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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Commons Pleas
Appeal from Colleton County
Honorable Kristi F. Curtis, Circuit Court Judge
Appellate Case No. 2023-001159

NATHANIEL HAMPLETON,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

“Whether Counsel provided ineffective assistance by failing to file a direct appeal where a motion to reconsider sentence was filed after Petitioner pled guilty, where the hearing to reconsider sentencing was held over a year later, yet where Counsel failed to consult Petitioner regarding an appeal after the hearing or file a notice of appeal on Petitioner’s behalf?”

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the PCR judge somehow err by finding Hampleton—who pled guilty to a number of offenses—was not entitled to belated appellate review when: (1) Hampleton’s own allegations suggested plea counsel consulted with him about an appeal, plea counsel advised him against one, and Hampleton elected to follow that advice; and (2) even if plea counsel did not consult with Hampleton about an appeal, the specific and non-extraordinary circumstances of Hampleton’s case did not require plea counsel to consult with Hampleton since there were no preserved issues that could have properly been raised or addressed on appeal?

STATEMENT OF THE CASE

In November of 2014, Petitioner Nathaniel Hampleton was arrested after he fired a shotgun into an occupied vehicle, striking one of its female occupants in the back with the blast. Between January and May of 2015, the Colleton County Grand Jury indicted Hampleton for three counts of attempted murder. On July 27, 2015, Hampleton appeared in the Colleton County Court of General Sessions before the Honorable Perry M. Buckner, circuit court judge, and—based on negotiations with the State—entered guilty pleas to one count of assault and battery of a high and aggravated nature along with two counts of first-degree assault and battery. At the conclusion of the plea hearing, Hampleton’s guilty pleas were accepted, and the plea judge sentenced him to an aggregate fifteen-year term of imprisonment for his convictions. A few days later, Hampleton—through plea counsel—timely filed a motion seeking reconsideration of the sentence. On October 26, 2016, a hearing was held on the motion in the Colleton County Court of General Session.¹ At the conclusion of the hearing, the plea judge orally denied the motion, and that ruling was later confirmed through a written order filed on October 28, 2016.

Subsequent to that, Hampleton did not initiate an appeal and, instead, filed an application for post-conviction relief (“PCR”) that was dated August 26, 2019, and filed on October 14, 2019. In response, the State filed a return requesting an evidentiary hearing and a more definite statement. On July 20, 2022, an evidentiary hearing was conducted in the Colleton County Court of Common Pleas with the Honorable Kristi F. Curtis, circuit court judge, presiding. During that hearing, the State moved for all claims other than one seeking belated appellate review to be dismissed as untimely. At the conclusion of the hearing, the PCR judge took the matter under

¹ The hearing was delayed because the plea judge was not alerted of the reconsideration motion for some time. (App’x pp. 35-36).

advisement. Thereafter, through an order dated June 15, 2023, the PCR judge denied and dismissed Hampleton’s PCR application. In doing so, the PCR judge found the application was untimely and the belated appellate review request did not warrant relief under the circumstances involved. Hampleton then timely filed a notice of appeal.

On appeal, the Supreme Court requested an explanation from Hampleton pursuant to Rule 243(c) of the South Carolina Appellate Court Rules as to why the PCR judge’s untimeliness determination was improper.² In response, Hampleton—through appellate counsel—stated he could neither set forth an arguable basis for asserting the PCR judge’s determination was erroneous pursuant to Rule 243 nor identify any appellate issues that could be reviewed on appeal pursuant to Rule 203. Following that, the Supreme Court found Hampleton failed to show there was an arguable basis for asserting the partial dismissal was improper and, thus, ruled the only issue that could be raised was whether the PCR judge erred by denying the request for belated appellate review. Hampleton then filed a petition for a writ of certiorari solely challenging the denial of belated appellate review and identifying the following the issue to be raised if such review was granted:

“Whether the Plea Court erred as a matter of law at Petitioner’s hearing to reduce his sentence where the Court stated the prior offer by the State in the case was ‘not admissible,’ yet where Rule 410, SCRE merely prohibits admissibility of plea negotiations if offered *against* a defendant, and where common law regarding sentencing hearing permits ‘an inquiry broad in scope, largely unlimited either as to the kind of information [the Court] may consider or the source from which it may come’?”

(footnote omitted).

² The records from Hampleton’s PCR appeal are presently available through the South Carolina Appellate Public Index. Appellate Records for Nathaniel Hampleton v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=78904>.

STANDARD OF REVIEW

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge’s factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (“Under the proper standard of review, the appellate court’s ‘view’ must be limited to whether there is probative evidence to support the PCR court’s factual findings.”). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge’s rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Ultimately, if the PCR judge’s decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR judge correctly found Hampleton—who pled guilty to a number of offenses—was not entitled to belated appellate review because: (1) Hampleton’s own allegations suggested plea counsel consulted with him about an appeal, plea counsel advised him against one, and Hampleton elected to follow that advice; and (2) even if plea counsel did not consult with Hampleton about an appeal, the specific and non-extraordinary circumstances of Hampleton’s case did not require plea counsel to consult with Hampleton about an appeal since there were no preserved issues that could have properly been raised or addressed on appeal.

Relevant Facts

After Hampleton was indicted for multiple counts of attempted murder, he elected—with the assistance of plea counsel—to enter guilty pleas to one count of the lesser-included offense of assault and battery of a high and aggravated nature along with two counts of the lesser-included offense of first-degree assault and battery. (App’x p. 3; pp. 141-142; pp. 144-145; pp. 147-148). During the ensuing plea hearing, Hampleton, who was thirty-four years old and had prior experience with the criminal justice system, confirmed it was his decision to plead guilty, he was doing so freely and voluntarily, and he was, in fact, guilty of all three charges to which he was entering his pleas. (App’x pp. 10-13). Furthermore and importantly, Hampleton affirmed he understood he had a right to appeal his convictions and sentence. (App’x p. 14).

Following that, the solicitor provided a factual recitation of Hampleton’s crimes. (App’x pp. 15-16). More specifically, the solicitor noted Hampleton became angry at one of his three female victims during a ride back to his house and responded by arming himself with a shotgun upon arriving there. (App’x pp. 15-16). Hampleton then returned to the vehicle, grabbed Latrelle Mays—the current subject of his ire—by her hair while she was inside it, pointed a shotgun at her, and fired the shotgun into the back of the vehicle when Mays and the two others—Stephanie and Charity Broughton—tried to flee. (App’x pp. 15-16). Fortunately, Mays was not struck by the shotgun blast, and neither was Stephanie, who was in a relationship with

Hampleton at the time. (App’x pp. 15-16). However, Charity, Stephanie’s sister, was hit in the back by the blast, and she was hospitalized as a result. (App’x pp. 15-16; pp. 18-20).

Ultimately, the plea judge accepted Hampleton’s guilty pleas. (App’x p. 17). And, after hearing competing sentencing *suggestions* from the prosecution and the defense, the plea judge elected to impose an aggregate fifteen-year term of imprisonment, which was a sentence far shorter than the maximum sentence Hampleton—by his own acknowledgement—could have received for his crimes. (App’x pp. 7-10; p. 12; pp. 21-29).

Despite receiving a shorter sentence than he could have permissibly received, Hampleton—through plea counsel—nevertheless timely sought reconsideration of his sentence, and a hearing was conducted on the matter. (App’x p. 35). During that hearing, plea counsel did *not* at any point raise any objections or allegations of error concerning Hampleton’s sentence. (App’x pp. 33-39). Instead, plea counsel simply asked the plea judge to “*consider*” imposing a lesser sentence than the one that had been imposed due to the facts: (1) Hampleton had not accrued any disciplinary infractions during his time in prison up to that point, which plea counsel suggested was “highly unusual” and “extraordinary” in his view; and (2) the solicitor had originally extended a plea offer of six years, which Hampleton had been advised to “strongly consider” but had rejected. (App’x pp. 33-39) (emphasis added). Upon considering Hampleton’s record along with the facts and circumstances of the case, the plea judge declined to reconsider Hampleton’s sentence.³ (App’x p. 39; p. 42).

³ Specifically, the plea judge explained:

I’ve gone back and looked in the file and looked at the affidavit in support of the warrant. I’ve also looked at where a written offer was made to Mr. Hampleton and he rejected the offer, and you signed the rejection, which is also in the file. I take into consideration that previously the victim appeared in front of me

Subsequently, Hampleton submitted a PCR application raising a number of claims, including a claim plea counsel—amongst other things—advised him not to appeal and to file a PCR application instead. (App’x pp. 43-48). For relief, Hampleton indicated he wanted a reduction in both his sentence and the assault and battery of a high and aggravated nature charge and his other two convictions to be “drop[ped].”⁴ (App’x p. 47).

An evidentiary hearing was convened on the matter. (App’x p. 69). During that hearing, Hampleton testified on his own behalf and, in doing so, never at any point indicated he had wanted to appeal his convictions and sentence, he had communicated a desire for an appeal to plea counsel, or he would have pursued an appeal but for plea counsel’s actions. (App’x pp. 67-91). In addition to that, Hampleton’s plea counsel testified about his representation of

and advised me of what this had done to her life. I recall that this was a shooting in which the victim was in the car and the weapon used was a weapon that penetrated the car and entered the victim’s body in the back as the car was going to leave, or they were trying to leave . . . [f]rom a residence here in Colleton County. I recall that the victim told me she was home for a holiday at the time visiting with her family at the time this incident occurred. I also believe, [plea counsel], from looking at it, I understand that [the solicitor] offered Mr. Hampleton, from what you tell me -- of course, you and I both know that’s not admissible, and I know you’ve communicated the offer that [the solicitor] made to your client who rejected that offer. You now want me to reinstate an offer after he pled and I’m afraid that’s called shutting the barn door after the horse is out, [plea counsel]. Considering Mr. Hampleton’s record, I certainly meant to run his sentences concurrent, which I did. It’s not an attempt to be unfair to Mr. Hampleton; I wanted to be fair to both the victim and to him in reaching my sentence. But in considering his record and the facts and circumstances of this case, I decline to change my sentence. Your motion for reconsideration is respectfully denied.

(App’x pp. 38-39).

⁴ Notably absent from Hampleton’s requested relief was a request for belated appellate review. (App’x p. 47).

Hampleton. (App’x p. 94). Through his testimony, plea counsel explained he did not “recollect” discussing an appeal with Hampleton and was not sure whether he did. (App’x pp. 106-107). However, he confirmed it was his general practice to discuss the right to appeal with a client and he would have filed an appeal if he had been asked to do so. (App’x p. 107). Beyond that, plea counsel indicated he did not personally think there was anything that warranted an appeal in Hampleton’s case. (App’x p. 107).

Ultimately, upon considering the matter, the PCR judge denied relief. (App’x p. 113; pp. 121-139). In doing so, the PCR judge—in addition to finding Hampleton’s PCR application was untimely—found Hampleton was not entitled to relief on his claim seeking belated appellate review because: (1) no extenuating circumstances existed in Hampleton’s case that would have warranted an appeal following his guilty pleas; and (2) plea counsel—who credibly did not recall Hampleton wanting an appeal—was not ineffective for failing to initiate one under the circumstances involved. (App’x pp. 138-139).

Law Applicable to a Claim of Ineffective Assistance of Counsel for Failing to Initiate an Appeal

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) (“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.”). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970); see Strickland v. Washington, 466 U.S. 668, 685 (1984) (“An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.”).

Effective assistance of counsel means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688; see Burt v. Titlow, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Meanwhile, counsel’s assistance is considered to be constitutionally ineffective when “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland, 466 U.S. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of counsel claim must establish: (1) counsel’s representation fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel’s deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). And, significantly, that heavy burden remains applicable to a claim counsel was ineffective for failing to file a notice of appeal. Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000).

Application of the Applicable Law to Hampleton’s Case

Through his petition for a writ of certiorari, Hampleton—who never even personally testified he actually wanted an appeal—contends the PCR judge erred by declining to grant him

belated appellate review. In so contending, Hampleton maintains plea counsel was constitutionally ineffective for failing to initiate an appeal because: (1) plea counsel filed a motion seeking reconsideration of Hampleton’s sentence, which supposedly would not have been filed unless expressly requested by Hampleton; (2) an “extraordinary” basis warranting reconsideration of the sentence imposed existed in Hampleton’s case since Hampleton had been well-behaved in prison; (3) the plea judge supposedly committed an error of law “in what [he] deemed permissible to consider in the matter” when denying the motion for reconsideration since he allegedly failed to give consideration to an earlier plea offer Hampleton had rejected; and (4) it was purportedly readily apparent Hampleton—or any rational defendant in the same situation—would have wanted to appeal the denial of the motion seeking sentencing reconsideration under the circumstances involved.

Importantly, in cases in which a defendant did not expressly instruct his counsel to initiate or not initiate an appeal, the effectiveness of counsel’s representation can best be ascertained by first looking to whether counsel consulted with the defendant about an appeal. Flores-Ortega, 528 U.S. at 478. If counsel did consult with the defendant about an appeal, counsel’s performance will only be deemed deficient if counsel failed to follow the defendant’s instructions. Id. Meanwhile, if counsel did not consult with the defendant, the effectiveness of counsel’s representation hinges on whether counsel’s failure to consult with the defendant itself constituted deficient performance. Id.

As a constitutional matter, counsel has a duty to consult with the defendant about an appeal “when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. at 480.

Ordinarily, following a trial, such factors will exist, and defense counsel must—to perform reasonably—inform a defendant about the possibility of an appeal and the method for pursuing such an appeal. Turner v. State, 384 S.C. 451, 456, 682 S.E.2d 792, 794-795 (2009). However, “absent extraordinary circumstances, there is no constitutional requirement that defendant be informed of the right to a direct appeal *from a guilty plea*.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995) (emphasis added); see Turner, 384 S.C. at 456 n. 6, 682 S.E.2d at 795 n. 6 (“Although decided prior to Flores-Ortega, the Weathers analysis is compatible with the Flores-Ortega analysis and remains good law.”).

In the case sub judice, Hampleton—at least based on the substance of his own allegations in his PCR application—appears to have consulted with plea counsel about an appeal, was advised by plea counsel not to appeal and to instead seek relief through a PCR application, and elected to follow that advice, albeit in a woefully untimely fashion.⁵ If such an appeal consultation did occur in Hampleton’s case, plea counsel could only have performed in a deficient manner if he failed to follow instructions Hampleton gave him after their discussion, and nothing was presented—including through Hampleton’s own testimony—suggesting: (1) Hampleton gave any such instructions to plea counsel; or (2) plea counsel failed to follow any such instructions. See Flores-Ortega, 528 U.S. at 478 (“If counsel has consulted with the defendant, the question of deficient performance is easily answered: Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.”). Accordingly, just as the PCR judge concluded, plea counsel was not constitutionally ineffective for failing to initiate an appeal under the

⁵ At one point in his application, Hampleton wrote: “I was advised by Mr. Mathews my counsel to file a P.C.R. not a appeal. I didn’t know what a P.C.R. was I just listen to him because I thought a P.C.R. was something better.” (App’x p. 44). Similarly, at another point, Hampleton wrote: “My counsel advised me not to appeal but to fill out a P.C.R. form.” (App’x p. 44).

circumstances involved, and Hampleton was not entitled to belated appellate review. See Turner, 384 S.C. at 453, 682 S.E.2d at 793 (“The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in his application.”); see also Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

However, even assuming no appeal consultation occurred in Hampleton’s case, plea counsel nevertheless still would not have been and was not constitutionally ineffective for failing to consult with Hampleton on the matter. Critically, that is true because the specific and non-extraordinary circumstances of Hampleton’s case did not require plea counsel to consult with Hampleton about an appeal when properly considered. See Weathers, 319 S.C. at 61, 459 S.E.2d at 839 (recognizing “there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal” when the defendant pled guilty).

Looking to those circumstances, Hampleton—who personally affirmed during the guilty plea hearing he understood he had a right to appeal his convictions and sentence—*pled guilty* to several offenses and received an aggregate sentence falling squarely within the permissible sentencing limits for his crimes. And, significantly, *no objections* were raised during the guilty plea hearing, including to the statutorily-authorized sentence imposed. Following that, Hampleton—through plea counsel—moved for reconsideration of his sentence. Importantly though, that motion was not predicated on a claim of error and, instead, simply involved a *request* for the plea judge to *consider* possibly exercising his broad sentencing discretion to impose a lesser term of imprisonment than he had previously elected to impose. And, just as occurred

during the guilty plea hearing, no objections of any kind were raised to or ruled upon by the plea judge during the hearing held on the reconsideration motion.⁶

Critically, because no objections were actually raised during the guilty plea and reconsideration hearings, no issues whatsoever with Hampleton's convictions or sentence were properly preserved for appellate review, which meant there were no nonfrivolous grounds for an appeal in Hampleton's case. See State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (“[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review.”); see also In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App.

⁶ In seeking reconsideration, plea counsel—in total—argued:

Thank you, Your Honor. Your Honor, initially, I mentioned that I had tried to discuss with Mr. Hampleton prior to this, I asked him to strongly consider the six years that was offered by the State on the charges initially. He did not do so. Your Honor, he is contrite. He is -- since we have the benefit now of some additional things that weren't evident at the time, one of them is I've passed up a copy of his jail report. He has no disciplinaries, which is highly unusual for anybody incarcerated. He stays in a Christian dorm. He knows he made a very big mistake that hurt people. He is a recreation assistant, warden keeper assistant, and has done very well. His mother is also here today. Your Honor, I would ask the Court to look again and ask the Court to consider a six-year sentence. He pled and he has taken responsibility for what he has done. I would ask the Court to consider also that he has done very well as somebody can do under that. I can't tell you the number of people that I've represented that don't do so well. I see pages of disciplinary actions. To see none is extraordinary. Obviously, that could not have been before the Court. I'd ask the Court to consider that he worked hard for nine years as a firefighter before this happened. These are things the Court had heard, but ask the Court to consider this again. I understand that the victims have been notified; that's my understanding at least, and are not present. They were certainly negatively impacted by this as the Court heard, but apparently nothing catastrophic has occurred since then, and people heal, and I'd ask the Court to reconsider and consider giving Mr. Hampleton a six year sentence.

(App'x pp. 36-37).

2009) (“Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.”); cf. State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (“No objection to sentencing was raised at trial and this issue is not properly before the court.”). Under such circumstances, plea counsel—who, based on the evidence presented, would have had no reason to think Hampleton was interested in appealing—was under no constitutional obligation to consult with Hampleton about an appeal since there was no rational basis upon which one could be pursued. Flores-Ortega, 528 U.S. at 480. Therefore, just as the PCR judge aptly concluded, plea counsel was not and could not have been constitutionally ineffective for failing to engage in an appeal consultation with Hampleton even assuming he did not do so, and Hampleton wholly failed to meet his burden of demonstrating anything to the contrary. See Strickland, 466 U.S. at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”); Terry v. State, 394 S.C. 62, 66, 714 S.E.2d 326, 329 (2011) (“A PCR applicant bears the burden of establishing he is entitled to relief.”). Hampleton’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 10, 2024