

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Deadra L. Jefferson, Circuit Court Judge

CARMEN L. RICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001857

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

The PCR judge erred in failing to conduct a full and complete PCR hearing on the entirety of petitioner's newly discovered evidence case.

STATEMENT

Petitioner Carmen L. Rice was convicted of armed robbery and murder per jury trial held during the April 2005 term of the Richland County General Sessions Court before Judge Reginald I. Lloyd, who sentenced her to imprisonment for a term of thirty years on the armed conviction and life without parole on the murder conviction. App. 1-1156. Solicitors John P. Meadors and Theodore W. Lupton prosecuted the case, and Attorneys John T. Mobley and Christopher Hart represented petitioner at trial. Petitioner's convictions and sentences were affirmed on appeal. See *State v. Rice*, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007). A petition for writ of certiorari was denied by the South Carolina Supreme Court on December 4, 2008. Chief Attorney Robert M. Dudek, of the South Carolina Office on Indigent Defense (Appellate Division), represented petitioner on direct appeal.

On January 14, 2009, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. After the Respondent filed a Return dated July 7, 2009, a PCR hearing was held on June 6, 2011, at the Richland County Courthouse before Judge James R. Barber. Petitioner was present at the hearing and represented by Mark Schnee, Esquire, and Assistant Attorney Brian T. Petrano appeared on behalf of the state. On August 22, 2011, Judge Barber issued an Order of Dismissal in the case denying post-conviction relief to petitioner. Petitioner appealed, but on April 5, 2015, the South Carolina Court of Appeals affirmed Judge Barber's Order that denied PCR relief in the case. Kathrine Hudgins, Esquire, of the South Carolina Commission on Indigent Defense (Appellate Division) represented petitioner on PCR appeal. Petitioner's subsequent Petition for Writ of Habeas Corpus was subsequently denied by United States District Judge R. Bryan Harwell.

On October 18, 2017, petitioner filed a Second PCR application with the Richland

County Office of the Clerk of Court. App. 1158-1165. On February 19, 2019, the Respondent filed a Return and Motion to Dismiss on the ground that the PCR action was successive. App. 1166-1173. Petitioner filed a response on March 6, 2019. App. 1175-1187. A Conditional Order of Dismissal was filed on May 22, 2019, by Judge Jocelyn Newman. App.1188-1194. On June 18, 2019, petitioner filed a response titled Opposition to Conditional Order of Dismissal and attached two letters as newly discovered evidence. App. 1195-1201. On July 1, 2019, a Partial Order of Dismissal was filed by Judge Newman wherein petitioner was granted a hearing only on the issue of newly discovered evidence. App. 1202-1204. An Amended Return was filed by the Respondent on June 22, 2021. App. 1205-1211. On March 21, 2023, PCR counsel filed an Amended PCR Application. App. 1212-1230. The Respondent filed a Motion to Strike on March 24, 2023. App. 1231-1236. A Second Amended PCR Application was filed by petitioner on July 10, 2023. App. 1237-1240. On July 12, 2023, the Respondent filed a Motion to Strike the Second Amended PCR Application. App. 1241-1251.

A second PCR hearing was convened in the matter on July 17, 2023, at the Richland County Courthouse before Judge Deadra L. Jefferson. App. 1252-1307. Petitioner was present at the hearing and represented by Timothy Griffith, and Assistant Attorney General D. Russell Barlow appeared on behalf of the state. On November 3, 2023, Judge Jefferson issued an Order of Dismissal in the case. App 1308-1328.

Petitioner appealed Judge Jefferson's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in failing to conduct a full and complete PCR hearing on the entirety of petitioner's newly discovered evidence case.

Petitioner was convicted of armed robbery and murder. At trial, state's witness Iris Renee Bryant testified that on the night of October 25, 2001, she and petitioner planned to rob a man named Bernard Brennan. Bryant testified that she and petitioner were riding with Brennan in his vehicle on that night, and that while parked petitioner pulled out a gun and shot Brennan and then took money from his wallet. The two fled the scene thereafter, and ultimately ended up at a house where petitioner resided. Upon their arrival there, they found Amber Byrd inside. Byrd was at that house babysitting petitioner's young child at that time. App. 504, l.14 - p. 529, l. 22. Amber Byrd testified at trial and explained that on the night in question she remembered that petitioner confessed to robbing and shooting a guy. App. 429, l. 21 – p. 472, l. 1.

State's witness Falisha Hallmon testified that she met petitioner while they were both jail detainees, and that petitioner confessed that she shot Brennan. App. 592, l. 5 – p. 604, l.5. Another jailed detainee mentioned a similar conversation with petitioner. App. 651, l. 14 – p. 658, l. 23. Teresa Rouse, who was petitioner's cell mate, testified that petitioner threatened to “do to her what she did to Brennan.” App. 581, l. 10 – p. 585, l.8.

During the instant PCR hearing held in the case, the issue of petitioner's claim of newly discovered evidence, which consisted of two letters, was the sole matter before the PCR judge. App. 1262, lines 9-13; App. 1284, lines 24-25. The first letter in question, which was written by Holly Jo Thompson, suggested that Hallmon's and Bryant's statements were not truthful statements. App. 1306. The second letter in question, which was written by Stacey Earle, indicated that she (Earle) was coerced into signing a statement (that was not written by her)

submitted to her by police that was ultimately detrimental to petitioner's defense. App.1307.

Thompson, who was the author of the first letter, testified at the PCR hearing about the substance of her letter. Thompson testified that she wrote the letter (App. 1306) for the police during her incarcerative time at SCDC. App. 1263, l. 7 – p. 1264, l.6. Earle, who was the author of the second letter, was not available to testify at the PCR hearing. It was established at the PCR hearing that Earle was not locatable at that time. App. 1289, l. 6 – p. 1292, l. 13; App. 1296, l. 1 p. 1304, l. 2.

Petitioner testified at the PCR hearing and explained that she was aware of Thompson's letter that was written in 2003, and that the letter was placed into her (petitioner's) possession at that time. Petitioner testified that Earle had also written a letter, which was placed into her (petitioner's) possession in 2016. App. 1268, l. 12 – p. 1278, l. 17. Earle's letter was not received into evidence after the PCR judge sustained the state's objection to Earle's letter on the grounds of hearsay and authenticity issues, particularly since she was not present at the PCR hearing to testify before the court. App. 1270, l. 9 – p. 1271, l. 4. PCR counsel argued that Earle's letter was exculpatory and should have received consideration by the PCR judge as said letter contained exculpatory information. Note that Earle's letter revealed that petitioner "had been done wrong." PCR counsel added that had these two letters been made available to trial counsel, then further investigations would have followed and possibly led to the exoneration of petitioner. App. 1284, l. 24 – p. 1287, l. 19; App. 1307.

In the Order of Dismissal, the PCR judge ruled that petitioner failed to meet the requisite burden of proof regarding newly discovered evidence. The PCR judge ruled that witness Thompson's testimony was not credible, and went on to rule further that Thompson's letter was "immaterial, conclusory in nature, lacking substantiation, merely purporting to

impeach a state's witness, and would not change the result if [petitioner were] granted a new trial" App. 1325. Regarding Earle's letter, the PCR Judge found that "Ms. Earle's letter was not admissible because its contents were hearsay and [that] Earle was not present to authenticate the letter or be subject to cross examination concerning its content." App. 1326-1327.

Clearly, Earle's letter, which contained exculpatory matter qualified as newly discovered evidence that should have been reviewed by the PCR judge in this case. Per Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993), the rule is that a new trial must be granted if newly discovered evidence would 1.) probably change the result if a new trial occurred, 2.) has been discovered since the trial; 3.) could not have been discovered before trial; 4.) is material to the issue of guilt or innocence; and 5.) is not merely cumulative or impeaching. In the case at bar, the PCR judge was charged with the duty of analyzing two pieces of evidence (two letters) presented as newly discovered evidence in the case. One newly discovered piece of evidence, i.e., the Thompson letter, was reviewed by the PCR judge under Clark; however, the second newly discovered piece of evidence, i.e., the Stacey Earle letter, was not properly reviewed by the PCR judge under Clark. Thus, the PCR judge erred in issuing an Order of Dismissal in the case sans a complete assessment of the newly discovered evidence presented in its entirety as ordered by the prior court order. Rather than dismiss the newly discovered evidence case in its entirety, a better course of action would have been to continue the PCR case or hold the PCR case open until Stacey Earle was available to testify in the matter.

An appellate court must defer to PCR judge's findings of fact and uphold the rulings if there is evidence in the record to support the same. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 1(2018); Sellner v. State, 416 S.C. 6906, 787 S.E.2d 525 (2016). Here, there was insufficient evidence in the case to support the PCR judge's findings regarding petitioner's newly discovered

evidence case, and as such said Order of Dismissal must not be upheld on appeal.

CONCLUSION

Based upon the foregoing argument, counsel for petitioner would request that the Order of Dismissal be vacated and a new hearing ordered on the entirety of petitioner's newly discovered evidence case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of July, 2024.