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**Oct 21 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Clarendon County

The Honorable Jocelyn Newman, Post-Conviction Relief Judge

The Honorable R. Ferrell Cothran, Jr., Trial Judge

Appellate Case Number 2017-002000

Op. No. 5867 (filed October 6, 2021)

Victor McCoy Weldon..... Petitioner,

v.

State of South Carolina, ..... Respondent.

**PETITION FOR REHEARING**

On October 6, 2021, this Court issued a published opinion reversing the post-conviction relief court’s denial of post-conviction relief and remanding Petitioner Victor McCoy Weldon’s case back to the court of general sessions for a new trial after finding Weldon met his burden of establishing his trial counsel was constitutionally ineffective for failing to present testimony from his mother and sister regarding his purported alibi. Weldon v. State, Op. No. 5867 (S.C. filed Oct. 6, 2021 (Howard Adv. Sh. No. 35 at 50). In reversing the post-conviction relief court and granting Weldon relief, this Court found Weldon met his burden of establishing he was entitled to relief because trial counsel did not present his mother and sister (neither of whom can testify as to Weldon’s specific whereabouts with certainty during the time of the crime) as alibi witnesses where trial counsel did not specifically articulate a trial strategy on the record. This Court further found Weldon established the result of his trial would have been different had trial counsel

presented these purported alibi witnesses to satisfy the prejudice requirements for a grant of post-conviction relief.

Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because the State believes this Court misapprehended and overlooked its argument before this Court that Weldon failed to present evidence of an alibi defense based on an inability of his mother and sister to provide testimony that would have made it physically impossible to commit the crime. Moreover, this Court misapprehended and overlooked the State's argument and the post-conviction relief court's finding that trial counsel agreed with strategic reasons for not presenting Weldon's mother and sister as witnesses and erroneously concludes that trial counsel must articulate a strategy to avoid a finding of deficiency in direct contrast to Strickland and its progeny which require that a favorable presumption be given to counsel's performance. In support of this petition for rehearing, the State asserts the following:

Weldon, like all post-conviction relief applicants, bore the burden of proving his allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a post-conviction relief applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be

said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Strickland, 466 U.S. at 690. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. Id.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ “ Dunn v. Reeves, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

“When 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). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may

have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an 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. 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 688–89; see id. at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” Dunn, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” Id. (quoting Harrington, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Strickland, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland’s deferential standard.

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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.” Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added). “An 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.” Id. at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. 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). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so manifestly ineffective that defeat was snatched from the hands of probable victory.").

Appellate courts such as this Court, in turn, must give great deference to the post-conviction relief court's findings of fact and must affirm these findings if there is any evidence in the record to support them. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). However, pure questions of law are reviewed de novo and appellate courts will reverse the post-conviction relief court's decision only if its decision is controlled by an error of law. Id.; Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). The post-conviction relief court's findings regarding prejudice are based on a thorough review of the record as a whole, and, accordingly, are inherently fact-based and must be afforded deference by a reviewing appellate court. See Briggs v. State, 421 S.C. 316, 334, 806 S.E.2d 713, 723 (2017) ("The PCR court found the case 'came down to the victim's believability and credibility.' The PCR court found the most damaging testimony to Briggs . . . was not reliable because [the witnesses'] 'credibility is highly suspect.' Finally, the PCR court found 'there is a reasonable probability that the result of the Applicant's trial would have been different' if Singleton had not allowed Arroyo-Staggs to improperly bolster

the victim. Giving to the factual findings by the PCR court the deference we are required by law to give, we affirm the court's finding that Briggs proved prejudice, satisfying the second prong Strickland.”).

Thus, in order for this Court to properly reverse the post-conviction relief court's denial of relief and remand for a new trial, the record must be devoid of *any* evidence supporting the post-conviction relief court's finding Counsel was not constitutionally ineffective in declining to present Weldon's mother and sister as alleged alibi witnesses. In its opinion, this Court repeatedly points to Counsel's testimony that he could not remember why he did not call the supposed alibi witnesses at trial as evidence to support this Court's assertion that trial counsel's failure to do so was not based on trial strategy. However, this Court overlooks that there is evidence in the record to support the post-conviction relief court's findings this decision was based on strategic considerations can be read from the record as a whole, and Counsel himself is not required to articulate or confirm any particular strategic reason for his decision. Harrington, 562 U.S. at 109-10 (“Although courts may not indulge ‘*post hoc* rationalization’ for counsel’s decisionmaking that contradicts the available evidence of counsel’s actions . . . neither may they insist counsel confirm every aspect of the strategic basis for his or her actions.” (internal citations omitted)).

Moreover, this Court failed to properly afford the required deference to trial counsel's performance. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.” Strickland, 466 U.S. at 689. For this reason, Strickland “calls for an inquiry into the *objective reasonableness* of counsel's performance, not counsel's subjective state of mind.” Richter, 562 U.S. at 110 (emphasis added). “Surmounting Strickland's high bar is never an easy

task.” Padilla, 559 U.S. at 371. “The question is whether an attorney’s representation amounted to incompetence under ‘prevailing professional norms,’ not whether it deviated from best practices or most common custom.” Richter, 562 U.S. at 105. Essentially, in order for this Court to reverse the PCR court’s decision and grant Weldon a new trial under Strickland, this Court must find that *no reasonably competent attorney* could have decided not to present the testimony from Weldon’s mother and sister.

Trial counsel was not deficient for failing to present Weldon’s mother and sister as witnesses to support an alibi defense because Weldon cannot establish that no competent attorney would have elected not to present these witnesses. Initially and crucially, the testimony from Weldon’s mother and sister does not make it physically impossible for Weldon to have committed the crime, and, therefore, it does not establish an alibi defense as a matter of law. Moreover, there were inherent credibility issues in presenting alibi testimony from family members, particularly when the testimony was riddled with inconsistencies. The record is replete with evidentiary support for the post-conviction relief court’s finding Counsel was not constitutionally ineffective, despite Counsel’s inability to recall or articulate a particular strategic reason for not presenting Weldon’s mother or sister as witnesses at trial.

To qualify as an alibi, a witness’s testimony must account for the defendant’s whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). “[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused’s guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.” Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

In this case, Weldon's mother's testimony wholly failed to establish an alibi for Weldon. She merely testified she saw Weldon at home the night before the crime before she went to bed, and then again when she woke up at 8 a.m. on the morning of the crime, notably after the crime had been committed. App. p. 526. Testimony at trial established the crime took place between 6:15 a.m. and 6:30 a.m. that morning. Accordingly, Weldon's mother testifying that she saw him the evening before the crime and then more than an hour after the crime does not create a physical impossibility for Weldon to have been the perpetrator.<sup>1</sup> Because Weldon's mother's testimony does not establish an alibi under South Carolina law, Counsel cannot have been deficient in not presenting this testimony to the jury as a matter of law.

Weldon's sister's testimony comes closer to that of an alibi but still fails to establish the physical impossibility for Weldon to have committed the crime, and accordingly, also fails to establish an alibi defense as a matter of law. Incredibly, Weldon's sister testified she woke up at 5:00 a.m. on the day of the crime and went into Weldon's room to sneak a cigarette from his girlfriend. App. p. 536. She stated Weldon and his girlfriend were in his room asleep at that time. App. p. 535. She then opened the door and went outside to smoke the cigarette, and she saw Weldon peeking at her out the window. App. p. 536. Although she asserted Weldon was at the house between 6 a.m. and 7 a.m. that morning, she acknowledged she did not see Weldon again until around 9 a.m. when he opened the door to his room to let his cats out. App. pp. 536-37. She did not provide any details as to how she was certain Weldon had not left the house, and moreover,

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<sup>1</sup> The crime took place on Country Club Drive in Manning, South Carolina. App. pp. 147, 162, 251. Testimony at the evidentiary hearing established Petitioner lived on Country Springs Drive in Sumter, South Carolina, at the time of the crime. App. p. 528. According to Google maps, Petitioner's home was approximately fifteen miles or twenty-five minutes by car from the crime scene.

her testimony admits Weldon had a way out of the house other than by using his bedroom door – the window he allegedly peeked through while she was smoking outside. App. p. 536.

Notably, the sister’s testimony – that she did not see Weldon again after 5 a.m. until 9 a.m. – conflicts with her mother’s testimony that she saw Weldon already awake at the house at 8 a.m. that morning. And, both Weldon’s mother’s testimony and Weldon’s sister’s testimony conflict with Weldon’s *own* testimony that he woke up and spoke to his sister around 6:45 a.m. and then saw his mother when she returned from work that morning at 7:15 a.m.<sup>2</sup> App. p. 511. His sister testified she remembered the events of the morning so well because it was all the family talked about after her brother’s arrest, yet when given the chance, she failed to mention that she actually saw and spoke to her brother at their home at the exact time the crime was being committed as Petitioner now purports in his testimony. App. p. 537. As the post-conviction relief court found this testimony was inherently unreliable and incredible, noting the alibi witnesses’ stories “did not exactly match up” and contained “discrepancies.” App. p. 573. This Court must give great deference to the post-conviction relief court’s findings regarding the credibility of the witnesses and the plausibility of their version of events. Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 435 (2018) (“[W]e afford great deference to a PCR court's credibility findings.”); Briggs, 421 S.C. at 334, 806 S.E.2d at 723 (“Giving to the factual findings by the PCR court the deference we are required by law to give, we affirm the court’s finding that Briggs proved prejudice, satisfying the second prong Strickland.”)

The credibility issue created by the conflicting testimonies is further compounded by the fact that family members are already biased witnesses. “[A]libi testimony by a defendant’s family

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<sup>2</sup> In yet another discrepancy, Weldon’s mother testified she did not work the overnight shift the night prior to and into the morning of the crime. App. pp. 525, 529.

members is of significantly less exculpatory value than the testimony of an objective witness.” Romero v. Tansy, 46 F.3d 1024, 1030 (10th Cir. 1995); see also Maxwell v. Gilmore, 37 F.Supp.2d 1078, 1089 (N.D. Ill. 1999) (“But Maxwell’s attorneys may well have thought – and surely reasonably so – that Maxwell’s mother and girlfriend would not be credible alibi witnesses, given their obvious personal interest in his acquittal (certainly less of a problem with the presumably more neutral girlfriend’s mother)”); Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (“As a matter of trial strategy, counsel could well decide not to call family members as witnesses because family members can be easily impeached for bias”). Significantly, the Weldon’s mother’s and sister’s testimony established a presumably more neutral witness was present at the house that morning, Weldon’s then-girlfriend, Rell. App. pp. 524, 535-36. And crucially, according to the sister, Rell was actually present in the room with Weldon during the time period in question. App. p. 535-36. Yet, Weldon did not present Rell as a witness at the evidentiary hearing and offered no explanation for his failure to do so. App. p. 563. The absence of her testimony at trial would surely have been noticed by both the jurors and the State, and Weldon would be left without any means of explaining her absence.

Importantly, as neither Weldon’s mother nor his sister create a legal alibi for Petitioner, his case is not akin to Martin v. State. 427 S.C. 450, 832 S.E.2d 277 (2019). In that case, Martin alleged trial counsel was constitutionally ineffective for failing to elicit the testimony of Martin’s mother that she dropped Martin off at a bus stop in Atlanta around 11:15 to 11:30 a.m. on the morning of the robbery, which occurred at a bank in North Augusta at 12:20 p.m. Id. at 453-54, 832 S.E.2d at 279. Although Martin’s mother testified at trial, trial counsel failed to question her about the precise time of the drop off even though he had notes in his file specifically recording the time. Id. Because North Augusta is at a minimum one-hundred and fifty miles, or two hours

by car, away from Atlanta, the mother's testimony, if believed by the jury, would have provided Martin with a complete alibi which made it physically impossible for him to have committed the crime. Id. at 454, 832 S.E.2d at 279. Moreover, unlike in Weldon's case, there was no physical evidence linking Martin to the robbery; the only other evidence against him was the testimony of codefendants, all of whom were friends with each but barely knew Martin, who acknowledged they had previously lied to law enforcement in an effort to exonerate themselves and that they were hoping to receive a lesser sentence in exchange for testifying against Martin. Id. at 456, 832 S.E.2d at 280.

Instead, Petitioner's case is more similar to Boseman v. Battle, in which the Fourth Circuit reversed the district court and found "no error in the PCR court's conclusion trial counsel exercised reasonable professional judgment regarding his decision not to present alibi witnesses." 364 Fed. Appx. 796, 810 (4th Cir. 2010). In that case, Boseman was convicted of murder in the shooting death of a pizza deliveryman. Id. at 797. The State presented evidence at trial establishing the critical period of events occurred between 9:15 p.m. and approximately 10:30 p.m. on the night of the murder. Id. at 797-98, 799-800. At the PCR hearing, Boseman contended his trial counsel was constitutionally ineffective for failing to present a supposed alibi witness, his brother, Walter, who testified he was with Petitioner at a different location from 8:30 p.m. to 10:30 p.m. Id. at 800. Boseman also introduced evidence of a report prepared prior to trial by trial counsel's investigator which stated, in relevant part, that Boseman was dropped off with Walter at 8:30 p.m. on the night of the murder, as Walter and his friends were leaving to go to a convenience store to buy beer, and Walter then left the house between 10:00 and 10:30 p.m. to return to Orangeburg. Id. at 800-01.

In analyzing the supposed alibi, the Fourth Circuit explained,

Boseman and the district court both assert the Rickborn report states that Boseman was dropped off at his house around 8:30 p.m. and that Walter, his friends, and

Boseman were together from that point in time until Walter left between 10:00 and 10:30 p.m. An equally fair reading, if not a more compelling reading, of the report's actual language is that Walter was with Boseman for undefined periods of the evening, Boseman was dropped off at an undisclosed location at 8:30 p.m., and that Walter and his friends were either out buying beer or at the house until they left around 10:00 p.m. Where Boseman was during that time period is simply not determinable from the Rickborn report. The report does not set forth the straightforward complete alibi that the district court erroneously credits to it.

Id. at 808. The Fourth Circuit ultimately reversed the district court and upheld the PCR court's finding trial counsel was not ineffective for declining to call Walter at trial, despite having him subpoenaed and present to testify, where "the evidence support[ed] trial counsel's statements during the PCR hearing that he investigated and considered an alibi defense" but ultimately decided not to pursue it because of "the incomplete nature of the alibi" where "the principal alibi witness was a family member," and "presenting an alibi defense would forfeit the right to make the last argument to the jury." Id. at 810.

Likewise, in Weldon's case, Counsel clearly investigated the possibility of presenting an alibi defense prior to trial, as he interviewed Weldon's mother, sister, and girlfriend, gave notice of intent to present an alibi defense, subpoenaed Weldon's mother and sister for trial. App. pp. 544-45, 547, 555, 563. Despite Counsel's hindsight testimony that he should have presented the alibi witnesses, he conceded presenting the conflicting testimony of all three witnesses would actually have been harmful to the defense. App. pp. 555-56. Counsel stated instead, he believed the defense would have been helped had he presented only one witness. App. pp. 562-63. He also acknowledged, however, this strategy would have opened the door for the State to present the other conflicting witness or witnesses. App. pp. 562-63. Moreover, Counsel testified repeatedly his defense focused on retaining the last closing argument and challenging the DNA evidence, the sole piece of evidence linking Petitioner to the crime, which he did in several ways: (1) by moving to exclude it prior to trial; (2) by thoroughly cross-examining the State's expert; (3) by making a

directed verdict motion, arguing the DNA match on the duct tape alone was insufficient to send the case to the jury based on previous South Carolina cases; and (4) by attacking its significance in closing argument. App. pp. 381-83, 418-27, 556-57.

Thus, in Weldon's case, particularly in light a valid alternative trial strategy of attacking the DNA evidence, a reasonably competent attorney could decide not to present any alibi testimony at all rather than introduce only partial alibi testimony from biased witnesses which only served to highlight the existence of an absent witness who allegedly could have established a complete alibi. Therefore, trial counsel was not constitutionally ineffective under Strickland.

For those reasons, the post-conviction relief court properly determined Weldon failed to meet his requisite burden of proof by failing to establish that no competent attorney would have elected no to present the testimony of Weldon's sister and mother in furtherance of a defense that did not constitute an alibi as a matter of law in light of other strategic considerations in the record. The State respectfully urges this Court to reconsider this matter for all the foregoing reasons, grant rehearing, vacate its prior opinion, and issue a new published opinion affirming the post-conviction relief court's finding that Weldon failed to establish he was entitled to post-conviction relief.

Respectfully submitted,

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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

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Certiorari to Clarendon County  
The Honorable Jocelyn Newman, Post-Conviction Relief Judge  
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Appellate Case Number 2017-002000  
Op. No. 5867 (filed October 6, 2021)

VICTOR WELDON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**CERTIFICATE OF SERVICE**

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Pursuant to Rule 262(b)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Appellate Defender Taylor Gilliam  
South Carolina Comm. on Indigent Defense – Office of Appellate Defense  
tgilliam@sccid.sc.gov

This 21st day of October, 2021.

*s/ Megan Harrigan Jameson*  
Megan Harrigan Jameson  
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**RECEIVED**  
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October 21, 2020

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211  
(via electronic filing – ctappfilings@sccourts.org)

RE: Victor Weldon v. State of South Carolina  
Appellate Case No.: 2017-0020000

Dear Ms. Kitchings:

Enclosed please find the original Petition for Rehearing for the Respondent in the above-referenced post-conviction relief matter for filing with the Court. By copy of this letter I am serving opposing counsel with this petition today.

Sincerely,

*s/ Megan Harrigan Jameson*

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General

MHJ/ks  
Enclosures

cc: Taylor D. Gilliam, Esquire (by email only)