

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 GREER H. ASHLEY, JR.)
 (#338842),)
)
 Petitioner,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 Filed Sept. 07 A.D. 2021
 at 12:38 o'clock PM
Shandal Boeas
 Clerk of Court

PETITIONER'S MOTION TO RECONSIDER

C/A No. 2018-CP-01-168

The Petitioner Greer H. Ashley, Jr. (hereinafter "Greer"), by and through his attorney of record, respectfully asks the Court to reconsider its Order of Dismissal dated August 18, 2021, wherein the Court dismissed the Applicant's PCR application. Greer's attorney received a signed but not filed copy of the Order by first-class mail from the Office of the Attorney General on Monday, August 30, 2021.

The following is a brief summary of the testimony and evidence presented at the PCR hearing, and Greer is informed and believes that the Court should reconsider its Order and that the Order should be amended to include the following findings of fact:

1. Law enforcement arrived at Greer's property at 5677 Keowee Road in Honea Path to serve arrest warrants on Donnie Wayne Hoyt Brock and Barbara Dezaraye Young.
2. Greer's property is located in Abbeville County.
3. The arrest warrants had been issued by the Honea Path municipal court for alleged crimes which occurred in Anderson County.
4. The Town of Honea Path is located primarily in Anderson County.
5. The arrest warrants weren't countersigned by an Abbeville County magistrate.
6. Law enforcement didn't enter Greer's property because of conflicting reasons: his gate was closed and had a "no trespassing" sign on it, or the gate was open but the roadway on the other side of the gate was so rutted that it was impossible to drive on.
7. Law enforcement then got on and used Larry Ashley's (hereinafter "Larry")

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 ABBEVILLE COUNTY CLERK OF COURT

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driveway to enter Larry's property.

8. Larry's property, which contains approximately 56 acres, is located at 5635 Keowee Road in Honea Path.

9. Larry's property is located in Abbeville County.

10. At Larry's house, on the day of Greer's arrest, a "no trespassing" sign was posted on a tree at the right of Larry's house at the start of a dirt driveway.

11. Law enforcement didn't have a search warrant to enter Larry's property to look for Mr. Brock and Ms. Young.

12. Law enforcement didn't get Larry's consent to enter and search his property prior to Greer's arrest.

13. There was no emergency or hot pursuit necessitating law enforcement to enter Larry's property.

14. Abbeville County Deputy Mack Eric Gladden, IV, testified that he saw Greer while Deputy Gladden was at the point where Greer's driveway intersects with Larry's driveway close to Keowee Road (as reflected on the photographs and video entered into evidence).

15. The remaining law enforcement officers testified that Greer was discovered deep in the woods, at a location that couldn't be seen from where Greer's driveway intersects with Larry's driveway.

16. All law enforcement testimony indicates that Greer was on the other side of Larry's "no trespassing" sign when law enforcement first saw Greer.

17. Trial counsel didn't walk and/or drive Larry's property (or Greer's property for that matter).

18. Greer, Larry, and attorney Billy J. Garrett, Jr., told trial counsel about Larry's "no trespassing" sign and/or that there were search issues.

The following is a more extensive summary of the testimony from each trial witness, and Greer is informed and believes that the Court should reconsider its Order and that the Order should be amended to include the following findings of fact:

Larry Ashley testified as follows:

1. He didn't consent for his property to be searched prior to Greer's arrest.
2. Law enforcement didn't ask him for permission to search his property.
3. The "no trespassing" sign had been on the tree for years.
4. He owned the property where Greer was located and arrested.
5. Greer operated a body shop on Larry's property.
6. Larry's property adjoins Greer's property.

Kevin Elder testified as follows:

1. No search warrant was obtained.
2. The arrest warrants hadn't been countersigned by an Abbeville County magistrate.
3. The Abbeville County Sheriff's Office can detain subjects that the Honea Path Police Department (hereinafter "HCPD") has warrants on, and then HCPD can get those subjects from the Abbeville County deputy who has detained the subjects.

Andrew Lunz testified as follows:

1. No search warrant was obtained.
2. The arrest warrants hadn't been countersigned by an Abbeville County magistrate.
3. The arrest warrants weren't countersigned "which is usually why we go with the agency down there so that they can actually take the person into custody and then we will take them in."
4. Nobody called Larry to ask for permission to enter and search his property.
5. Nobody knocked on Larry's door to ask for permission to enter and search his property.
6. "I remember there was several like trails and lanes back through there, through the woods. I don't recall exactly which trail we used going in. I was probably, at least the second or third vehicle back[.]"

7. "I remember taking a trail that went through the woods, I remember it being a very windy type trail[.]"

8. He had to travel a "little bit" to get to where Greer was located.

9. He didn't recall a "no trespassing" sign on Larry's tree.

10. "I would say we went down a decent ways before he was seen."

11. "I recall going a little ways into the woods."

12. "I mean it's a little ways off the road and there are trees."

13. "A lot of woods."

14. He didn't speak with anyone on Larry's property

15. There was no hot pursuit.

16. He didn't see Greer when he entered Larry's property.

17. He arrived at Keowee Road at 10:45 a.m.

Evan McCurry testified as follows:

1. He agreed that Officer Lunz arrived at Keowee Road at 10:45 a.m.

2. Law enforcement wasn't actively chasing anybody.

3. Law enforcement didn't have a search warrant.

4. He wasn't sure if the arrest warrants were countersigned.

5. Law enforcement didn't have consent from Larry.

6. He thought Greer lived in a trailer on Larry's property.

7. Law enforcement went down the driveway past Larry's house.

8. Law enforcement didn't get out at Larry's house.

9. He first said the "no trespassing" sign wasn't there.

10. Then he said he didn't recall seeing the "no trespassing" sign.

11. "I remember it was very briefly after we passed that house that we saw Mr. Ashley. We saw a white male running[.]"

12. He wasn't the officer who obtained the consents to search from Larry and Greer after Greer was arrested.

13. "We approached a black, I believe, Ford truck. And when the mere presence of

law enforcement was observed a white male -- the car left towards a wooded area. And he was noted to be toting something as he ran."

14. "[T]he gate was closed and we were familiar with the second entrance that wound back to that place."

15. Law enforcement didn't have access through Greer's gate.

Mack Gladden testified as follows:

1. Law enforcement entered the Keowee Road property at the driveway just beside Larry's driveway.

2. He didn't recall Greer's gate being closed.

3. He didn't recall seeing the "no trespassing" sign on Greer's gate.

4. He thought Greer was living on the backside of Larry's property at the time of Greer's arrest.

5. He was going to Larry's house to speak to Larry.

6. He didn't stop at Larry's house.

7. He didn't have dispatch call Larry.

8. "I was going to try to speak to Greer at first but I knew I had to pass Larry's property first. That is the reason I was going to speak to Larry to see had he seen the wanted person."

9. "[I]n the process of turning to get onto Larry's driveway I could see down the straight away, just an open trees, and was down beside Larry's property that leads back to -- by Greer's residence. And in the process of looking that way I could see a white male and a truck down on that opening, the first den right there, before I even made it to Larry's property or Larry's residence per se."

10. "I saw a human being and a truck."

11. "I did not recognize the human being at the time."

12. He didn't recall seeing the "no trespassing" sign on Larry's tree.

13. "[A]s far as seeing the vehicle, the vehicle takes off, the person takes off."

14. There was no hot pursuit beforehand.

15. He didn't see any criminal activity while looking down the road.

Micah Black testified as follows:

1. He wasn't sure when the Abbeville general sessions trial docket was sent to trial counsel, but he usually sends the trial docket out at least one (1) month prior to the term of court.
2. He had been in discussions with trial counsel about possible plea offers.
3. He told trial counsel that the 15-year negotiated offer was off the table if trial counsel went forward with a suppression hearing.
4. He communicated this to trial counsel by telephone.
5. He doesn't think he and trial counsel had a pre-trial meeting with Judge Addy.
6. No other plea offers were extended to Greer.

Billy Garrett testified as follows:

1. He was hired by Greer's family on September 20, 2017, for Greer's probation violation only.
2. He met with Greer at the Abbeville County jail on September 21, 2017.
3. After talking to Larry and Greer, it became clear that there was a question of whether law enforcement had the right to go past the "no trespassing" sign farther onto Larry's property.
4. He relayed this information to trial counsel and that there may be a search issue.
5. He wanted to make sure that trial counsel had this information.
6. He wasn't sure of the date that he called trial counsel.
7. There was no way that law enforcement could have seen Greer while situated at Larry's "no trespassing" sign.
8. He received a telephone call from Greer's family on October 10, 2017, that Greer was scheduled for court on October 23, 2017.
9. There was no question that he raised possible search issues with trial counsel.
10. Larry didn't give prior consent for law enforcement to enter his property.
11. Law enforcement didn't have a search warrant.

12. Larry was scared and signed a consent to search after the fact.
13. Greer told him that Greer had told trial counsel about the "no trespassing" sign.

Donnie Brock testified as follows:

1. The "no trespassing" sign was on Larry's tree when Greer was arrested.
2. Law enforcement couldn't see Greer and him from the "no trespassing" sign.
3. Greer and him were deep into the woods when they first saw law enforcement.

Bruce Byholdt testified as follows:

1. Greer was arrested for a probation violation on or about September 1, 2017.
2. He couldn't recall how many times he met with Greer prior to Greer being arrested for the probation violation on September 1, 2017.
3. He met with Greer on October 10, 2017, while Greer was in the Abbeville County jail on the probation violation.
4. He couldn't recall how many other times he met with Greer while Greer was in jail on the probation violation.
5. He didn't recall any screened phone calls with or letters to Greer while Greer was in jail on the probation violation.
6. He communicated the plea offer to Greer on October 10, 2017, at the jail.
7. He filed the motion to suppress on October 10, 2017.
8. The State hadn't made any previous settlement offers.
9. He thinks he filed the motion to suppress prior to talking to Greer at the jail.
10. Then he said he's not sure what came first - his meeting with Greer or the filing of the motion to suppress.
11. He agreed that he sent his entire file to PCR counsel.
12. There were no notes in his file.
13. He asked for exculpatory information in his discovery requests.
14. The State didn't send him anything about how deep Greer was in the woods at the time of his arrest.

15. His best recollection was that he filed the motion to suppress prior to meeting with Greer at the jail.

16. He didn't work on scheduling a suppression hearing after meeting with Greer at the jail.

17. The motion to suppress was filed 13 days before Greer's scheduled court date.

18. The case wasn't settled at the time of Solicitor Black's email on October 18, 2017.

19. There was no written notice of trial in his file.

20. He probably didn't obtain a written juror list from the Abbeville County clerk of court.

21. It's a fair statement that the first time he notified Greer that he was on the trial roster was October 10, 2017, at the jail.

22. He didn't hire a private investigator.

23. He didn't recall any meetings with Greer after October 10, 2017, but before October 23, 2017.

24. He didn't recall any telephone conversations with or letters to Greer after October 10, 2017, but before October 23, 2017.

25. He agreed that Greer signed the form indicating that he wanted a jury trial.

26. He probably reviewed discovery responses while preparing for trial.

27. He didn't have any recollection of when he talked to Greer to prepare for trial, and that it could have been the morning of October 23, 2017.

28. He didn't have any recollection of conferencing this case with Judge Addy prior to the plea.

29. He now knows that the events complained of didn't occur at 5677 Keowee Road, but rather happened in the proximity thereto.

30. The recording on the police radio mentioning Greer by name wasn't produced to PCR counsel.

31. He didn't know how long law enforcement had been on Larry's property before the radio dispatch.

32. He denied ever being told about the "no trespassing" sign on Larry's property.

33. He didn't research the issue of law enforcement entering someone's property with no search warrant to serve an arrest warrant on a third party.

34. He didn't walk Larry's property or Greer's property.

35. He didn't recall if he tried to locate the arrest warrants that law enforcement had the day of Greer's arrest.

36. He didn't pinpoint with Greer about where exactly Greer was on Larry's property at the time of arrest.

37. He didn't talk to Donnie Brock, who was mentioned in the incident report.

38. He didn't serve any trial subpoenas.

39. He didn't call any of the law enforcement officers mentioned in the incident report during his investigation.

40. "It could have" made a difference in his analysis if he had learned about the "no trespassing" sign or signs and that the arrest warrants for Brock and Young hadn't been countersigned by an Abbeville County magistrate.

41. He had many meetings with Larry.

42. He had a few meetings with Greer.

43. "They would have asked him about his drug history" if Greer testified.

44. "And it was a negotiated plea, so I would have met with Judge Add[y] and the prosecutor to negotiate his plea. There was no way they were going to - they could back out on the 15 years."

45. He looked at the issue in this case as Greer running when he saw the police and after the police had recognized him.

46. "That was going to be a long shot, to see if the judge would have suppressed that evidence based on the information that was available **then**." (emphasis added)

47. He sought the 15 year offer on Greer's behalf.

48. When asked by the attorney general if he was prepared to proceed to trial on October 23, 2017, his response was, "We would have gone forward, yes, sir."

49. There could be many locations on 56 acres where you could be close enough to see law enforcement and them to see you.

50. Information provided by the State in discovery didn't lead to anything that he thought would benefit Greer.

51. He agreed that Donnie Brock would have been a source of information about Greer's case.

Greer Ashley testified as follows:

1. He told trial counsel about the "no trespassing" signs on his property and Larry's property.
2. He told trial counsel that his gate was shut.
3. The "no trespassing" signs had been on his gate and Larry's tree for a long time.
4. All events occurred on Larry's property.
5. At the point where his driveway merges into Larry's driveway, someone standing or parked at that point couldn't see deep enough into the woods to where Greer first saw the police.
6. At 53 seconds into the video is where law enforcement were when he first saw them.
7. At 66 seconds into the video is where he was when he first saw law enforcement.
8. He signed the consent to search form for his property after he was arrested, although all events happened on Larry's property.
9. He met with trial counsel "about three times" after hiring trial counsel but before his probation violation arrest on September 1, 2017.
10. He told trial counsel that he wanted to have the suppression motion filed and heard during the October 10, 2017, meeting at the jail.
11. Trial counsel hadn't filed the motion to suppress on October 10, 2017, at the time of the meeting at the jail.
12. His first meeting with trial counsel after his probation violation arrest was on October 10, 2017.
13. He didn't receive any phone calls or letters from trial counsel after his probation violation arrest but prior to October 10, 2017.

14. He had no meetings with trial counsel after October 10, 2017, but before October 23, 2017.

15. He didn't receive any phone calls or letters from trial counsel after October 10, 2017, but before October 23, 2017.

16. He learned that his case was first up for jury trial when he arrived at the courthouse on the morning of October 23, 2017.

17. Trial counsel arrived in court during the middle part of the day.

18. Trial counsel said he talked to the judge, and the judge wasn't going to suppress the drugs.

19. He tried to get trial counsel to visit the Keowee Road property, but trial counsel wouldn't.

20. He thought it was very important that trial counsel should have visited the property.

21. He never heard the audio recording where the police said, "There goes Greer Ashley" or something like that.

22. He believes trial counsel's representation was deficient.

23. He thinks there's a reasonable probability that the drugs would have been suppressed if trial counsel had conducted a meaningful investigation and properly argued the motion to suppress.

Greer is informed and believes that the Court should reconsider its Order and that the Order should be amended to include the following documents entered into evidence:

1. Honea Path Police Department officers arrived at Keowee Road at 10:45 a.m. on November 21, 2016. Greer's trial exhibit #6.

2. Abbeville County Deputy Mack Gladden arrived at 5677 Keowee Road (Greer's house) at 10:58 a.m. on November 21, 2016. Greer's trial exhibit #7. Deputies intended to assist Honea Path Police Department with serving arrest warrants. "Upon arrival deputies noticed a white male running the opposite direction of them while carrying an unknown container." "Upon arrival at the location . . . we observed an unknown w[h]ite male to begin fleeing on foot

by running through the woods." Gladden's testimony indicated that he first saw the person when the person was on the other side of Larry's "no trespassing" sign, and that Gladden didn't observe any criminal activity upon first seeing the person.

3. After being arrested, Greer and Larry each signed a Consent to Search form authorizing law enforcement to search Greer's property at 5677 Keowee Road. Greer's trial exhibit #28. However, all events occurred on Larry's property at 5635 Keowee Road.

The following is relevant law to the issues in this case, and Greer is informed and believes that the Court should reconsider its Order and that the Order should be amended to include the following conclusions of law:

1. After all testimony, Greer's attorney made a motion to conform the allegations contained in his amended PCR application to the testimony presented at trial by Deputy Mack Gladden. Gladden testified that when he first saw a person on the other side of Larry's "no trespassing" sign, this person wasn't doing anything wrong and Gladden didn't see any criminal activity. When this testimony is considered along with the uncontradicted evidence that law enforcement had no consent, no permission, no hot pursuit, or no search warrant to be on Larry's property, then Greer or anybody else can run upon seeing law enforcement. Trial counsel should have challenged this aspect of the flight issue.

2. To find that law enforcement entered Larry's property without first having the arrest warrants for Brock and Young countersigned by an Abbeville County magistrate. See Code Section 22-5-190. Once Honea Path Police Department learned that Brock and Young were located on property in Abbeville County, Honea Path PD should have had the arrest warrants countersigned. An opinion from the Office of the Attorney General to Cayce Department of Public Safety dated April 15, 2010 (2010 WL 1808725 (S.C.A.G.)) discusses Code Section 22-5-190. In the case at hand, the Honea Path PD officers on Larry's property had no authority to arrest Brock and Young, because these officers were outside their jurisdiction. The Abbeville County deputies on Larry's property had no authority to arrest Brock and Young, because the warrants hadn't been countersigned. All the deputies could have done would be to take the arrestees before an Abbeville County magistrate. It appears that law enforcement was

on a fishing expedition because no officer on scene had the lawful authority to arrest Brock and Young, which was law enforcement's purported reason for being on Larry's property. This is supported by the fact that Brock's charge was dismissed (Greer's trial exhibit #4) and Young's charge was greatly reduced from a possible 10 years to a maximum of 30 days (Greer's trial exhibit #5).

3. To meet the prejudice burden, an applicant need only testify that he would not have pled guilty. See e.g., Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (S.C. 1991). Greer testified that he wanted to go to trial so that trial counsel could argue the motion to suppress. Trial counsel was unprepared and in no position to argue a motion to suppress on Monday, October 23, 2017. Furthermore, trial counsel misled Greer when trial counsel said the trial judge intended to deny the motion to suppress, even though the matter hadn't been presented to the trial judge.

4. "The prevailing seizure jurisprudence flows from the idea that, short of an investigatory stop, a person is 'free to disregard the police and go about his business.'" Wingate v. Fulford, No. 19-700, decided February 4, 2021, and amended February 5, 2021 (4th Cir. 2021). Deputy Mack Gladden testified that he saw the person who turned out to be Greer before Gladden reached the "no trespassing" sign on Larry's tree. Gladden had no authority to go past the "no trespassing" sign. If the Court accepts Gladden's testimony and believes that Greer first noticed law enforcement before law enforcement passed the "no trespassing" sign, then Greer had every right to run.

5. In Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (S.C. 1994), the applicant received ineffective assistance of counsel when his trial counsel did not move to suppress evidence that was obtained in violation of the Fourth Amendment of the United States Constitution. In Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S. Ct. 2574, 2583, 91 L. Ed. 2d 305 (1986), the U.S. Supreme Court set forth the standard for prejudice in Fourth Amendment PCR claims: "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual

prejudice.” In the case at hand, trial counsel’s failure to investigate led him to be unaware of Larry’s “no trespassing” sign and that law enforcement had no permissible reason to drive past Larry’s “no trespassing” sign to serve arrest warrants that hadn’t been countersigned.

6. The case at hand is similar to Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (S.C. 2010) in that trial counsel hadn’t sufficiently prepared to argue a motion to suppress. In Kolle, trial counsel was ineffective in a drug trafficking plea case for advising the defendant to plead guilty without sufficiently investigating and arguing the motion to suppress evidence seized from an apartment in which the defendant was an invited guest. Police officers testified that they received a call about loud music from the apartment. When an officer arrived, he heard music and observed fresh “forced entry marks” on the door, but no one responded to knocking. Believing there were exigent circumstances, officers entered and observed powder cocaine and materials used for processing and manufacturing cocaine in plain sight. The officers seized the powder cocaine and obtained a search warrant, which yielded a find of 63 grams of cocaine in the apartment. Counsel moved to suppress the evidence, but the motion was denied, due to the court’s finding of exigent circumstances followed by plain view. The defendant pled guilty the same day. Counsel’s conduct was deficient during the motion hearing, because counsel had failed to obtain discovery and, therefore, failed to question the officers about time discrepancies, such as the warrant being issued and executed even before the initial “loud music complaint.” Likewise, counsel failed to point out that the arrest and search warrant affidavits and incident reports referred to crack cocaine rather than powder and made no reference to “fresh damage” or “forced entry.” If counsel had adequately performed, there is a reasonable probability that the court would have granted the suppression motion. Even if the trial court had ruled erroneously, counsel could have advised the defendant to proceed to trial and then challenge the denial of the suppression motion on direct appeal.

7. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (S.C. 2000) discusses prejudice in guilty plea PCR’s, and the Court very clearly states that the proper analysis is ONLY if but for counsel’s unprofessional errors the defendant would not have pled guilty and would have insisted on going to trial. “[T]he fact that the judge sentenced Thompson within the range is irrelevant. To establish prejudice, the proper analysis is to determine whether there was a reasonable

probability that, but for counsel's unprofessional errors, the defendant would not have pled guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)." In the case at hand, even though Greer may have received a good deal, that's not the issue. The issue is whether but for trial counsel's unprofessional errors would Greer have insisted on going to trial. The answer is yes, Greer testified that he wanted to go to trial and have his suppression motion heard.

RESPECTFULLY SUBMITTED.

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