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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO JASPER COUNTY
Carmen T. Mullen, Trial Judge
Roger M. Young, Sr., PCR Judge

Appellate Case No. 2023-001386

ANEISHA YOUNG,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner's Question

Whether the PCR court erred in finding trial counsel was not ineffective where the Court of Appeals found on direct appeal counsel failed to preserve for appellate review the erroneous admission of multiple text messages at trial?

Respondent's Counterstatement of Question

Did the PCR court properly find Petitioner did not prove counsel was ineffective for not objecting to the text messages based on Rule 403 when it is not reasonably probable a more specific Rule 403 objection would have changed the outcome of Petitioner's trial or appeal, and counsel raised several viable objections to the text messages, making his performance reasonable under prevailing professional norm and not deficient?

STATEMENT OF THE CASE

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections serving a cumulative forty-year sentence. In October 2016, the Jasper County Grand Jury indicted Petitioner for murder (2016-GS-27-00241), attempted murder (-00251), and possession of a weapon during the commission of a violent crime (-00569). On March 12-15, 2018, Petitioner proceeded to a jury trial before the Honorable Carmen T. Mullen. Stephen T. Plexico, Esquire, represented Petitioner. Assistant Solicitors Brian Hollen, Patrick Hall, and Lynnor Musser prosecuted the case. The jury convicted Petitioner as indicated, and Judge Mullen sentenced her to thirty years for murder, a consecutive ten-year sentence for attempted murder, and a concurrent five-year sentence for the weapon charge.

Petitioner filed a timely notice of appeal, which was perfected by Appellate Defender Robert M. Dudek. On appeal, Petitioner argued (1) she was deprived due process when the State notified her on the third day of trial that Debbie Spann would testify as a jailhouse snitch; (2) the trial court erred in allowing text messages through a business custodian that were not trustworthy and were unduly prejudicial and confusing; and (3) the trial court erred in qualifying Eric Grabski as an expert in cell phone location data analysis. The Court of Appeals affirmed. See State v. Young, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. 2021). The remittitur was sent February 17, 2021.

On January 31, 202, Petitioner filed an application for post-conviction relief (PCR) alleging *inter alia* that counsel was ineffective for "failing to make proper objections." Thereafter, Petitioner filed an amended application alleging *inter alia* that counsel was ineffective for not objecting to text messages entered by the State based on undue prejudice. On July 31, 2023, a PCR hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and

represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. On August 25, 2023, Judge Young issued an order denying relief.

Summary of Trial Testimony

On April 30, 2016, law enforcement responded to a 911 call placed by Wrenshad Anderson and found Anderson and his brother, Devonte Freeman, behind a fast-food restaurant. Freeman had been shot in the back of his head and later passed away. (App. 35-36). Although Anderson initially told law enforcement that "Peanut" (Eric Darien) and "Dre" (Keandre Frazier) were the perpetrators, he also mentioned while at the scene that Petitioner was involved. Anderson gave investigators the contact numbers for Darien, Frazier, and Petitioner. (App. 37-38, 41).

Keith Horton, the property manager of the nearby Siesta Hotel, testified he knew Freeman as someone who hung out around the hotel. (App. 120-21). Horton testified he received a call from a female caller with a blocked number at approximately 11:00 pm the evening of the shooting informing him that Freeman—who was on trespass notice—was on the property. (App. 121-22). Horton went to the hotel and spoke to Freeman, who agreed to leave. (App. 124-25). Horton testified Petitioner approached him at the hotel, told him where Freeman was, and left with one or two other men just before Freman and Anderson left. (App. 123-25).

Bernard Seabrooks testified that Freeman and Anderson were hanging out in his room at the Siesta the night of the shooting. He recalled seeing Darien that evening as well. (App. 232-35). Likewise, Cedric Riley recalled seeing Freeman and Darien at the Siesta that evening. (App. 248-50). He testified Darien had on a black shirt and was initially wearing green pants but later changed into black pants. (App. 249-50). Riley testified Petitioner went to the hotel that night to pick up Darien; she was wearing a black shirt and black or gray shorts. (App. 250-53).

Demitria Williams, who was pregnant with Freeman's child, recalled an incident a few

weeks before the shooting where Petitioner forced her way inside Williams and Freeman's home, accused Freeman of taking her money, and said she was going to kill Freeman. (App. 102-04).

Anderson testified that shortly before the shooting, he and Darien had a disagreement. (App. 154-55). Similarly, he stated Freeman and Petitioner had recently fought over money. Anderson testified that on the day of the shooting, Freeman was hanging out in a friend's room at the Siesta hotel. (App. 156). Anderson met Freeman at the hotel and ran into Darien, who flashed a gun at Anderson. (App. 156). Anderson testified Petitioner was also in the hotel room, which was unusual because she did not usually hang out there. (App. 157-58). Anderson stated Petitioner was wearing all black. (App. 158). He testified he planned to stay at the Siesta until the property manager asked Freeman to leave. (App. 159-60). Anderson testified he felt funny and sensed something was off as he and Freeman walked away from the hotel. (App. 160).

Anderson testified they were walking on a nearby path and heard leaves rustling followed by gunshots; they started running, but Freeman was hit by gunfire. (App. 161-62). Anderson testified he saw two figures in all black. (App. 170). He testified he called Darien after the shooting, but Darien claimed to be in the "country." (App. 175). Anderson said Petitioner repeatedly contacted him the next day, denying her involvement. (App. 175).

Lieutenant Daniel Litchfield testified he located both .9 millimeter and .22 caliber shell casings at the scene. (App. 211-21, 225). He also interviewed witnesses who confirmed Frazier was playing cards at the Siesta when the shooting occurred. (App. 229-30). Lieutenant Litchfield stated Petitioner provided a statement, but Lieutenant Litchfield could not confirm her alibi. (App. 235). He stated he obtained search warrants for Petitioner's and Darien's phones. (App. 235-36).

At trial, the State sought to introduce text messages to and from Petitioner's phone; some of the messages were between Petitioner's phone and co-defendant Darien's phone, and some were

between Petitioner's phone and unidentified numbers. Counsel objected, arguing the messages lacked trustworthiness and were not admissible as business records. (App. 451, 463). Counsel also argued the texts were unduly prejudicial. (App. 452). The Court held an in-camera hearing on the admissibility of the texts and concluded some were probative for impeaching Petitioner's statement to law enforcement that she wasn't texting Darien and others were probative to show Petitioner did not deny committing the murder. The trial court allowed the text messages over objection. (App. 454-65). Thereafter, the State entered the following text messages:

Yo call me asap.
Come on sis.
Shawty be trippin. What's dey move?
You good bro?
Yea.

***

I see you hitting n****s what the fire. Welcome to the family fool.
WITNESS.

Already . . . . delete this text NOW. Who told you?

***

Mimi just hmu talking bout you told her I did that sh** . . . smh

***

Not around kuzzo.
Wyd
On my way to NC
Why?
Chillout for uh minute.

***

Mane I ain't gone lie bruh I been hiding out they tryna pin me to this "M" delete this.

***

What's your email?

*****@gmail.com

(Tr. 469-75).

The State also called an expert who mapped the location of towers used by the phone. (App. 369, 556-573). According to the mapping testimony, Petitioner's cell phone used the cell tower nearest to the crime scene between 10:53 pm and 12:34 am the night of the murder, and thereafter the phone travelled southward on Interstate 95. (App. 369). This contradicted Young's statements to police about her location that night. (App. 372).

Finally, the State presented testimony from "jailhouse snitches" Marie Powell and Debbie Spann. Both generally testified they were detained with Petitioner, and Petitioner admitted to killing Freeman. (App. 387-89, 392, 394, 428). Both also relayed that Petitioner wanted to have Freeman killed. (App. 396-97, 431). The State rested after Spann's testimony. Petitioner did not testify or present any witnesses at trial.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law are reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court properly found Petitioner did not prove counsel was ineffective for not objecting to the text messages based on Rule 403 when it is not reasonably probable a more specific Rule 403 objection would have changed the outcome of Petitioner's trial or appeal, and counsel raised several viable objections to the text messages, making his performance reasonable under prevailing professional norm and not deficient.

Petitioner contends the PCR court erred in finding Petitioner did not prove trial counsel was ineffective when the Court of Appeals found counsel did not preserve for appellate review the alleged erroneous admission of multiple text messages at trial. He further contends he was prejudiced by this deficiency because the texts messages were more prejudicial than probative. However, based on the analysis of the text messages conducted by the trial court, it is not reasonably probable a more specific Rule 403 objection would have excluded them. Further, because the probative value of the text messages outweighs the prejudicial effect, it is not reasonably probable the Court of Appeals would have determined the trial court abused its discretion in allowing these messages had the argument raised to the Court of Appeals been properly preserved. Finally, counsel raised several viable objections to the text messages, making his performance reasonable under prevailing professional norms and not deficient.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C.

at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

A. The PCR court properly found it is not reasonably probable a more specific Rule 403 objection would have changed the outcome of Petitioner's trial or appeal.

Petitioner's argument is premised on the fact the Court of Appeals found counsel did not preserve the Rule 403 argument regarding the text messages that was raised on appeal. However, to prove ineffectiveness, Petitioner must prove both deficiency and prejudice. Here, Petitioner did not show by a reasonable probability that the text messages would have been excluded had counsel raised a more specific objection under Rule 403. Likewise, it is not reasonably probable the Court

of Appeals would have reversed based on Rule 403 had the appellate argument been preserved. Thus, the PCR court properly found Petitioner did not prove prejudice.

At trial, counsel raised several objections to the text messages, and the trial court held a lengthy in-camera hearing where it considered the texts and the reasons the State sought to introduce them. The trial court found some of the messages were probative for impeaching Petitioner's statement to law enforcement and others were probative because they did not contain denials to allegations that Petitioner was involved in the murder. Ultimately, the trial court *did* engage in an analysis of the admissibility of the text messages and considered their probative value. Thus, the PCR court properly found it is not reasonably probable that (1) the trial court would have excluded the messages had counsel raised a more specific objection under Rule 403 or (2) the Court of Appeals would have reversed this issue on appeal.

Petitioner's reliance on State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) is misplaced. In King, the South Carolina Supreme Court found the trial court abused its discretion in entering into evidence a fifteen-minute jail call placed by the defendant. Pertinently, the Court noted the trial court "adamantly" refused to listen to the phone call before ruling on its admissibility—and thus could not have exercised any discretion under Rule 403. Further, the Court found the call was "riddled with profanity, racial slurs, and references to prior bad acts," and the probative value of the call was thus outweighed by the danger of unfair prejudice. However, the Court found the admission of the call was harmless, in part because the call itself was difficult to understand.

Unlike the King court, the trial court here held a lengthy in-camera hearing where it considered the texts messages. Likewise, unlike the fifteen-minute phone call in King, the text messages here were not riddled with vulgarity or racial slurs. Of the seventeen messages introduced, only one contained profanity and only one contained a racial slur. These two messages,

however, were probative for showing Applicant did not deny the murders. Although these two messages contained one racial slur and one instance of profanity, the PCR Court properly found the prejudicial nature of the profanity and racial slur did not outweigh the probative value of the texts, and it was thus not reasonably probable (1) the messages would have been excluded had counsel more specifically objected under Rule 403 or (2) the Court of Appeals would have reversed on this issue had it been properly preserved.

B. The PCR court properly found Petitioner did not prove deficiency when counsel raised several viable objections to the text messages, making his performance reasonable under prevailing professional norms.

Here, trial counsel did object to the text messages based on undue prejudice, although the Court of Appeals found the Rule 403 objection raised at trial was not the same argument raised on appeal. (Tr. 452). Counsel also objected to the texts as hearsay, but the court admitted them over objection. Overall, although counsel did not make the specific argument raised in the appellate brief, counsel's performance at trial was reasonable under prevailing professional norms and not deficient. Notably, Petitioner has not set forth a more compelling argument to the text messages that counsel should have raised that would have reasonably changed the outcome. At the PCR hearing, Petitioner's allegations related to the text messages was vague and not specific. For example, Petitioner did not cite to any specific text message that should have been excluded based on undue prejudice but rather generally argued all of them should have been excluded. Ultimately, Petitioner failed to overcome the presumption that counsel's performance in this regard fell within prevailing professional norms and thus did not prove deficiency.

CONCLUSION

Based on the foregoing, this Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully Submitted,

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This 13th day of September, 2024.