.C. Code Ann. § 16-11-380).

In pleading guilty to each of the indictments, Petitioner admitted to going into the banks ("... from the person and presence of [building address] ...") to steal money ("... did take ... money ...") either by force, intimidation, or threats ("... with force, violence, and intimidation . . ."). As such, Petitioner pled to what would qualify as entering a bank with intent to steal under South Carolina law. Because entering a bank with intent to steal carries a maximum sentencing exposure of 30 years, it qualifies as a "serious" offense under the recidivist statute.

Because the prior federal convictions could be classified as serious offenses, Counsel could not be ineffective for failing to object and argue otherwise.

c. The prior federal bank robbery convictions are comparable to armed robbery, such that they would be classified as "most serious" offenses, and Petitioner's effort to distinguish "dangerous" and "deadly" weapons is devoid of support.

Second, all of the elements of the South Carolina offense of armed robbery are also encompassed by the fact averments set forth in the indictments to which Petitioner pled guilty in federal court. "Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007). "A person who commits robbery while armed with a ... deadly weapon ... is guilty of a felony[.]" S.C. Code Ann. § 16-11-330(A). "A deadly weapon is generally defined as 'any article, instrument or substance which is likely to produce death or great bodily harm.'" State v.

Scurry, 322 S.C. 514, 517, 473 S.E.2d 61, 63 (Ct. App. 1996) (citing State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985)). "Whether an object has been used as a deadly weapon depends upon the facts and circumstances of each case." State v. Simmons, 360 S.C. 33, 43, 599 S.E.2d 448, 453 (2004).

In pleading guilty to each of the indictments, Petitioner admitted to taking money (". . . did take . . . money . . .") either by force, intimidation, or threats (". . . with force, violence, and intimidation . . .") by the use of a deadly weapon in the form of explosives (". . . by the use of a dangerous weapon and device, that is explosives . . ."). As such, Petitioner pled to what would qualify as armed robbery under South Carolina law. Armed robbery is specifically enumerated as a "most serious" offense under the recidivist statute.

Petitioner argues that the prior convictions could not be compared to armed robbery because "the federal crime of bank robbery does not require a deadly weapon like South Carolina's armed robbery charge." (Petition for Writ of Certiorari at 10). While it is true that portions of 18 U.S.C. § 2113 contemplate bank robberies not involving deadly weapons, the subsection under which Petitioner pled guilty, and the averred facts admitted by Petitioner through his guilty plea, most definitely do involve deadly, dangerous weapons. 18 U.S.C. § 2113(d). As Counsel noted at the evidentiary hearing, "it says explosives, which – and I would submit to you, in every case, would be considered a deadly weapon in an armed robbery prosecution." (Appx. 472, ll. 16-19).

Breezily unburdened by precedent, Petitioner contends that "a dangerous weapon and device" is lexicographically and legally distinct from a "deadly weapon." To the contrary, Black's Law Dictionary defines "dangerous weapon" as "[a]n object or device that, because of the way it is used, is capable of causing serious bodily injury[,]" which constitutes a class of

objects and devices encompassed by our jurisdiction's conception of a "deadly weapon" as in relation to "great bodily harm." Weapon Definition, Black's Law Dictionary (11th ed. 2019), available at Westlaw; Scurry, 322 S.C. at 517, 473 S.E.2d at 63. Indeed, Black's recognizes the encompassing overlap in its definition of a deadly weapon. See Weapon Definition, Black's Law Ditionary (11th ed. 2019), available at Westlaw ("Any firearm or other device, instrument, material, or substance that, from the manner in which it is used or is intended to be used, is calculated or likely to produce death. *In some states, the definition encompasses the likelihood of causing either death or serious physical injury.*") (emphasis added).

Corpus Juris Secundum is clearer in explicitly defining the terms together: "A 'dangerous or deadly weapon' may be defined as one likely to produce death or serious physical injury, when operable, or an object that ostensibly may be used as a tool . . ., but surrounding circumstances indicate that the purpose of carrying the object is its use as a weapon." 94 C.J.S. Weapons § 5. Put simply, any weapon or device that is dangerous is also deadly. Any weapon or device that is deadly is dangerous.

South Carolina jurisprudence accordingly appears to treat the terms "dangerous" and "deadly" as synonymous. See, e.g. State v. Davis, 309 S.C. 326, 343-44, 422 S.E.2d 133, 144-45 (1992) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)) (considering a jury charge which used the phrase "dangerous, or deadly, object" four times before concluding a hand or fist may be considered as a deadly weapon); State v. Wilds, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003) (explaining that "an automobile is regarded as a dangerous instrumentality" such that the use thereof could then be relied upon for a permissive inference of malice instruction).

Federal jurisprudence similarly reflects that "dangerous" and "deadly" weapons are, in effect, one in the same. See, e.g. Prince v. United States, 352 U.S. 322, 324 n.1, 329 n.11 (1957) (quoting the armed bank robbery statute and the "dangerous" language in full in one footnote, then summarily describing the crime as "robbery aggravated by assault with a deadly weapon" in another footnote); United States v. Johnson, 324 F.2d 264, 266 (4th Cir. 1963) (affirming that a chair, and almost any object, may be a dangerous weapon when as used "is likely to produce death or great bodily harm[.]"); United States v. Dayea, 32 F.3d 1377, 1379 n.2 (9th Cir. 1994) (citing to ten cases as examples of "dangerous" weapons, and recognizing the interchangeable character of the terms "dangerous weapon," "dangerous instruments," and "deadly weapon"). The use of the total phrase "dangerous or deadly weapon" is not a signal of some legal distinction between "dangerous" and "deadly," but rather is an antiquated artifact of overly cautious legalese whose only real purpose could be to deter litigators from attempting to argue a distinction that does not exist.

The PCR court properly rejected Petitioner's contention that Counsel was ineffective in failing to argue that "dangerous" and "deadly" weapons are different. Counsel could not be deficient in failing to make a meritless argument, and even if this Court were to find some merit in such an argument, Petitioner could not be prejudiced as he would still be consigned to life without parole based upon the shared elements of armed bank robbery and entering a bank with intent to steal.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

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By: ______________________
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20 Sept. 2019

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Grace Gilchrist Knie Circuit Court Judge

Appellate Case No. 2018-001839

CALVIN WILLIAMS, PETITIONER

v.

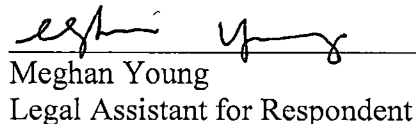
STATE OF SOUTH CAROLINA, RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by hand-delivering two copies addressed to:

Taylor D. Gilliam, Esquire
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

This 20th day of September, 2019.



Meghan Young
Legal Assistant for Respondent

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
SEP 20 2019
S.C. SUPREME COURT

September 20, 2019

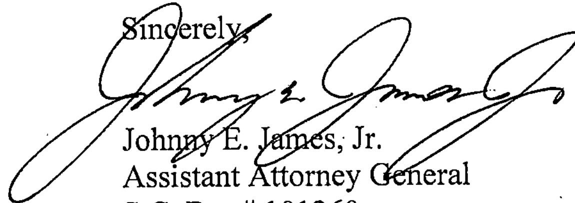
The Honorable Daniel E. Shearouse
Clerk of Court — SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Calvin Williams v. State of South Carolina
Appellate Case No.: 2018-001839

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,



Johnny E. James, Jr.
Assistant Attorney General
S.C. Bar # 101260

JEJ/my
Enclosures

cc: Taylor D. Gilliam, Esquire
Victim Advocacy Division