

RECEIVED

Jul 29 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY

Court of Common Pleas
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2022-000176

JOHNNY HAGGINS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUE ON APPEAL	1
STATEMENT OF THE CASE	2
STANDARD OF REVIEW	4
ARGUMENT.....	5
The PCR court correctly dismissed the allegations challenging Haggins’s trial in absentia without counsel when these issues could have been raised on direct appeal.	5
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<u>Brown v. State</u> , 423 S.C. 56, 925 S.E.2d 146 (2018)	8
<u>Drayton v. Evatt</u> , 312 S.C. 4, 8,430 S.E.2d 517,520 (1993)	7
<u>Fortune v. State</u> , 428 S.C. 545, 837 S.E.2d 37 (2019).....	9
<u>Gibson v. State</u> , 329 S.C. 37, 41,495 S.E.2d 426,428 (1998).....	8
<u>Hyman v. State</u> , 278 S.C. 501,502,299 S.E.2d 330,331 (1983)	8
<u>Jones v. State</u> , 440 S.C. 14, 889 S.E.2d 590 (2023).....	9
<u>Roscoe v. State</u> , 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)	7
<u>Simmons v. State</u> , 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975)	7
<u>Smalls v. State</u> , 422 S.C. 174, 810 S.E.2d 836 (2018).....	4
<u>Stepney v. State</u> , 278 S.C. 47,292 S.E.2d 41 (1982).....	7

Statutes

S.C. Code Ann. § 17-27-80.....	11
S.C. Code§ 17-27-20.....	5

STATEMENT OF THE ISSUE ON APPEAL

Whether the PCR court correctly dismissed Haggins's allegations challenging his trial in absentia without counsel where these claims were properly cognizable on direct appeal.

STATEMENT OF THE CASE

A Lee County grand jury indicted Petitioner Johnny Haggins for second degree burglary, domestic violence of a high and aggravated nature (DVHAN), assault and battery in the first degree, and conspiracy. The charges stem from Petitioner's assault on his wife (Victim).

The case was called for trial on June 4, 2018. Petitioner was represented by Kevin Etheridge, Esquire (Counsel). Petitioner did not show up for trial. The prosecutor advised the trial court he noticed Petitioner of the trial through Counsel. Counsel objected to Petitioner being tried in his absence, although Counsel admitted the State provided Counsel with notice of the trial. Counsel also outlined his considerable efforts to contact Petitioner. App. pp. 3-6. The trial court granted a continuance in the case until the following term of court and issued a bench warrant for Petitioner. App. pp. 10-14.

The prosecution called the case to trial on July 10, 2018, before the Honorable George M. McFaddin, Jr., for the charges of DVHAN and second degree burglary. The prosecution noted it mailed notice to Counsel after the June 4 hearing. Counsel moved to be relieved, advising the trial court that Petitioner failed to maintain contact with Counsel or his office. Counsel only met with Petitioner once in September 2017. The trial court relieved Counsel and informed the prosecution that it could proceed with Petitioner's trial. App. pp. 19-21.

Petitioner was convicted of both charges and Judge McFaddin sealed the sentence. On September 4, 2018, Petitioner was brought before the Honorable R.

Ferrell Cothran and the sentence was unsealed. Petitioner was sentenced to twenty years' imprisonment for DV-HAN and fifteen years' imprisonment for second degree burglary. Petitioner did not appeal the convictions and sentences.

Petitioner filed an application for relief on March 13, 2019. The Honorable Diane S. Goodstein held an evidentiary hearing via WebEx on November 17, 2021. Judge Goodstein denied relief by order dated February 10, 2022. Petitioner appealed the denial of relief and filed a petition for writ of certiorari. The supreme court transferred the case to this Court on April 14, 2023. This Court granted certiorari on January 24, 2024.

STANDARD OF REVIEW

The appellate court will defer to the PCR court's findings of fact, but reviews questions of law de novo. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

ARGUMENT

The PCR court correctly dismissed allegations challenging Haggins's trial in absentia without counsel when these issues could have been raised on direct appeal.

In this PCR action, Haggins challenges the trial court's decision to allow him to be tried in his absence and without counsel. However, these claims could and should have been raised on direct appeal as they allege trial court error. PCR does not serve as a substitute for direct appeal. This Court should affirm.

A. Issue preservation.

Haggins's claim that he was denied the right to counsel at trial is not preserved for review. In its order of dismissal, the PCR court found "[t]o the extent Applicant claims he was denied his right to counsel," he failed to present evidence to support the allegation. App. p. 180. Haggins failed to even allege in his application that he was denied the right to counsel during trial; he alleged only that he was denied the right to counsel at sentencing. App. p. 173. Haggins never moved to supplement his application, and confirmed at the evidentiary hearing he was not presenting any new allegations. App. p. 125. Accordingly, this issue is not preserved for review because it was not raised below.

B. Even if preserved, Haggins's claims regarding trial in absentia and the right to counsel are direct appeal claims not cognizable in PCR.

Petitioner alleges the PCR court erred in dismissing five claims in the PCR application as direct appeal issues. Petitioner contends an applicant may raise any constitutional issues in a PCR application. Petitioner reaches this conclusion by reading only half the statute, paragraph A of S.C. Code§ 17-27-20, but Petitioner

ignores paragraph B and well-established case law that holds PCR is not a substitute for a direct appeal.

Petitioner retained Counsel and met with Counsel once. However, the phone number he provided was disconnected and the letters Counsel sent to the address he provided were returned. Petitioner admits he moved out of his girlfriend's residence and his phone was cut off. However, Petitioner made no effort to provide Counsel new contact information. App. pp. 154-57. Petitioner was tried in his absence. Petitioner admitted that he had previous convictions and through his experience, he knew he could be tried in his absence. App. p. 139, lines 11-24.

Five of petitioner's claims in his PCR application were dismissed by the PCR court: (4) Petitioner was denied the right to be present at trial and/or sentencing; (5) the trial court erred in sentencing Petitioner in absentia when he did not have notice of his sentencing date; (7) Petitioner was denied a fair opportunity to present a defense; (8) Petitioner did not know he could be impeached with prior convictions; and (9) Petitioner did not have knowledge of a plea offer by the prosecutor. These issues were not framed as questions of ineffective assistance of counsel. Of course, for the last allegation, the reason Petitioner did not know about the prosecution's plea offer was because he did not provide his counsel any reliable contact information so counsel could not relay the offer. App. p. 157.

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

However, paragraph A is modified by section 17-27-20 (B):

This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Accordingly, free-standing claims of trial court error are not cognizable claims for post-conviction relief, and this prohibition has long been recognized. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); Drayton v. Evatt, 312 S.C. 4, 8,430 S.E.2d 517,520 (1993) ("The Simmons rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."); Stepney v. State, 278 S.C. 47,292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot

be considered on PCR application absent claims of ineffective assistance of appellate counsel).

Therefore, contrary to Petitioner's reading of the statute, a PCR applicant is not able to raise any constitutional issue in an application. An applicant "may allege constitutional violations in PCR proceedings ... unless the issue could have been raised by direct appeal." Gibson v. State, 329 S.C. 37, 41,495 S.E.2d 426,428 (1998) (citing S.C. Code§ 17-27-20) (emphasis added); Simmons, 64 S.C. at 423,215 S.E.2d at 885 ("Generally, post-conviction hearing statutes do not afford relief in the case of alleged errors for which remedies were available before and during the original trial, or by review on motion for a new trial or on appeal. These statutes were not intended to afford a procedure to operate as a substitute for a motion for a new trial, or for an appeal or writ of error; and ordinarily a judgment of conviction may not be challenged on grounds which could have been raised by a direct appeal."); Hyman v. State, 278 S.C. 501,502,299 S.E.2d 330,331 (1983) ("The appellant argues also that sentencing for both crimes violated the prohibition on double jeopardy. She made no objection on this point at trial and may present it now only to support a claim of ineffective representation, not as a separate ground for relief." (citation omitted)).

Petitioner relies on several cases to support his argument, but they are distinguishable. Brown v. State, 423 S.C. 56, 925 S.E.2d 146 (2018), merely holds someone convicted of a crime has standing to file a PCR application regardless of their custody status. It has no applicability, especially in light of the specific authority above which Petitioner has avoided in his brief. Jones v. State, 440 S.C.

14, 889 S.E.2d 590 (2023), concerned a challenge to the constitutionality of a statute raised in PCR after a guilty plea. The supreme court addressed the claim, explaining Jones could not raise the claim in direct appeal because conditional guilty pleas are not allowed. Id. at 24, 889 S.E. 2d at 595. Finally, in Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (2019), the supreme court addressed a Due Process claim based on a solicitor’s egregiously improper closing argument. The court did not overrule its extensive precedent explaining PCR is not a substitute for direct appeal. Rather, the court explained that “this is one of those cases” where PCR review of a direct appeal issue should be allowed, and noted the claim was intertwined with a claim of ineffective assistance of counsel. Id. at 559, 837 S.E.2d at 44. To the extent these cases support Haggins’s argument that his direct appeal claims are cognizable in PCR, they should be seen as outliers.

In this case, the claims referenced, 4-5 and 7-9, were all issues that could have been raised as direct appeal issues and the PCR court correctly found they were not proper for PCR. In particular, his claim regarding his right to be present at trial alleges the “trial court abused its discretion [sic] and/ or committed reversible error when trying . . . and/or sentencing defendant in absentia without giving defendant proper notice of hearing date” App. p. 172. Thus Haggins expressly alleged trial court error. As discussed above, Haggins failed to even raise the claim that he was wrongly denied counsel at trial. His claim that he was wrongly denied counsel at his sentencing alleges trial error. The PCR court did not err in dismissing the claims.

The only claim presented below that arguably raises an allegation cognizable in PCR is allegation #9, which alleges “Defendant didn’t have knowledge of plea offer by solicitor Paul M. Fata for 5 years non-violent [until] after sentenced in absentia and placed in department of corrections.” App. p. 171. However, Haggins does not make any argument regarding this allegation in his brief, and thus the issue is waived.

Even if preserved, the allegation is without merit. At the evidentiary hearing, PCR counsel elicited testimony regarding the fact that Haggins was never made aware of a plea offer made by the solicitor to defense counsel. However, neither Haggins nor PCR counsel ever explicitly argued counsel provided ineffective assistance by failing to relay the plea offer. This is likely because all the testimony showed counsel never had an opportunity to relay the offer because Haggins failed to maintain contact with him. Counsel and Haggins testified they only met once and did not discuss the facts of the case. Haggins testified he never saw discovery until after he was incarcerated. Accordingly, even if Haggins’s allegation can be read as raising a claim of ineffective assistance of counsel, he produced no evidence to support the allegation. Accordingly, the claim is without merit. However, because Haggins did not explicitly allege ineffective assistance of counsel, and because PCR counsel did not file a motion to alter or amend the order, this court should not interpret the claim as alleging ineffective assistance.

C. If this court determines Haggins’s claims are cognizable, it should remand the case.

Should this Court determine Haggins's claims are cognizable in PCR, it should remand the case to the circuit court to consider those issues. See S.C. Code Ann. § 17-27-80 ("The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."). While this Court can affirm for any reason, it should not grant Haggins a new trial without his allegations first being addressed by the PCR Court.


CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed. In the alternative, the case should be remanded for findings of fact and conclusions of law on Haggins's claims.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BY:  _____
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 29, 2024

RECEIVED

Jul 29 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY

Court of Common Pleas
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2022-000176

JOHNNY HAGGINS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Susan Spencer, certify that I have served the within Brief of Respondent on Jessica Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 29th day of July, 2024.



Susan Spencer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Susan Spencer

From: Susan Spencer
Sent: Monday, July 29, 2024 5:03 PM
To: jsaxon@sccid.sc.gov
Cc: Josh Edwards; cstock@sccid.sc
Subject: Johnny Haggins v. State of South Carolina (2022-000176)
Attachments: HAGGINS Johnny - Brief of Respondent (03648023xD2C78).PDF

Follow Up Flag: Worldox

Good Afternoon Ms. Saxon,

Please find attached the Brief of Respondent in Johnny Haggins v. State of South Carolina (2022-000176). A copy of this brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

SUSAN SPENCER, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3219 | susanspencer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov



This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.