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Jun 30 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO CHEROKEE COUNTY
Court Of Common Pleas

The Honorable Lee S. Alford, Plea Judge
The Honorable Robin B. Stilwell, PCR Judge

Appellate Case No.: 2017-001777

Alonzo C. Jeter, III,

Petitioner,

v.

State of South Carolina,

Respondent.

**RETURN OPPOSING PETITIONER'S MOTION FOR JUDICIAL NOTICE AND
LEAVE TO FILE RULE 60(B) MOTION AND NEWLY DISCOVERED EVIDENCE**

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

NOW COMES, Respondent, by and through the undersigned counsel, issuing its return in opposition to Petitioner's motion for judicial notice and leave to file Rule 60(B) motion and newly discovered evidence. Respondent respectfully requests this Court deny Petitioner's motion for the following reasons:

I.

Alonzo C. Jeter, III, ("Petitioner") is presently confined in the South Carolina Department of Corrections. Petitioner was charged with two counts of distribution of methamphetamine, third or subsequent offense (2015-GS-11-0461; 2015-GS-11-0463); two counts of distribution of methamphetamine within one-half mile of a park or school (2015-GS-11-0462; 2015-GS-11-0464); and one count of trafficking in methamphetamine 10-28 grams, third offense (2015-GS-11-0465). Petitioner was represented by Christopher Kennedy, Esq., and Assistant Solicitor Cliff Sams, of the Seventh Circuit Solicitor's Office, prosecuted the case. On July 16, 2015, Petitioner appeared before the Honorable Lee S. Alford, waived presentment to the grand jury on all charges, and entered a guilty plea to the lesser-included offenses of two counts of distribution of methamphetamine, second offense; and trafficking in methamphetamine 10-28 grams, second offense. Petitioner also entered a guilty plea, as indicted, to the two counts of distribution of methamphetamine within one-half mile of a park or school.¹ Judge Alford sentenced Petitioner to concurrent terms of fifteen years' imprisonment for each count of distribution of methamphetamine and trafficking in methamphetamine, as well as concurrent terms of 10 years' imprisonment for each count of distribution of methamphetamine within one-half mile of a school. Petitioner did not appeal his guilty plea or sentence.

¹ Petitioner was also charged with possession of an ounce or less of marijuana (2014-GS-11-591), second offense, and entered a guilty plea to that charge in the same proceeding. Judge Alford sentenced him to time-served, and Petitioner does not challenge that conviction in this action.

On April 28, 2016, Petitioner filed an application for post-conviction relief. In his application, Petitioner alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to investigate and request continuance. . . . A continuance would have given counsel more time to investigate, prepare for mitigation and bargaining, as well as time to discover the applicant's state of mind and needs.
 - b. Counsel failed to challenge insufficient indictments.
 - c. Counsel failed to present nor allow me to present mitigating evidence and factors at opportunity
 - d. Counsel failed to obtain the original plea offer of seven (7) years.
 - e. Counsel failed to inform me of my right to appeal and make sure I understood what it was and how to do it.
 - f. Failure to withdraw guilty plea where indictment charging 'possession with intent to distribute marijuana' did not sufficiently state level of offense.
2. Due Process Violation
 - a. My constitutional rights of due process under the Fourteenth Amendment, and applicable case law, was violated as counsel failed to request a competency hearing.
 - i. Absent counsel's errors there is a reasonable probability that the evidence would have been reweighed and thus it would have been concluded that the balance of aggravating and mitigating circumstances did not warrant such harsh sentencing and punishment.
 - ii. Applicant also had the right to be competent when entering a guilty plea and a complete picture of the Applicant's mental condition would have established that the Applicant was suffering from a mental or emotional disturbance both at the time the crimes were committed and at the time of entering a plea of guilty.
 - iii. Due process prohibits this conviction therefore the conviction is illegal.
3. Lack of Subject Matter Jurisdiction
 - a. The court lacked subject matter jurisdiction to accept my guilty pleas.

Respondent made its return on November 15, 2016, moved the Court to dismiss Petitioner's allegations regarding subject-matter jurisdiction and due process violations, and requested an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty

plea.

An evidentiary hearing convened on March 20, 2017, before the Honorable Robin B. Stilwell, at the Spartanburg County Court House. Petitioner proceeded on several issues, including an allegation that his plea counsel was ineffective for failing to challenge the indictments for possession to distribute methamphetamine within one-half mile of a park because the “park” in question was a basketball goal located on the property of the Macedonia Baptist Church, in Gaffney, South Carolina.

Judge Stilwell denied Petitioner’s request for post-conviction relief as to the two distribution charges and took the allegations of ineffective assistance regarding the distributions of methamphetamine near a school or park and the trafficking charges under advisement. On April 27, 2017, Respondent filed a motion to reopen the record because evidence of Petitioner’s prior convictions were discovered, refuting some of the evidence presented at the March 20 hearing. A hearing on this motion was held on June 30, 2017. At the conclusion of the hearing Judge Stilwell denied Petitioner’s request for post-conviction relief. A final order of dismissal was signed on July 24, 2017.

Petitioner filed a notice of appeal on August 28, 2017, and the appeal was perfected by Lanelle Cantey DuRant, Esq., of the South Carolina Commission on Indigent Defense. Petitioner, through counsel, filed a petition for writ of certiorari on June 6, 2018. On July 24, 2018, Petitioner filed a motion to relieve counsel and proceed *pro se*. Petitioner’s motion was granted and he filed a *pro se* petition for writ of certiorari on October 25, 2018.

In Petitioner’s *pro se* petition, he presented the following issues:

1. The PCR Court erred in denying post-conviction relief to the Petitioner when plea counsel failed to have Petitioner’s mental competency examined and allowed Petitioner to enter in a guilty plea while under duress;

2. The PCR Court erred in finding that Plea Counsel was not ineffective for failing to provide adequate advice concerning proximity within one-half mile of a park/school;
3. The PCR Court erred in not finding Plea Counsel ineffective for failing to challenge the improper enhancement of Petitioner's 2015 methamphetamine convictions based on a prior possession of crack cocaine conviction from 2004 and a possession of marijuana conviction from 2013;
4. The PCR Court erred in denying Petitioner's Motion for Discovery which would have provided the PCR Court and Petitioner with facts and evidence of Petitioner's PCR claims;
5. The PCR Court erred in granting the State's Motion to Reopen the PCR Record thereby prejudicing Petitioner and violating Petitioner's Due Process Rights.

Respondent made its return to the petition for writ of certiorari on February 15, 2019.

Respondent stated the issues as follows:

1. The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief due to improper sentencing enhancements where Petitioner failed to prove that counsel was deficient in advising him to plead guilty to the charges and Petitioner was further not prejudiced by Counsel's conduct where the State had substantial evidence of Petitioner's guilt and the weight of the charges against Petitioner could have resulted in a sentence of life without parole rather than the fifteen year term of imprisonment Petitioner received pursuant to the terms of his guilty plea (Petitioner's Issue III).
2. The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to make factual challenges to the two indictments for distribution of methamphetamine within one-half mile of a park or school and Petitioner was not prejudiced whatsoever by any error where Petitioner would still be serving the same sentence regardless of whether the indictments at issue.
3. The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to have Petitioner's mental competency examined where Petitioner made no statements or engaged in any behavior that would lead Counsel to question Petitioner's competency. Further, Petitioner failed to establish prejudice from Counsel's alleged error where he produced no evidence that he was actually mentally incompetent. (Petitioner's Issue I).

4. The post-conviction relief judge properly denied Petitioner's Motion for Discovery where Petitioner failed to establish good cause for the PCR judge to grant the motion.
5. The post-conviction relief judge properly granted the State's Motion to Reopen the Record.

The matter was transferred to the Court of Appeals on February 28, 2019. On October 19, 2020, this Court granted certiorari as to Issue Two, and ordered briefing, as provided by Rule 243(j) SCACR. Petitioner filed his first brief on January 26, 2021. On March 1, 2021, this Court denied Petitioner's motion to exceed the page limits of Rule 208, SCACR, and ordered that he file an amended brief within the fifty-page limit. Petitioner's amended brief was filed on March 29, 2021. Briefing concluded on August 16, 2021. The Court issued an order on April 18, 2022, stating that the matter would be submitted without oral argument during the June 2022 term. The motion for judicial notice and leave to file Rule 60(b) motion and newly discovered evidence was filed June 23, 2022. This return in opposition follows.

II.

Respondent contends that leave is inappropriate in this instance. "During the pendency of an appeal, leave to make the motion must be obtained from the appellate court." *Hudson v. South Carolina Dept. of Highways and Public Transp.*, 324 S.C. 245, 246, 478 S.E.2d 839, 840 (1996) (quoting Rule 60(b), SCRCPP). Applicant requests this leave in presenting documentation which he refers to as "newly discovered evidence." Newly discovered evidence can be raised as a basis for a 60(b) action if the newly discovered evidence could not, by exercising due diligence, "have been discovered in time to move for a new trial under Rule 59(b)." Rule 60(b)(2), SCRCPP. A Petitioner requesting a new trial based on after-discovered evidence following a guilty plea must show that:

- (1) the newly discovered evidence was discovered after the entry of the plea and,

in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

The basis of Petitioner’s newly discovered evidence claim is based upon 2015 SLED analysis reports he claims he recently discovered on March 21, 2022. He claims he obtained this through a friend who filed a Freedom of Information Act request. These reports could have been discovered through exercising due diligence prior to the plea if it was not actually received before the plea. *See Jamison v. Ford Motor Co.*, 373 S.C. 248, 272, 644 S.E.2d 755, 767-68 (Ct. App. 2007) (quoting *Black’s Law Dictionary*, 468 (7th ed. 1999)) (stating the due diligence is “[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement to discharge an obligation.”). In fact, Petitioner has seemingly long been aware of the existence of these reports, given that prior PCR Counsel made an oral and written requests for the SLED drug analysis records at his evidentiary hearing held on March 20, 2017. (App. 52-53). This was seemingly in response to a letter from Applicant directed at PCR Counsel requesting the records on December 30, 2016. (First Supp. App. 1). Accordingly, this documentation was seemingly known to Petitioner or received by Petitioner before the plea and certainly was known to Petitioner long before one year prior to filing his motion for leave. This is not newly discovered evidence. Accordingly, a Rule 60(b) motion is improper, and leave is not proper as a result.

III.

WHEREFORE, Respondent respectfully asks that this Court deny Petitioner's motion for judicial notice and leave to file Rule 60(b) motion and newly discovered evidence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHELSEY F. MARTO
Assistant Attorney General
S.C. Bar # 104191

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Columbia, S.C. 29211
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By: /s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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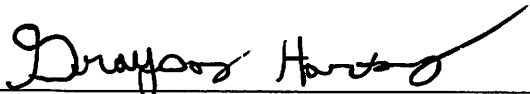
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return Opposing Petitioner's Motion for Judicial Notice and Leave to File Rule 60(b) Motion and Newly Discovered Evidence has been served upon the applicant by placing one copy in the United States Mail, addressed to:

Alonzo C. Jeter, III., #282902 (W5-0053-B)
Manning Correctional Institution
502 Beckman Drive
Columbia, SC 29203

This 30th day of June, 2022.



Grayson Horton
Legal Assistant for Respondent



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

June 30, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(By Electronic Filing Only)

RE: Alonzo C. Jeter III., #282902 v. State of South Carolina
Appellate Case No.: 2017-001777

Dear Mr. Kitchings:

Enclosed please find the original Return Opposing Petitioner's Motion for Judicial Notice and Leave to File Rule 60(b) Motion and Newly Discovered Evidence in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General
S.C. Bar # 104191

CFM/geh
Enclosures

cc: Alonzo C. Jeter III., #282902
Victim Advocacy Division