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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-001459

RISHAWN REEDER,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUE ON CERTIORARI1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT.....4

I. Reeder failed to produce any evidence of fraud by his
arresting officer and the PCR court correctly denied
relief.....4

II. Reeder failed to provide the PCR court with a copy of
his 59(e) motion as required by rule and the PCR
court correctly denied the motion.....9

CONCLUSION10

STATEMENT OF ISSUES ON CERTIORARI

- I. Whether Reeder produced after-discovered evidence of fraud by his arresting officer sufficient to show a reasonable likelihood of a different result at trial.
- II. Whether the PCR court correctly denied Reeder's 59(e) motion where Reeder failed to serve his motion upon the court as required by rule.

STATEMENT OF THE CASE

This is Rishawn Reeder's second PCR application. He was convicted in a Spartanburg County jury trial of murder, assault with intent to kill, and assault and battery with intent to kill. Reeder's direct appeal was dismissed for failure to file a brief or order the trial transcript. He filed his first PCR application in 2012, raising allegations of prosecutorial misconduct and ineffective assistance of counsel. The Honorable R. Keith Kelly denied relief. Through counsel, Reeder filed a petition for writ of certiorari raising three allegations of ineffective assistance of counsel. The petition was denied on November 16, 2016. Reeder initiated a federal habeas action in 2017, which was dismissed. Reeder's appeal to the Fourth Circuit Court of Appeals was dismissed and his petition for certiorari to the United States Supreme Court was denied.

He filed the current PCR action in 2019, alleging newly discovered evidence that "Investigator Lorin Williams was fired amid allegations of fraud." App. 658. The State's motion to dismiss was denied. An evidentiary hearing was held before the Honorable Brian Gibbons, Circuit Court Judge, on February 16, 2023. Reeder proceeded pro se. The PCR court denied relief in a written order on March 10, 2023. Reeder served a 59(e) motion on the State and filed the motion with the clerk of court, but did not provide a copy to the PCR court as required by rule. The PCR court denied the motion on August 24, 2023. Through appointed counsel, Reeder filed a petition for certiorari on April 22, 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.

ARGUMENT

I. Reeder failed to produce any evidence of fraud by his arresting officer and the PCR court correctly denied relief.

Reeder claims—without evidence—that the lead investigator in his case “purposefully withheld” information from the magistrate in order to procure his arrest warrant, and that there was not probable cause to arrest him. Reeder’s successive PCR action is premised on alleged newly discovered evidence of misconduct, but Reeder failed to produce any such evidence and instead makes arguments about defects in his arrest warrant that were previously available to him. Reeder challenges the probable cause determination in his arrest warrant, a direct appeal issue, despite the fact that he was subsequently indicted by a grand jury and convicted at trial. He attempts to show prejudice by claiming he could not have been at the scene of the crime based on time stamps on surveillance videos produced at trial, but he failed to present evidence to prove this claim. He ignores other evidence conclusively showing he was in fact at the scene. The PCR court correctly rejected his improper attempt to relitigate a direct appeal issue with unsupported allegations of misconduct in this successive PCR action. Certiorari should be denied.

S.C. Code Ann. § 17-27-45 (C) provides: “If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the

applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.” To obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since 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. Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014).

Reeder’s claim is premised on alleged newly-discovered evidence of misconduct by the lead investigator. But Reeder failed to produce any evidence of “fraud” or misconduct by Investigator Williams, much less any misconduct in the investigation of this case. Citations to the record of this alleged misconduct are conspicuously absent from Reeder’s petition. Thus this PCR application should be considered successive and procedurally barred. See Robertson v. State, 418 S.C. 505, 514, 795 S.E.2d 29, 33 (2016); S.C. Code Ann. § 17-27-90 (“All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.”).

Reeder claims the investigator “more likely than not” withheld evidence from the magistrate who issued his arrest warrant. Reeder’s purported proof of this “fraud” is that the surveillance video capturing the commission of this crime is timestamped at 3:54:01 through 3:54:35 a.m., but the hospital surveillance video “shows Petitioner entering the hospital at approximately 3:55 in the morning”

Petition at 11. Reeder claims, without citation to the record, that the “distance between the location of the shooting and Spartanburg Regional is approximately five miles. That simply is not a distance that could be travelled in mere seconds.”

Petition at 11. Reeder claims this is “highly exculpatory evidence” and claims it shows it is “more likely than not” that the investigator “did not present the magistrate with the totality of the circumstances but instead purposefully withheld information from the magistrate in violation of Petitioner’s right to due process.”

Petition at 12.

Reeder failed to prove Investigator Williams withheld any information from the magistrate who issued his arrest warrant, much less that he purposefully did so. He did not call Williams or the magistrate as witnesses at the PCR evidentiary hearing, and thus there is no evidence in the record as to what information was supposedly withheld. Hence the weak and speculative assertion that it is “more likely than not” that Investigator Williams “purposefully withheld information” from the magistrate. Reeder complains about the conclusory affidavit while implicitly acknowledging the sufficiency of the affidavit is a direct appeal issue.

During Reeder's pro se summation at the evidentiary hearing, he essentially attempted to re-argue the weight of the evidence presented at trial. App. 632-37.

Further, Reeder failed to show the alleged improper arrest warrant would have affected the result of his trial. Given the fact the Reeder was subsequently indicted by a grand jury and convicted at trial, there was obviously probable cause for his arrest. The evidence overwhelmingly showed Reeder was in the car from which shots were fired at the victims. Reeder himself was shot and covered in gunshot residue. He arrived at the hospital with his codefendant, who was also shot and covered in gunshot residue.

His claim otherwise is based solely on the time stamps on the surveillance videos. Reeder claims he could not have travelled from the incident location to the hospital between 3:54:53 at "approximately" 3:50:00. Reeder presented testimony from Gary Foster, who was "familiar with working at the security department" at the hospital. He testified that he has not "ever known anything about the security system [timestamps] being off." App. 618. However, he also testified he was not even working at the hospital in 2009 and had no personal knowledge of the facts of this case or the accuracy of the timestamps on surveillance videos from 2009. Reeder did not present any expert witness to prove the timestamps were precise such that they could be relied upon to disprove the obvious evidence that Reeder participated in this shooting. Reeder failed to produce any evidence at the PCR hearing about the distance between the two locations. Nor did he explain how he was shot or why he arrived contemporaneously at the hospital with an individual

identified by a victim as the shooter and the person with whom he argued on the night of the shooting. Reeder did not seriously contest at trial that he was present at the scene. App. 414–21. Reeder did not even bring up the timestamps in his summation to the PCR court. App. 647–49. The PCR court correctly denied relief. Certiorari should be denied.

II. Reeder failed to provide the PCR court with a copy of his 59(e) motion as required by rule and the PCR court correctly denied the motion.

Reeder failed to provide the court with a copy of his 59(e) motion to alter or amend the order denying relief as required by rule. See Rule 59(g), SCRCPP (“A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.”). The proof of service shows Reeder served the motion on the State and clerk of court, but did not provide a copy to the PCR court. App. 702. The PCR court correctly denied Reeder’s motion on this basis. See Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017) (“The trial court properly denied Smith's motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing.”).

Further, the issues raised in the motion are manifestly without merit. Reeder’s allegation regarding counsel’s failure to present an alibi witness is not based on newly discovered evidence. This issue could have been presented in Reeder’s prior PCR application and is thus procedurally barred. Further, Reeder did not present evidence to support the allegation at the PCR hearing. Finally, the PCR court was aware of the allegation regarding alibi witnesses and addressed this allegation in its order. App. 658. The PCR held Reeder did not produce any newly discovered evidence on any of his claims beyond “unsubstantiated blanket allegations” App. 659. Thus the court did address each allegation. 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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