

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to Spartanburg County  
Court of Common Pleas

The Honorable Roger L. Couch, Trial Judge  
The Honorable Thomas A. Russo, PCR Judge

Appellate Case No. 2019-001319

**RECEIVED**  
**Oct 23 2020**  
**SC Court of Appeals**

TAIWAN J. HARDY ..... Petitioner,

v.

STATE OF SOUTH CAROLINA ..... Respondent.

**RETURN TO THE AMENDED PETITION  
FOR WRIT OF CERTIORARI**

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## **STATEMENTS OF ISSUES ON CERTIORARI**

### **Petitioner's Statement of Issues on Certiorari**

- I. Did the PCR court err in denying relief where trial counsel was ineffective for failing to properly advise client in relation to the plea offer?
- II. Did the PCR court err in denying relief where trial counsel was ineffective for failing to present an effective defense by failing to properly impeach the state's key witness?
- III. Did the PCR court err in denying relief where trial counsel failed to object to evidence of prior bad acts?

### **Respondent's Counterstatement of Issues on Certiorari**

- I. Did the post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to sufficiently advise Petitioner to accept the plea deal because Counsel told Petitioner that he would spend life in prison if he did not accept the plea deal and Counsel because the State's case against him was incredibly strong?
- II. Did the post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to establish a proper defense when he strategically withdrew the sole defense exhibit after it was read to the jury to ensure Petitioner could maintain the last argument, which Counsel reasonably concluded was more helpful to the defense than refusing to withdraw the exhibit?
- III. Did the post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to object to an allegedly prejudicial comment by the State's witness because Counsel utilized strategic judgement when refusing to object at trial and Petitioner was not prejudiced as a result?

## STATEMENT OF THE CASE

Taiwan J. Hardy (hereafter “Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its December 2014 term, the Spartanburg County Grand Jury indicted Petitioner for distribution of cocaine base (2014-GS-42-5877).<sup>1</sup> The factual basis of the indictment was that on March 10, 2014, a confidential informant purchased twenty dollars crack cocaine from Petitioner. (App. 52, 66). The informant was equipped with video and audio equipment to record the transaction with. (App. 63). Petitioner was represented by William Bean, Esquire (hereafter “Counsel”). Assistant Solicitors Hunter Blouin, Esquire, and Edward Hunter, Esquire, from the Seventh Circuit Solicitor’s Office, represented the State. On July 22-23, 2015, the case proceeded to trial before the Honorable Roger L. Couch. On July 23, 2015, the jury found Petitioner guilty of the crime charged. Judge Couch sentenced Petitioner to life without parole.

Petitioner filed a timely notice of appeal on July 31, 2015, that was perfected by Wanda H. Carter, Esquire, who filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), on March 30, 2016 and moved to be relieved as counsel. The following issue was addressed on appeal:

The trial judge erred in coercing appellant in effect to withdraw defense exhibit #1, which was a prior controlled drug purchase agreement signed by the confidential informant used in this case, in order to secure the last closing argument to the jury because this exhibit was corroborative evidence that established the unreliableness of this informant deemed critical to appellant’s defense.

The South Carolina Court of Appeals dismissed Petitioner’s appeal by unpublished

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<sup>1</sup> Petitioner was also indicted by the Spartanburg County Grand Jury in October 2003 term for Trafficking in Crack Cocaine (2003-GS-42-3498) and in September 2011 was indicted for two counts of Distribution of Methamphetamine or Cocaine Base (2011-GS-42-5541 and -5542).

opinion and granted Counsel's motion to be relieved. *State v. Hardy*, Op. No. 2016-UP-460 (S.C. Ct. App. 2016). The Remittitur was issued on December 2, 2016.

Petitioner filed a post-conviction relief (hereafter "PCR") application on June 26, 2017.

In this application, Petitioner alleged:

1. "Ineffective assistance of trial counsel and appellant counsel."
  - a. "Counsel failed to [] investigate."
2. "Due Process violation."
  - a. "Failed to supervise informant."
3. "Subject Matter Jurisdiction."
  - a. "Court lacked jurisdiction to sentence."

The "amendment to application for post-conviction relief" was filed on November 9, 2017. In the amendment, Petitioner, through Counsel, alleged:

1. "Ineffective assistance of counsel," in that:
  - a. "Failure to properly prepare and investigate the case."
    - i. "Including the failure to investigate and obtain evidence, surveillance video, cell phone records, cell phone video recordings, etc., that would establish a defense in the case."
  - b. "Failure to obtain transcripts from court proceedings wherein potential witnesses had given previous testimony or to obtain records relevant to the impeachment of the testimony of "confidential informants" or other witnesses."
  - c. "Failure to follow instructions or requests of the applicant."
  - d. "Failure to properly present an adequate defense based on the facts and circumstances of the case."
  - e. "Failure to properly conduct discovery in the case."
  - f. "Failure to properly subpoena and call witnesses and present evidence in the case."
  - g. "Failure to raise proper objections during the trial to present and preserve evidentiary issues."
  - h. "Making improper stipulations or giving consent on issues during the trial which were adverse to the defense of the case."
  - i. "Failure to move for appropriate suppression hearings and properly object to the testimony of witnesses and evidence in a timely manner."
  - j. "Failure to properly and effectively cross-examine the State's witnesses."
  - k. "Failure to raise and properly argue and preserve record and issues for

- appeal.”
    - i. “Failure to make a proffer of evidence when warranted by the circumstances of the case and properly present and preserve issues for appeal.”
    - ii. “Failure to make and preserve record in cases of conferences at the bench and in chambers.”
  - l. “Failure of counsel to communicate all plea offers to the Applicant and to adequately discuss same.”
    - i. “Failure to fully and timely explain the advantages of a guilty plea and the plea offers and the risks of trial.”
  - m. “Failure to properly discuss the case and advise the Applicant on the applicable law and procedure and facts known or believed to exist.”
    - i. “Including failure to meet with the Applicant adequately and the failure to, in a timely manner, fully review and discuss the discovery material, evidence, law, and procedure so that the Applicant would fully understand the charges, consequences and choices, including plea options.”
  - n. “Failure to fully advise as to the right to testify and the associated risks.”
2. “Discovery Violation,” in that:
- a. “Failure of the state, including law enforcement, to provide discoverable information that would have materially aided in the preparation and presentation of the defense as required under Rule 5, Brady, and other authority.”

Respondent made its return on December 29, 2017. The evidentiary hearing occurred on March 7, 2019, before the Honorable Thomas A. Russo. J. Faulkner Wilkes, Esquire was the Petitioner’s attorney. Johnny E. James, Jr. of the South Carolina Attorney General’s Office represented Respondent. On July 12, 2019, the Court denied and dismissed Petitioner’s PCR application.

A notice of appeal was timely filed on August 8, 2019. The original petition for writ of certiorari was filed by Taylor Gilliam, Esquire, on March 30, 2020, raising the following issue:

Whether the post-conviction relief court erred in denying relief, where trial counsel failed to object to a highly prejudicial comment by the State’s first witness that she used to do drugs with Petitioner, where in a drug case, propensity testimony regarding Petitioner’s alleged prior use of drugs was mentioned to the jury, where an objection would have been sustained, and where no strategic reason existed not to object?

Respondent filed its return to the petition on May 6, 2020. Petitioner, through Counsel J. Falkner Wilkes, Esquire, filed a motion to substitute counsel and an amended petition for writ of certiorari on July 24, 2020, which was granted over Respondent's objection on October 8, 2020. This return to the amended petition follows.

## STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts “give[] great deference to the PCR court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the petitioner shouldering the burden of proof. Rule 71.1(e), SCRCP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court’s findings will be upheld if there is “any evidence of probative value sufficient to support them.” *Id.* Reversal of the lower court’s findings occurs when there is no probative evidence to support the initial finding. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a de novo review when evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

In a PCR action, the petitioner bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When a petitioner asserts ineffective assistance of counsel as a ground for relief, the petitioner must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] 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. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the petitioner must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the petitioner must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the petitioner so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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 696. 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. *Id.* at 696-97.

**I. The post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to sufficiently advise Petitioner to accept the plea deal because Counsel told Petitioner that he would spend life in prison if he did not accept the plea deal and Counsel because the State’s case against him was incredibly strong.**

On appeal, Petitioner argues the PCR court erred in denying him relief because counsel was ineffective for failing to advise Petitioner to accept the plea. Specifically, Petitioner argues that Counsel was deficient for failing to tell Petitioner how strong the State’s case against him was and that he would almost certainly be found guilty at trial and sentenced to life imprisonment. However, the PCR court properly rejected this argument, finding that Counsel

credibly testified that he told Petitioner he would most likely get convicted at trial and sentenced to life imprisonment because of the overwhelming evidence against him. These findings are not controlled by an error of law and are supported by probative evidence in the record.

Consequently, this Court should deny certiorari.

“[A]n accused is entitled to counsel’s considered and reasonable judgment.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). Further, “uncertainty concerning a potential legal challenge may well provide a defendant a catalyst in plea negotiations with the State.” *Id.* To demonstrate prejudice, “defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel” and “demonstrate a reasonable probability the plea would have been entered without the prosecution cancelling it or the trial court refusing to accept it, if they had authority to exercise that discretion under state law.” *Missouri v. Frye*, 566 U.S. 134, 147 (2012).

Counsel was not deficient on this ground. Specifically, Counsel credibly testified that photograph and video evidence existed involving Petitioner holding a bag of cocaine in his hand. (App. 259). Counsel testified he told Petitioner multiple times that he would likely be convicted at trial, based upon the video and photographic evidence that would be admitted to trial. (App. 259-60). Counsel stated he discussed the plea offer with Petitioner several times, they went over the discovery together, including the video and photographs. (App. 256). Counsel stated that Petitioner was served with a notice of life without parole and offered eighteen years’ imprisonment. (App. 256-57). Counsel stated that he should take the plea offer because he would be in prison for the rest of his life if convicted at trial. (App. 259-60).

Additionally, at the PCR hearing, Petitioner admitted that other than the fact that the camera turned for a fraction of a second away from the deal, no other defenses existed that

Petitioner was aware of when deciding whether or not to go to trial. (App. 251). Petitioner confirmed Counsel informed him of the plea offer consisting of a sentence between fifteen and thirty years, which was rejected by Petitioner, who wanted a maximum of fifteen years. (App. 246-47). Petitioner stated that Counsel told him that if he did not take the plea deal, he would die in prison if convicted. (App. 249).

Thus, given the testimony from both Counsel and Petitioner, Counsel was not deficient. Counsel testified that he told Petitioner that he would spend his life in prison if convicted. Petitioner confirmed this at the PCR hearing. Counsel also stated there was strong video and photographic evidence incriminating in nature and taken by the confidential informant while the drug deal was in process. Petitioner was shown this evidence while considering the plea. Counsel could do no more to encourage Petitioner to take the plea and, consequently, cannot be found deficient simply because Petitioner decided he was unwilling to accept the offer.

Further, concerning prejudice, Petitioner's decision to reject the plea offer is seemingly based on not the likelihood of success at trial, but on his dissatisfaction of being offered a plea deal with a maximum sentence of thirty years. Petitioner, seeking at most half of that time, was unwilling to accept a plea deal consisting of anything more than fifteen years' imprisonment, regardless of the likelihood of success at trial. Thus, the decision to decline the offer was rooted in Petitioner's desire for a better plea deal; not because of any deficiency on the part of Counsel for failure to warn of the low likelihood of success at trial. *See Collins v. State*, 422 S.C. 250, 262-63, 810 S.E.2d 871, 877 (2018) (finding applicant failed to establish prejudice because he offered no testimony indicating he would have accepted the plea absent Counsel's deficient performance). Thus, because Petitioner has failed to show Counsel was deficient or that he was prejudiced by any alleged deficiency, relief should be denied on this ground.

**II. The post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to establish a proper defense when he strategically withdrew the sole defense exhibit after it was read to the jury to ensure Petitioner could maintain the last argument, which Counsel reasonably concluded was more helpful to the defense than refusing to withdraw the exhibit.**

On appeal, Petitioner argues the PCR court erred in denying him relief because Counsel was allegedly ineffective for withdrawing the defense's sole exhibit at trial. However, the PCR court properly rejected this argument, finding that withdrawing the exhibit was a strategic decision that allowed the information to be admitted into trial, while ensuring that Counsel could have the last argument, which Counsel determined was more helpful to Petitioner's case than keeping the exhibit in evidence after it was read to the jury. These findings are not controlled by an error of law and are supported by probative evidence in the record. Consequently, this Court should deny certiorari.

“Where trial counsel articulates a valid reason for employing a certain trial strategy, counsel will not be deemed ineffective.” *McKnight v. State*, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Additionally, “mere speculation . . . cannot, by itself, satisfy the applicant's burden of showing prejudice.” *See Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995).

At the PCR hearing, Counsel stated he decided to withdraw the exhibit because the jury had already heard the exhibit, which impeached the State's sole witness. (App. 267). Counsel stated he thought withdrawing the exhibit probably would not have impacted how the jury viewed the impeachment of the witness and stated he thought it would be more helpful to Petitioner's case to have the last argument. (App. 267). Additionally, he wavered when asked if

he thought a curative instruction would have helped the jury, but ultimately testified that he thought a curative instruction could have further confused the jury or indicated to the jury that they should disregard that piece of evidence altogether, which would have been harmful to Petitioner's case. (App. 268-69). Thus, this tactical move allowed Counsel to publish the piece of evidence to the jury while still keeping last word. This is an inherently strategic decision and, thus, Counsel was not deficient for exercising it.

Regarding prejudice, Petitioner has done no more than merely speculate as to what impact, if any, this would have had at trial. Thus, Petitioner has not met his burden of proof in establishing prejudice. Thus, because Petitioner cannot satisfy either prong of the *Strickland* test, this court should deny relief on this ground.

**III. The post-conviction relief court properly determined that Petitioner failed to establish counsel was ineffective for failing to object to an allegedly prejudicial comment by the State's witness because Counsel utilized strategic judgement when refusing to object at trial and Petitioner was not prejudiced as a result.**

On appeal, Petitioner argues the PCR court erred in denying him relief because Counsel was ineffective for failure to object to a comment made by one of the State's witnesses about how he and Petitioner "used to do drugs together", which Petitioner alleges was damaging to Petitioner's case at trial. Petitioner alleges this led him to being found guilty, despite the already overwhelming evidence of guilt. However, the PCR court properly rejected this argument, finding that Counsel had a valid strategy behind his decision not to object and Petitioner was not prejudiced by Counsel's strategic decision not to object. These findings are not controlled by an error of law and are supported by probative evidence in the record. Consequently, this Court should deny certiorari.

Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d

487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Counsel did not act deficiently. At the evidentiary hearing, Counsel stated that he used his strategic judgement at trial, stating he was valuing the damage to the confidential informant’s credibility over the potential damage to his client. (App. 265). Counsel stated that he failed to renew the objection because there was a video involving Petitioner possessing drugs, testimony to that affect and he thought it would be beneficial to Petitioner to allow that testimony in because he thought evidence of the informant’s drug use would negatively impact her credibility. (App. 265).

This strategy was executed at trial. During cross-examination of the witness, Counsel confirmed that the informant is a crack cocaine addict and has been for thirteen years. (App. 75). Additionally, the witness testified that she has never bought or possessed drugs for something other than personal use or assisting law enforcement. (App. 76). Further, the witness testified she assisted law enforcement or “work off charges”. (App. 76-80). Thus, a valid trial strategy was executed at trial and, thus, Counsel was not deficient.

Even if Counsel was deficient, Petitioner was not prejudiced by Counsel’s alleged deficiency. Photograph and video evidence existed involving Petitioner holding a bag of cocaine in his hand. (App. 63, 259). Other than the fact that the camera turned for a fraction of a second away from the deal, no other defenses existed that Petitioner was aware of when deciding to go to trial. (App. 251). After becoming aware of the video and photograph evidence, Counsel testified he told Petitioner multiple times that, in his opinion, he would likely be convicted at

trial, based upon the video and photograph evidence that would be admitted to trial. (App. 63, 259-60). Petitioner confirmed he was told this by Counsel. (App. 253). Thus, even if Counsel was deficient, Petitioner was not prejudiced by this deficiency because the evidence against Petitioner was overwhelming, no viable defense existed, and the probability of conviction was all but certain. Objecting to this line of questioning would not have made a difference at trial. Consequently, Petitioner's claim is without merit and the appeal should be denied.

**CONCLUSION**

For the reasons stated above, this court should deny certiorari and affirm the PCR Court's findings that Petitioner had effective assistance of counsel. However, if this Court decides to grant the petition of writ of certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

BY: /s Chelsey F. Marto  
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ATTORNEYS FOR RESPONDENT

October 23, 2020

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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CERTIORARI TO SPARTANBURG COUNTY

The Honorable Roger L. Couch, Trial Judge  
The Honorable Thomas A. Russo, PCR Judge  
Appellate Case No. 2019-001319

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**SC Court of Appeals**

TAIWAN J. HARDY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PROOF OF SERVICE**

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Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to the Amended Petition for Writ of Certiorari has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

**J. Falkner Wilkes, Esquire**  
**[jfalknerwilkes@gmail.com](mailto:jfalknerwilkes@gmail.com)**

This 23<sup>rd</sup> Day of October, 2020.

s/ Chelsey F. Marto  
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Oct 23 2020

SC Court of Appeals

**From:** Chelsey Marto  
**To:** ["J. Falkner Wilkes"](#)  
**Cc:** [SeventhCircuitPCR](#)  
**Subject:** Hardy, Taiwan - Return to Amended PWC (2020-001319)  
**Date:** Friday, October 23, 2020 4:18:00 PM  
**Attachments:** [HARDY Taiwan - Amended RPWC FINAL \(02410665xD2C78\).PDF](#)

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Good afternoon,

Attached please find the return to the amended PWC in Taiwan Hardy's PCR appeals case (2020-001319), to be filed with the court momentarily.

Best,  
Chelsey Marto



ALAN WILSON  
ATTORNEY GENERAL

October 23, 2020

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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**Oct 23 2020**

**SC Court of Appeals**

RE: **Taiwan J. Hardy v. State of South Carolina**  
**Appellate Case No. 2020-001319**  
**Lower Court Case No. 2017-CP-42-02217**

Dear Ms. Kitchings:

Enclosed for filing is the Return to the Amended Petition of Writ of Certiorari in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

/s Chelsey F. Marto  
Chelsey F. Marto  
Assistant Attorney General  
S.C. Bar No. 104191

CFM/ec  
Enclosures

cc: J. Falkner Wilkes, Esquire