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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition of Writ of Certiorari to Orangeburg County
Court of Common Pleas
The Honorable Craig D. Brown, Post-Conviction Relief Judge
The Honorable Edgar W. Dickson, Trial Judge

Appellate Case No. 2020-000896

JULIAN YOUNG, #352043, Respondent/Petitioner,

v.

STATE OF SOUTH CAROLINA, Petitioner/Respondent.

STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI IN CROSS-APPEAL OF RESPONDENT/PETITIONER

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Petitioner's Statement of Issue on Petition for Writ of Certiorari

Did the PCR Court err in failing to grant Respondent/Petitioner relief on his Allegations No. 9, in which he alleged that Trial Counsel was ineffective for neglecting to advise the Applicant thoroughly concerning the law as it relates to the lesser included offense of voluntary manslaughter?

Respondent's Counterstatement of Issue on Petition for Writ of Certiorari

Did the PCR Court correctly find trial counsel was not ineffective, where: 1) trial counsel testified he discussed the lesser-included charge of voluntary manslaughter with Respondent/Petitioner; 2) trial counsel submitted a brief to the trial court requesting the lesser-included charge and the trial court ruled, after an in-chamber conference, that it would not charge the lesser-included offense of voluntary manslaughter; and 3) there was no probative evidence presented at trial to support the lesser-included charge of voluntary manslaughter?

STATEMENT OF THE CASE

During its April 2014 term, the Orangeburg County Grand Jury indicted Respondent/Petitioner (Young) for Murder (2011-GS-38-1833). On August 14, 2012, Young proceeded to trial before the Honorable Edgar W. Dickson. Young was found guilty on August 16, 2012. Judge Dickson sentenced Young to thirty-five years imprisonment.

Young filed a timely notice of appeal. On June 18, 2014, the South Carolina Court of Appeals issued an unpublished opinion affirming the ruling and conviction. Following the denial of his petition for rehearing, Young sought certiorari to this Court, which was denied on December 18, 2014.

On March 5, 2015, Young filed an application for post-conviction relief, asserting forty-four ground for relief. The State filed a Return on September 9, 2015. On October 4-5, 2018, an evidentiary hearing was held in Dorchester County before the Honorable D. Craig Brown. Judge Brown granted post-conviction relief on May 11, 2020. The State was served the Order on June 4, 2020. The PCR court granted relief on multiple grounds of ineffective assistance of counsel which the State addressed in its Petition for Writ of Certiorari.

The State filed its Petition for Writ of Certiorari on October 20, 2020. On May 21, 2021, this Court received a 48-page Return to the State's Petition. Additionally, on June 1, 2021, Young filed a Petition for Writ of Certiorari in Cross-Appeal. By Order dated June 1, 2021, this Court struck Young's "corrected amended return" because it exceeded the 25 page limit and because counsel for Young failed to move to exceed the page limit. Counsel was directed to serve and file an amended return no later than June 12, 2021. On June 14, 2021, Counsel for Young submitted a "corrected amended return" via email and on June 15, 2021, Counsel submitted an amended return and motion to exceed the page limit. Based on Counsel's failure to timely serve and file a return to the petition for writ of certiorari, the Return was struck and this matter was ordered to proceed

without a return. This Return to the Respondent/ Petitioner's Petition for Writ of Certiorari in Cross-Appeal follows.

STATEMENT OF FACTS

Kendra Williams, a sergeant with the South Carolina State University (SC State) Police Department, was dispatched to 2195 Russell Street on the night of April 15, 2011. (Amended App. p 82, line 3 – p 83, line 5). Williams was called to the property around 11:14 p.m. because a vehicle hit the building at 2195 Russell Street, which held offices for SC State. (Amended App. p 83, lines 6-25). Williams arrived on the scene at 11:20 p.m. and she observed that a green car had struck the front of the building at 2195 Russell Street. (Amended App. p 84, lines 6-22). Williams observed "a lot of car pieces and a lot of bricks everywhere" (Amended App. p 84, lines 19-20). There were a number of public safety officers already at the scene when Williams arrived. (Amended App. p 53, lines 13-21). An ambulance was also on the scene. (Amended App. p 85, line 22 – p 86, line 2).

Williams asked Victim his name and if he was a student at SC State, but Victim would not answer her. (Amended App. p 88, line 22 – p 89, line 2). Victim gave few audible responses. (Amended App. p 93, lines 22-23). But Williams testified that she:

> …asked him if he was Queen's Village, he said he—well, he shook his head, yes. I asked him if he had been robbed, he shook his head, yes. I asked him if, how many, and he stuck his hand up and showed me four fingers. I asked him if he saw the weapon, he shook his head, yes. I asked him if it was a revolver, he shook his head, yes.

(Amended App. p 89, lines 6-14). The ambulance ultimately took Victim to the helipad at The Regional Medical Center of Orangeburg, and he was transported to another hospital. (Amended App. p 89, lines 19-25). Victim died later that night from his injuries. (Amended App. p 90, lines 1-3).

SLED Agent Richard Johnson came to Orangeburg on April 16, 2011, to begin his investigation. (Amended App. p 336, lines 14-24). Investigators lifted two latent prints from the

outside of the passenger door of Victim's vehicle, one from the top of the window and one from the door, near the key entry. (Amended App. p 292, line 22 – p 296, line 9). The latent print from the window matched Ray Alston's prints. (Amended App. p 315, line 13 – p 317, line 8; p 325, lines 15-19). The other print could not be identified at first, but eventually it was identified as Young's prints. (Amended App. p 317, line 9 – p 323, line 11).

At trial Alston testified that on the night of April 15, 2011, he was hanging out with Young and others at a friend's house. (Amended App. p 198, line 8 – p 202, line 4). Alston decided he wanted to get some marijuana. (Amended App. p 202, lines 3-10). Alston asked Young about arranging for him to buy marijuana, and Young made some phone calls and set something up. (Amended App. p 202, line 11 – p 203, line 3). Then, Alston, Young, Milliard Pinckney, and Maurice Thompson drove to the SC State campus in silver Buick. (Amended App. p 199, lines 9-13 – p 204, lines 1-20). Thompson drove, and Pinckney sat in the passenger seat. (Amended App. p 204, line 21 – p 205, line 4). Alston and Young sat in the back seat. (Amended App. p 205, lines 5-24).

On the SC State campus, the group picked up Gipson, who Young contacted earlier in the day about purchasing marijuana. (Amended App. p 130, line 16 – p 135, line 4). Because Gipson did not have enough marijuana for Alston, Gipson arranged for Victim to sell to Alston. (Amended App. p 131, line 16 – p 132, line 20). In the car Gipson sat between Alston and Young, but Young was the only one there who knew Gipson. (Amended App. p 134, line 18 – p 136, line 16; p 205, line 25 – p 207, line 3).Gipson testified he arranged to meet with Victim at the marriage housing area. (Amended App. p 134, line 18 - p 135, line 4). The group arrived before Victim, so they reversed and parked in a parking space, then waited for Victim to arrive. (Amended App. p 138, lines 8-21; p 207, lines 4-24).

When Victim arrived, he pulled into a parking spot such that his passenger side was closest to the passenger side of the Buick. (Amended App. p 138, line 21 – p 139, line 11; p 207, line 25 – p 208, line 21). Gipson, Alston, and Young went to Victim's car, and Gipson got in the passenger seat to facilitate the transaction. (Amended App. p 140, lines 1-13). Alston and Young were unhappy with the quality of the marijuana, and they complained to Victim. (Amended App. p 140, line 8 – p 141, line 18; p 209, line 13 – p 210, line 7). Gipson then got out of the car and turned his attention to another car in the parking lot. (Amended App. p 141, line 19 – p 142, line 12). When Gipson turned back around, he saw Young and Victim "tussling in the car. . . ." (Amended App. p 142, lines 12-14). Gipson observed that Young was leaning in the car, but Gipson could not tell what Young and Victim were fighting over. (Amended App. p 143, lines 10-24). Gipson never saw anyone with a gun. (Amended App. p 143, line 25 – p 144, line 2). Gipson noticed that Victim's car was in reverse and the passenger door was open. (Amended App. p 142, lines 14-16). Gipson also observed that Alston was standing away from the car. (Amended App. p 143, lines 11-19). Gipson testified that he heard Victim's tires make a noise, then he heard a pop and he ran away. (Amended App. p 142, lines 16-21). Gipson looked back and saw Victim's car left the parking spot. (Amended App. p 142, lines 21-25). Gipson kept running. (Amended App. p 142, line 25).

Alston also testified that Young was leaning in Victim's car when he "heard a pow go off." (Amended App. p 210, line 19 – p 212, line 11). Alston thought the "pow" was a gun shot. (Amended App. p 181, lines 12-14). Young then got back in the Buick. (Amended App. p 211, lines 2-3). Alston asked Young "if he was alright, and then [Alston] asked if he shot the guy, but [Young] never answered" (Amended App. p 211, lines 3-6 – p 214, lines 1-7).

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)). Pure questions of law are reviewed *de novo* without deference to the lower court. Id.

ARGUMENT

The PCR Court correctly found trial counsel was not ineffective, because: 1) trial counsel testified he discussed the lesser-included charge of voluntary manslaughter with Respondent/Petitioner; 2) trial counsel submitted a brief to the trial court requesting the lesser-included charge and the trial court ruled, after an in-chamber conference, that it would not charge the lesser-included offense of voluntary manslaughter; and 3) there was no probative evidence presented at trial to support the lesser-included charge of voluntary manslaughter.

On cross-appeal, Petitioner contends the PCR court erred in denying Young's allegation that trial counsel was ineffective for failing to advise him thoroughly concerning the lesser-included offense of voluntary manslaughter. No evidence supporting a voluntary manslaughter instruction was presented at trial and Young denied intentionally shooting Victim. Additionally, Young contends that, but for counsel's failure to advise him concerning the requirements for the defenses of self-defense and accident, as well as the lesser-included offenses of involuntary manslaughter and voluntary manslaughter, Applicant would have testified at trial[1]. The post-conviction relief court properly rejected the argument trial counsel failed to advise Applicant of the lesser-included offense of voluntary manslaughter, finding the two lesser-included offenses (voluntary and involuntary manslaughter) were discussed with Young. (Amended App. p 1407). These findings are not controlled by an error of law and are supported by probative evidence in

[1] Young's arguments regarding trial counsel's failure to advise him that jury charges on the defenses of self-defense and accident and the lesser-included offense of involuntary manslaughter would not be given absent testimony from Young should not be reviewed. Young's issue statement specifically alleges the PCR court erred in failing to grant him relief on allegation number nine. Allegation number nine, as specifically delineated in the lower court's Order of Dismissal, states: "Trial counsel was ineffective for neglecting to advise the [Respondent/Petitioner] thoroughly concerning the law as it relates to the lesser included offense of voluntary manslaughter." (Amended App. p 1374). As such, only the argument pertaining to trial counsel's failure to advise Young regarding voluntary manslaughter is addressed here. State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal.") The State believes it is appropriate to solely address the issue as enumerated in the issue statement of Young's cross-appeal.

the record. Consequently, this Court should deny certiorari.

***Strickland*[2] Standard and Burden of Proof**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). 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

[2] Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690); see Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (noting counsel's strategic decisions are to be afforded "'strong presumption' of reasonableness that the defendant must overcome); 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). 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 "countless" ways. Strickland, 466 U.S. at 688-89.

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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). The court makes this determination based upon the totality of the evidence. Id. at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Harrington v. Richter, 562 U.S. 86, 112 (2011).

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.

No Probative Evidence Presented Supporting Voluntary Manslaughter Charge

In Young's cross-appeal Petition, he concedes no evidence was presented by witnesses at trial to support a request for voluntary manslaughter. Specifically, in his cross-appeal, he states "[t]hese witnesses were not able to testify to any of these facts described by [Young] in his PCR testimony which would have provided a foundation for a request to charge on both self-defense and the lesser-included offense of murder; voluntary manslaughter". (Petition for Writ of Certiorari in Cross-Appeal of Respondent/Petitioner p 15). Therefore, he accepts that no testimony elicited from witnesses supports the lesser-included charge of voluntary manslaughter. Moreover, Young testified at his PCR hearing, he did not intend to shoot Victim. Rather, he claims he was merely trying to get the gun from the Victim. (Amended App. p 1335-1337; p 1355-1362).

In Burt v. Titlow, the Supreme Court of the United States found, counsel should be "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," 571 U.S. 12, 134 S.Ct. 10 (citing Strickland, 466 U.S., at 690, 104 S.Ct. 2052), and the burden to "show that counsel's performance was deficient" rests squarely on the defendant, Id., at 687, 104 S.Ct. 2052. It should go without saying that the absence of evidence cannot overcome the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." Id., at 689, 104 S.Ct. 2052.

Counsel Discussed the Lesser-Included Voluntary Manslaughter Charge with Respondent/Petitioner, Submitted a Brief to the Trial Court on the Charge, and Informed Respondent/Petitioner there was No Evidence Presented to Support Charge

Based upon the trial transcript and trial counsel's testimony at the PCR hearing, the PCR court found the lesser-included charge of voluntary manslaughter was likely discussed with Young (Amended App. p 1407). At the PCR hearing, trial counsel testified he reviewed the lesser included offenses, including voluntary manslaughter with Young. (Amended App. p 1405-1406). Though

Young testified he was not told anything about voluntary manslaughter, the PCR court believed the lesser-included offense was discussed with Young. (Amended App. p 1406-1407). Trial counsel further testified he submitted a brief to the trial court concerning the lesser-included charges of voluntary manslaughter. (Amended App. p 1406-1407; p 1419). This is supported by the trial judge's remarks on the record, after an in-chambers conference, stating:

> "[W]e have gone back in chambers to go over the charge, and I have gone over my charges with the attorneys. It appears from my reading or my take on the evidence, I'm not going to be charging voluntary or involuntary manslaughter as lesser included offenses." (Amended App. p 382).

Therefore, the trial court refused to instruct the jury as to any of the aforementioned instructions due to a lack of evidence in the record. (Amended App. p 1407). Additionally, at the PCR hearing, trial counsel testified he informed Young that none of the witnesses testified to anything that would provide trial counsel a basis for asking for a voluntary manslaughter instruction. (Amended App. p 1132).

Voluntary manslaughter is defined as the intentional and unlawful killing of a human being in sudden heat of passion and upon sufficient legal provocation. State v. Niles, 412 S.C. 515, 522 772 S.E2d 877, 880 (2015). Sudden heat of passion, upon sufficient legal provocation, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. Id. (citing State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). "In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169, (2007) (internal citation omitted). For a defendant to be entitled to a voluntary manslaughter

charge, there must be evidence of both sufficient legal provocation and heat of passion at the time of the killing. State v. Smith, 391 S.C. 408, 412-413, 706 S.E.2d 12, 14-15 (2011).

Moreover, the trial court is required to charge a jury on a lesser included offense only "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. Suber v. State, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007). At his PCR hearing, Young was asked whether during discussions with trial counsel, he was told there were "certain things about your story that if you told those things in court, would give the judge a reason to give jury instructions that might be helpful to [him]". (Amended App. p 1325). Young responded affirmatively. (Amended App. p 1325). However, because Young did not testify at his trial, and because the no witness' testimony supported a charge of voluntary manslaughter, the trial did not err in refusing to charge the lesser rather than greater offense.

Likewise, the PCR court found trial counsel was neither deficient, nor was Young prejudiced – even if trial counsel failed to discuss the lesser-included offense of voluntary manslaughter. (Amended App. p 1411). Specifically finding, a voluntary manslaughter charge "would not have been likely as a matter of law had [Young] given the same testimony at trial that he gave at his PCR hearing". (Amended App. p 1411).

When asked about his version of the facts, Young testified that Alston and Gipson got out of the car he was in to go buy weed. (Amended App. p 1328). Upon Alston and Gipson returning to the car, they were arguing about the weed they had just purchased – saying the "drugs were trash". (Amended App. p 1329). Young claimed he then got out of the car and "was trying to get

some weed" too. (Amended App. p 1329). After approaching Bailey's car to buy some marijuana, he testified he told Bailey, "I'm just trying to buy some weed, man." (Amended App. p 1332-1333). Young then testified that Bailey became aggressive and angry toward him. (Amended App. p 1333). Young testified that when Bailey became aggressive, he was standing near the passenger door that was open, leaning into the car, talking to Bailey. (Amended App. p 1333). Young asserts at that time, Bailey started reaching near the console of his car (Amended App. p 1333-1334). Young testified he saw Bailey grab a pistol from the console. (Amended App. p 1335). Young testified Bailey then knocked the car in reverse, started hitting the gas, and started hitting Young with the door, knocking Young out of the way (Amended App. p 1334). Young testified as the car was rolling backwards, Young was trapped by the door and Bailey and he were "tussling" over the gun when a shot went off. (Amended App. p 1336). Young testified both of Bailey and his hands were on the gun when a shot went off as Young attempted to take the gun away from Bailey. (Amended App. p 1336) After the gun went off, Young fled and took the gun because he believed it may have his fingerprints on it – though he also claims he didn't know Bailey was shot at that time. (Amended App. p 1337-1338).

Young's recitation of the facts at the PCR hearing do not support the lesser-included charge of voluntary manslaughter. According to Young's own testimony, Bailey and himself were "tussling" for the gun. (Amended App. p 1336). Young also stated during cross-examination, "only thing I was trying to do was get control of the gun". (Amended App. p 1356). As mentioned above, voluntary manslaughter requires for the unlawful killing to be intentional. State v. Niles, 412 S.C. 515, 522 772 S.E2d 877, 880 (2015). Voluntary manslaughter also requires a sudden heat of passion, sometimes called an uncontrollable impulse to do violence. Id. (citing State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). The State contends *if* Young testified at trial to the

same version of facts he testified to at his PCR hearing, he would not be entitled to the lesser-included charge of voluntary manslaughter. Specifically, his testimony fails to show he intentionally killed Bailey or that he intended to 'do violence'. Consequently, as the PCR court found, *if* Young had given the same testimony at trial that he gave at his PCR hearing, he still was not entitled to a jury charge of voluntary manslaughter as a matter of law. (Amended App. p 1411). Therefore, Young was not prejudiced – even if trial counsel failed to discuss the lesser-included offense of voluntary manslaughter.

Arguments Addressed in Respondent/Petitioner's Cross-Appeal Petition Not Enumerated in Issue Statement

Lastly, as aforementioned, to the extent Young's Cross-Appeal argues trial counsel failed to advise Young that if he did not testify he would not receive the benefit of jury charges for the defenses of self-defense and accident, as well as the lesser-included offense of involuntary manslaughter, the State submits these arguments are not preserved for review because they are not stated in the issue statement. Further, these allegations are addressed in the State's Petition to which Young failed to complete a return.

If this Court interprets Young's argument to allege trial counsel erred by failing to advise Young of the law as it relates to the defenses of self-defense or accident, or the lesser-included offense of involuntary manslaughter or failed to advise Young if he did not testify he would not receive the benefit or the aforesaid defenses or lesser-included charge, the argument is unpreserved for review because it is not stated in his issue statement. Rule 208(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal.").

Young's issue statement expressly alleges the PCR court erred in "failing to grant Respondent/Petitioner relief on his Allegation No. 9, in which he alleged that Trial Counsel was ineffective for neglecting to advise the Applicant thoroughly concerning the law as it relates to the lesser included offense of voluntary manslaughter? Allegation 9." (Petition for Writ of Certiorari in Cross-Appeal of Respondent/Petitioner p 15). This allegation, solely argues "Allegation 9", which concerns trial counsel's alleged failure to advise Applicant on the lesser-included offense of voluntary manslaughter. Neither the cited allegation, nor the issue statement reference the defenses of self-defense, accident, or the lesser-included charge of involuntary manslaughter. By addressing the defenses of self-defense and accident or the lesser-included charge of involuntary manslaughter in his Cross-Appeal, Young appears to try to back-door an argument that was waived when Young's Return to the State's Petition was struck. Young has not clearly stated the basis for his argument, thus, this Court should deem the issues abandoned. Petitioner/Respondent and this Court should not have to "grope in the dark" to ascertain Young's allegations of error. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.").

This Court should deny Certiorari because Young was advised he would not be able to present his side of the story if he did not testify and trial counsel testified he discussed the lesser-included charge of voluntary manslaughter with Young and submitted a brief to the trial court concerning the lesser-included charge. Additionally, Young failed to establish prejudice as no elicited testimony from trial exists to support a jury charge of voluntary manslaughter nor does Young's testimony at his PCR hearing entitle him to a voluntary manslaughter jury charge. Because probative evidence supports the PCR court's ruling, this Court should deny Certiorari.

CONCLUSION

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

Respectfully submitted,

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