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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Darlington County
Court of Common Pleas

The Honorable Paul M. Burch, Plea Judge
The Honorable Michael G. Nettles, PCR Judge

Appellate Case No. 2021-001255

REGINALD DUDLEY..... Petitioner.

v.

STATE OF SOUTH CAROLINA..... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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STATEMENTS OF ISSUE ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

Whether the PCR Court erred in denying Petitioner relief where Counsel Stucks, shortly after being retained by Petitioner, became the city judge for the City of Darlington creating an actual conflict that adversely impacted his representation of Petitioner.

Respondent's Counterstatement of Issue on Certiorari

Did the post-conviction relief court properly determine that Petitioner failed to establish a conflict of interest existed when Petitioner was aware of the potential conflict, continued with the representation, and there was no showing that an actual conflict of interest existed or that any potential conflict impacted Counsel's performance?

STATEMENT OF THE CASE

Reginald Dudley (hereafter “Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. During its July 2017 term, the Darlington County Grand Jury indicted Petitioner for assault and battery of a high and aggravated nature (2017-GS-16-0842). Petitioner was represented by Robert Stucks, Esquire (hereafter “Counsel”). Assistant Solicitor Glenn M. Bell, Esquire, from the Fourth Circuit Solicitor’s Office, represented the State. Waiving venue, Petitioner pled guilty as indicted in Chesterfield County to a recommendation of twelve years’ imprisonment before the Honorable Paul M. Burch, circuit court judge, on October 16, 2019. Judge Burch sentenced Petitioner in accordance with the recommendations. Applicant did not appeal his plea or sentence.

Petitioner timely filed a PCR application on October 9, 2020. Respondent made its return on January 15, 2021. An evidentiary hearing was held on August 23, 2021, before the Honorable Michael G. Nettles, circuit court judge. Steven W. Fowler, Esquire was Petitioner’s attorney. Chelsey F. Marto, Esquire of the South Carolina Attorney General’s Office represented Respondent. The Court issued an order of dismissal, denying Petitioner’s PCR application and remanding him to the custody of South Carolina Department of Corrections on September 29, 2021. Petitioner appeals from the denial of relief based upon the allegation that Counsel Stucks representing Petitioner presented an actual conflict that negatively impacted his representation.

STATEMENT OF FACTS

On March 17, 2017, Petitioner, along with a co-defendant, went to the Darlington Motel because Victim, William Steen, Jr., owed Petitioner and his co-defendant forty dollars. (App. 7-8). A video in the motel shows both men exiting a vehicle and going into a motel room, following the victim. (App. 8). The video shows Petitioner striking Victim, who then falls inside the room. (App. 8). Both Petitioner and his co-defendant went inside the room. (App. 8). Another co-defendant was charged with accessory after the fact. (App. 8). This co-defendant witnessed the entire ordeal and was prepared to testify that Petitioner and a co-defendant struck Victim multiple times in the head and body causing significant bodily injury. (App. 8).

Victim was present at the plea hearing in a wheelchair, but was unable to address the Court, due to the extent of the injuries. (App. 8). Injuries incurred include a rib fracture, a skull fracture, spinal cord injury, spinal fracture, splenic laceration, subdermal hematoma, and epidermal hematoma. (App. 8-9). At the time of the plea hearing, Victim required around-the-clock care. (App. 9).

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts “give[] great deference to the PCR court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the applicant shouldering the burden of proof. Rule 71.1(e), SCRCPP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court’s findings will be upheld if there is “any evidence of probative value sufficient to support them.” *Id.* Reversal of the lower court’s findings occurs when there is no probative evidence to support the initial finding. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a *de novo* review only if evaluating questions of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

On appeal, Petitioner argues the PCR court erred in denying him relief because Counsel allegedly had a conflict of interest when representing Petitioner while simultaneously holding office as a Darlington City Judge. However, the PCR court properly rejected this argument, finding that Petitioner seemingly knew Counsel was a city judge and continued with the representation and there was no showing that an actual conflict of interest existed, that impacted Counsel's performance. These findings are not controlled by an error of law and are supported by probative evidence in the record. Consequently, this Court should deny certiorari.

“To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an **actual conflict of interest** adversely affected his attorney's performance.” *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)) (emphasis added). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the petitioner's. *Fuller v. State*, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an petitioner demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. *Gonzales v. State*, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing *Strickland*, 466 U.S. at 692) (emphasis added). However, “[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction.” *Fuller*, 347 S.C. at 634, 557 S.E.2d at 665.

“The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver.” *United States v. Swartz*, 975 F.2d 1042, 1048 (4th Cir. 1992). “The state can establish a waiver only by proving an intentional relinquishment or

abandonment of the right.” *Hoffman v. Leeke*, 903 F.2d 280, 288 (4th Cir. 1990). “To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently.” *Thomas v. State*, 346 S.C. 140, 144, 551 S.E.2d 254, 256 (2001) (citing *Swartz* at 1048-49). “Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right.” *Hoffman*, 903 F.2d at 288.

Petitioner is not entitled to relief based upon the alleged conflict of interest. Petitioner cited Counsel’s judgeship it as the reason why Counsel was unable to represent him in his subsequent charges. (App. 46, 60). Counsel confirmed that he told Petitioner that he could not represent him on subsequent charges. (App. 61, 69). Counsel also confirmed that Petitioner was arrested several months before he became a city judge. (App. 61). Though Petitioner stated he did not know Counsel was a city judge at the time, his testimony regarding Counsel’s inability to represent him on subsequent charges seemingly contradicted that assertion. This was acknowledged by the PCR Court, which found Petitioner did, in fact, know about the judgeship. (App. 100). Accordingly, Petitioner seemingly waived any alleged conflict because, while knowing about its scope, he decided to proceed forward with the representation.

Petitioner failed to show that an actual conflict of interested existed at all. Instead, Petitioner merely asserted that an alleged conflict existed because of Counsel’s judgeship. There was no showing that Counsel’s judgeship in any way impacted his representation of or duty of loyalty to Petitioner. Additionally, there was no conflict of interest because the charges were disposed of in General Sessions court and Counsel was a municipal judge.¹ The actual impact of

¹ Respondent submits that this position is seemingly a part-time position, rendering the practice of law contemporaneously appropriate.

any alleged conflict is speculative at best which is insufficient to overturn a criminal conviction. Accordingly, because Petitioner failed to establish the alleged conflict existed or had any impact on the representation itself, relief should be denied on this ground.

CONCLUSION

For the reasons stated above, this court should deny certiorari and affirm the PCR Court's findings that Petitioner is not entitled to relief because of an alleged conflict of interest.

However, if this Court decides to grant the petition of writ of certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

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