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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Anderson County
Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2024-000153

GERALD A. GADSDEN,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE

Whether the PCR court properly found that counsel was not ineffective for failing to request Petitioner be evaluated for competency where Counsel reasonably relied on his perceptions of Petitioner's competency.

STATEMENT OF THE CASE

Petitioner Gerald Gadsden was indicted by an Anderson County Grand Jury in September of 2016 for murder and possession of a weapon during the commission of a violent crime. He proceeded to a plea hearing on January 8, 2020, before the Honorable J. Cordell Maddox, Jr., circuit court judge. Petitioner pled guilty, pursuant to Alford, to voluntary manslaughter. Petitioner was sentenced to twenty years' incarceration, to be served concurrently with an unrelated life without parole sentence. Petitioner's appeal was dismissed due to Counsel's failure to inform Petitioner of any issues preserved for appeal. Petitioner filed an application for post-conviction relief on December 10, 2020. His PCR hearing was held on November 30, 2022, before the Honorable Perry H. Gravely. Petitioner was granted belated appellate review pursuant to White v. State. The remainder of Petitioner's application was dismissed with prejudice. This appeal follows.

STATEMENT OF FACTS

Petitioner was previously diagnosed with schizophrenia and bipolar disorder. (App'x 3). Prior to this offense, Petitioner was convicted of an unrelated offense in Greenville County and was sentenced to life without parole. (App'x 14). During those proceedings, Petitioner was found incompetent but was later determined to have had his competency restored. (App'x 14).

At the plea hearing, the State explained that on April 18th of 2016 officers were dispatched to H Street in Anderson County. (App'x 13). When they arrived at the scene, a victim was lying in the roadway next to a vehicle with a gunshot wound to the head. (App'x 13). Petitioner ran from the scene and called his bondsman to whom he confessed. (App'x 13). Witnesses at the scene identified Petitioner. (App'x 13). Petitioner was arrested shortly thereafter. (App'x 13).

Counsel informed the court that Petitioner's prior competency evaluations were done during his prior case and Counsel had no reason to believe Petitioner had relapsed back into incompetency. (App'x 14). Petitioner confirmed he understood the offense of voluntary manslaughter and had adequate time to speak with his attorney. (App'x 4-5). Petitioner informed the judge he had been released from MUSC mental institution seventy-two hours before the incident. (App'x 6). Petitioner's plea counsel stated he knew of no reason to believe Petitioner had relapsed into incompetence. (App'x 6). Petitioner informed the court that he was not in his right mind during the incident. Subsequently, he pled guilty pursuant to North Carolina v. Alford. (App'x 16). The court noted that Petitioner seemed to understand what was going on that there had been several long discussions about the case. (App'x 16).

Subsequently, Petitioner filed a timely notice of appeal. (App'x 18). On March 10, 2020, the Court of Appeals requested Counsel forward a guilty plea explanation to Applicant and notify

Petitioner of any arguable basis for appeal. (App'x 22-8). Counsel failed to do so resulting in the dismissal of the appeal. (App'x 34). Subsequently, Petitioner filed an application for post-conviction relief. (App'x 36).

First, Petitioner claimed counsel was ineffective for not requesting an evaluation to show Appellant was incompetent to enter a plea. (App'x 64). The Court found Applicant was not on medication at the time of the plea hearing but had previously been on medication. (App'x 134). The court found Counsel believed Petitioner was competent at the time of the plea hearing. (App'x 131). The court found Petitioner understood that he pled guilty to voluntary manslaughter with a recommendation for a twenty years' incarceration to be served concurrently to his life without parole sentence. (App'x 134). The PCR court found Counsel was not ineffective because he reasonably relied on the fact that Petitioner's competency had been restored and perceived him to be competent at the time of the plea. (App'x 135).

Next, Appellant claimed that he was denied effective assistance of counsel for Counsel's inability to perfect his appeal. (App'x 137). The court relied on the fact that the State conceded[1] that Petitioner did not knowingly and voluntarily waive his appeal. (App'x 138). The PCR court agreed and found Petitioner was entitled to a belated appeal pursuant to White v. State. (App'x 138).

[1] In light of this concession, the State does not contest the grant of belated appellate review.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's finding of fact and will uphold them if there is any evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed de novo without deference to the lower court. Id.

ARGUMENT

The PCR court properly found that counsel was not ineffective for failing to move for Petitioner to be evaluated for competency because he reasonably relied on his perceptions of Petitioner's competency.

The PCR court properly denied relief because Counsel was within the range of competence in not requesting a mental health evaluation. Petitioner's competency was restored, Counsel testified Petitioner seemed competent at the plea hearing, and the court noted it seemed as if Petitioner understood what was happening. Given these facts, the PCR court properly found Counsel reasonably relied on his perception of Petitioner in making his determination to not requesting yet another evaluation. Accordingly, the Petition for Writ of Certiorari should be denied.

Pursuant to the first prong of the Strickland analysis, Petitioner must prove counsel's performance was deficient. Strickland v. Washington, 466 U.S. at 686 (1984); Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence"). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant." Id. at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that

counsel acted competently, because competent representation may be executed in virtually "countless" ways. Strickland, 466 U.S. at 688-89. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the result cannot be relied upon as being just. Id. 466 U.S. at 686. Even if there is reason to think counsel's conduct was far from exemplary relief may still be denied so long as counsel did not take an approach that no competent lawyer would have taken. Dunn v. Reeves, 141 U.S. 2405, 2410 (2021).

Second, counsel's deficient performance must have prejudiced the petitioner so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. Id. at 695. Realistically, this is found "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." Harrington v. Richter, 562 U.S. 86, 111-12 (2011) (quoting Strickland, 466 U.S. at 697). In examining whether an applicant has proven prejudice, courts should consider the specific impact Counsel's error had on the outcome. Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). To prove counsel was ineffective when a guilty plea is challenged, an applicant "must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered." Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007).

A criminal defendant may not be tried or plea guilty unless he is competent and does so intelligently. Godinez v. Moran, 509 U.S. 389, 396 (1993). A defendant is competent if he is "capable of understanding the nature and object of the charges and proceedings against him, of

comprehending his own condition in reference thereto, and of conducting in cooperation with his counsel his defense in a rational and reasonable manner." Thursby v. State, 223 A.2d 61, 66 (Me. 1966). Additionally, a defendant is not competent if he is unable to understand the proceedings against him or to assist in his own defense. Moye v. Comm'r of Correction, 142 A.3d 424, 428 (Conn. 2016).

Factors for the court to consider in determining whether to order a competency evaluation include: (1) evidence of irrational behavior, (2) demeanor at trial, and/or (3) any prior medical opinion on the defendant's competency to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation. State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (Ct. App. 1981); State v. Burgess, 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003). The determination of whether there is "reason to believe" a defendant lacks a certain mental capacity is within the discretion of the court. State v. White, 364 S.C. 143, 611 S.E.2d 927 (Ct. App. 2005). Refusal to order further examination should not be disturbed absent an abuse of discretion. Id.

In Jeter, this Court found counsel was not deficient for failing to request a mental examination. Jeter v. State, 308 S.C. 230, 232-3, 417 S.E.2d 594, 596 (1992). Applicant asserted his plea was involuntary due to his mental incompetence and ineffective assistance. Id. At the PCR hearing no medical expert testified. Id. The court noted that some medical records were introduced. Id. One report found applicant to struggle with mentation and noted a difficulty answering questions. Id. The portions of the record noted applicants' ability to recount details, described him as socially appropriate, and recounted that he asked relevant questions. Id. The court noted "[a]ny evidence of probative value to support the post-conviction judge's factual findings is sufficient to uphold those findings on appeal." Jeter 308 S.C. 232, 417 S.E.2d 596.

The Jeter Court found applicant was unable to establish ineffective assistance because the opinions given were contradictory and did not provide insight as to applicant's ability to consult with his attorney or understand legal proceedings. Id.

Conversely, in Ramirez, this Court found counsel to be deficient in failing to request an independent mental examination. Ramirez v. State, 419 S.C. 14, 16, 795 S.E.2d 841, 842 (2017). Notably, at the PCR hearing Counsel questioned whether applicant fully understood what was going on, admitted he should have moved to have applicant's competency evaluated, and gave no explanation for his failure to request the evaluation. Ramirez 419 S.C. 19, 795 S.E.2d 843-4.

Further, several state courts have found individuals suffering from schizophrenia and bipolar disorder to be competent. State v. Cooper, 213 SE2d 305 (NC. 1975) (overruled on other grounds by State v. Leonard, 266 SE2d 631(NC. 1980)) (finding defendant competent to stand trial even though he was diagnosed as a paranoid schizophrenic); Johnson v. State, 232 So. 3d 761, 763 (Miss. Ct. App. 2017) (finding schizophrenic defendant competent where he stated his medications and medical conditions did not impact his ability to understand the proceedings and counsel stated he believed defendant to be competent); Iverson v. State, 807 P.2d 1372, 1375 (Nev. 1991) (Noting defendant's medication for schizophrenia "helped him and that he freely, voluntarily and knowingly" pled); Sosa v. State, 201 S.W.3d 831, 832 (Tex. Ct. App. 2006) (noting "trial court's careful questioning of [defendant who suffered from schizophrenia] at the adjudication hearing did not produce any evidence of incompetence").

The PCR court found Petitioner failed to meet his burden in establishing Counsel was ineffective in failing to request a psychological evaluation. (App'x 136). The PCR court made several significant initial findings. The court found Petitioner was not on any medication at the time of the hearing but had previously been on medication. (App'x 131). The court found

Petitioner had previously been diagnosed with schizophrenia and bipolar disorder. (App'x 131). The court found Counsel believed Petitioner was competent at the time of the plea. (App'x 131). The court found Petitioner knew he was pleading under Alford to voluntary manslaughter with a recommendation for a twenty year concurrent sentence. (App'x 131-2). Additionally, the PCR court noted portions of Counsel's testimony to be persuasive and credible. (App'x 135).

Here, Counsel was not deficient because he reasonably relied on his perceptions of Petitioner's competency. Applicant was previously declared incompetent but was later found to have his competency restored. The mere presence or history of mental illness or defect alone is insufficient to establish incompetence. Moore v. State, 287 So. 3d 189, 197 (Miss. 2020); State v. Cornell, 878 P.2d 1361 (Ariz. 1994) ("the test for whether a competency hearing is mandated is not whether a defendant was insane at some time in the past, or even whether he was free of all mental illness at the time" of trial). Other than Petitioner's diagnosis, Petitioner has failed to produce evidence that establishes his incompetence. The court noted that Petitioner seemed to understand what was happening and Counsel stated Petitioner appeared competent. (App'x 16; 85). Given the facts explained by the State and Appellant's concurrent life without parole sentence, Appellant's decision to plea is understandable. The PCR Court found Counsel persuasively testified Petitioner appeared competent that he would have requested an evaluation if he thought it was necessary. (App'x 83). Applicant testified he was on medication at the evidentiary hearing and had been taking it regularly. Like Jeter, the evidence introduced supports the PCR court's findings and does not establish Petitioner was incompetent at the time of the plea hearing. Petitioner failed to establish Counsel's conduct was not within the range of competence.

Even if Counsel rendered deficient performance, Petitioner was not prejudiced[2]. The PCR court properly found that Petitioner did not meet his burden in establishing what Counsel would have discovered in a more thorough examination. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) ("in a post-conviction proceeding, the burden is on the applicant to prove the allegations in his application"); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding applicant failed to establish prejudice from counsel's failure to investigate criminal background of victims and witnesses where applicant failed to show at PCR hearing that victims and witnesses had criminal records). Petitioner failed to establish he suffered any prejudice for Counsel's failure to request an examination.

Accordingly, this Petition for Writ of Certiorari should be denied.

[2] If Petitioner fails to satisfy either the performance or the prejudice prong of the test, then this Court need not consider the other. Jones v. State, 661 S.W.3d 806, 809 (Mo. Ct. App. 2023)

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Court deny the Petition for Writ of Certiorari.

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