STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
G. Thomas Cooper Jr., Circuit Court Judge

Appellate Case No. 2019-000381

HENRY NESBIT JR., Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether trial counsel rendered ineffective assistance by failing to request a jury instruction for the lesser-included offense of simple possession of cocaine.

2. Whether trial counsel rendered ineffective assistance by failing to locate and examine all of the State's evidence prior to trial.

3. Whether trial counsel rendered ineffective assistance by not fully explaining the benefits and detriments of Nesbit testifying at trial and advising him not to testify.

STATEMENT OF THE CASE

This is an appeal of the denial of Appellant Henry Nesbit, Jr.'s application for post-conviction relief ("PCR"). The application was filed on May 26, 2016 and claimed that Nesbit was entitled to relief based on constitutionally ineffective assistance of counsel and a violation of South Carolina chain of custody laws in the handling of drugs in Nesbit's criminal case. (R. p. 605-613). Respondent served its return and partial motion to dismiss1 on April 14, 2017. (R. p. 614-652). Nesbit then filed an amended application for post-conviction relief on June 28, 2018 and a second amended application for post-conviction relief on September 6, 2018. (R. p. 653-659; 660-667). Respondent served its amended return on September 25, 2018, requesting an evidentiary hearing be convened on the application. (R. p. 668-678). An evidentiary hearing was held on December 6, 2018. (R. p. 679-765). On February 15, 20192, the court issued its Order of Dismissal, denying Nesbit relief. (R. p. 766-779). Nesbit filed a Notice of Appeal on March 4, 20193. (R. p. 780-781).

Nesbit is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of Commitment. (R. p. 650-652). During its September 2013 term, the Charleston County Grand Jury indicted Nesbit for failure to stop for a blue light (2013-GS-10-5527), trafficking cocaine (2013-GS-10- 5634), and possession with intent to distribute ("PWID") methylone (bath salts) (2013- GS- 10-5639). (R. p. 287-292). Melissa Gay, Esquire and Michael Nelson, Esquire represented Nesbit at trial on May 5-8, 2014, before a jury and the Honorable Deadra L. Jefferson. The jury convicted Nesbit as indicted for failure to stop for a blue light, and the lesser-included offenses of PWID cocaine and possession of methylone. (R. p. 270). Judge Jefferson sentenced Nesbit to concurrent terms of fifteen years

for PWID cocaine, five years for failure to stop for a blue light, and one year for possession of methylone. (R. p. 284-285; 650-652).

Nesbit appealed and was represented by Robert M. Pachak, Esquire, who filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) on Nesbit's behalf. (R. p. 590-601). The South Carolina Court of Appeals dismissed Nesbit's appeal in an unpublished opinion. State v. Nesbit, No. 2015-UP-483, 2015 WL 5970097 (S.C. Ct. App. Oct. 14, 2015). (R. p. 602-603). The remittitur was returned to the circuit court on October 30, 2015. (R. p. 604).

STANDARD OF REVIEW

An appellate court must affirm the factual findings of the PCR court if they are supported by any probative evidence in the record. Reeves v. State, 415 S.C. 366, 373, 782 S.E.2d 747, 750 (Ct. App. 2015). However, reversal is appropriate where the PCR court's decision is controlled by an error of law, id., or unsupported by the evidence, Garren v. State, 423 S.C. 1, 11, 813 S.E.2d 704, 710 (2018). The appellate court's standard of review in PCR cases depends on the specific issue before it. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). The appellate court defers to a PCR court's factual findings and will uphold them if there is evidence in the record to support them. Id. The court, however, reviews questions of law de novo, with no deference to trial courts. Id. at 180-81, 810 S.E.2d at 839.

STATEMENT OF THE FACTS

Nesbit was represented at his criminal trial by attorneys Melissa Gay and Michael Nelson. The criminal charges against Nesbit stem from an incident that occurred on June 16, 2013, when Deputy Chavez tried to effect a traffic stop on the Harley Davidson motorcycle being driven by Nesbit. (R. p. 92-93). The traffic stop was for failing to use a turn signal when making a turn. (R. p. 92-98). The Harley Davidson motorcycle Nesbit was driving did not belong to him. (R. p. 125:14-19).

Deputy Chavez initiated the stop by activating his blue lights, but Nesbit, after starting to slow down and making a right-hand turn, took off at a high rate of speed. (R. p. 96-97). Deputy Chavez pursued Nesbit and during the chase Nesbit had a collision and fell off the motorcycle. (R. p. 98-99). Deputy Chavez arrested Nesbit for failing to stop for a blue light and placed Nesbit in handcuffs. (R. p. 99-100).

Deputy Chavez then searched Nesbit and found a large amount of U.S. currency (approximately $2,900) and several bags of narcotics in his front pockets. (R. p. 101). The majority of the money was "in smaller bills, 20s". (R. p. 101:10). The money was in Nesbit's right front pocket. (R. p. 101:25, 102:1). "There was approximately $108 in 5's, 10's and l's. There was approximately 7- to $750 in 100's and 50's. And the rest was in 20's. And I believe that was approximately 100 or 103, 102, $20 bills stuffed, crushed, shoved inside his pocket... shoved, wadded, pushed in." (R. p. 131:12-21). Nesbit "had over 100 actual bills.wadded up" in his right front pocket. (R. p. 133:15-23).

In Nesbit's right front pocket, Chavez also found a clear plastic baggy that had a sizeable amount of white powdery substance that" Chavez believed to be cocaine. (R. p. 101:25, 102:1-4). In Nesbit's left front pocket, Deputy Chavez found a "brown grocery style plastic bag... that had

four individual freezer style bags that had an amount of a brown crystallized substance inside... each one of the baggies. (R. p. 102:5-9). Another "freezer-style bag that had a small amount of the brown crystallized substance" was also found in Nesbit's right front pocket. (R. p. 102:10-13). Nesbit also had cigarettes in his jean pockets. (R. p. 132:13-19, 142:1-13). Deputy Chavez seized all these items and placed them in an evidence bag and placed the bag in his patrol vehicle. (R. p. 104:8-10).

Nesbit was then transported to the Medical University of South Carolina ("M.U.S.C." or "hospital") for treatment. (R. p. 109:23-25, 110:1-3). Deputy Buckhannon had followed the ambulance that had transported Nesbit to the hospital. (R. p. 110:1-7). At the hospital, medical staff had cut off Nesbit's pants to administer treatment. (R. p. 110:12-17). When Deputy Chavez arrived at the hospital, he took custody from Buckhannon of the cut-off pants that had been placed in a bag. (R. p. 1 10:12-18). Deputy Chavez then searched the pants and in the right coin pocket he found a "small baggy of white powdery substance and another small baggy with green plant-like material in it." (R. p. 110:18-25).

Deputy Chavez testified that Deputy Buckhannon collected Nesbit's clothes at the hospital and turned them over to Chavez. (R. p. 138:2-10). Chavez testified that he inventoried the jeans because they were part of the evidence, and he had a duty to maintain Nesbit's property. (R. p. 110:23-25, 111:1-5). Deputy Buckhannon testified that the medical staff cut off all of Nesbit's clothes at the hospital. (R. p. 151:9-11). Buckhannon witnessed this and gathered Nesbit's clothes off of the ground and put them into an evidence bag. (R. p. 151:12-17). Buckhannon kept the bag until Chavez arrived and then turned it over to Chavez. (R. p. 151:20-25, 152:1-15). The jeans, however, were not introduced into evidence at trial.

A drug analysis performed on the items seized from Nesbit indicated that the cocaine found in Nesbit's right front pocket weighed 19.53 grams, and the cocaine found later in Nesbit's coin pocket weighed 1.72 grams. (R. p. 196:3-7). The methylone found in Nesbit's left front pocket weighed a total of 394.66 grams. (R. p. 197:23-25).

Deputy Chavez testified that the various bags found on Nesbit were not submitted for fingerprinting although he could have done so if he had chosen to. (R. p. 140:23-25, 141:1-16).

Nesbit did not testify at trial and the defense offered no evidence.

Following the presentation of evidence, defense counsel requested a lesser-included offense instruction of simple possession of methylone, which request the trial court granted. (R. p. 209-210). The defense also requested a lesser-included offense instruction on possession with intent to distribute ("PWID") cocaine which request the court granted. (R. p. 207:2-4, 10-25; 210-212). Attorney Gay argued that the charge was warranted by the fact that there were "two packets of drugs. One of them is a smaller amount and one was a larger amount, the cocaine, and both of those there's a smaller amount... It's not just one baggie. And so if we - I mean, the jury may want to pick an option of having him convicted of one baggy and not the other baggy." (R. p. 207:10-18). Despite this argument, the defense did not request an instruction on the lesser-included offense of simple possession of cocaine.

In closing argument, defense counsel Gay argued that given the size of the bags allegedly found in Nesbit's pants pocket, along with the many wadded up bills and the cigarettes, the drugs could not have been in Nesbit's pocket because they could not fit in his pockets, and, so, must have been on the ground after being thrown out of the motorcycle during the crash. (R. p. 235-237). Because the motorcycle did not belong to Nesbit, counsel argued that he did not know the drugs were in the motorcycle and thus did not actually or constructively possess the drugs, and

therefore was not criminally liable for such drugs. (R. p. 235-236). Counsel recognized, however, that the small amount of cocaine found at the hospital in Nesbit's coin pocket was a "completely different situation." (R. p. 236:11-18). Gay told the jury that "in many ways we understand that they claim they came out of the coin pocket of his pants," but the other drugs were a different matter. (R. p. 238:3-9).

During jury deliberations, the jury sent a note to the court stating that it could not decide on the cocaine offense (20 13-GS- 10-5634). (R. p. 262:15-6). The court sent the note back and informed the jury that "they had to write out what their question was." (R. p. 262:22-23). The jury then sent a note stating: "Can we select the lesser charge for cocaine possession even though the law says greater than 10 grams is trafficking." (R. p. 262:24-25-263:1). The court and counsel discussed how to respond, and the court initially stated: "And I think the simple answer is yes. It's a lesser included offense. Oh, you know what ~ I just read this note again ~ I'm thinking PWID, not possession." (R. p. 263:1-4). The court continued:

> THE COURT: I think I need more clarity on this note because I need to figure out what they're asking. Can we select the lesser charge for cocaine possession. Well, the only thing they could be talking about is PWID because those are the only two that are on the verdict form. They may have used different terminology, but those are the only two options. (R. p. 263:6-12).

Attorney Nelson stated: "They might also be thinking about the charge you gave for the possession with intent of Methylone." (R. p. 263:13-14). The court responded: "No. I don't think so." (R. p. 263:15, 18). The court continued:

> Juries are very direct when they ask questions. If that was the case, they would have said possession of Methylone. They only have two options on that verdict form, which is trafficking and PWID. And when I charge possession with intent, possession is one of the elements that you instruct, and you instruct actual and constructive possession, so that is my thought process of what they're asking, but I could also always ask the foreperson to come in and clarify for me,

> but the problem is I don't want them getting into their internal deliberations, and I don't want her to tell me too much.

After further discussion the court ruled that it would respond by writing a note to the jury stating that it could "select trafficking in cocaine or the lesser included offense of possession with intent to distribute cocaine." (R. p. 266:19-21). There was no objection to the court's response. (R. p. 268-269). A verdict was later returned which included a finding of guilt for PWID cocaine. (R. p. 270:9-12).

At the PCR hearing on Nesbit's claims of ineffective assistance of counsel at trial, Nesbit and his two attorneys who requested him at trial, Michael Nelson and Lisa Gay, testified. Nesbit testified that he met personally with Gay only once or twice and never met Nelson while he was in detention awaiting trial. (R. p. 689:8-20). Nesbit understood from his attorney that their strategy was "all or nothing", i.e. either guilty or not guilty of the crimes as charged. (R. p. 692:1-9). Nesbit was not made aware that the jury could possibly convict him of a lesser-included offense. (R. p. 692:6-9).

Nesbit testified that he was informed of the plea offers by the State, but was not able to make an informed decision whether to accept or reject the offers due to his counsel's ineffective assistance. (R. p. 692-695). Thus, Nesbit's rejection of the offers was not informed. (R. p. 695:3-8).

Nesbit testified that Gay briefly discussed with him his right to testify at trial, but told him that if he testified the State could introduce his prior convictions into evidence on cross-examination, so it was in his best interest not to testify. (R. p. 696-697). Also, Gay told him it was better not to testify because then they would have the last closing argument at trial. (R. p. 697). Nesbit, however, wanted to testify but did not due to the advice of his attorney. (R. p. 697-698). Nesbit testified that his defense was that the drugs at issue were not his and that he never

had actual or constructive possession of them, but that they had apparently been in the motorcycle and came out after the accident. (R. p. 698-699). He was not able to tell the jury this, however, because his attorney advised him not to testify at trial. (R. p. 699:6-13). Nesbit also testified that counsel was ineffective in failing to introduce his jeans into evidence, even though the State had "logged" the parts into evidence prior to trial. (R. p. 695-696). His attorneys did not discuss with him why they did not introduce the pants into evidence. (R. p. 696:8-11). Nesbit further testified that counsel was ineffective in failing to request a lesser-included offense instruction of simple possession of cocaine, and that the jury's note about being able to convict of possession supports such claim. (R. p. 701-703).

Attorney Nelson testified that he was hired only about two or three weeks before the trial and was hired to assist in trying the case. (R. p. 711:13-16). Nelson met Nesbit only a couple of days before trial and on the morning of trial. (R. p. 711:22-23). Nelson testified that because the money and the "majority of drugs" were found in Nesbit's pants, his questioning of witnesses was "along the lines of it is impossible that this much stuff could have been in the pants." (R. p. 713:13-18).

Attorney Gay testified at the PCR hearing that defense counsel had an "all or nothing" strategy at trial, i.e. either Nesbit would be convicted as charged or acquitted. (R. p. 754:7-18). Gay's argument was essentially that the large amount of drugs could not have been in Nesbit's pockets but must have been on the ground and have come from the motorcycle, which did not belong to Nesbit. Gay testified that "nobody's pants would have been big enough for that much drugs to be put in. The package was literally that big (motioning)." (R. p. 762:6-8).

Gay testified, however, that counsel's strategy "evolved" at trial when "different information became available", referring to the separate bags of cocaine found on Nesbit, and particularly the small bag found in his coin pocket at the hospital. (R. p. 753-755).

Attorney Gay testified that not requesting a lesser-included instruction on mere possession of cocaine was not a strategic move, but that she just "didn't do it right" because she "didn't think about the fact that [the cocaine found in Nesbit's pants' pocket] didn't even weigh a gram. . .and there was no evidence of intent" with the small amount of cocaine in the pants' pocket. (R. p. 734-737). Thus, according to Gay, the jury should have been instructed on the lesser charge of simple possession. (R. p. 735-736). Gay testified that, based on the jury's question during deliberation, it would have convicted Nesbit only of simple possession (as it did for the possession of methylone). (R. p. 734- 741). Gay testified that because of the small amount of cocaine found in the coin pocket and the lack of evidence any intent to distribute, the evidence supported the simple possession instruction and, if requested, would have been given. (R. p. 735-741). Gay testified that the jury's question about possession" indicated that had they the option of convicting Nesbit only of simple possession they would have done so. (R. p. 734:15-23,735:11-19, 739:11-25, 740-741, 743:10-19). Gay further testified: "I don't think the jury was ever going to find him not guilty of what was in his pocket, because it was a pair of pants that he was wearing when they cut it off of him and when he got to the hospital... [but] once they [the jury] determined that they didn't want to convict him of what was on the ground the only thing left was less than a gram in his pocket." (R. p. 760:12-24).

With regard to why she did not introduce the jeans Nesbit had been wearing into evidence, Gay testified that the "pants had been cut off of [Nesbit] and went away as part of the medical procedure." (R. p. 734:12-14). "The pants were not kept." (R. p. 738:4-5). Gay testified

that the police did not "gather [the pants] from the nursing staff or the medical professionals at the hospital" and were "destroyed when he went to the hospital." (R. p. 761:16-22, 762:2-3). This, of course, contradicts the testimony presented at trial that the police collected Nesbit's clothing as evidence.

ARGUMENT

The PCR court properly found that trial counsel had a strategic reason for not requesting the simple possession charge, Petitioner was aware of the strategy, and that there was not sufficient factual basis for the trial court to give the charge. The PCR court properly found that not requesting the simple possession charge in favor of an "all-or-nothing" approach was a valid trial strategy and was not ineffective.

The PCR court found that Petitioner consistently wanted his trial to be all or nothing, however, he was aware of counsel's strategy changing throughout the trial. The court evaluated the testimony of trial counsel concerning Petitioner's involvement in trial strategy, including the decision as to what jury charges to request. The court also considered the testimony of Mr. Nelson, Petitioner's trial counsel, that he believes that there was not a sufficient factual basis to support a charge on simple possession and does not believe that the trial court would have given it if requested. The PCR court found that counsel articulated a valid trial strategy in not requesting the simple possession charge and that counsel's performance was not ineffective. The court relied on well-established case law in making its findings:

> Indeed, where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v; State, 309 S.C. 560, 562, 425 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such a strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 1 19, 122, 417 S.E.2d 529,

531 (1992) (citing Gobdson v. U.S., 564 F.2d 1071 (4th Cir. 1977)). Therefore, this court dismisses this allegation.

Therefore, the PCR court's Order of Dismissal finding that counsel was not ineffective was proper.

The United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const, amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). To establish a claim of ineffective assistance of counsel, the defendant has the burden of proving (1) counsel failed to render reasonably effective assistance under the prevailing professional norms; and (2) counsel's deficient performance prejudiced the defendant's case. Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). To prove trial counsel's performance was deficient, an applicant must show counsel's representation fell below an objective standard of reasonableness. Smalls, 422 S.C. at 181; see, Strickland, 466 U.S. at 688. Prejudice, as required for the second prong of the Strickland test, is defined as a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Reeves v. State, 415 S.C. 366, 373, 782 S.E.2d 747, 750 (Ct. App. 2015) (citing Strickland, 466 U.S. at 693). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial. Smalls v. State, 422 S.C. at 188, 810 S.E.2d at 843; see Strickland, 466 U.S. at 695-96.

Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary. Reeves v. State, 415 S.C. at 375-76, 782 S.E.2d at 752 (citing Strickland, 466 U.S. at 691). At a minimum, counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Id. at 376, 782 S.E.2d at 752. Strategic choices made after less than complete

investigations are reasonable precisely to the extent that reasonable professional judgments support the limitations or investigation. Id. Counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. Id. It is counsel's duty to develop a trial strategy and discuss it with her client. McCoy v. Louisiana, 138 S. Ct. 1500, 1509 (2018).

It is recognized that trial counsel is not ineffective when she can articulate a valid strategic reason for failing to request a lesser offense instruction. Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014), cert, denied (Jan. 5, 2015). Nevertheless, while the court is reluctant to second-guess counsel's strategic decisions, the decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound. Stone v. State, 419 S.C. 370, 383-84, 798 S.E.2d 561, 568-69 (2017); see United States v. Allmendinger, 894 F.3d 121, 129-30 (4th Cir. 2018) (even if counsel has a strategic reason for decision, the decision still must pass the test of reasonableness and not every purported strategic reason will pass such test; in the case before it, counsel's purported strategic rationale for decision rested on a "faulty foundation", and thus his performance was deficient and constituted ineffective assistance).

Petitioner argues that the PCR court used flawed reasoning in accepting that trial counsel properly utilized the "all or nothing" trial strategy. Petitioner argues that since the State's evidence was that there was a large amount of cocaine found on Petitioner at the scene and a small baggie found on his person at the hospital there was no valid basis for the strategy. Petitioner goes on to enumerate counsel's strategy to separate the possession of the small baggie of cocaine from the large quantity found at the scene. Counsel argued to the jury that Petitioner possessed the small amount of cocaine found in his pocket, but that the cocaine found at the

scene was the property of the person from whom Petitioner borrowed the motorcycle. This strategy of conceding possession of the small quantity while arguing against possession of the larger quantity makes perfect sense considering an "all or nothing" strategy as it related to charges necessitating large quantities of cocaine.

Petitioner argues that Counsel admitted she should have requested the simple possession charge, however, co-counsel and the PCR court disagreed with her change of heart as it relates to the enumerated strategy. First, Counsel Nelson testified that he did not believe that there was a sufficient factual basis for the simple possession charge, that he was surprised the trial court found basis enough to charge PWID, and that Petitioner was involved in the decision to not request the charge. Second, the question from the jury does not necessarily mean that failing to request the jury instruction was a bad strategy decision by counsel. The jury question essentially asked if they could not find Petitioner guilty of trafficking or PWID could they find him guilty of possession. The question fairly implies that the defense had successfully convinced the jury that Petitioner was not in possession of the larger quantity of drugs found at the scene, therefore, the jury should have acquitted Petitioner due to the "all or nothing" strategy employed by counsel.

Petitioner argues that counsel failed to properly investigate what happened to his jeans after the incident. However, testimony from counsel at the evidentiary hearing was that the pants were destroyed as part of a medical procedure at the hospital. The evidence from the trial shows that the pants had been destroyed and that they were not available to either party to be introduced into evidence. Counsel testified that they were able to thoroughly describe the pants to the jury as it related to their theory of the case, that the large amount of drugs found on the scene could not have fit in the pants. Therefore, the PCR court properly dismissed Petitioner's allegation as it relates to counsel failing to investigate this aspect of the case.

Petitioner argues that counsel was ineffective in advising him not to testify at trial. Petitioner argues that his testimony may have been helpful and that it is uncertain whether his convictions could have been used against him for impeachment purposes. Counsel testified at the evidentiary hearing that she believed that Petitioner's prior convictions could have been used against him for impeachment purposes. Counsel further testified that she believed that having closing argument was going to be an important part of the strategy in the case. Also, as previously argued, the question asked by the jury further shows that the closing argument made by counsel was highly effective in getting the jury to believe the defense's theory of the case. Therefore, the PCR court's holding that counsel was effective in advising Petitioner of his right to testify was proper.

Petitioner has failed to show counsel's alleged ineffective representation prejudiced him during the trial. The credible testimony of counsel was that Petitioner was advised of the decision to not request the simple possession jury instruction, counsel did not believe there was a factual basis sufficient to support the instruction, and the jury tended to believe the defense's theory of the case. Petitioner cannot show that counsel was ineffective, nor can he show how he was prejudiced by the alleged ineffective representation. Therefore, counsel did not render ineffective assistance of counsel and the PCR court properly found that to be the case.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a 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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October 7, 2019

ALAN WILSON
ATTORNEY GENERAL

October 7, 2019

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

RE: Henry Nesbit v. State of South Carolina
Appellate Case No.: 2019-000381

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,

Benjamin H. Limbaugh
Assistant Attorney General
S.C. Bar # 103334

BHL/jj
Enclosures

cc: Jerry N. Theos, Esquire
Victim Advocacy Division

STATE OF SOUTH CAROLINA
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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 placing one copy in the United States Mail, addressed to:

Jerry N. Theos, Esquire
Theos Law Firm, LLC
11 State Street
Charleston, SC 29401

This 7th day of October, 2019.

Benjamin H. Limbaugh, AAG
Attorney for Respondent