

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO GEORGETOWN COUNTY
Court of Common Pleas
William H. Seals, Circuit Court Judge

Appellate Case No. 2018-000139

RONALD EDWARD GOODEN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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The post-conviction relief court properly found Petitioner failed to establish trial counsel was ineffective for failing to renew his pretrial motion to exclude Petitioner’s prior strong arm robbery ¹ conviction for impeachment purposes without conducting a probative value/prejudicial effect analysis under Rules 403 & 609, SCRE, because: (1) at the time of Petitioner’s trial, robbery was considered a “crime of dishonesty” such that its admission for impeachment was automatic and did not require balancing its probative value against its prejudicial effect; and (2) counsel articulated a valid trial strategy for not renewing his pretrial motion.....	10
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¹ Common law or “strong arm” robbery was codified as “common law robbery” in Section 16-11-325 of the South Carolina Code with an effective date of January 1, 1994.

ISSUE PRESENTED

Whether the post-conviction relief court properly found Petitioner failed to establish trial counsel was ineffective for failing to renew his pretrial motion to exclude Petitioner's prior strong arm robbery conviction for impeachment purposes without conducting a probative value/prejudicial effect analysis under Rules 403 & 609, SCRE, where: (1) at the time of Petitioner's trial, robbery was considered a "crime of dishonesty" such that its admission for impeachment was automatic and did not require balancing its probative value against its prejudicial effect; and (2) counsel articulated a valid trial strategy for not renewing his pretrial motion.

STATEMENT OF THE CASE

Petitioner was indicted at the March, 2011, term of the grand jury for Georgetown County for attempted murder (2011-GS-22-54). (App.p.320-p.321). He was represented by C. Reuben Goude, Esquire. Respondent (the State) was represented by Assistant Solicitor Erin Bailey of the Fifteenth Circuit Solicitor's Office. On October 26-27, 2011, Petitioner proceeded to trial by jury pursuant to which he was found guilty of the lesser included statutory offense of assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Benjamin H. Culbertson to twenty (20) years' imprisonment. (App.p.266-p.272; p.322). Petitioner timely filed a notice of intent to appeal his conviction and sentence and a direct appeal was perfected by Assistant Appellate Defender LaNelle Cantey Durant, Esquire, who raised the following issue on appeal:

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003).

(Supp.1pp.p.1-p.13). The State submitted a brief in response and the parties proceeded to oral arguments on April 10, 2013. (Supp.App.p.14-p.28). By unpublished opinion filed April 24, 2013, the South Carolina Court of Appeals affirmed Petitioner's conviction on grounds that "an argument advanced on appeal and not raised and ruled on below is not preserved for appellate review." *State v. Gooden*, Op. No. 2013-UP-167 (S.C. Ct. App. filed April 24, 2013). (App.p.323-p.324). The Remittitur was issued on June 3, 2013.

On October 1, 2013, Petitioner filed an application for post-conviction relief (PCR) alleging he was being held unlawfully for the following reasons:

1. “Ineffective [Assistance] of Trial Counsel on several fronts”
 - a. “Failed to make [continuous] objection of prior conviction.”
 - b. “Failed to request Blair Hearing.”
 - c. “failed to request to be evaluated for criminal responsibility.”

(App.p.274-p.280). The State filed its Return on May 14, 2014. (App.p.281-p.285). An evidentiary hearing into the matter was convened on Thursday, September 21, 2017, at the Horry County Courthouse in Conway, South Carolina, before the Honorable William H. Seals. Petitioner was present at the hearing and represented by Tristan M. Shaffer, Esquire. The State was represented by Assistant Attorney General Johnny Ellis James, Jr., of the South Carolina Attorney General’s Office. (App.p.286). At the evidentiary hearing, Petitioner withdrew the second and third allegations and proceeded only on the first allegation—that Counsel was ineffective for failing to make a continuous objection regarding the admission of Petitioner’s prior conviction for impeachment purposes at trial. (App.p.288-p.289).

Only Petitioner’s trial counsel, Mr. Goude, (“Counsel”) testified at the evidentiary hearing. The PCR court also had before it Petitioner’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Petitioner’s direct appeal records, and the pleadings. (App.p.313). At the conclusion of the evidentiary hearing, the PCR court took the matter under advisement. On January 5, 2018, Judge Seals issued a written order denying relief, finding counsel provided effective assistance in this case. (App.p.313-p.319).

On January 28, 2018, Petitioner filed a Notice of Appeal, appealing the PCR court’s denial of his application for PCR. Petitioner filed his Petition for Writ of Certiorari and the

Appendix on September 17, 2018. On December 19, 2018, the State submitted a Supplemental Appendix. This Return on behalf of the State now follows.

STATEMENT OF FACTS

Trial

At trial, after jury selection but before the jury was sworn, Petitioner made a motion *in limine* asking the trial court to rule on the admissibility of any prior offenses the State intended to use to impeach Petitioner in the event he testified. The solicitor said she believed a 2007 North Carolina conviction for larceny of a firearm and a 1992 South Carolina conviction for strong arm robbery would be admissible. Petitioner objected to the 1992 conviction being used, and argued that at twenty years old it was too remote for admission despite technically falling within the ten year time frame. The trial court then asked for each party's position on the probative value of the conviction versus its prejudicial effect. After hearing from Petitioner, the court ruled the solicitor would not be able to use the strong arm robbery. However, the solicitor handed up a copy of the Court of Appeals' published opinion in *State v. Al-Amin*.² After reviewing the opinion, the trial court reversed its ruling and decided the State could use the 1992 strong arm robbery to attack Petitioner's credibility if he took the stand. (App.p.32, line 21-p.38, line 25).

On October 22, 2010, Petitioner walked into Shaw's Corner Store in the city of Andrews in Georgetown County, threw something on a customer, and set him on fire. (App.p.59-p.60). Officer Timothy Harrelson of the Georgetown County Sheriff's Office responded to the scene when he was flagged down by a pedestrian who said she had seen a man on fire running across

² 353 S.C. 405, 414, 578 S.E.2d 32, 37 (Ct. App. 2003), *cert. denied*, (October 21, 2004), *overruled by State v. Broadnax*, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013), *affirmed in part and reversed in part by State v. Broadnax*, 414 S.C. 468, 779 S.E.2d 789 (2015).

the road adjacent to the store. He went inside the store and found Curtis Anderson walking around in a daze. Mr. Anderson had burn injuries on his face, nose, mouth, throat, chest and arm. (App.p.82, line 10-p.83, line 14). Officer Harrelson said it was a gruesome scene and that Mr. Anderson's skin was peeling away from his face. (App.p.85, lines 3-17). Officer Matthew Hoeffler with the Andrews Police Department also responded to the scene and observed Mr. Anderson with severe third-degree burns to his chest, face and both of his arms. (App.p.93, line 23-p.94, line 15). When he exited the store, Officer Hoeffler saw Petitioner standing on the edge of the roadway. Petitioner put his hands in the air and stated: "It's me. I did it." (App.p.104, lines 17-25). Alphonso Giles, Sr., was standing beside Mr. Anderson in the store at the time of the incident. When Petitioner entered the store, he said "like I told you," just before Mr. Anderson burst into flames. Mr. Giles helped extinguish the fire by patting it out. (App.p.108, lines 3-10; p.109, line 6-p.110, line 14).

Mr. Anderson testified he remembered being in the store when Petitioner approached him, said "watch out," and dashed him with gas. The next thing he remembers is being on fire. (App.p.113, line 10-p.115, line 7). He was flown by helicopter to the burn center in Augusta, Georgia, where he spent three months, followed by one month in a rehabilitation center in Florence, South Carolina. (App.p.115 line 18-p.116, line 15). Mr. Anderson described his ongoing treatment and the extent of his injuries. (App.p.117, line 15-p.120, line 25).

Petitioner testified in his own defense. He described his poor living conditions and proximity to the store, and how he had been picked on by Mr. Anderson and two other patrons, Gerry Chandler and Greg Tisdale. Petitioner said the three men accused him of being gay because he had let a man named Johnny Bradshaw live in his trailer. Petitioner claimed he had

been beaten up by the others in the past, that in the days leading up to the incident he had been threatened with swords and guns, and that someone had even fired shots into his trailer during the night. (App.p.144, line 4-p.161, line 24). He testified that he confronted the three men in the store the afternoon before the incident and told them if they kept “bothering” him and “lying on” him, he was “going to set your ass on fire.” (App.p.162, line 1-p.163, line 6). Petitioner claimed they responded that: “Yeah, and we’ll set your ass on fire.” Petitioner testified that Mr. Tisdale said he was going to get a gun, and left the store. (App.p.163, lines 7-20). He testified he went home, but decided to return to the store later to get his cell phone, which was charging in the back room. Petitioner claimed that as he approached the store, he picked up a jug of gas that was on top of a lawnmower next to the store. He testified that when he walked into the store Mr. Anderson made a motion with his hand, like he was shooting a pistol. (App.p.168, line 17-p.172, line 3). Petitioner testified he threw the gas on Mr. Anderson and lit his lighter all in one motion, at which point both he and Mr. Anderson caught fire. (App.p.173, line 19-p.174, line 3).

On cross-examination, the solicitor asked Petitioner about the 2007 North Carolina conviction for larceny of a firearm, as well as the 1992 South Carolina conviction for strong arm robbery. The solicitor did not question Petitioner about the details of the prior crimes. Counsel did not renew his pretrial motion or otherwise object to the solicitor’s questions. (App.p.187, lines 7-17). After the parties gave closing arguments, the trial court charged the jury on the applicable law including the State’s burden of proof, the presumption of innocence, the duty of the court to rule on admissibility of evidence and to charge the law, the duty of the jury to judge the facts and the credibility of witnesses, the elements of the charged crime and lesser included offenses, and self-defense. (App.p.246-p.260). The trial court explained the jurors had the duty

to accept and apply the law as charged. (App.p.249). It then explained that the jury could only consider the Defendant's prior convictions for purposes of determining whether his testimony was believable, and for no other purpose. (App.p.250, line 20-p.251, line 2). Ultimately, Petitioner was found guilty of the lesser included statutory offense of ABHAN and was sentenced to twenty (20) years' imprisonment. (App.p.266-p.272; p.322).

PCR Hearing

At the September 21, 2017 evidentiary hearing Petitioner proceeded only on the first allegation in his Application—that Counsel was ineffective for failing to properly object and preserve the issue related to admission of the strong-arm robbery conviction for impeachment purposes at trial. (App.p.288-p.289). Petitioner called trial counsel, Mr. Goude, as the sole witness. Counsel first described the difficulty he had locating any of his records from Petitioner's case; however, he then gave a fairly detailed recitation of the facts, his trial preparation, his defense strategy, and attempts to negotiate a plea with the solicitor. (App.p.289-p.299).

Next, Counsel reviewed the pages of the trial transcript concerning his motion *in limine* to exclude evidence of Petitioner's prior conviction for strong arm robbery. He confirmed he argued against admission of the prior conviction and was initially successful in convincing the judge to exclude it from trial, but the judge ultimately changed his ruling after reviewing case-law provided by the solicitor. That case, *State v. Al-Amin*, held armed robbery was a crime of dishonesty, and Counsel acknowledged crimes of dishonesty are automatically admissible under Rule 609(a)(2) if they fall within the proper time frame. (App.p.299-p.304). As to why he did not renew his pretrial objection during trial, Counsel testified he did not believe it was a good

idea to stand up and make a big objection about something the solicitor had asked and been answered, where the judge already ruled it was admissible. He explained such an objection would simply highlight the prior conviction to the jury and make it a bigger deal than it was. (App.p.303, line 8-p.304, line 6). Counsel further explained that despite his pretrial objection, he honestly believed “whether the thing came into evidence or not made zero difference . . . [on] how the jury is gonna vote in their verdict of whether we threw gas on the man and set it afire, because we did set it on fire.” (App.p.304, lines 10-14). Counsel acknowledged he did not make a specific objection under Rule 403; however, he explained the pretrial discussion about weighing probative value against prejudicial effect was focused on the balancing test in Rule 609(a)(1) rather than Rule 403. Counsel testified his understanding of *Al-Amin* at the time of trial was that under the rules there is no balancing test for crimes of dishonesty and therefore the court was not required to weigh prejudice and probative value under section two of Rule 609. (App.p.304-p.308). After hearing arguments from both parties on the claim of ineffective assistance of counsel, the PCR court took the case under advisement. (App.p.308-p.311).

In an Order of Dismissal dated January 5, 2018, and filed January 16, 2018, Judge Seals denied and dismissed Petitioner’s PCR Application with prejudice. The PCR court concluded that at the time of trial, robbery was considered a crime of dishonesty such that admission of a prior robbery conviction did not require analysis of its probative value versus its prejudicial effect. It further concluded Counsel articulated multiple valid strategic reasons to not object to the admission of Petitioner’s prior strong arm robbery conviction and would therefore not deem Counsel ineffective. Finally, the PCR court concluded any conceivable error by Counsel in regard to failing to preserve the pretrial objection to admission of the prior conviction was

harmless in light of the numerous witnesses, including Petitioner, who admitted he intentionally set the victim on fire. (App.p.313-p.319).

STANDARD OF REVIEW

The standard of review in post-conviction relief cases depends on the specific issue before the reviewing court. It will defer to a post-conviction relief court's findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law *de novo*, with no deference to trial courts. *Smalls v. State*, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839-40 (2018). In criminal cases, the appellate court sits to review errors of law only. *State v. Broadnax*, 414 S.C. 468, 473, 779 S.E.2d 789, 791 (2015). The admission or exclusion of evidence is left to the sound discretion of the trial court, whose decision will not be reversed on appeal absent an abuse of discretion. *Id.*; *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008); *State v. Howard*, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2011) An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. *State v. Meggett*, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012); *Howard* at 178, 720 S.E.2d at 514. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005); *Howard* at 178, 720 S.E.2d at 514.

ARGUMENT

The post-conviction relief court properly found Petitioner failed to establish trial counsel was ineffective for failing to renew his pretrial motion to exclude Petitioner's prior strong arm robbery conviction for impeachment purposes without conducting a probative value/prejudicial effect analysis under Rules 403 & 609, SCRE, because: (1) at the time of Petitioner's trial, robbery was considered a "crime of dishonesty" such that its admission for impeachment was automatic and did not require balancing its probative value against its prejudicial effect; and (2) counsel articulated a valid trial strategy for not renewing his pretrial motion.

Petitioner asserts the PCR court erred in finding Counsel was not ineffective for failing to renew his pretrial objection to the admission of Petitioner's 1992 conviction of strong arm robbery for impeachment because this resulted in the objection not being preserved for appellate review. He argues that had the issue been preserved, there was a strong reasonable probability the appellate court could have ruled in Petitioner's favor—that robbery was not a crime of dishonesty—as the Court of Appeals' ruling in *Broadnax* came only sixteen months after Petitioner's trial. Petitioner then seems to alternatively argue that if Counsel had renewed his objection, the appellate court could have reviewed the issue of prejudice under Rule 403 based on the age of the conviction and the State painting Petitioner as a violent person, and that review would have created a reasonable probability of a different outcome, presumably reversal of the conviction on direct appeal. The State disagrees and submits each of Petitioner's alternative arguments should be rejected for a number of reasons.

In regard to the entirely speculative claim that the appellate court might have found strong arm robbery was not a crime of dishonesty, that specific claim was not part of the pretrial objection made by Counsel at trial. Indeed, Counsel simply challenged admissibility on grounds the conviction was too remote, and then argued the probative value of admitting the conviction

did not outweigh the prejudicial effect. He never argued strong arm robbery was not a crime of dishonesty during the pretrial hearing. Consequently, this objection could not have been “renewed” at trial, could not have served as a ground for appeal, and could not have been the basis of the appellate court ruling in Petitioner’s favor on direct appeal. In any event, Petitioner also failed to make this argument at the PCR hearing, so it is not preserved for appellate review. Instead, Petitioner’s argument to the PCR judge was solely about weighing the probative value of the prior conviction against the prejudicial effect under Rule 403, and Counsel’s failure to preserve that argument for direct appeal by failing to renew it during trial. (App.p.308-p.310). By not making a *Broadnax* argument to the PCR court, Petitioner failed to preserve it for review in this PCR appeal, and it may not be considered by this Court. *See Palacio v. State*, 333 S.C. 506, 514 n.7, 511 S.E.2d 62, 66 n.7 (1999) (concluding issue that was neither raised to nor ruled upon by the PCR court was not preserved for appellate review). Finally, controlling precedent at the time of Petitioner’s trial held that any act of robbery—armed or otherwise—is a crime of dishonesty because taking the property of another is dishonest. *Al-Amin*, 353 S.C. at 424-25, 578 S.E.2d at 42-43 (holding it is the larcenous element of taking property of another which makes the action dishonest). Thus, Counsel could not have been ineffective for failing to make this argument to the trial court. *See Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.”). For all of these reasons, the *Broadnax* portion of the claim now raised by Petitioner should be discounted in its entirety.

In regard to the alternative claim—the one which was argued to the PCR court—that the appellate court might have reversed Petitioner’s conviction if Counsel had preserved his Rule

403 objection by renewing that objection during trial, Petitioner's argument is entirely without merit. The PCR court properly found Petitioner failed to establish trial counsel was ineffective for failing to renew his pretrial motion to exclude Petitioner's prior strong arm robbery conviction under Rules 403 & 609, SCRE, because: (1) at the time of Petitioner's trial, robbery was considered a "crime of dishonesty" such that its admission for impeachment was automatic and did not require balancing its probative value against its prejudicial effect; and (2) counsel articulated a valid trial strategy for not renewing his pretrial motion. The PCR court's ruling is supported by probative evidence in the record and should be affirmed.

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCPP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (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). An applicant must overcome this presumption in order to receive relief. *Cherry*, 300 S.C. 115, 386 S.E.2d 624. Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a

court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. *Strickland*, 466 U.S. at 689. In assessing counsel's performance, counsel's decisions must be evaluated at the time in which they were made and "every effort [must] be made to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

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. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the

function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside *the wide range* of professional competent assistance” required of a criminal defense attorney.” *Id.* at 690 (emphasis added).

Rule 609, SCRE

Pursuant to Rule 609(a)(2), SCRE, “evidence that any witness has been convicted of a crime *shall be admitted*” for purposes of attacking the credibility of a witness “if it involved dishonesty or false statement, regardless of punishment.” Rule 609(a)(2), SCRE (emphasis added). This exception “permits the automatic admission of certain prior convictions”—those that involved dishonesty or false statement. *State v. Broadnax*, 414 S.C. 468, 476, 779 S.E.2d 789, 793 (2015). Since Petitioner’s strong arm robbery conviction met the Rule 609(b) time limit and, at the time of trial, fit the description of a crime of dishonesty under Rule 609(a)(2), there was no requirement for a probative value/prejudicial impact analysis. As explained by this Court, “Rule 609(a)(2) . . . clearly limits the discretion of the court by mandating the admission of crimes involving dishonesty without any determination as to a balancing test.” *Al-Amin* at 426, 578 S.E.2d at 43. This automatic admission was also recognized by our Supreme Court in *Broadnax*. Thus, Petitioner’s prior strong arm robbery conviction was properly admitted as impeachment evidence by the trial court automatically, and no balancing under either Rule 403 or Rule 609 was required. Thus, Counsel could not have been ineffective for failing to renew an objection to admission of the prior conviction on this basis, and PCR was properly denied.

Strategic Decision

Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, “no particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety

of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” *Strickland*, 466 U.S. at 689. Moreover, “representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 693. 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, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In fact, *Strickland* requires extreme deference to counsel’s strategic judgments that are adequately investigated. *Strickland* explains “strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable. . . .” *Strickland*, 466 U.S. at 690-91.

Here, Counsel gave a specific strategic reason he did not renew his pretrial objection. First, he testified he did not want to draw undue attention to or highlight the prior conviction by objecting in front of the jury where the judge already ruled it was admissible. (App.p.303, line 8-p.304, line 6). This strategy is valid standing alone, but is particularly strong where the prior conviction was properly admitted by the trial court in the first place. Counsel further testified that despite his pretrial objection seeking to exclude the conviction, he did not see the need to pursue the effort any further once the trial court ruled against Petitioner. Counsel testified he honestly did not believe exclusion of the prior conviction would have made any difference given the defense theory of admitting the acts which led to the charge but trying to convince the jury

they were done in self-defense. (App.p.304, lines 10-14). Counsel's decision to abandon a weak and inconsequential pretrial objection was a valid strategy where Counsel spent a good portion of the trial painting a vivid picture of Petitioner's meager existence and constant harassment at the hands of the victim and successfully secured a conviction for ABHAN rather than attempted murder where Petitioner admitted intentionally setting the victim on fire. This is particularly true where the prior conviction was admissible. Because Counsel articulated a valid strategic reason for his failure to renew the pretrial objection to the admission of the prior armed robbery conviction, his performance was properly found not to be ineffective.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

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December 27, 2018.

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STATE OF SOUTH CAROLINA,


Petitioner,
Respondent.

PROOF OF SERVICE

I, J. Benjamin Aplin, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
South Carolina Commission on Indigent Defense
Office of Appellate Defense,
Post Office Box 11433
Columbia, South Carolina 29211-1433

I further certify that all parties required by Rule to be served have been served. This 27th day of December, 2018.



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ALAN WILSON
ATTORNEY GENERAL

December 27, 2018

RECEIVED
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S.C. SUPREME COURT

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

Re: Ronald Edward Gooden, #191688 v. State of South Carolina
Appellate Case No.: 2018-000139
Lower Court Case: 2013-CP-22-1007

Dear Mr. Shearouse:

Enclosed for filing please find an original and six copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
SC Bar #8729

JBA/ck
Enclosures

cc: LaNelle C. DuRant, Esquire
Trisha Allen, Director - Victim Advocacy Division