

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Spartanburg County Court of Common Pleas **S.C. SUPREME COURT**

The Honorable J. Mark Hayes, II, Plea Judge
The Honorable William A. McKinnon, PCR Judge

Appellate Case No. 2022-000117

JIMMY DEAN WILLIAMS.....Respondent.

v.

STATE OF SOUTH CAROLINA.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

Did the PCR Court err in finding that Petitioner was denied assistance of counsel because of the supposed denial of a direct line of communication between Counsel and Williams when Williams never requested to speak to Counsel privately and no prejudice was shown?

STATEMENT OF THE CASE

Jimmy Williams, Jr. (“Williams”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2020, the Spartanburg County Grand Jury indicted Williams for attempted murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2020-GS-42-03092). Charles W. Snyder, III, Esquire represented Williams. Assistant Solicitor J. Edward Hunter, Esquire, prosecuted the case. On October 13, 2020, Williams pled guilty to the lesser-included offense of assault and battery of a high and aggravated nature before the Honorable J. Mark Hayes, II, circuit court judge. Judge Hayes sentenced Williams to twenty years’ imprisonment for ABHAN and the weapons charge was dismissed *nolle prosequi*.

Williams appealed and the South Carolina Court of Appeals dismissed the appeal on November 17, 2020, for failure to provide a sufficient plea explanation, as required by Rule 203(d)(1)(B)(iv) SCACR. The remittitur was sent on January 15, 2021.

Williams filed a post-conviction relief application on June 16, 2021 and amended on June 3, 2022. An evidentiary hearing was held on June 7, 2022, before the Honorable William A. McKinnon, circuit court judge. Williams was represented by Tommy A. Thomas, Esquire. Assistant Attorney General Chelsey F. Marto, Esquire, represented the State. Judge McKinnon granted relief by written order on June 30, 2022. The State filed a motion to alter or amend judgement pursuant to Rule 59(e), SCRCP on July 19, 2022. Williams’ return to the motion was filed on August 2, 2022. The order denying the State’s motion was filed on August 11, 2022. This petition for writ of certiorari follows.

STATEMENT OF FACTS

On November 8, 2019, Williams and his father argued after Williams' father told Williams to stop entering and exiting their home, out of fear that he would wake his mother. (App. 8-9). Williams took a knife and stabbed the victim multiple times, causing large lacerations all over his body. (App. 9). When his father arrived at the hospital, the charge nurse exclaimed he looked like he was filleted like a fish. (App. 9). William's father spent multiple days in the ICU and incurred over \$130,000 in medical debt. (App. 9). One of the father's daughter-in-law's said he died multiple times in the hospital in an attempt to repair him. (App. 9-10).

STANDARD OF REVIEW

The standard of review in 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 post-conviction relief 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), SCRCP; *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). 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). However, courts must conduct a de novo review when evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error 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

The PCR court erred in granting Williams relief because the Court found a Sixth Amendment violation existed due to the alleged deprivation of Williams' ability to communicate with Counsel directly and privately during the plea hearing. On the belief that a structural error was found, the Court did not engage in an analysis concerning prejudice. The court found that the suppose structural error inherently led to the plea not being entered freely, voluntarily, knowingly, and intelligently. The court erred in finding a structural error occurred that relieved Williams' duty to prove prejudice. Thus, the PCR court's findings are controlled by an error of law and are not supported by probative evidence in the record. Consequently, this Court should grant certiorari.

The PCR Court's reliance on *United States v. Cronin*, 466 U.S. 648 (1984), is misplaced. "[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has in the ability of the accused to receive a fair trial." *United States v. Cronin*, 466 U.S. 648, 658 (1984). Further, "[a]bsent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated." *Id.* The burden of proof still remains on Applicant to demonstrate a constitutional violation, though there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Id.* Among these are "if the accused is denied counsel at a critical stage of his trial", "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing", and circumstances in which "although counsel is available to assist the accused during a trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Id.* at 659-60.

In South Carolina, structural issues, as addressed in *Cronic*, have been found sparingly and typically in the most egregious of cases. See *Nance v. Ozmint*, 367 S.C. 547, 555, 626 S.E.2d 878, 882 (2006) (finding ineffective assistance of counsel under *Cronic* when lead counsel was ill and on heavy medication and co-counsel had only practiced law for eighteen months, for failure to communicate to the jail to stop anti-psychotic medication when claiming mental illness in court, for clearly communicating to the jury that the defense attorneys did not want to be at the trial, for failure to qualify the defense expert when asserting a defense of guilty but mentally ill, and for failure to present adaptability evidence at the sentencing hearing); *McKnight v. State*, 320 S.C. 356, 359-60, 465 S.E.2d 352, 354 (1995) (finding ineffectiveness under *Cronic* when trial counsel was absent during the testimony of a victim at trial).

Though a novel issue, courts that began addressing issues concerning virtual court hearings have generally found any constitutional violations need to be rooted in some prejudicial impact extending beyond the format of the hearing itself. See *Lewis v. Zatecky*, 993 F.3d 994, 1001 (2021) (finding the issue was not rooted in the hearing occurring through telephone or zoom, but that the attorney did “absolutely nothing for [the defendant] regardless of format”); *State v. Torres*, 2022 WL 829907, ¶¶ 12, 14, 48 (Ct. App. Ohio filed Mar. 21, 2022) (finding that the defendant was entitled to relief because he was not afforded any opportunity to meet with counsel *before* the virtual hearing).

“[R]epresentations of the defendant, his lawyer, and the prosecutor at . . . a [guilty plea] hearing, as well as any findings made by the judge accepting the plea, constitutes a formidable barrier in any subsequent collateral proceedings.” *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977). Such “[s]olemn declarations in open court carry a strong presumption of verity” and “subsequent presentation of conclusory allegations unsupported by specifics is subject to

summary dismissal, as are contentions that in the face of the record are wholly incredible.” *Id.* at 74.

Williams’ case does not fit one of the structural errors or circumstances as delineated by the Court in *Cronic* and its progeny. Counsel was present for the entirety of the hearing, adequately did his job, and spoke to Williams in detail before the plea. Williams’ case is not comparable to the cases above as Williams had Counsel available at the hearing in the event he was needed. In fact, Counsel was actively involved in the hearing during sentencing and mitigation. (App. 21-23). Additionally, the record remains silent concerning the PCR court’s primary concern: whether a direct line of communication between Williams and Counsel existed. Thus, a structural error is not present, and prejudice cannot be presumed.

Further, any purported failure to establish a direct line of communication between Williams’ and Counsel during the plea did not have an impact upon the proceedings. The plea hearing transcript itself reflects that the plea was entered freely, knowingly, intelligently, and voluntarily. Williams informed the Court he wanted to plead to the lesser-included offense of ABHAN. (App. 5). Williams stated he was not on any substances impacting his ability to understand the plea. He agreed he was not promised or threatened into pleading, the plea was free and voluntary, he was satisfied with his lawyer, and that he understood the rights he was waiving by pleading, including the right to a jury trial, to call and confront witnesses, to present evidence, to establish a defense, to remain silent, and to subpoena witnesses. (App. 6-8). He admitted to the facts as stated by the prosecutor. (App. 8-11). He advised he knew he could be sentenced up to twenty years and that he was pleading to a violent and serious charge, while knowing the consequences of the distinctions. (App. 11-12). He advised all his answers were truthful. (App. 12).

At the PCR hearing, Williams confirmed he wanted to plead because he was afraid of facing more time at trial. (App. 72-73). Williams claimed he was confused as to why he did not receive a lesser sentence, but admitted guilt to the crime, and that he agreed to the charge plead to, the rights waived by pleading, and the sentencing range he faced. (App. 73-75). Counsel advised that based upon his recollection and review of the transcript Williams understood what he was pleading to and that his only issue was concerning the statements made by his family members. (App. 82-83). Williams' discontentment seemingly hinges only on the statements his family made prior to sentencing.

Though Williams claims he wanted to correct erroneous statements made by family members prior to sentencing, he has failed to establish any prejudice on this ground. Williams gave a well-spoken statement following his family members' statements, in which he never stated that anything in those statements were erroneous. (App. 23-24). Instead, he stated he has been taking Merge and anger management classes in prison and was a member of Narcotics Anonymous. (App. 23). Williams stated he was willing to take any rehabilitation classes he must to ensure he can remain present in his daughter's life. (App. 23). He stated he wanted to dedicate himself to mending his relationship with his family. (App. 23). Williams took responsibility for what happened and pleaded the court to return to his family. (App. 23). Thus, the record reflects Williams understood the plea proceedings, did not want to proceed to trial instead, understood he could be sentenced to up to twenty years, that he knew his family would speak against him at the plea hearing, and that there was nothing Counsel could have done to walk back these statements. Williams had more than ample opportunity to independently address the alleged falsehoods his family presented to the plea court but elected not to do so.

Additionally, during and after the statements were offered, Williams never attempted to interrupt the proceedings and request the Court permit him to speak with Counsel. (App. 14-21). At the PCR hearing, he stated he did not expect his family to take his side and suspected they disapproved of what happened but did not expect for them to speak against him as harshly as they did. (App. 75).

Counsel also offered a statement in mitigation, which included what Williams' father told him. (App. 22, 94). Specifically, Counsel stated that Williams was high on methamphetamine at the time and was under the belief that his father was an intruder. (App. 22). He stated that Williams' father does not want him to go to prison for what happened but does not want him around the house any longer. (App. 22). He stated that the father wants to see how Williams conducts his life upon release. (App. 22). Counsel explained that Williams has been taking classes in prison and stated that he needs help with his meth addiction. (App. 22). He stated that Williams is very involved in his daughter's life and was in the PTA and a Baptist church member. (App. 23).

At the PCR hearing, Counsel testified that he reached out to Williams' father and seemingly thought that Williams spoke to his father and additional family members. (App. 80). He explained that he knew Williams' family members beyond his father were seeking prison time and they were very upset with what happened. (App. 80). Counsel testified they were aware Williams' family members were coming out strongly against him and that the only person standing beside Williams was his father. (App. 80). Counsel was not surprised by the statements made but did not think they would demand the maximum sentence. (App. 81). Counsel informed Williams that his family members were going to speak at his plea hearing and were not happy about what happened. (App. 83). Counsel testified that Williams likely would have received

more time if convicted at trial. (App. 85). Counsel was unaware of anything he could have done to walk back the family members' statements once they were offered. (App. 93-94).

In sum, the State contends that there was no denial of the right to speak to Counsel. If Williams was explicitly forbidden from speaking with Counsel during the proceedings, the analysis may be different. Instead, the record remains silent on this issue and there has been no showing of a denial of a direct line to Counsel because no attempt on Williams' part to speak to Counsel was ever made. Further, the State respectfully contends that the Court erred as a matter of law by either presuming prejudice or alleviating him from showing prejudice based on a finding that this was a structural error or otherwise constituted a circumstance so egregious where a prejudice analysis is not needed. To the extent this Court finds a prejudice analysis was conducted, the State contends that the court erred in finding Williams met his burden of proof because the plea was free, knowing, and voluntary, Williams knew his family would speak out against him, and Counsel testified that he had no ability to walk back any of the statements Williams' family members made against him. Thus, Williams failed to meet his burden of proof in demonstrating prejudice and the finding of the circuit court should be reversed.

CONCLUSION

For the reasons stated above, the State respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.

Respectfully submitted,

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