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Aug 05 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2023-001858

TIMOTHY ROBERT HARRISON,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Whether the PCR court correctly denied relief on Harrison's claim that his lawyer unreasonably advised him to plead guilty to ABAHN after Harrison rammed a state trooper's car with his own car where the ABHAN statute does not require that the victim suffer a physical injury and where Harrison failed to show the trooper did not suffer a physical injury.

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Petitioner Timothy Harrison for ABHAN, failure to stop for a blue light resulting in great bodily injury, malicious injury to personal property, and causing great bodily injury as a habitual traffic offender. The charges stemmed from Harrison's failure to stop for a highway patrolman's signal which resulted in Harrison ramming the patrolman's car and subsequently injuring one of his own passengers. Harrison pleaded guilty before the Honorable J. Mark Hayes II, Circuit Court Judge, on May 16, 2018. Petitioner was represented by Chad Snyder, Esquire. Judge Hayes sentenced Harrison to 20 years' incarceration for ABHAN, suspended on the service of 10 years with five years' probation. He was sentenced to ten years' incarceration on the remaining charges.

Harrison did not appeal his sentence. Petitioner filed a pro se application for post-conviction relief on August 27, 2018. Petitioner was represented by counsel Rodney Richey at an evidentiary hearing held on July 16, 2019, at the Spartanburg County Courthouse before the Honorable J. Derham Cole, Circuit Court Judge. The PCR court denied relief in a written order signed November 22, 2023. Petitioner filed a petition for writ of certiorari and appendix on April 5, 2024. This return follows.

STANDARD OF REVIEW

The appellate court will defer to a PCR court's findings of fact if there is any evidence in the record to support them. Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018). However, questions of law are reviewed de novo, with no deference to trial courts. Id. The appellate court may affirm on any ground appearing in the record. Rule 220(C), SCACR.

ARGUMENT

The PCR court correctly denied relief because the crime of ABHAN does not require physical injury. Even if physical injury is an element of the crime, Harrison failed to present evidence that the trooper did not suffer an injury and thus failed to show counsel's advice to plead guilty was unreasonable or that he was prejudiced.

Harrison claims counsel provided ineffective assistance by advising him to plead guilty to ABHAN because the trooper he rammed with his vehicle did not suffer an injury. However, physical injury is not an element of ABHAN. Further, Harrison failed to present evidence that the trooper did not suffer a physical injury, and thereby failed to show deficiency or prejudice. The petition should be denied.

To obtain relief, a PCR applicant must show that his attorney's performance was deficient such that it fell below an objective standard of reasonableness. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. Id. Second, an applicant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. In the context of a guilty plea, the applicant is required to show that, but for counsel's ineffective assistance, there is a reasonable probability that he would not have pleaded guilty and instead would have insisted on going to trial. Id.

Assault and Battery of a High and Aggravated Nature is defined by statute: "A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: (a) great bodily injury

to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.” S.C. Code Ann. § 16-3-600(B)(1). The statute does not define the phrase “unlawfully injures.”

In State v. Robinson, the court of appeals explained in the context of Assault and Battery First Degree that “a physical, bodily injury is not required” to meet the elements of the crime. State v. Robinson, 437 S.C. 226, 235, 878 S.E.2d 8, 13 (Ct. App. 2022), reh'g denied (Oct. 5, 2022), cert. denied (Feb. 7, 2024). The elements of A&B 1st can be met upon a showing that “a person unlawfully . . . injures another person, and the act . . . involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent” S.C. Code Ann. § 16-3-600(C). The court examined the statute as a whole and history of the crime and determined Robinson could be convicted even though he did not cause physical bodily injury but instead made the victim “uncomfortable” while groping her. The court explained that “to require a physical, bodily injury. . . . tortures any plain reading of the statute and would severely limit the statute’s breadth.” Id. at 233, 878 S.E.2d at 11. Instead, the statute only requires 1) a legal injury and 2) one of the additional alternate elements.

The ABHAN statute is structured similarly to the A&B 1st statute and the same rationale applies. The statute requires that the defendant 1) “injures another” and 2) that either “great bodily injury results” or that the act was “accomplished by means likely to produce death or great bodily injury.” S.C. Code §16-3-600(B) (emphasis added). Because the legislature made great “bodily injury”

one of two alternate elements of the crime that applies once the State has proven an “injury,” the part of the statute that this phrase modifies—that the defendant “unlawfully injures another”—does not require a physical bodily injury. Rather, as with A&B 1st, the statute requires a legal injury—an unlawful touching—accompanied by either great “bodily” injury, or, as relevant here, that the act was done in a manner likely to cause great bodily injury. Accordingly, the evidence supported Harrison’s guilt for ABHAN based on his ramming a state trooper’s car with his own vehicle.

Even if a physical injury is required, Harrison failed to show the trooper whose car he struck was not physically injured. In a PCR action, the applicant carries the burden to prove his allegations. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Harrison could not do so without supporting his claim that the trooper suffered no injury. While the trooper did not testify at the plea hearing about an injury, he also never stated that he did not suffer any injury. A plea hearing is not an evidentiary hearing, and it is not surprising that there was no testimony clarifying whether the trooper suffered an injury. This underscores the limited nature of PCR claims in the context of guilty pleas and the need for a PCR applicant to support his allegations with factual proof at an evidentiary hearing. Harrison failed to do so as he did not call the trooper to testify or offer any other evidence showing the trooper did not suffer an injury. Given the facts, it is reasonable to believe the trooper suffered some sort of injury, even if only a mild one. But the record is silent as to the trooper’s injuries because Harrison failed to

provide evidence to support his allegations. He therefore cannot show deficiency or prejudice. Certiorari should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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August 5, 2024