

STATE OF SOUTH CAROLINA
In The Supreme Court

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Sep 23 2024

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Roger L. Couch, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-000216

CARNIE NORRIS,

Petitioner,

v.

THE STATE,

Respondent.

AMENDED RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

- I. Whether the court of appeals correctly reversed the PCR court's grant of relief where Norris claimed counsel was ineffective for failing to object to impeachment with prior convictions but the Robinson factors weighed heavily in favor of impeachment and the trial court would not have abused its discretion by allowing impeachment.
- II. Whether the State timely served its 59(e) motion, vesting the appellate court with jurisdiction.

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Petitioner Carnie Norris for armed robbery. Norris proceeded to jury trial before the Honorable J. Derham Cole, Circuit Court Judge, on July 6–7, 2009. Petitioner was represented by Beverly Jones, Esquire. Norris was convicted and sentenced to 28 years' imprisonment.

Petitioner's appeal was dismissed after an Anders brief was filed by appellate counsel Katherine H. Hudgins, Esquire. See Anders v. California, 386 U.S. 738 (1967). The remittitur was issued on June 19, 2012. Petitioner filed an application for post-conviction relief on November 7, 2012. An evidentiary hearing was held on September 15, 2014, at the Spartanburg County Courthouse before the Honorable Roger L. Couch, Circuit Court Judge. Brandt Rucker, Esquire, represented Petitioner.

The PCR court granted relief in a written order on September 6, 2017. The PCR court held trial counsel provided ineffective assistance because she did not object to impeachment with Norris's prior convictions for second-degree burglary and common law robbery. (App. 225–28, 498–512). The State served a 59(e) motion to alter or amend the order on opposing counsel on September 12, 2017. (Supp. App. 112). The State mailed a copy to the Spartanburg County Clerk of Court on that same day, but the filing was "returned" because it listed an incorrect case number. (Supp. App. 113). The State mailed a corrected copy to opposing counsel and the clerk of court on September 19, 2017. (App. 523). Judge Couch denied the State's motion by order filed February 15, 2019. (App. 526).

The State filed a petition for writ of certiorari and appendix on September 20, 2019. This Court transferred the matter to the South Carolina Court of Appeals on February 18, 2020, and the Court of Appeals granted certiorari on August 19, 2022. After briefing and oral argument, the Court of Appeals reversed the PCR court's order in an unpublished opinion. Norris v. State, Opinion No. 2023-UP-406 (S.C. Ct. App. Filed Dec. 20, 2023). Norris filed a petition for writ of certiorari on February 16, 2024, and the State filed a return. Norris filed a motion to amend his petition on July 15, 2024, and the State filed a return on July 25. This Court granted the motion to amend, and Norris filed an amended petition on September 18, 2024. This amended 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.

ARGUMENT

- I. **The PCR court erred as a matter of law in its analysis of the impeachment value of Norris's prior convictions, and the Court of Appeals correctly reversed the grant of relief because impeachment was proper.**

The PCR court committed multiple errors of law when analyzing Norris's impeachment with prior convictions, failing to apply the law as explained by this Court in State v. Robinson, 426 S.C. 579, 828 S.E.2d 203 (2019). The Court of Appeals correctly reversed. Norris was not prejudiced by counsel's failure to object because impeachment was proper. Certiorari should be denied.

Norris was on trial for armed robbery. The State alleged Norris and a co-defendant approached a group of teenagers as the teens were playing a nighttime game of frisbee golf. Several of the group identified Norris at trial as the person who pushed Andrew Bonds to the ground, held him at knifepoint while claiming to be a security guard, and stole items from his wallet. (App. 113–20, 144–47, 169–76). Police responded quickly and observed Norris walking away from the group. Police recovered a knife from Norris's person and some of Bonds's financial cards from the codefendant. (App.187–91). Norris claimed he thought the boys were attempting to break into a church building by the frisbee golf course and that he was not robbing Bonds. (App.210–13).

Norris testified at trial. Trial counsel did not oppose impeachment with two prior convictions: an October 12, 1995, conviction for second-degree burglary, non-violent; and a January 17, 1996, conviction for common law robbery. (App. 225-28). Norris was sentenced to imprisonment for these crimes and was released on parole

on January 29, 2004. (App. 534). Thus, the convictions were within ten years' of the trial of this case for purposes of Rule 609(b), SCRE (providing evidence of prior convictions is "not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.") (emphasis added).

However, the PCR court failed to correctly apply Rule 609(b), holding the date of the convictions, not the date of release from incarceration, was the pertinent date for purposes of the "point in time" factor of State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) (explaining factors courts should consider in assessing impeachment value of prior convictions). (App. 507–08). Thus, the PCR court viewed the time that elapsed between conviction and impeachment as 12 or 13 years instead of 5 years. The Court of Appeals correctly held this was error. This error of law tainted the remainder of the PCR court's analysis. The date of release, not the date of conviction, is important because it is this time period which tends to show a continuing disregard for the law.

The PCR court made several other errors of law in its analysis of the Colf factors. It cited State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), for the proposition that convictions for robbery and burglary are "not probative of truthfulness." (App.507). But as this Court explained in Robinson, just because

robbery and burglary are not “crimes of dishonesty” under Rule 609(a), SCRE, and thus automatically admissible, does not mean they have no impeachment value. Robinson, 426 S.C. at 599, 828 S.E.2d at 213. If this was true, “no convictions would ever have impeachment value under Rule 609 unless they were crimes of dishonesty or false statement admitted under Rule 609(a)(2). Rule 609(a)(2) would inevitably swallow Rule 609(a)(1).” Id. The PCR court failed to recognize any impeachment value in Norris’s prior convictions for common law burglary and second-degree robbery, even though these convictions for serious crimes showed Norris’s history of total disregard for the law. This affected his credibility and weighed heavily in favor of impeachment.

The fourth Colf factor is the centrality of credibility to the case. Colf, 337 S.C. at 627, 525 S.E.2d at 248. The PCR court misapplied this factor as well. It held the importance of credibility to the case weighed against impeachment. But as this Court explained in Robinson, the more important a witness’s credibility is to the case, the more important it is to allow impeachment. Robinson, 426 S.C. 579, 828 S.E.2d 217 (2019) (explaining “when credibility is central to a case, the introduction of prior convictions for impeachment purposes becomes even more legitimate.”). The PCR court committed another error of law by misapplying this factor.

The final Colf factor is the importance of the defendant’s testimony. Colf, 337 S.C. at 627, 525 S.E.2d at 248. The PCR court did not analyze this factor, and thus its balancing of the Colf factors was incomplete. (App. 508). However, Norris’s

testimony was not necessary to his defense. His codefendant testified before him and essentially presented Norris's version of events to the jury. Norris's testimony was gratuitous. Robinson, 426 S.C. at 603, 828 S.E.2d at 216 (noting defendant's "testimony was largely cumulative to that of other witnesses").

Because a proper analysis of the Colf factors shows Norris's prior convictions were admissible for impeachment, Norris failed to show prejudice from counsel's failure to object. The PCR court found that if "trial counsel had opposed the introduction of the two prior convictions, it is more likely than not that the trial judge would have excluded the use of those convictions." (App. 509). This was error in two ways. First, to show prejudice, Norris was required to show the trial court would have abused its discretion by allowing impeachment. See Wolfe v. State, 326 S.C. 158, 163, 485 S.E.2d 367, 370 (1997) (in context of plea counsel's failure to move for continuance, applicant was required to demonstrate the trial court "would have abused its discretion in refusing to grant a continuance motion"). Because impeachment was proper under the rules, the trial court would not have abused its discretion by allowing impeachment, even if counsel had objected. Second, the finding of prejudice was a consequence of the PCR court's erroneous 609(b) analysis, and thus rests on legal error.

Norris attempts to portray the PCR court's findings regarding prejudice as factual in nature, but they are legal conclusions. (Petitioner's issue #2). The Strickland "reasonable probability" prejudice analysis presents a question of law, which the appellate court reviews de novo unless it rests upon credibility findings or

other determinations of historical fact. The admissibility of prior convictions for impeachment purposes in this case was a question of law, and thus the appellate court owed no deference to the PCR court. Regardless, the PCR court's prejudice finding was a product of its erroneous 609(b) analysis. The Court of Appeals correctly reversed.

Furthermore, this issue is not worthy of certiorari because this Court recently explained the relevant law in Robinson. There is nothing new for this Court to explain; the PCR court simply misapplied the law, and the court of appeals corrected the error in an unpublished opinion. Certiorari should be denied.

II. The State timely served its 59(e) motion.

In his amended petition, Norris alleges the appellate court was without jurisdiction to entertain the State's appeal because the State did not timely file its 59(e) motion, making the notice of appeal untimely. Norris admits the State served its motion on opposing counsel within the ten-day window provided by rule. However, he claims the State is barred from asserting this undisputed fact because it did not make that argument in a filing in Norris's ongoing federal habeas case. This argument is without merit.

The State perfected service of its Rule 59(e) motion by mailing it to Norris's PCR counsel on September 12, 2017, the same day it mailed the motion to the Spartanburg County Clerk of Court. (Supp. App. 101, 112). See Rule 5, SCRPC ("Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. . . . Service by mail is

complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.”) (emphasis added). Because the motion was mailed on September 12, it was served within the 10-day window required by rule. See Rule 59(e), SCRPC. (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”) (emphasis added).

The motion was also mailed to the clerk of court on September 12, 2017. See Rule 5(d), SCRPC (“All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof.”). Even though the clerk of court returned the State’s motion because the caption listed the wrong docket number, the filing “was complete upon the clerk of court’s receipt of the application.” Barnes v. State, 433 S.C. 399, 403, 859 S.E.2d 260, 262 (2021). The scrivener’s error did not make the filing untimely. Clerks of court have a “ministerial duty to docket filings irrespective of potential procedural flaws that may exist.” Id. at 404, 859 S.E.2d at 261. Regardless, the State re-filed the motion on September 19, 2017. Had PCR counsel objected, the PCR court could still have considered the motion. See Rule 5(d), SCRPC (“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court’s own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.”) (emphasis added). However, the issue here is whether the motion was timely served, as Rule 59(e) requires. It was.

Norris claims the State is estopped from asserting timeliness because the issue was “determined by a valid and final judgment” in his federal habeas case. Norris refers to an order denying his motion to alter or amend a previous federal district court order denying the State’s motion to dismiss Norris’s ongoing habeas case. In a previous order, the district court expressed concern that the 59(e) order filed in Norris’s PCR case was not timely and requested the parties to brief the issue. The State responded by arguing the timeliness issue was a question of state law not cognizable in a federal habeas case.

While acknowledging that questions regarding the timeliness of the State’s appeal would be a state law/state court matter and being aware that Norris’s request for further review was pending in this Court, the district court directed that Norris’s state appellate “counsel should ensure these timeliness argument[s] are presented to the South Carolina Supreme Court immediately and without delay” because “the timeliness questions presented by Norris here are a determination for the South Carolina Supreme Court to make in the first instance.” (Supp. App. 97). Thus the federal court did not issue a final judgment on the claim, and instead directed Norris to raise the issue in this Court.

The order denying Norris’s motion to amend its previous order staying the case was not a final judgment and does not implicate the collateral estoppel doctrine. See State v. Hewins, 409 S.C. 93, 107, 760 S.E.2d 814, 821 (2014). As explained above, the motion was timely served. Thus even if collateral estoppel was at play, application of the doctrine would not be appropriate in this case. Id. at 106,

760 S.E.2d at 821 (explaining “even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it”).

Norris does not explain why his PCR appellate counsel was directed to raise the issue to this court if the matter was already determined by the federal court. Federal courts sitting in habeas do not normally have authority to rule on matters of state law. See 28 U.S.C. § 2254 (a) (restricting review to assertions prisoner “is in custody in violation of the Constitution or laws or treaties of the United States”); Estelle v. McGuire, 502 U.S. 62, 67–68 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.”). The more logical reading is that the district court expressed concern there may be a dispositive jurisdictional issue and the state court should have an opportunity look at the issue and make its own determination.

Furthermore, Norris never raised the estoppel argument to the circuit court or court of appeals at any time. See Rule 242, SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”); Rule 208(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); Norton v. Opening Break of Aiken, Inc., 319 S.C. 469, 470, 462 S.E.2d 861, 862 (1995) (“Opening Break failed to raise this argument to the Court of Appeals, however, and consequently we decline to address it.”); State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021) (“In order for an

issue to be preserved for appellate review, a party must make a ‘contemporaneous objection that is ruled upon by the trial court.’”). Because Norris failed to properly raise this argument below, the issue is not preserved for this Court’s review.

The State timely served its Rule 59(e) motion, and this issue is meritless. 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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