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**Aug 06 2020**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIORARI TO BERKELEY COUNTY  
Court of Common Pleas  
J. Edgar Dickson, Circuit Court Judge

Case No. 2016-CP-08-2600

Barry Jerrod Stanley, #274236 .....Respondent,

v.

State of South Carolina, .....Petitioner.

**NOTICE OF APPEAL**

The State of South Carolina appeals the Honorable J. Edgar Dickson’s order granting post-conviction relief filed April 2, 2020. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCPP, which was denied by Judge Dickson by written order filed July 22, 2020 and received by the State on August 3, 2020. A copy of the order is attached hereto.

August 6, 2020

Respectfully submitted,

ALAN WILSON  
Attorney General

BENJAMIN LIMBAUGH  
Assistant Attorney General  
S.C. Bar No. 103334  
1000 Assembly St.  
Columbia, S.C. 29201  
(803) 734-4124

By: s/ Benjamin Limbaugh  
Attorneys for the Petitioner

Other counsel of record:  
Leslie Therese Sarji, Esquire  
230 Congress Street  
Charleston, SC 29403  
Attorney for Respondent  
(843)-722-5354

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Barry Jerrod Stanley, #274236, )

Case No.: 2016-CP-08-2600

)  
Applicant, )

ORDER DENYING STATE'S  
MOTION TO RECONSIDER

-versus- )

)  
State of South Carolina, )

)  
Respondent. )

FILED  
2020 JUL 22 PM 5:04  
LEWIS COUNTY CLERK  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED  
VB

THIS MATTER CAME BEFORE ME upon the State's Motion to Reconsider the Court's prior Order granting Applicant's petition for Post Conviction Relief, filed on April 16, 2020. After careful consideration of the State's Motion to Reconsider and Applicant's Response to the Motion to Reconsider, this Court denies the State's Motion.

AND IT IS SO ORDERED!



Judge Edgar W. Dickson  
Presiding Judge

Orangeburg, South Carolina

July 9, 2020

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 BARRY JERROD STANLEY, #274236 )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2016-CP-08-2600

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

FILED  
 2020 JUL 22 PM 5:04  
 LEAN QUINCY DUBRE  
 CLERK OF COURT  
 BERKELEY COUNTY, SC  
 VB

Plaintiff's Attorney: Leslie Sarji, Bar No. 15672 Address: PO Box 20248, Chas. SC. 29413 Phone: 843-722-5354 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Benjamin Limbaugh, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Leslie Sarji July 16, 2020  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: VB Date Filed: nope  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2016-CP-08-2600

Barry Jerrod Stanley, # 274236, )  
 )  
Applicant, )  
-versus- )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

ORDER GRANTING APPLICATION  
FOR POST CONVICTION RELIEF

**FILED**  
APR 16 2020  
CASE NO. 2016-CP-08-2600  
LEAH GUERRY DUFRÉE  
CLERK OF COURT  
BERKELEY COUNTY, SC

DATE OF HEARING: January 23, 2020  
PRESIDING JUDGE: Edgar W. Dickson  
APPLICANT'S ATTORNEY: Leslie T. Sarji  
RESPONDENT'S ATTORNEY: Benjamin Limbaugh  
COURT REPORTER: Circuit Court DCRP

This matter came before me in Charleston County on January 23, 2020 upon Applicant's request for post-conviction relief ("PCR"). The Applicant, Barry Stanley, made several arguments in support of his claim of ineffective assistance of trial counsel. Those arguments and the Court's findings on each are discussed below.

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted in February 2014 for failure to stop for a blue light (2014-GS-08-027) and trafficking cocaine base 28 - 100 grams, third offense (2014-GS-08-0028). Applicant entered a not guilty plea and was tried by a jury from April 7 - 9, 2014 before the Honorable Kristi Lee Harrington. Applicant was represented at trial by David

CC: Sarji  
L. T. Sarji  
B. Limbaugh

Schwacke, Esquire and Chad Shelton, Esquire. Applicant was found guilty on both charges and was sentenced to imprisonment for consecutive terms of three years for failure to stop for a blue light and thirty years for trafficking cocaine base, 28 -100 grams, third offense.

Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 11, 2016. *State v. Stanley*, Op. No. 2016-UP-194 (S.C. Ct. App. May 1, 2016). Remittitur was returned to the circuit court on May 27, 2016.

On October 31, 2016, Applicant filed an initial application for post conviction relief. Applicant's application for post-conviction relief alleges that he is being held in custody unlawfully as he received ineffective assistance of counsel for the following reasons:

- a. Trial counsel failed to conduct or request adequate voir dire to determine any potential bias of potential jurors, resulting in a due process violation;
- b. Trial counsel failed to object to the State vouching for the State's witness, William Loflin;
- c. Trial counsel failed to object to testimony regarding how crack cocaine is made and in failing to object to a curative instruction or motion to strike such testimony; and

d. Trial counsel failed to object to and preserve for appellate review the "use of false inconsistent testimony of State's witnesses."

At the hearing of this matter, counsel for the State conceded that trial counsel had not conducted any case specific voir dire to determine the potential jurors' bias with regard to a case involving drugs and/or crack cocaine. Because I find this amounts to ineffective assistance of trial counsel sufficient to satisfy the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), it is not necessary to address Applicant's remaining allegations regarding ineffective assistance of counsel.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard argument of counsel provided at the Post-Conviction Relief hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Fraiser v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Post-Conviction Relief Applicant must prove that (1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that the deficient performance prejudiced

the Applicant's case. *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In order to prove prejudice, an Applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* Courts presume that "counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690. The PCR Applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

**Trial counsel failed to request any case-specific voir dire, which substantially prejudiced his ability to select and impanel an impartial jury.**

Applicant alleged trial counsel was ineffective for failing to request case-specific voir dire in order to determine whether any potential juror could be impartial. Specifically, Applicant alleges prejudicial error by trial counsel's failure to inquire of the potential jurors as to whether there was any member of the venire that had experience or knowledge relating to drugs and/or cocaine or crack cocaine. An examination of the record shows that trial counsel's failure to request specific voir dire resulted in a merely perfunctory *voir dire* examination by the trial court.

"*Voir dire* examination serves the dual purpose of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges." *Mu'min v.*

*Virginia*, 500 U.S. 415, 431 (1991). See also, *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (“Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored.”); *State v. Clark*, 981 S.W.2d 143, 146 (Mo. 1998) (“The purpose of voir dire is to discover bias or prejudice in order to select a fair and impartial jury.”); *State v. Green*, 301 S.C. 347, 354 (1990) (“The ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as it is explained to him.”). Because trial counsel’s failure to request the trial court inquire as to possible prejudices within the jury panel, Applicant was deprived of the ability to impanel an impartial jury. The result is a deprivation of Applicant’s rights under the Sixth and Fourteenth Amendments to the Constitution. Therefore, I find trial counsel was ineffective and the result was a trial that was rendered fundamentally unfair. See *State v. Bixby*, 698 S.E.2d 572 (S.C. 2010); *State v. Stanko*, 658 S.E.2d 94 (S.C. 2008) (“To constitute reversible error, a limitation on questioning must render the trial fundamentally unfair.”).

### CONCLUSION

Based on the foregoing reason, this Court finds and concludes that the Applicant has established sufficient constitutional violations and deprivations that this Court is required to grant his application for Post-Conviction Relief. Therefore, this application must be granted and the Applicant’s case reversed and remanded.

IT IS THEREFORE ORDERED That the Application for Post-Conviction Relief must be granted and the Applicant's convictions are hereby SET ASIDE and the Applicant's sentence is hereby VACATED. This matter is hereby REMANDED for further prosecution.

IT IS FURTHER ORDERED that Applicant shall be remanded to the custody of Berkeley County to await further prosecution.

AND IT IS SO ORDERED!



JUDGE EDGAR W. DICKSON  
PRESIDING JUDGE

Orangeburg, South Carolina

2 April, 2020