STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
JAN 30 2020
S.C. SUPREME COURT

CERTIORARI TO YORK COUNTY
Court of Common Pleas
Roger E. Henderson, Post-Conviction Relief Judge
John C. Hayes, III, Trial Judge

Appellate Case No. 2019-000655

ANTONIO L. ROBBINS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

PETITIONER'S ISSUES PRESENTED ON CERTORARI

I. Did the PCR Court err in its finding that trial counsel was not ineffective for his failure to obtain through discovery the recording of the controlled buy between the CI and the Applicant?

II. Did the PCR Court err in finding that trial counsel was not ineffective for failing to object to Lieutenant Ligon's qualifications and testimony as an expert regarding levels of drug dealers?

RESPONDENT'S ISSUES PRESENTED ON CERTORARI

I. Did the post-conviction relief court properly find Counsel was not constitutionally ineffective for failing to obtain the audio recording of the peripheral and uncharged controlled buy between Petitioner and the confidential informant from the State through the discovery process because Counsel obtained a copy of the audio recording, presented it to the trial court, and the trial court ruled it was not relevant to Petitioner's trial; further, the State did not have an obligation to provide the audio recording to Counsel as the audio recording was not relevant to Petitioner's trial and Counsel cannot be found deficient for failing to obtain evidence in discovery that was not discoverable for Petitioner's trial?

II. Did the post-conviction relief court properly find Counsel was not constitutionally ineffective for failing to object to Lieutenant Ligon being qualified as an expert witness where he provided testimony regarding narcotics detection and valuation as Lieutenant Ligon was qualified to provide such testimony based on his knowledge, education, and experience in the field of narcotics?

STATEMENT OF THE CASE

Antonio Robbins (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During its February 2016 term, the York County Grand Jury indicted Petitioner for third-offense trafficking in crack cocaine, ten to twenty-eight grams (2015-GS-46-03147). David C. Cook, Esquire, (Counsel) represented Petitioner. Assistant Solicitors Jennifer Colton (Colton) and Teasa Weaver, both of the Sixteenth Circuit Solicitor's Office, prosecuted the case. On March 16-17, 2016, Petitioner proceeded to a jury trial before the Honorable John C. Hayes, III. Following deliberations, the jury convicted Petitioner as indicted, and Judge Hayes sentenced Petitioner to a term of imprisonment of thirty years.

Petitioner filed a timely notice of appeal, and Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense -Office of Appellate Defense represented Petitioner. Appellate counsel filed an Anders[1] brief, in which he raised the following issue: "Whether the trial court erred in giving a coercive Allen charge after the jury said it was hopelessly deadlocked?" Following a review pursuant to Anders, the Court of Appeals dismissed Petitioner's appeal by unpublished opinion on February 15, 2017. State v. Robbins, Op. No. 2017-UP-081 (S.C. Ct. App. filed February 15, 2017). The remittitur was issued on March 3, 2017.

Petitioner then filed his application for post-conviction relief on June 19, 2017, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel

[1] Anders v. California, 386 U.S. 738 (1967).

a. Plea offer was eighteen years and attorney advised him to go to trial and if he didn't win at trial, he would win on appeal;

2. Illegal warrant;

3. No probable cause.

Tommy A. Thomas, Esquire, represented Petitioner in his PCR action. A hearing was held on April 16, 2018, at the Moss Justice Center before the Honorable Roger E. Henderson, circuit court judge. Assistant Attorney General Justin J. Hunter of the South Carolina Attorney General's Office represented Respondent. At the evidentiary hearing, Petitioner proceeded forward on allegations of ineffective assistance of counsel for: (1) failing to investigate the controlled buy between Petitioner and the CI, which was the basis for the search warrant; (2) failing to object to the drugs based on the possibility the weight could have been different than reported because the drugs were moist at the time of analysis; (3) failing to object to Lieutenant Ligon's (Ligon) qualification as an expert and his testimony about "high-level trafficking dealers;" and (4) failing to object to the Allen[2] charge.

At the hearing, Petitioner testified on his own behalf. Counsel also testified. By order filed March 26, 2019, Judge Henderson denied and dismissed Petitioner's application for post-conviction relief finding Petitioner failed to meet his burden to prove Counsel was ineffective in any regard. Judge Henderson found Counsel's conduct was reasonable because he attempted to obtain and introduce a copy of the audio recording into evidence, but ultimately was prevented from doing so because the trial court found the recording was not relevant to Petitioner's trial. The lower court further found Ligon possessed the requisite knowledge, skill, and experience to be qualified as an expert, therefore, Counsel was not deficient for failing to object. The lower court further found, Petitioner failed to show any resulting prejudice as Ligon did not testify that

[2] Allen v. United States, 164 U.S. 492 (1896).

Petitioner was a high-level trafficking dealer or guilty of trafficking. Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his petition for writ of certiorari.

STATEMENT OF FACTS

On June 24, 2015, officers with the York County Multi-Jurisdictional Drug Enforcement Unit began conducting surveillance at a home on Woodland Road in Clover, South Carolina. (App. 165-66.) After a few hours of surveillance, officers observed Petitioner drive up to the house in a truck. (App. 166-67.) Officers pulled into the driveway after Petitioner, got out of their car, and asked Petitioner to get out of the truck. (App. 167.) As soon as Petitioner stepped out of his truck, officers detained him and advised him they had a search warrant for Petitioner and for the residence. (App. 168.) Petitioner was the only person in the truck and was the only person outside of the residence at the time. (App. 173.)

Officers then searched Petitioner's person and found marijuana and $630 in cash in his left pocket. (App. 168.) The smell of marijuana was also emanating from the truck, so officers conducted a search of the truck as well. (App. 169.) From the vehicle, officers recovered crack cocaine from four different bags, plastic bags, and a digital scale. (App. 169.) These items were found in a children's backpack, which was sitting on the bench in the cab of the truck. (App. 169.) Additionally, the crack cocaine found in the truck was "a dealer's amount of crack that's a large quantity," or also known as a "crack cookie." (App. 177.)

After searching the truck, officers then went inside the residence to execute the search warrant. (App. 191.) Petitioner, an adult female, and two children were present in the home at the time of the search. (App. 192.) In the home, officers recovered two additional "things" of crack cocaine, which were found in an Easter basket. (App. 192.) Men's shoes and clothing were also found in the home. (App. 198-99.) After finding the drugs in the home, Investigator

Logan McGarrity asked Petitioner to whom the drugs belonged.[3] (App. 206.) Petitioner stated everything found in the house was his. (App. 206.) Ligon also asked Petitioner how much crack cocaine he had, to which Petitioner stated he did not know exactly. (App. 230.) In explaining why he did not know the amount of crack cocaine in his possession, Petitioner said an individual gave him whatever that person had left over. (App. 230.) Petitioner also stated he had been selling crack cocaine for approximately two months. (App. 231.)

The drugs were then sent to the drug laboratory for analysis. (App. 249-51.) One of the rock substances found was moist at the time of analysis; and by the time of trial, had liquefied in the bag.[4] (App. 254-55.) At the time of trial, the substance had turned into a paste, but it was not like that at the time of analysis. (App. 255.) The other three rock substances were not moist. (App. 255.) After analysis, the rock substances were determined to be crack cocaine, weighing at 141.15 grams, 0.6 grams, and 0.23 grams. (App. 257-58.)

[3] Petitioner had previously been advised of his rights both inside and outside the home, and Petitioner waived those rights. (App. 201-06.)

[4] If, in the process of cooking crack cocaine, the cocaine does not completely dry, then it can start to break down and liquefy. (App. 239.)

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 give great deference 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 179, 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); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 179, 810 S.E.2d at 840. 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, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood, 338 S.C. at 109, 525 S.E.2d at 517; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 [proceeding] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. 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 applicant 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 applicant 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 applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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. Strickland, 466 U.S. at 670. 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. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id.

ARGUMENT

I. The post-conviction relief court properly found Counsel was not constitutionally ineffective for failing to obtain the audio recording of the peripheral and uncharged controlled buy between Petitioner and the confidential informant from the State through the discovery process because Counsel obtained a copy of the audio recording, presented it to the trial court, and the trial court ruled it was not relevant to Petitioner's trial; further, the State did not have an obligation to provide the audio recording to Counsel as the audio recording was not relevant to Petitioner's trial and Counsel cannot be found deficient for failing to obtain evidence in discovery that was not discoverable for Petitioner's trial.

Petitioner alleges the post-conviction relief court erred in finding Counsel was not constitutionally ineffective for failing to obtain the audio recording of the undercover drug buy between Petitioner and a confidential informant through discovery. However, the post-conviction relief court properly found Counsel was not deficient in failing to obtain the audio recording as the State was under no obligation under Brady or Rule 5 to provide a copy of the audio recording to Counsel since the confidential informant was only peripherally connected to Petitioner's case through a controlled buy he conducted, which ultimately led to the issuance of a search warrant for the targeted residence. Despite not being entitled to receive the audio recording, Counsel did obtain a copy of the audio recording through Petitioner's girlfriend, Angie Hester (Hester). Counsel presented the recording along with the testimony of Petitioner and Hester to the trial court during a pretrial suppression motion. Ultimately, the trial court found the audio recording was not relevant to Petitioner's trial as it was not connected to the narcotics that led to Petitioner's trafficking charge. Moreover, Petitioner failed to meet his burden of establishing prejudice because he neglected to present the audio recording to the post-conviction relief court during his evidentiary hearing, so any resulting prejudice is speculative. Therefore, the post-conviction relief court properly found Petitioner failed to meet his burden and denied and dismissed his application. This Court should deny certiorari.

Petitioner's claim that Counsel's failure to obtain a copy of the audio recording from the State "severely hampered" his ability to convince the trial court that the search warrant was improperly issued is meritless. (PWC. 8.) The State was not obligated to provide Counsel with a copy of the audio recording under Brady or Rule 5. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, **and** (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). "Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." Id. (citing State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998)). "The definition of 'material' for purposes of Rule 5 is the same as the definition used in the Brady context." Kennerly, 331 S.C. at 453, 503 S.E.2d at 220.

Here, the audio recording was captured during a controlled buy between Petitioner and the confidential informant, which was later used to obtain a search warrant. Petitioner was **not** criminally charged for the drug transaction involving the confidential informant. Petitioner's trafficking charge stems from the narcotics found during the execution of the search warrant at the targeted residence. As such, the audio recording of the controlled buy is not material to Petitioner's guilt on the trafficking charge and Counsel was not entitled to the audio recording in discovery. Further, at the outset of the pretrial motions, Counsel made a motion to ensure the State had complied with the discovery motions and noted to the trial court that he believed the State was in compliance with his discovery motions. (App. 28.) Colton further confirmed she

has "complied with everything under Rule Five and Brady that we've intended to offer in this case[.]" (App. 28.)

Despite agreeing that Colton had complied with discovery, Counsel moved to compel the State to produce the confidential informant. (App. 29.) During his argument, Counsel requested the State be compelled to produce the confidential informant so he may be cross-examined regarding the controlled buy. (App. 29.) The trial court heard testimony from Investigator David Vaughn (Vaughn) regarding the controlled buy, reviewed the affidavit and the search warrant, and heard testimony from Petitioner and Hester. During her testimony, Hester explained she obtained a copy of the audio recording from Petitioner's original attorney. Hester played the audio recording from her cell phone. Colton confirmed the recording played by Hester was essentially the same audio recording she had in her office from the controlled buy and offered her copy for a court exhibit in lieu of Hester's recording.[5] (App. 76.) At the conclusion of the hearing, the trial court found there was nothing relevant to Petitioner's case on the recording. (App. 92.) The trial court further found Counsel had failed to present "any reason that the State is required to divulge the name of the confidential informant." (App. 94.) See State v. Shupper, 263 S.C. 53, 57, 207 S.E.2d 799, 800 (1974) (finding no error in the refusal to require disclosure of the confidential informant's identity where "the defendant made no showing whatever that his lot may have been improved by the informer's testimony").

Petitioner's argument that Counsel's failure to obtain a copy of the recording from the State or Petitioner's first attorney prevented him from producing a complete argument that the search warrant was not supported by credible evidence is meritless. (PWC. 8.) The audio

[5] Colton explained to the trial court she did not recall providing a copy of the audio recording to Petitioner's first attorney, and, if she did, it would be "highly unusual" and "completely inadvertent." (App. 32.)

recording Petitioner complains Counsel did not obtain, he in fact did obtain and presented it to the trial court during the pretrial motion hearing. Colton even confirmed the recording was essentially the same audio recording she had in her possession and offered her copy for a court exhibit. The trial court heard the recording and testimony from Vaughn, Petitioner, and Hester before determining the audio recording was irrelevant to Petitioner's trafficking charge. Petitioner has failed to show how obtaining the audio recording from Colton rather than from Hester would have any bearing on the outcome of the trial judge's determination that the audio recording was irrelevant to Petitioner's trial.

Petitioner further contends he was entitled to the audio recording through discovery because there was a "common thread" between the controlled buy and Petitioner's trafficking charge. However, "[a]n informant's identity need not be disclosed where either the informant possesses only a peripheral knowledge of the crime or is a mere tipster who supplies a lead to law enforcement authorities." State v. Blyther, 287 S.C. 31, 33, 336 S.E.2d 151, 152 (Ct. App. 1985) (citations omitted). "In delineating the significance of this involvement, we have held that the government is privileged to withhold the identity of the informant when the informant was a "mere tipster," . . . or **was used only for obtaining a search warrant**, . . . but that failing to disclose the informant's identity more likely amounts to error when the informant was an active participant in the events leading to the arrest of the accused[.]" United States v. Gray, 47 F.3d 1359, 1365 (4th Cir. 1995) (emphasis added)); see United States v. Ray, 61 F. App'x 37, 55 (4th Cir. 2003) ("Because the confidential informant was used solely to obtain a search warrant and not at trial, the government had no duty to disclose the identity.").

"The purpose of the privilege [against disclosure] is the furtherance and protection of the public interest in effective law enforcement." Roviaro v. United States, 353 U.S. 53, 59 (1957).

"The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform their obligation." Id. However, the privilege against disclosure is limited to the extent necessary to ensure fundamental fairness for all parties to a case. Id. at 60. "Where the disclosure of an informant's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Id. at 60-61. Significantly though, there is "no fixed rule with respect to disclosure[.]" Id. at 62. Instead, the public's interest in perpetuating the flow of vital information to law enforcement officials must be balanced against the criminal defendant's right to prepare his defense. State v. Bultron, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995). Therefore, whether disclosure is required necessarily depends on the particular circumstances of each individual case. Roviaro, 353 U.S. at 62.

In seeking the disclosure of the identity of a confidential informant, "the burden is upon the accused to show facts and circumstances giving rise to an exception to the privilege against disclosure[.]" State v. Batson, 261 S.C. 128, 134, 198 S.E.2d 517, 520 (1973). "[T]he onus is on the defendant to 'come forward with something more than speculation as to the usefulness of such disclosure.' " United States v. Blevins, 960 F.2d 1252, 1259 (4th Cir. 1992) (citations omitted). In deciding whether to require the disclosure of a confidential informant's identity, the trial judge has "considerable discretion" on the matter. Batson, 261 S.C. at 134-135, 198 S.E.2d at 520.

Here, Petitioner was **not** indicted for any offense related to the transactions in which the confidential informant participated but, instead, was charged with trafficking in cocaine based solely on the discovery of narcotics during the search of the targeted residence and his truck. As

the trial court properly found, the audio recording was not relevant to Petitioner's trial for the trafficking charge, and Petitioner failed to meet his burden to show disclosure of the confidential informant was necessary. See Rugendorf v. United States, 376 U.S. 528, 534 (1964) ("[A] careful examination of the whole record shows that **he requested the informers' names only in his attack on the affidavit supporting the search warrant**. Having failed to develop the criteria of Roviaro necessitating disclosure on the merits, we cannot say on this record that the name of the informant was necessary to his defense. All petitioner's demands for identification of the informants were made during the hearings on the motion to suppress and were related to that motion. **Never did petitioner's counsel indicate how the informants' testimony could help establish petitioner's innocence**." (emphasis added and footnote omitted)).

Notwithstanding the fact that Petitioner has failed to prove Counsel was deficient for failing to obtain the audio recording in discovery, Petitioner has also failed to show any resulting prejudice from that alleged deficiency as he claimed ownership of the narcotics recovered from the residence and his truck. After being arrested and advised of his rights, Petitioner was taken inside the residence where he as again advised of his rights and presented him with the Miranda rights form, which Petitioner signed indicating he was informed of their rights understood his rights. (App. 131-136.) Petitioner did not request an attorney or invoke his right to remain silent. (App. 137.) Petitioner was then questioned by Lieutenant Ligon (Ligon) with the York County Drug Enforcement Unit regarding the narcotics recovered from the residence and his truck. (App. 139.) During questioning, Petitioner admitted the narcotics were his and admitted to Ligon that he had been "selling crack" for approximately two months. (App. 141.) Although Counsel challenged Petitioner's statements during a Jackson v. Denno, 378 U.S. 368 (1964), pretrial hearing, the trial court found Petitioner's statements were admissible. (App. 145-146).

Petitioner's allegation that the outcome of his trial would have been different had Counsel obtained the audio recording of the controlled buy in discovery is meritless since Petitioner's own admission that the narcotics recovered in the residence and his truck were his and that he was "selling crack" for two months were presented to the jury at trial.

Moreover, Petitioner has failed to show any resulting prejudice from Counsel's failure to obtain the audio recording from the State as Petitioner failed to present the audio recording to the post-conviction relief court during the evidentiary hearing. As the recording was never introduced to the post-conviction relief court, it is inconceivable that Petitioner could have satisfied his burden of proof as to this allegation. See Rule 71.1(e), SCRCP (an applicant has the burden of proving the allegations in his or her application); Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (an applicant has the burden of proving both deficiency and prejudice). See also State v. Decker, 275 Kan. 502, 507, 66 P.3d 915, 920 (2003) (internal citations omitted). "The appellant bears the burden of furnishing a record which affirmatively shows that prejudicial error occurred in the trial court." Pate v. Riverbend Mobile Home Village, Inc., 25 Kan.App.2d 48, 52, 955 P.2d 1342 (1998) (without photographs, court was unable to conclude there was material error); White v. State, 41 Ala. App. 54, 56, 123 So. 2d 179, 181 (Ala. Ct. App. 1960) ("The omission of photographs and blackboard drawings from the appellate record precludes our review as to the sufficiency of the evidence."). Petitioner has failed to meet his burden of providing a record that substantiates this allegation as he has not provided this Court with the audio recording he is alleging created the prejudicial effect in his case. Therefore Petitioner has failed to meet his burden as set forth in Strickland, 466 U.S. 668 (1984), and this Court should deny certiorari.

II. The post-conviction relief court properly found Counsel was not constitutionally ineffective for failing to object to Lieutenant Ligon being qualified as an expert witness and providing testimony regarding narcotics detection and valuation as Lieutenant Ligon was qualified to provide such testimony based on his knowledge, education, and experience in the field of narcotics.

Petitioner alleges the post-conviction relief court erred in finding Counsel was not constitutionally ineffective for failing to object to Lieutenant Ligon (Ligon) being qualified as an expert and providing testimony regarding drug pricing, packing, selling and dealing. However, Ligon testified regarding his extensive career as a narcotics officer, his specialized training and experience he has in the field of narcotics detection and valuation prior to be qualified as an expert. Ligon also provided testimony regarding the value of certain quantities of drugs, however, he did not testify Petitioner was a high-level drug dealer as Petitioner has alleged. Ligon's testimony was well within the scope of his expertise and Counsel was not deficient for failing to object to Ligon's testimony or his qualification as an expert witness. This Court should deny certiorari.

A person is competent as an expert when he has acquired knowledge, skill, or experience so that he is better able to assist the jury in understanding the evidence or determining a fact in issue. Rule 702, SCRE. "'An expert is not limited to any class of persons acting professionally.'" State v. Robinson, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012), aff'd as modified 410 S.C. 519, 765 S.E.2d 564 (2014) (quoting Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997)). Indeed, a law enforcement officer with extensive experience in narcotics enforcement coupled with his involvement in numerous drug cases has sufficient experience to qualify the officer as an expert in narcotics. Id. at 587, 722 S.E.2d at 825.

Here, Ligon testified he has been a law enforcement officer for twenty years and has been with the Drug Enforcement Unit for fifteen years. (App. 220.) Ligon testified he has been through drug unit commander school, numerous undercover and surveillance schools, and had graduated from the FBI National Academy. (App. 223.) He testified he investigates not only trafficking offenses but also street-level offenses and has been able to interview and debrief street-level dealers, mid-level dealers, and high-level trafficking dealers. (App. 221-222.) He further testified he has interviewed "hundreds, if not, probably thousands" of street-level dealers throughout his career. (App. 222.) Ligon also testified he was familiar with how much crack cocaine was sold for on the street, and the cost of purchasing crack cocaine in bulk. (App. 223.) Based on the foregoing, Ligon possessed the requisite knowledge, skills, and experience to qualify as an expert in narcotics detection and valuation and the trial court properly qualified him as an expert in the area of narcotics detection and valuation. Accordingly, Petitioner has failed to establish how Counsel was deficient for failing to object to Ligon's qualification as an expert witness.

Petitioner further alleges Ligon's testimony was able to "directly tie the Petitioner to the amount of drugs involved as well as to the value of the drugs." (PWC. 11.) However, Petitioner's own admission that the narcotics recovered by law enforcement belonged to him directly tied Petitioner to the amount of drugs involved regardless of any expert testimony provided by Ligon at trial. Further, Ligon's testimony regarding the value of the drugs recovered was proper as he was qualified as an expert in narcotic detection and valuation.

Petitioner further alleges Counsel should have objected to Ligon's testimony as his testimony established "Petitioner was a high level drug dealer based upon the amount of drugs that were found." (PWC. 11.) However, Counsel testified at the post-conviction relief hearing

that Ligon never offered expert testimony stating Petitioner was a high-level drug dealer. (App. 420.) Further, Cynthia Mitchum, an expert drug analyst, also testified at Petitioner's trial and provided testimony regarding the large amount of drugs recovered from the residents and Petitioner's truck. (App. 257.) Since Petitioner's own statements admitting the recovered narcotics were his and he had been selling crack cocaine for approximately two months was also admitted at trial, the jury would have made the connection that Petitioner is a drug dealer even without Ligon's expert testimony. Finally, Ligon's testimony regarding the quantities of drugs varying levels of drug dealers would possess is within the scope of his expertise and, therefore, not objectionable testimony.

Petitioner has failed to show this Court how Counsel was deficient for failing to object to Ligon qualifying as an expert witness at Petitioner's trial. Based on Ligon's testimony, he had acquired the knowledge, skills, and experience in narcotics through his lengthy law enforcement career, various trainings, and participation in numerous narcotic investigations to qualify as an expert for Petitioner's trial. Petitioner has also failed to show any resulting prejudice from Ligon's testimony as Ligon was not the only witness who testified at trial regarding the large quantity of crack cocaine found in the residence and in his truck. Moreover, Petitioner admitted the full quantity of the drugs recovered in the residence and his truck were his and also admitted he had been selling crack cocaine for approximately two months; so even without Ligon's testimony, the jury was presented with evidence that could have led them to find Petitioner guilty of the trafficking charge. Therefore, Petitioner cannot show the outcome of his trial would have been different had Counsel objected to Ligon's qualification or testimony. This Court should deny certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied. Should this Court grant the petition for writ of certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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January 30, 2020

STATE OF SOUTH CAROLINA
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CERTIORARI TO YORK COUNTY
Court of Common Pleas
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2019-000655

Antonio Robbins,

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 placing one copy in the United States Mail, addressed to:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

This 30th day of January, 2020.

John Grzymalski
Legal Assistant for Respondent

ALAN WILSON
ATTORNEY GENERAL

January 30, 2020

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

RE: Antonio Robbins v. State of South Carolina
Appellate Case No.: 2019-000655

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,

Janell H. Gregory
Assistant Attorney General
S.C. Bar # 103176

JHG/jpg
Enclosures

cc: Tommy A. Thomas, Esquire
Victim Advocacy Division