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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to Kershaw County
Honorable D. Craig Brown, Circuit Court Judge
Honorable G. Thomas Cooper, Post-Conviction Relief Judge
Honorable Daniel McLeod Coble, Circuit Court Judge

Appellate Case No. 2022-000158

Alonzo T. Jones,

Petitioner,

v.

State of South Carolina,

Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE**

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

- I. Whether the circuit court erred concluding petitioner's PCR hearing was reconstructed where the record as reconstructed prevents meaningful appellate review because the only witness available at the reconstruction was the former assistant attorney general and the reconstruction hearing was nearly ten years after the PCR hearing?
- II. If this Court determines the record has been reconstructed to permit meaningful review, whether the limited record available demonstrates the PCR judge erred denying petitioner relief where petitioner's guilty plea was involuntary because he was unaware the conviction would trigger a federal prosecution?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

- I. Whether the circuit court properly found that Petitioner's first post-conviction relief hearing was reconstructed, given that only two issues were raised to the first post-conviction relief court, the witness's notes corroborate the issues presented, and the first post-conviction relief court's order covers the testimony, findings of fact, and conclusions of law that enable this Court to conduct a meaningful review of the record?
- II. Whether the record provides that the first post-conviction relief court properly denied Petitioner relief when his guilty plea was entered knowingly, intelligently, and voluntarily, and where plea counsel had no duty to inform Petitioner of potential collateral consequences of his guilty plea?

STATEMENT OF THE CASE

Petitioner Alonzo T. Jones was indicted during the February 2013 term of the Kershaw County Grand Jury for possession of a firearm by a prior convicted felon (2013-GS-28-0054) and unlawful carrying of a pistol (2013-GS-28-0083). Petitioner was subsequently indicted in the May 2013 term for resisting arrest (2013-GS-28-0334). Kershaw County Chief Public Defender Cornelius J. Riley (Counsel Riley) represented Petitioner. Fifth Circuit Deputy Solicitor Brett A. Perry prosecuted the case. On April 9, 2013, Petitioner pleaded guilty as indicted to unlawful carrying of a pistol and resisting arrest before the Honorable DeAndrea G. Benjamin. In exchange for the guilty plea, the State dismissed the charge of possession of a firearm by a prior convicted felon. Pursuant to the State's recommendation, Judge Benjamin sentenced Petitioner to imprisonment for concurrent terms of one year, suspended to six months' probation for each charge. Petitioner did not appeal his conviction or sentence.¹

Petitioner filed his first post-conviction relief application on April 8, 2014, asserting he was being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of counsel:
 - a. "My plea counsel failed to investigate the facts underlying my charges, specifically whether or not the State actually had possession of the evidence in my case. I have since discovered that the State did not possess the evidence and I would not have pled guilty knowing that there was no evidence."
 - b. "I was not advised by my plea counsel of the collateral consequences of my guilty plea to a weapons offense, namely that I would be subject to Federal Prosecution from it. I would not have pled guilty had I been made aware of that consequence."

Respondent made its return on June 12, 2014, requesting an evidentiary hearing. Ronald W. Moak, Esquire (Moak), represented Petitioner. An evidentiary hearing into the matter was

¹ Following the plea Applicant was indicted for and ultimately convicted and received a term of incarceration for federal offenses.

convened on July 16, 2015, before the Honorable G. Thomas Cooper, Jr. Petitioner, who was in federal custody out of state at the time, was not present, but was represented by Moak. Petitioner and Counsel Riley testified. Petitioner alleged Counsel Riley failed to investigate his case and allegedly failed to learn that the gun, which was recovered from Petitioner's person during the incident, was not processed by investigators. Petitioner also testified that Counsel Riley failed to advise him that he could be subject to federal prosecution for the incident. The post-conviction relief court found Counsel Riley acted reasonably in his representation and strategic decision to advise Petitioner to accept the beneficial plea deal. On December 3, 2015, Judge Cooper issued an Order of Dismissal, denying and dismissing Petitioner's application with prejudice. Moak did not file an appeal on Petitioner's behalf.

Thereafter, on November 1, 2016, Petitioner filed a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper, as Petitioner had not exhausted all other available remedies, pursuant to Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Petitioner to file a subsequent application for PCR in the circuit court.

On March 15, 2017, Petitioner filed his second post-conviction relief application, asserting he was being held in custody unlawfully based on the following reasons:

1. Ineffective Assistance of PCR Counsel
 - a. "Plaintiff engaged an attorney, Ronald Wade Moak, Esquire, who failed to provide adequate legal representation regarding a Post-Conviction Relief (PCR). Moak was later sanctioned and received a public reprimand by the State Supreme Court on July 20, 2016. Due to Plaintiff's loss of his Sixth Amendment Right to counsel and Fundamental right a fair trial his lack of legal skill and knowledge and loss of ample opportunity to meet the case of the prosecution to which he is entitled...."
 - b. "Plaintiff's counsel was proven ineffective by the Supreme Court and there was reasonable probability of the different result with effective assistance."

- c. "Plaintiff was in federal prison and a Writ of Habeas Corpus was not completed for PCR hearing for Plaintiff to be present for the PCR. Plaintiff has been prejudiced by lack of adequate legal representation. Plaintiff had an insurmountable impediment to mount any lawful appeal and could not have filed in a timely basis."
- d. "Due to these deficiencies, the Plaintiff's constitutional Rights to Due Process of law, Equal Protection and Right to counsel were violated. Material and/or legal argument was over-looked in the decision to deny the Plaintiff's PCR petition. Plaintiff did not know about the PCR hearing until July 20, 2016."

A hearing was convened before the Honorable D. Craig Brown on January 24, 2022. After testimony from Petitioner and Moak, Judge Brown found Petitioner had not waived his right to appellate review of his first post-conviction relief action and granted belated appellate review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner filed a timely notice of appeal. On June 1, 2022, Petitioner requested the transcript of his first post-conviction relief hearing. Pursuant to Rule 607, SCACR, the court reporter indicated that she no longer had the files or recording as it was beyond the five (5) year retention policy. On July 1, 2022, Petitioner filed a motion to hold the appeal in abeyance and a motion to remand for reconstruction of the post-conviction relief hearing. On August 23, 2022, this Court issued an order granting Petitioner's motions.

On December 17, 2024, a reconstruction hearing was held before the Honorable Daniel Coble via the Webex platform. Petitioner was present and represented by Appellate Defender Sarah Shipe of the South Carolina Commission on Indigent Defense. Respondent was represented by Senior Assistant Deputy Attorney General D. Russell Barlow, II, of the South Carolina Attorney General's Office. Testimony was taken from Petitioner and former Assistant Attorney General J. Clayton Mitchell, Esquire (Counsel Mitchell), who represented the State in Petitioner's first post-conviction relief action. Also, before the Court were notes of the hearing taken by Counsel Mitchell. At the conclusion of the reconstruction hearing, Judge Coble took the matter

under advisement. On February 21, 2025, Judge Coble issued an order finding the record was successfully reconstructed.

Petitioner filed a Petition for Writ of Certiorari Pursuant to Austin v. State on March 24, 2025. This Return to Petition for Writ of Certiorari Pursuant to Austin v. State follows.

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). South Carolina jurisprudence recognizes that its trial courts possess the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). Where a transcript has been lost or otherwise destroyed, a court may remand to have the record reconstructed. Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2005), overruled on other grounds by State v. Gentry, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005). In Ladson, the court of appeals held that a reconstructed record on appeal allows for a "meaningful appellate review." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). A new trial is only appropriate where the appellant establishes that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" Id. at 326, 644 S.E.2d at 274. The Ladson court elaborated that "we believe our supreme court would follow a rule requiring the party challenging a reconstructed record on appeal to demonstrate prejudice flowing from an inadequate record." Id.

When reviewing factual findings, the appellate courts defer to the post-conviction relief 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. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief 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

- I. The circuit court properly found that Petitioner's first post-conviction relief hearing was reconstructed, given that only two issues were raised to the first post-conviction relief court, the witness's notes corroborate the issues presented, and the first post-conviction relief court's order covers the testimony, findings of fact, and conclusions of law that enable this Court to conduct a meaningful review of the record.**

On petition for certiorari, Petitioner argues that the circuit court erred in finding that the reconstructed record of Petitioner's first post-conviction relief hearing was sufficient for meaningful appellate review due to the passage of time and the unavailability of witnesses. Petitioner further relies on State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007) to support his assertions. However, as the circuit court properly found, there were two issues presented to the first post-conviction relief court, which are substantially covered in the order of dismissal, the testimony of Counsel Mitchell, and his notes. Furthermore, the circuit court properly outlined the distinctions between the Ladson case and the case *sub judice*. The circuit court properly ruled that the reconstruction hearing yielded a sufficient record for meaningful appellate review.

Where a transcript has been lost or destroyed, a court may remand to have the record reconstructed. Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2005) overruled on other grounds by State v. Gentry, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005). In China v. Parrot, 251 S.C. 329, 162 S.E.2d 276 (1968), this Court held that where a portion of the court reporter's notes was lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record.

In the instant case, the circuit court properly considered testimony from Counsel Mitchell, who represented the State during Petitioner's first post-conviction relief action. At the

reconstruction hearing, Counsel Mitchell testified that his notes mainly reflected the contents of the order issued by Judge Cooper. (App'x p. 131). Counsel Mitchell testified that his notes reflect that Counsel Riley was called and testified that he was not aware that the feds were investigating Petitioner while he represented him. (App'x p. 132). Counsel Mitchell testified that his notes further reflected that there was never a dispute that Petitioner had a gun, so he did not check the gun, and Petitioner was eager to take a plea deal. (App'x pp. 132–133). Counsel Mitchell testified that his notes reflect that he crossed Counsel Riley on the charges being reduced and questioned him about dual sovereignty. (App'x p. 133). Counsel Mitchell testified that Counsel Riley indicated that typically he is contacted when state charges are upgraded to federal, but he was not contacted and did not advise Petitioner of any "theoretical" federal investigation because he did not know there was one. (App'x p. 133).

In the Order of Dismissal issued by Judge Cooper from Petitioner's first post-conviction relief hearing, Judge Cooper found the allegation of failure to investigate the gun was without merit. (App'x p. 31). Judge Cooper found Petitioner admitted to having the gun and pleaded guilty to it, and was foreclosed from now coming and asserting that he did not have a gun when he openly admitted to it during his guilty plea. (App'x p. 32). Judge Cooper further found that Petitioner "failed to present any evidence that the gun was not properly processed by law enforcement," and that his allegation rested solely on speculation. (App'x p. 32).

Turning to the issue of Petitioner not being informed of the potential federal investigation and that if he had known, he would not have pleaded guilty, Judge Cooper found the issue was collateral and not a cognizable post-conviction relief claim. (App'x pp. 32–33). Judge Cooper further found Counsel Riley's testimony credible that he was not aware of a federal investigation into Petitioner. (App'x p. 33). Judge Cooper found Counsel Riley "acted reasonably in his

representation and made a strategic decision to advise Applicant to plead guilty to the charges as he believed the plea deal to be beneficial to Applicant." (App'x p. 34).

In Ladson, where the Court of Appeals found that the reconstructed record was insufficient, the court stated it was "essentially left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year prison term." 373 S.C. at 327, 644 S.E.2d at 274. However, the instant case is distinguishable from Ladson for several reasons. First, the present matter involves the reconstruction of a brief post-conviction relief hearing, whereas the Ladson case involved the attempted reconstruction of a three-day trial. Second, all key aspects of the Petitioner's post-conviction relief hearing can be discerned from the testimony presented at the reconstruction hearing, the notes of Counsel Mitchell, and the Order of Dismissal. Third, the issues raised at the first post-conviction relief hearing lacked complexity, with only one of the claims being a cognizable post-conviction relief claim. Based on the foregoing, the present case is distinguishable from Ladson, and the record of the July 16, 2015, hearing was successfully reconstructed to allow for meaningful appellate review.

A new trial is appropriate only when Petitioner establishes that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" Ladson, 373 S.C. at 326, 644 S.E.2d at 274. The Court of Appeals stated that "we believe our supreme court would follow a rule requiring the party challenging a reconstructed record on appeal to demonstrate prejudice flowing from an inadequate record." Ladson, 373 S.C. at 326, 644 S.E.2d at 274. In this case, Petitioner cannot show the requisite prejudice, as the evidentiary hearing in 2015 was straightforward and the issues presented were not particularly complex or fact-intensive. Counsel Mitchell's notes, along with Judge Cooper's Order of Dismissal, offer ample context for

the two issues raised, ensuring a meaningful appellate review. Petitioner fails to demonstrate the necessary prejudice to warrant an entirely new evidentiary hearing, as the reconstructed record is more than adequate.

II. The first post-conviction relief court properly denied Petitioner relief when his guilty plea was entered knowingly, intelligently, and voluntarily, and plea counsel had no duty to inform Petitioner of potential collateral consequences of his guilty plea.

Additionally, Petitioner avers that the first post-conviction relief court improperly determined that Petitioner knowingly, intelligently, and voluntarily pleaded guilty. Specifically, Petitioner avers that "Petitioner did not have information that would have been crucial to his determination whether to continue to trial or plead guilty [and] Counsel's advice to plead guilty knowing [P]etitioner would be implicated in a federal prosecution was deficient performance." (PWC p. 11). However, Petitioner's contention rests on Counsel Riley knowing that Petitioner would be implicated in a federal prosecution, and the record before this Court wholly refutes this contention. Specifically, Judge Cooper's Order of Dismissal found that Counsel Riley credibly testified that "he did not know the federal authorities were investigating the case." (App'x p. 33). Therefore, the first post-conviction relief court properly found that Petitioner pled knowingly, intelligently, and voluntarily, and plea counsel had no duty to advise Petitioner of the possibility that he could be charged by the federal government, and this Court should deny certiorari.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the post-conviction relief applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusive unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford

v. United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish a post-conviction relief applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

"The imposition of a sentence may have a number of collateral consequences, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." Williams v. State, 378 S.C. 511, 514, 662 S.E.2d 615, 617 (Ct. App. 2008) (quoting Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)). "Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny." Id., 378 S.C. at 511-12, 662 S.E.2d at 617.

"[A] consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence." Williams, 378 S.C. at 515, 662 S.E.2d at 617; see State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment." Williams, 378 S.C. at 515, 662 S.E.2d at 617 (quoting Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1365-66 (4th Cir. 1973)).

Here, Petitioner avers that his guilty plea was invalid because Counsel Riley did not inform him that his guilty plea in state court could subject him to federal prosecution. Further, Petitioner avers, even though the record directly refutes this claim, that Counsel Riley knew Petitioner was being investigated by the federal authorities and did not inform him that he could be prosecuted federally. As provided *supra*, Judge Cooper addressed this very issue, where he found Counsel Riley's testimony credible that he did not know Petitioner was being investigated by the federal authorities. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a

credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Nevertheless, the Fourth Circuit has long held that "[w]hether a guilty plea in state court might be used in a subsequent federal prosecution is plainly a collateral consequence." United States v. Ayala, 601 F.3d 256, 270 (4th Cir. 2010). The Ayala court further held that "[i]n our system of dual sovereigns, state and federal courts run on separate tracks; thus, a guilty plea in one does not automatically lead to consequences in the other." Id. Importantly, the Ayala court explained, quoting United States v. Long, 852 F.2d 975, 979 (7th Cir. 1988), that "[t]he state and federal systems are separate and distinct, and the defendant need only be informed of the direct consequences he may face within the particular system." Id.; accord United States v. Williams, 104 F.3d 213, 216 (8th Cir. 1997); United States v. Maestas, 941 F.2d 273, 279 (5th Cir. 1991); United States v. Bouthot, 878 F.2d 1506, 1511 (1st Cir. 1989).

Accordingly, the first post-conviction relief court correctly found Petitioner's subsequent federal prosecution was a collateral consequence, and Counsel Riley cannot be deficient for failing to advise Petitioner of something he did not know was occurring or was going to occur. Therefore, this Court should uphold the post-conviction relief court's findings and deny certiorari.

CONCLUSION

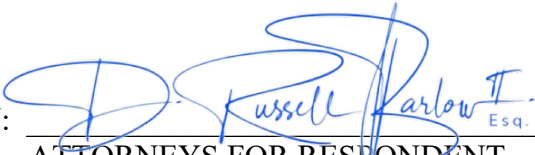
For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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