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May 13 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Honorable Kristi F. Curtis, Circuit Court Judge

Common Pleas Case No.: 2020CP3201982

Supreme Court Case No.: 2025-000324

The State of South Carolina, Respondent,

v.

Lemont Michael Smith, Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Order of Dismissal was made and finally ruled upon on February 14, 2025 and filed with the Court of Common Pleas on February 19, 2025

QUESTIONS PRESENTED

I. Did the Court err in not granting relief based on the issue of The Honorable Frank R. Addy personally recognizing the victim, as testified to by the Petitioner during the Post-Conviction Relief hearing?

II. Did the Court err in not granting relief due to plea counsel's failure to advise the Petitioner of the nature and effect of the Petitioner's plea?

STATEMENT OF THE CASE

This Petition for Writ of Certiorari follows a timely appeal to the South Carolina Supreme Court, following a decision from a Post Conviction Relief hearing in Lexington County.

The Petitioner was arrested on September 3, 2018, following an investigation into an attempted armed robbery where the victim was shot in the hand at an All South Federal Credit Union ATM in Lexington County, South Carolina (App. P. 132, lines 14-25 and 134, lines 22-25). The Petitioner was arrested for this incident on September 3, 2018 (App. P. 132). During the 2018 term, the Lexington County Grand Jury indicted the Petitioner for Attempted Murder (2018-GS-32-3922), Attempted Armed Robbery (2018-GS-32-3923), Kidnapping (2018-GS-32-3924), and Possession of a Weapon during the Commission of a Violent Crime (2018-GS-32-3925) (App. P. 61). On June 5, 2019, the Petitioner pled to a lesser included offense, Assault and Battery of a High and Aggravated Nature and Attempted Armed Robbery (2018-GS-32-03923) (App. P. 128, lines 1-11). The Petitioner was represented by Sarah Mauldin with the Eleventh Circuit Public Defenders' office (App. P. 128, line 11). The State was represented by Assistant Solicitor Rhonda Patterson (App. P. 132, lines 11-12). This plea took place without formal negotiations or recommendations by the State as to sentencing (App. P. 61).

As a part of the plea, the charges of Kidnapping (2018-GS-32-3924) and Possessing a Weapon during a Violent Crime (2018-GS-32-3925) were dismissed (App. P. 129, lines 13-16). The Petitioner also had charges for an incident that occurred while the Petitioner was detained in the Lexington County Detention Center, which were charges for Criminal Conspiracy and Assault by Mob 3rd Degree were also dismissed as a result of the plea on June 5, 2019 (App. P. 129, lines 13-16).

The Honorable Frank R. Addy heard the Petitioner's plea and the Petitioner was sentenced to 17 years for both charges to run concurrently with each other and the Petitioner received credit for the 276 days served in pretrial detention in the Lexington County Detention Center (App. P. 163 lines 6-13).

Following the plea, the Petitioner timely appealed (Appellate Case No.: 2019-000966) on July 7, 2019, by way of his Public Defender, Sarah Mauldin (App. P. 119). In the filed explanation of the appeal, Ms. Mauldin stated that she did not have a good faith basis to believe there were any issues to appeal, but that she filed the appeal to follow through with the request made by the Petitioner per his Sixth Amendment right (App. P. 110-111).

The South Carolina Court of Appeals dismissed the appeal on July 9, 2019, pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why his appeal from a guilty plea should proceed (App. P. 109).

Following the decision of the South Carolina Court of Appeals, the Petitioner filed a Post Conviction Relief Application on May 5, 2020, seeking a finding of post-conviction relief due to ineffective assistance of Counsel and conflicts of interest in sentencing; while requesting the Court to vacate the sentence and guilty plea and demanding a new trial (App. P. 100-108). The State then filed a Return on October 7, 2020, stating that each and every allegation in the application should be denied and that an evidentiary hearing be held (App. P. 60-99).

Post-conviction relief applications are based on the allegations that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. §17-27-20(A). The allegation that the applicant did not receive such representation sets for a *prima facie* violation of the Sixth Amendment right, and this can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The Lexington County Court of Common Pleas scheduled the Post Conviction Relief evidentiary hearing for April 4, 2023 (App. P. 14-57). The Petitioner was represented by James R. Snell Jr., with the Law Office of James R. Snell, Jr., LLC (App. P. 16 lines 2-4). The State was represented by Zachary Jones with the South Carolina Attorney General's office (App. P. 39, lines 9-13). This hearing was heard before the Honorable Kristi F. Curits (App. P. 14). After hearing from all parties and witnesses, the Court took the matter under advisement (App. P. 55-56).

The Court then issued an Order Denying the Post Conviction Relief by way of an order issued February 14, 2025, and filed with the Lexington County Court of Common Pleas on February 19, 2025 (App. P. 1-13). The Court found that the Petitioner could not meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denied and dismissed his application with prejudice (App. P. 13).

Following the Order of the court, the Petitioner timely filed the Notice of Appeal with the South Carolina Supreme Court on February 21, 2025.

ARGUMENT

I. THE COURT ERRED IN NOT GRANTING RELIEF BASED ON THE ISSUE OF THE HONORABLE FRANK R. ADDY PERSONALLY RECOGNIZING THE VICTIM, AS TESTIFIED BY THE PETITIONER IN THE POST-CONVICTION RELIEF HEARING.

During the plea hearing, the Honorable Frank R. Addy addressed the victim directly and had a colloquy with the victim and her Pastor regarding her religion, her faith, and this case. The conversation between Judge Addy and the victim appeared to show a possible connection or relationship between the two, leading the Petitioner to believe that there was a conflict between the Judge and the victim. The Petitioner mentioned this conflict to his plea counsel during the conversation but an objection was not made regarding the matter. Therefore, the Petitioner then requested relief from this matter in his Post Conviction Relief Application. The relevant excerpt is as follows:

> **THE COURT**: All right. Ms. Riley, just out of curiosity, what church do you go to?
>
> **MS. RILEY**: Right now, I go to Lighthouse Baptist Church right up the road from here.
>
> **THE COURT**: Okay. All right.
>
> **MS. RILEY**: My Pastor is here today.
>
> **THE COURT**: Okay. That's the gentleman—okay.
>
> **MS. RILEY**: Yes, sir.
>
> **THE COURT**: All right. Well, I'm glad he's here, because it gives me the chance to say this: You don't need to do any marketing, Pastor, for your church. Okay? Ms. Riley is sufficient to bring other people in.
>
> (App. P. 160, lines 1-14).

In this excerpt, Judge Addy directly addresses the victim and her Pastor regarding her church, thus beginning a potential conflict. Judge Addy then goes on to continue this dialogue, "Ms. Riley,

you are one of the strongest women I've ever come to meet, and I'm truly impressed and amazed at your ability to forgive Mr. Smith. And, please, do pray for me, because I need it. And, of course, certainly pray for Mr. Smith." (App. P. 160, lines 19-23). Judge Addy then proceeded by addressing the Prosecutor regarding the Victim's compensation, "And, Solicitor, you may want to suggest – I know it's not that significant. But that $500 deductible, I would think the Victims Compensation might be willing to help with that—" (App. P. 160, lines 24-25 and P. 161, lines 1-2), no objection was made by Plea Counsel regarding this dialogue.

It is well settled that judges should recuse themselves where questions of impartiality or impropriety are raised. This Court recently addressed the disqualification of judges in *Parker v. Shecut,* 340 S.C. 460, 531 S.E.2d 546 (Ct.App.2000), *cert. granted:recusal*, "The Code of Judicial Conduct requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned. *Christy v. Christy,* 317 S.C. 145, 452 S.E.2d 1 (Ct.App.1994). Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Ellis v. Procter & Gamble Dist. Co.,* 315 S.C. 283, 433 S.E.2d 856 (1993). It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias. *Christensen v. Mikell,* 324 S.C. 70, 476 S.E.2d 692 (1996); *Mallett v. Mallett,* 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). Furthermore, the alleged bias must be personal, as distinguished from judicial, in nature." *Id.* at 74.

In this Post Conviction Relief matter it is not that the conflict for recusal was not raised, it was that Plea Counsel did not object, thus denying the Defendant the right to raise this issue. Therefore,

we would not know what Judge Addy would say if there was an objection because there was not one, making the record silent on this issue.

During the Post Conviction Relief hearing, counsel for the Petitioner asked him if he recalled if, "the judge said something that made you think he knew somebody involved in the case?" (App. P. 34, lines 24-25 & P. 35, lines 1). The Petitioner then went on to answer:

> **A:** Yes, sir. Now, when they were – they were doing introduct – we were reading our victim, like, the statements. Like, basically everyone had, like, were speaking. I don't know exactly what it's called, the statement. Like, where the family says – reads their letters to me. Well, one person went to speak, and then she couldn't speak, so the other one went to speak. And the judge had said that – the name. And so I – I said to my lawyer, I was, like, "How does he know her name?" They didn't do no introductions, nothing – like nothing like that. It's like he knew her – her first name, as a matter of fact, and there was no introduction. So, like he told her, like "Hold on." And then she handed the paper. So I didn't understand. Like, it was like they knew each other. And I asked for the audio transcript.
>
> **Q**: Well, let me step back. So based on what you heard in the plea hearing, you thought that the Judge knew somebody connected with the victim?
>
> A: Yes, sir.
>
> (App. P. 35, lines 2-22).

The Petitioner testified during his Post Conviction Hearing that he was concerned about the conversation that Judge Addy had with the victim and that he had mentioned it to his plea counsel but she did not address the concern. Therefore, the issue was not properly preserved and the Petitioner did not have effective assistance of counsel. The Post Conviction Relief Application alleges ineffective assistance of counsel as a ground for relief. "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 trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

If the objection would have been made then the record would be able to reflect the addressing of the objection/concern made and it would be clear for all parties and the Court if there was an issue and, if in fact Judge Addy did personally know the victim. By not objecting to this, either by Plea Counsels own knowledge and expertise nor by the concern by the Petitioner during the hearing, the record remains silent resulting in the issue not being preserved for an appeal nor Post Conviction Relief.

After the evidentiary hearing, the Honorable Kristi Curtis took the Post Conviction Relief under advisement. In Judge Curtis' order denying the Post Conviction Relief, she stated,

> "Applicant bears the burden of proving the allegations in his PCR application by a preponderance of the evidence. Butler, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRCP. Although Applicant claims that the missing audio recording would have captured additional speech or vocalizations on Judge Addy's part that were not included in the written transcript, he has been unable to produce any such recording to substantiate this claim. Therefore, the Court finds Applicant has not met his burden of proving that a "conflict of interest" existed between Judge Addy and the victim's family." (App. P. 8-9).

However, although Judge Curtis stated that the Petitioner was "unable to produce any such recording", this does not mean that the Petitioner's claim was invalid nor that it was not proven. During the evidentiary hearing, this audio recording was brought up both by the Petitioner as mentioned, "And I asked for the audio transcript" (App. P. 35, line 18) and by his counsel,

> **MR. SNELL:** "And, Your Honor, before the next witness, just for the record, so that – I did mention this previously; I just want to make sure it's part of the record. We had obtained an order as part of the PCR process for a copy of an audio recording, if one

existed from the reporter at the time of the plea, and the court reporter responded back there was no such audio available. I think that should be – I think that order should be a part of the record. We had obtained an order as part of the PCR process for a copy of an audio recording, if one existed from the reporter at the time of the plea, and the court reporter responded back that there was no such audio available. I think that should be – I think that order should be part of the Court's file, but I just wanted to make sure. I just want to make sure that's part of the record.

THE COURT: There's a consent order and then there's, I believe, a rescission of the consent order.

MR. SNELL: And there should be – I though, on the note that was sent back, the court reporter had marked "no audio available."

MR. JONES: I'm willing to stipulate that, Your Honor.

MR. SNELL: And they'll stipulate, yeah.

THE COURT: Okay. Thank you.

(App. P. 39, lines 15-25, and P. 40, lines 1-7).

Counsel stated that they did request this audio, the Judge ruled on Counsel being able to request it, but this ruling was later withdrawn due to the finding that no such audio existed. The order was then retracted due to it being found that there was not/no longer any audio recording from that plea hearing. This highlights once again that the record on this issue was not properly preserved, resulting in the record remaining silent on the issue of a potential conflict due to Judge Addy potentially knowing the victim, to which no objection was made. Then brings back to the forefront that the record was not preserved for this issue and the record is silent, even based on the written

transcript of the plea hearing and evidentiary hearing, in that there was a potential conflict in that Judge Addy personally recognized the victim and no objection was made.

The Post Conviction Relief Application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

II. THE COURT ERRED IN NOT GRANTING RELIEF BASED ON PLEA COUNSEL'S FAILURE TO ADVISE THE PETITIONER ON THE NATURE AND EFFECT OF THE PETITIONER'S PLEA.

The Petitioner pled on June 5, 2019 to the offense of Assault and Battery of a High and Aggravated Nature and Attempted Armed Robbery. He was sentenced by the Honorable Frank R. Addy to 17 years for both charges to run concurrently with each other. The Petitioner received credit for the 276 days served in pretrial detention in the Lexington County Detention Center. The offense of Assault and Battery of a High and Aggravated Nature carries up to 20 years and the Attempted Armed Robbery carries 0-20 years. Assault and Battery of a High and Aggravated Nature and Attempted Armed Robbery are both violent offenses and the offense of Assault and Battery of a High and Aggravated Nature requires that 85% of the sentence must be served before becoming parole eligible.

Although the Petitioner was sentenced to serve time in the South Carolina Department of Corrections, the Petitioner believed that he was not prepared to receive this time and that if he would have known that he was getting active time, he would not have pled.

During the plea, when Petitioner's counsel addressed the court, Counsel mentioned the Strong Program,

> "He also wrote to the South Carolina STRONG program and has been accepted there. I have an acceptance letter from them, if Your Honor would like to see that. He would very much like to go there. It's a two-year program; it's an environment where he would have to remain there or it would be a probation violation. There would be the kind of day-to-day accountability that he needs." (App. P. 155, lines 14-22).

Plea Counsel then went on to say, "Based on his lack of prior record of anything like this at all, we'd ask the Court to consider a probationary sentence with South Carolina STRONG as a

condition of probation." (App. P. 156, lines 16-19). This colloquy from Petitioner's counsel shows that the Petitioner believed that this was his best course and what was going to occur at his plea hearing.

However, the breakdown in understanding then presents itself, after Plea Counsel speaks with the Court, the Petitioner then addresses the Court as well, when the Petitioner concludes, the State addresses the Court once again and states, "And, Your Honor, I'm sorry, I know they get the last word. But I didn't know Ms. Mauldin was going to ask for SC STRONG. We strongly oppose that." (App. P. 159, lines 18-21). The Court then responds, "I don't – I appreciate her advocacy. But that is not appropriate under these circumstances." (App. P. 159, lines 22-24). This shows that although the Petitioner believed he would at least receive the option to be in the STRONG Program, Petitioner's Counsel appears to not even mention these options to the State prior to the hearing. Plea Counsel first mentioned this option to the State and the Court at the time of sentencing, ultimately shortening the probability of it being an option. It is the position of the Petitioner that he should have been prepared that the State would be opposing the STRONG program and that it most likely would not be granted.

The court then further addresses the STRONG program and probation,

> "And sometimes, Mr. Smith, crimes are just so bad that the Court has to send a message, and the South Carolina STRONG ain't the message that the Court can send…And understand, again, this just isn't the case where probation is appropriate…I hear that law enforcement is wanting the maximum. If somebody is admitting responsibility, if somebody is confessing and taking that first step towards redemption, I typically do not impose the maximum. That is just my standard operating procedure." (App. P. 162, lines 5-8, 16-17, 25-25 and P. 163, lines 1-4).

In the second part of *Hill v. Lockhart*, 474 U.S. at 56 (1985), two-part *Strickland* test to challenge guilty pleas, it, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58-59. More specifically, when an applicant makes a claim that counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. This is supported in the record that what the Petitioner believed was happening, broke down during the sentencing phase of his plea with no way for him to stop it. Petitioner's testimony during the Post Conviction evidentiary hearing further supports this.

The Petitioner could only recall meeting with his counsel, "Twice. And I would say that I thought one was the time that we talked about the medical, and then the second time was when I was brought to court." (App. P. 26, lines 17-19). The Petitioner was then asked if he could recall talking to his counsel on how his case would be resolved and he stated,

> "We spoke and I was –line, I applied for, like, a drug rehab program, and I got accepted into the program. So it was, like, a five-year program. And I thought that would be a lot. Like, that was a lot for me, like, five years. I was thinking that was, like, a lot. So, I mean, when I got accepted into that, I mean, we were supposed to bring that to the court, and that's kind of what I thought was going to happen when I went up for my like, my hearing." (App. P. 28, lines 10-18).

The Petitioner fully believed he was going to go to court, plead to his charges, and go into the SC STRONG Program and serve his time through this program and be rehabilitated. The Petitioner's counsel during the Post Conviction Relief hearing asked the Petitioner, "When did you

decide that you were going to take the plea?..What made you want to take it?) (App. P. 29, lines 16 & 19). For which the Petitioner responded,

> "I believe, like, two days before or – or the day that she brought it to me…Because we had discussed going to the STRONG program, and I thought that, like – like the sentencing was just – I don't know about – like, I don't know about these kind of things. So I thought that just because it says, you know, zero to 20 or zero to 30, like, I didn't know that, like sentencing and doing – like, I didn't know it was – I really didn't understand. I just thought that I was supposed to say, "Yes, sir," kind of how I'm doing now." (App. P. 29, lines 17-18, 20-25 & P. 30, lines 1-2).

Then the Petitioner was asked, "Did you think there was a real possibility, when you pled, that you were going to be released into that program?" to which he responded, "100 percent." (App. P. 30, lines 13-15).

Petitioner's plea counsel did not prepare the Petitioner for the correct expectations going into his plea. He firmly believed that he was walking out of the hearing and going into the SC STRONG program, not that he was going to be serving 17 years in the Department of Corrections. When asked, "She never advised you or told you that you were probably going to get loaded up on that plea?" he responded, "No." (App. P. 32, lines 20-22). The Petitioner was fully under the belief he was not looking at any time in the Department of Corrections and he is adamant to this in his testimony in the Post Conviction Relief Evidentiary hearing.

The Petitioner was sentenced to the South Carolina Department of Corrections for a period of 17 years with a projected release date of 2033. This is a significant amount of time to serve especially, when one believes, they were going to receive a probationary sentence, which at maximum would be five years. The Petitioner stated that he would not have pled if he had a "real

likelihood or significant likelihood at getting anything close to 17 years" (App. P. 37, lines 11-15). Petitioner said he would not have pleaded if he ever got over 10 years (App. P. 37, lines 16-18).

It is evident from the record of the Plea Hearing that plea counsel did not adequately prepare the Petitioner with accurate expectations on how this hearing would be conducted. Plea Counsel did not set up the Petitioner to have a fair and informed plea, she did not get clarity on all sides as to Probation and the SC STRONG program and where the State stood. It is also evident from the record of the Post Conviction Relief evidentiary hearing that the Petitioner was under the full belief that he would be going into the SC STRONG program on a probationary sentence and should that have not been an option then he would not have pled.

The court erred in not finding that Plea Counsel failed to adequately prepare the petitioner for this plea, leading him to being sentenced to 17 years in the Department of Corrections. Which then further led to the Post Conviction Relief, and then an appeal.

CONCLUSION

Based on the foregoing, Petitioner believes that certiorari should be granted in this case; Petitioner's sentence and conviction reversed; and Petitioner's request for a new trial granted, and for all other relief which is just and proper.

Respectfully submitted,

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RULE 243 CERTIFICATION

The undersigned hereby certifies the PETITION FOR A WRIT OF CERTIORARI complies with the Rule 243, SCACR.

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