RECEIVED

Jan 28 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Berkeley County Court of Common Pleas
The Honorable J. Edgar Dickson, Post-Conviction Relief Judge
The Honorable Kristi Harrington, Trial Judge

Appellate Case No. 2020-001079

BARRY STANLEY, #274236, Respondent,

vs.

STATE OF SOUTH CAROLINA, Petitioner.

PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

ISSUES PRESENTED FOR CERTIORARI.....3

STAEMENT OF THE CASE.....4

STATEMENT OF FACTS… 5

STANDARD OF REVIEW… 9

ARGUMENT 10

Certiorari is warranted to review and ultimately reverse this erroneous grant of relief because the post-conviction relief court, without taking any testimony or otherwise conducting a meaningful hearing, wrongly determined trial counsel was constitutionally ineffective for not requesting additional questions during voir dire where no specific voir dire is required and Stanley wholly failed to establish any prejudice.

CONCLUSION.....16

ISSUE PRESENTED FOR CERTIORARI

Is Certiorari is warranted to review and ultimately reverse this erroneous grant of relief because the post-conviction relief court, without taking any testimony or otherwise conducting a meaningful hearing, wrongly determined trial counsel was constitutionally ineffective for not requesting additional questions during voir dire where no specific voir dire is required and Stanley wholly failed to establish any prejudice?

STATEMENT OF THE CASE

Respondent Barry Jerrod Stanley is presently confined in the South Carolina Department of Corrections. In February 2014, the Berkeley County Grand Jury indicted Stanley for failure to stop for a blue light (2014-GS-08-0027) and trafficking cocaine base, 28-100 grams, third offense (2014-GS-08-0028). David Schwacke, Esquire and Chad Shelton, Esquire represented Stanley. Assistant Solicitors Michael Patterson and Charles Condon of the Ninth Circuit Solicitor's Office prosecuted the case. On April 7-9, 2014, Stanley proceeded to a jury trial before the Honorable Kristi Harrington. The jury convicted Stanley as indicted. Judge Harrington sentenced Stanley 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.

Stanley filed a timely notice of appeal and was represented on appeal by Appellate Defender Tiffany L. Butler of the South Carolina Commission of Indigent Defense-Office of Appellate Defense, who argued the trial judge erred by failing to direct a verdict of acquittal on the charge of trafficking in cocaine base, third offense, where the State failed to introduce direct or substantial circumstantial evidence at trial that Stanley was in constructive possession of the drugs found on the ground. The South Carolina Court of Appeals affirmed Stanley's conviction on May 11, 2016. State v. Stanley, Op. No. 2016-UP-194 (S.C. Ct. App. filed May 11, 2016). The remittitur was returned to the circuit court on May 27, 2016.

Stanley then filed a post-conviction relief application, arguing he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
    a. "Failing to *voir dire* or request the trial court *voir dire* the jury for any potential bias of potential jurors prior to seating the jury."
    b. "Failing to object to the Solicitor vouching for the State's witness William Loflin"

c. "Failing to object to testimony regarding how crack cocaine is made after objection made and sustained to witness being a narcotics expert as well as failing to ask for curative instruction or motion to strike testimony."
d. "Failing to object to and preserve for appellate review the State's use of false inconsistent testimony of State's witnesses to obtain a conviction for trafficking in crack cocaine."

2. "Ineffective Assistance of Appellate Counsel"
   a. "Failing to raise 'the trial court erred in denying Defendant's motion for a directed verdict of acquittal on the charge of trafficking in crack-cocaine, thereby denying him due process' on direct appeal

A number of evidentiary hearings were scheduled, but ultimately continued in an attempt to acquire the *voir dire* transcript from Stanley's trial. The *voir dire* transcript was finally received and reviewed by the parties. An evidentiary hearing was scheduled before the PCR judge the week of January 20th in Charleston County. At the start of the hearing, before any testimony was taken, Stanley moved for the court to summarily grant post-conviction relief on the claim that counsel was ineffective for failing to request case-specific *voir dire*. Stanley failed to cite to any legal authority and premised his argument on his belief that a prior judge (who also did not hear any testimony or legal authority) would have granted relief). The PCR court granted the motion and requested a proposed order from Stanley, but did allow the State to submit a brief n opposition at its request. Thereafter, the PCR court granted relief. The State moved for reconsideration pursuant to Rule 59(e), SCRCP, which was summarily denied. This appeal follows.

STATEMENT OF FACTS

On March 11, 2013, Evette Nelson ran out of her apartment, frantic, toward neighbors playing basketball in the parking lot and asked them to "call the police, he's beating me, he's going to kill me." (App. 77, 80; 90; 93; 97). Greg Rider testified that he and his son calmed Ms. Nelson down but could not call the police because they did not have their phones. However, he observed

Stanley come out of his apartment, get into his blue Crown Victoria, and drive slowly through the basketball court while Ms. Nelson backed up to another building. Stanley then traveled through the gate and Mr. Rider took Nelson to his apartment and asked his wife to call the police. Rider instructed his son to stay there to protect the two women. (App. 98; 92 – 93; 98 - 101). Once inside Nelson was still hysterical and saying that going to "kill her." Tanya Deane called 9-1-1 while her husband, Rider, went back outside to make sure that Stanley did not return. (App. 93-98). Rider saw Stanley return to the apartment complex, stop the car in front of Stanley's apartment, and run into his apartment while the car was running, and then get in the vehicle and drive to where Rider stood outside waiting on officers to arrive. (App. 98 - 101). Stanley stopped, made eye contact with Rider, and drove off. Law enforcement officers arrived not more than 15 seconds later. (App. 99). Rider said no one was in the vehicle with Stanley and that he was able to look at Stanley driving the vehicle twice, once as Stanley drove through the basketball court and a second time when Stanley returned to the apartment. (App. 99; 100). Rider had no doubt that Stanley was the individual he saw driving the vehicle that day and described the vehicle Stanley was driving as a dark blue older model Crown Victoria with large wheels. (App. 99; 100- 101). He also stated that Stanley was the only person he had seen driving that vehicle. Ms. Nelson confirmed that the Crown Victoria belonged to her but that Stanley had permission to use it. (App. 77 - 79; 89; 94; 100). Not only did Rider know Stanley from previous interactions with him, he also identified Stanley in a photographic lineup as the person he saw driving the vehicle that day. (App. 97; 101; 187; 189).

Corporal Ellwood and Detective Camp arrived at the apartment building and relayed to other officers the information that Stanley left in a Crown Victoria. (App. 104 – 105; 110). Nelson appeared very upset and fearful of Stanley and provided Camp a cell phone photograph of Stanley which was relayed by text to officers pursuing Stanley. (App. 106 – 108; 157). Ms. Nelson advised

the officers that she and Stanley argued because she did not want Stanley to keep drugs in the apartment with her children. (App. 107; 280). Ms. Nelson also reported that Stanley took her vehicle and had drugs and possibly a firearm in the vehicle with him. (App. 157; 162). This information was also relayed to other officers. (App. 157).

Officer Dodd, an off duty resource officer, heard the commotion over the police radio about a black male who left the scene in a dark Crown Victoria and requested permission to join the pursuit as it was near his location. (App. 111 – 12). Officer Dodd was the first to encounter Stanley driving in the opposite direction at a high rate of speed. (App. 112; 120 – 21). Dodd turned around, activated his blue lights and attempted to make a traffic stop, but Stanley did not stop. (App. 112-113). Instead, Stanley attempted to hit Dodd's patrol car but a collision was avoided when Dodd swerved off of the road. (App. 114). Dodd remained the lead officer in pursuit through several neighborhoods at which point Corporal Lanp here took over. (App. 114). Dodd identified Stanley as the person he saw driving the Crown Victoria that day. (App. 122; 124).

While the pursuit of Stanley was still active, a call was made to the police department that narcotics had been thrown out of a dark blue Crown Victoria that was currently involved in a police chase as the pursuit passed the intersection of Spring Hill and Fort Drive. (App. 115; 158-159). Corporal Ellwood and Officer Dodd responded. (App. 114; 123; 158). Dodd testified that he did not see anything being thrown from Stanley's vehicle during his pursuit of Stanley in that neighborhood but stated that he slowed as he and Stanley approached a sharp turn because he feared children might be present. Dodd testified that the narcotics were discovered along the sharp turn where he lost sight of Stanley. (App. 116 – 119; 121). Officers Dodd and Ellwood spoke with and took a statement from William Loflin. (App. 115- 116; 158; 164). Loflin reported that he heard the sirens and saw the blue Crown Victoria being driven by a black male and being

pursued by officers in the residential neighborhood. Loflin reported that as the pursuit passed, he saw narcotics coming out of the Crown Victoria Stanley was driving. (App. 115 – 116; 163 - 164; 166). The item thrown from the car was given to the officers who described the contents as a clear plastic bag containing a disc-shaped substance and several shards. (App. 158 – 160). Ellwood conducted a quick test of the substance. It tested positive for a cocaine based substance. (App. 160; 149). Ellwood took the evidence into custody and interviewed the witnesses, Rowland and his coworker, Loflin, who was out in the backyard smoking when he heard sirens then saw Stanley driving the car as it raced by and Stanley throw something out of the window. (App. 136-141).

William Loflin testified that he was on the back porch of the home smoking a cigarette when he heard sirens in the neighborhood. The residential neighborhood has only one access in and out. (App. 136). He walked into the backyard to investigate what he heard and saw a blue Crown Victoria "come flying by" and cut the corner with a "siren" behind it trying to catch up. Loflin stated that the driver of the Crown Victoria was looking over his shoulder the entire time for the officer in pursuit. Loflin stated that the driver threw a bag out of the vehicle and took off. Loflin testified that the officer following the Crown Victoria would not have been in a position to see the bag being tossed out. (App. 136 – 137; 140; 143 -146; 150 – 153). Loflin called to his roommate to retrieve the item that was thrown from the car and to call officers about what they found. (App. 138; 153). Loflin saw his roommate pick up the bag and identified the contents of the bag as crack and also identified the drugs in court as the item he saw thrown from the Crown Victoria. (App. 141 – 142; 148 – 149).

Christopher Rowland testified that William Loflin was his roommate on the day in question and that he also heard sirens. He also testified that Loflin advised him that he saw a car fly by and throw a bag out of the window. Rowland went outside and found the bag on the side of the road.

He retrieved the bag based upon his concern the bag contained drugs that would be found by children in the neighborhood. He called law enforcement officers to report what he found. (App. 168 – 169; 179). He turned the bag over to officers when they arrived and identified the drugs in court as the item he retrieved that day. (App. 170 – 175). The bag contained 28.85 grams of crack cocaine or cocaine base. (App. 206 – 208; 219 – 225).

Officer Lanphere also received the call about the domestic assault and the fact that the assailant fled in a blue Crown Victoria. Lanphere waited near the neighborhood where Stanley was being pursued and took over the pursuit. (App. 126 – 129; 182). Stanley was identified as the driver and sole occupant of the blue Crown Victoria. (App. 133). Lanphere saw Stanley touch the rear-view mirror in the vehicle during his pursuit of Stanley. (App. 133). Officers Lanphere and Beaudoin observed as Stanley collided with another vehicle. (App. 129 – 131; 182). Stanley abandoned the Crown Victoria and fled on foot. (App. 129-130). Stanley's fingerprints were found on the rear-view mirror of the blue Crown Victoria Stanley abandoned. (App. 200; 206; 253 – 259). Stanley was charged, and found guilty of failure to stop for a blue light and trafficking in cocaine base in excess of twenty-eight grams, but less than one-hundred grams, third offense.

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. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (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. Id. 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).

ARGUMENT

Certiorari is warranted to review and ultimately reverse this erroneous grant of relief because the post-conviction relief court, without taking any testimony or otherwise conducting a meaningful hearing, wrongly determined trial counsel was constitutionally ineffective for not requesting additional questions during voir dire where no specific voir dire is required and Stanley wholly failed to establish any prejudice

Here, the PCR court, without hearing testimony, granted relief based on counsel's purported failure to move for individualized *voir dire*, which is *not* required under South Carolina law. The record clearly and unequivocally establishes that sufficient *voir dire* was conducted in compliance with the U.S Constitution, South Carolina Constitution, and all statutory provisions. This grant of relief amounts to a clear error of law that requires certiorari and ultimately reversal.

The responsibility of the trial court is to focus the scope of *voir dire* examination as described in S.C. Code Ann. § 14–7–1020. The manner in which these questions are pursued and the scope of any additional *voir dire* is within the sound discretion of the trial court. *State v. Lucas,* 285 S.C. 37, 39, 328 S.E.2d 63, 64–65 (1985) (*voir dire* regarding the jurors' possible association with the solicitor's office was outside the scope of § 14–7–1020); *Crosby v. Southeast Zayre, Inc.,* 274 S.C. 519, 521–22, 265 S.E.2d 517, 519 (1980) (the refusal to make *any* inquiry regarding the possible bias of jurors is reversible error); *Norris v. Ferre,* 315 S.C. 179, 432 S.E.2d 491 (1993) (Rule 47(a), SCRCP, provides the trial judge broad discretion in regards to *voir dire*). The trial court is not required to ask every question submitted by counsel. *State v. Middleton,* 266 S.C. 251, 257, 222 S.E.2d 763, 765 (1976) (citing *State v. Britt,* 237 S.C. 293, 117 S.E.2d 379 (1960)

(determination of when *voir dire* shall cease and refusal to ask additional questions proposed by parties is within the discretion of the trial judge)).

In the case at bar, Mr. Stanley failed to meet his burden of establishing defense counsel's performance during the *voir dire* process fell below the prevailing standard of professional norms. The trial court asked all of the statutorily mandated questions during the jury voir dire, thus, trial counsel was not ineffective for not requesting additional questions be asked. See S.C. Code Ann. § 14-7-1020 (requiring a trial judge—upon request by either party—to question prospective jurors to determine whether any of them: (1) is related to either party; (2) has any interest in the cause; (3) has expressed or formed any opinions; and (4) is sensible of any bias or prejudice therein). The trial court asked the jury if anyone was "related by blood, marriage, close personal friends, ever had business, personal or professional dealings with Mr. Stanley?" App. 36, l. 23-25; App. 37, l. 1-2. The trial court asked this question, only required of it if asked by a party, without such a request being made. Significantly, it appears that the trial judge asked some additional questions during *voir dire* beyond the statutorily-mandated questions to elicit information about the prospective jurors beyond the information that would have otherwise been elicited through the trial judge's standard questioning. Specifically, the trial judge stated; "If you need to answer that question or if you feel that whatever moral, political, *whatever belief that you could not be a fair and impartial juror in this particular case and you need to discuss that with me*, please move to the center aisle just as you did in the jury qualifications and I will see you at this time." (emphasis added) App. 46, l. 3-9. The trial court not only asked the questions that are mandated be asked during jury *voir dire*, but asked further questions to be certain any juror with potential bias toward the defendant was not seated. Any further questions requested by trial counsel would have gone

above and beyond what is required and would not doing so does not make trial counsel constitutionally ineffective.

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970); see Strickland v. Washington, 466 U.S. 668, 685 (1984) ("An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair."). Significantly, effective assistance of counsel does *not* mean perfect representation. See Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."); see also Burt v. Titlow, 571 U.S. 12, 24 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]"). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, counsel's assistance is considered to be constitutionally ineffective when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of counsel claim must establish: (1) counsel's representation fell below an objective standard of

reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to post-conviction relief. Hughes v. State, 364 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). Significantly, "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.

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Id.; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, will make every effort "to eliminate the distorting effects of hindsight," and will "evaluate the conduct from counsel's perspective at the time" in light of the then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Thus, counsel's performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to post-conviction relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment."[1] Strickland, 466 U.S. at 691. In order for that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112 (emphasis added).

Defense counsel not proposing additional *voir dire* questions on potential bias against drugs to a trial judge with no obligation whatsoever to ask such a question was simply not evidence of unreasonable representation below the objective standard of professional norms. See Richter, 562 U.S. at 110 ("Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or *for failing to prepare for what appear to be remote possibilities*." (emphasis added)); see also State v. Britt, 237 S.C. 293, 305, 117 S.E.2d 379, 385 (1960) ("[A]fter the statutory questions have been asked and answered, any further examination of a juror on *voir dire* must be left to the discretion of the trial Judge, which is subject to review only for abuse thereof. . . . [T]he scope and limit of the interrogation of a juror on *voir dire* is within the sound discretion of the trial Judge, and it is

[1] Notably, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Strickland, 466 U.S. at 697. In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice "[i]f it is easier" to do so. Id.

for him to determine the character of the questions proposed, and when the examination shall end."), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); cf. Mu'Min v. Virginia, 500 U.S. 415, 425-426 (1991). Further, as noted above, the *voir dire* conducted by the trial court was entirely proper. The trial court asked the constitutionally and statutorily mandated questions of the jury pool, thus trial counsel could not be deficient for failing to request further questions be asked during *voir dire*.

Further, notwithstanding Stanley's failure to establish deficiency on the part of defense counsel, Stanley additionally failed to establish he suffered any actual prejudice as a result of defense counsel's performance during *voir dire*. First, Stanley did not present any evidence establishing the trial judge would have asked the question Stanley now contends should have been asked if it had been proposed by defense counsel, and thus, he has failed to show defense counsel's failure to propose such a question altered the manner in which *voir dire* was conducted. See Wall v. Keels, 331 S.C. 310, 318, 501 S.E.2d 754, 757 (Ct. App. 1998) ("[A]s a general rule, the trial court is not required to ask all *voir dire* questions submitted by the attorneys."); see also State v. Neeley, 271 S.C. 33, 37, 244 S.E.2d 522, 525 (1978) ("Having asked the statutory questions, any further examination was in the trial judge's discretion."). Second, other than mere speculation, Stanley presented no evidence supporting the claim that any juror selected was not fair and impartial. Thus, Stanley could not possibly have met his burden in proving his right to a fair and impartial jury was impacted negatively in any capacity by defense counsel's representation during *voir dire*. See State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96-97 (2008) ("While . . . a defendant [has] the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury."); State v. Evins, 373 S.C. 404, 416, 645 S.E.2d 904, 910 (2007) ("[A] defendant has no right to trial by a particular jury."); cf. White v. Dingle, 757 F.3d

750, 755 (8th Cir. 2014) ("White asserts that he was 'prejudiced by counsel's errors' because there 'is a strong possibility that the jury foreperson was biased because of her relationship to the surviving victim's roommate.' As the district court found, there is no direct evidence of bias. His speculation of prejudice is without evidentiary support.").

Thus, because the trial court asked the statutorily mandated questions and further inquired as to any additional biases, trial counsel not proposing additional questioning during *voir dire* on potential drug bias did not constitute unreasonable representation falling below a standard of professional norms and because Stanley has not presented any evidence proving prejudice as a result of any juror's service on the jury, this Court incorrectly concluded Stanley met his required burden of establishing both deficiency and prejudice, and the ruling is erroneous. See Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (instructing a post-conviction relief judge's factual finding will be upheld if supported by any evidence and a post-conviction relief's judge's decisions will only be reversed where controlled by an error of law).

CONCLUSION

For the foregoing reasons, this Court should grant this Petition for a Writ of Certiorari and reverse the post-conviction relief court's erroneous grant of relief.

Signature on following page

Respectfully submitted,

ALAN WILSON
Attorney General

BENJAMIN HUNTER LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

By: s/ Benjamin Limbaugh
ATTORNEYS FOR PETITIONER

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

January 28, 2021