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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2025-000324

Lemont Michael Smith,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DON J. ZELENKA
Deputy Attorney General

ZACHARY W. JONES
S.C. Bar No. 104174
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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PETITIONER’S STATEMENT OF THE ISSUES ON APPEAL

- 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?

RESPONDENT’S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

- I. The PCR court properly found Petitioner did not meet his burden of proving that Judge Addy knew the victim’s family, where the court specifically found that the transcript did not support the allegation, that Counsel credibly testified she never saw or heard any indication that Judge Addy knew the victim, and that Petitioner’s contrary testimony on this issue was not credible.
- II. The PCR court properly found Petitioner did not meet his burden of proving that he was misadvised of his potential sentence prior to his guilty plea, where the court specifically found that the plea colloquy was sufficient to cure any purported error, that Counsel credibly testified she correctly explained the potential sentences Petitioner was facing prior to the plea, and that Petitioner’s contrary testimony was not credible.

STATEMENT OF THE CASE

On the morning of September 1, 2018, Officers with the West Columbia Police Department responded to 3225 Augusta Road in the West Columbia area of Lexington County regarding a shooting that had just taken place at an AllSouth Federal Credit Union ATM. (App.p.132). The victim in this case, Martha Riley, had relocated to the U.S. Metro Flea Market by that time. (App.p.132). She reported that she had been shot in her left hand during a robbery after she was getting money out of the ATM. (App.pp.132–33). She reported that, as she was getting the money, a gray truck pulled up behind her. (App.p.133). The suspect walked up to her as she was putting the money inside her purse, presented a handgun, and pointed it to her head. (App.p.133). She pushed the gun away, at which time she was shot in her left hand. (App.p.133). She managed to drive away from the scene; however, the suspect got back into his vehicle and began following her. (App.p.133). She was ultimately able to flag down a nurse, who was able to assist her until law enforcement arrived. (App.p.133). After giving law enforcement a description of the suspect, she was transported to Palmetto Health Richland for medical treatment. (App.p.133).

The case was immediately assigned to Detective Chris Morris of the West Columbia Police Department, who responded to the scene. (App.p.133). Detective Morris collected surveillance footage from the ATM and a .45-caliber shell casing at the scene. (App.p.133). He then put out a BOLO for the suspect as well as the vehicle used in the incident. (App.p.133). Shortly thereafter, Detective Morris was contacted by a Deputy Morris out of Clarendon County. (App.pp.133–34). Deputy Morris was able to identify the suspect as Petitioner because he had arrested him in Clarendon just six days earlier, on August 24th. (App.p.134). Petitioner had been released from custody on August 26th. (App.p.134). Detective Morris also received a call from a man who said that it was actually his truck that had been used in this attempted armed robbery, and that the truck

had been stolen out of Manning on August 26th while the man was at a gas station. (App.p.134). The person who identified the truck as being theirs also said there was a .45-caliber handgun in the truck. (App.p.134).

On September 3rd, Petitioner, along with his co-defendant girlfriend, a Laura Mixon, was arrested in North Charleston. (App.p.134). Petitioner was still driving the stolen truck. (App.p.134). The truck was searched, and the red shirt Petitioner was wearing during the attempted armed robbery was found along with a .45-caliber shell casing. (App.pp.134–35). Petitioner was interviewed, gave a verbal confession, but refused to give a written confession. (App.p.135). Petitioner also refused to tell officers what happened to the gun and told them they would never find it. (App.p.135). Petitioner’s girlfriend also confessed to being an accessory, but minimized her involvement, stating she was asleep and woke up when she heard the gunshot. (App.p.135).

In December of 2018, the Lexington County Grand Jury indicted Petitioner for attempted murder (2018-GS-32-3922) and 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).

On June 5, 2019, Petitioner appeared before the Honorable Frank R. Addy and pleaded guilty to the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) and as indicted to attempted armed robbery without formal negotiations or recommendations from the State as to sentencing. The State dropped the kidnapping and weapons charges in exchange for Petitioner’s plea.¹ Assistant Public Defender Sarah Mauldin (“Counsel”)

¹ While incarcerated, Petitioner picked up charges for criminal conspiracy and third-degree assault and battery by mob. (App.p.136). These charges were also dropped as part of the plea agreement. (App.p.136).

represented Petitioner and Assistant Solicitor Rhonda Patterson prosecuted the case. Judge Addy sentenced Applicant to concurrent terms of seventeen years' imprisonment for each charge.

Petitioner filed a timely notice of appeal. On July 9, 2019, the Court of Appeals dismissed Petitioner's appeal 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. *State v. Smith* (S.C. Ct. App. filed July 9, 2019). The remittitur was sent on July 4, 2019.

Petitioner commenced this PCR action on May 5, 2020. In his application, Petitioner alleged he is being held in custody unlawfully based on the following (verbatim):

1. Conflict of interest with sentencing judge who heard the plea
 - a. During the plea, Judge Frank Addy identified one of the victim's family members by name, and basically indicated in open court that he personally knew the victim and/or the victim's family.
2. Plea counsel's failure to advise [Petitioner] about this conflict, or otherwise improperly waive the conflict on [Petitioner]'s behalf.
 - a. Plea counsel did not object to this conflict, did not advise [Petitioner] about the conflict, and otherwise waived objection.
3. Plea counsel's failure to advise [Petitioner] as to the potential sentence that could be imposed
 - a. [Petitioner]'s plea was unknowingly and involuntarily entered based on representations of his counsel regarding his acceptance into a rehabilitation program; further, [Petitioner] was not aware of the potential sentencing discretion of the court.

Petitioner requested relief as follows:

Finding of post-conviction relief due to ineffective assistance of counsel and conflicts of interest in sentencing; vacate sentence and guilty plea and demanding a new trial.

An evidentiary hearing was held before the Honorable Kristi F. Curtis on April 4, 2023, at the Lexington County courthouse. Following the hearing, Judge Curtis issued an order denying

and dismissing the PCR application with prejudice. Petitioner filed his petition for a writ of certiorari with this Court on May 13, 2025.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Appellate courts must be especially deferent to the credibility findings of the post-conviction relief court. *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 435 (2018); *see also Drayton v. Evatt*, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993) ("We give great deference to a judge's findings where matters of credibility are involved since we lack the opportunity to directly observe the witnesses.").

ARGUMENT

I. The PCR court properly found Petitioner did not meet his burden of proving that Judge Addy knew the victim’s family, where the court specifically found that the transcript did not support the allegation, that Counsel credibly testified she never saw or heard any indication that Judge Addy knew the victim, and that Petitioner’s contrary testimony on this issue was not credible.

Petitioner claims Counsel was ineffective for failing to object when Judge Addy made certain statements during the plea proceeding which led Petitioner “to believe that there was a conflict between the Judge and the victim.” This claim is without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). In reviewing a PCR application alleging ineffective assistance of counsel, a court must apply the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so [ineffective] as to require reversal” of the applicant’s conviction or sentence. *Id.* at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668.

In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To satisfy the second, or “prejudice,” prong of *Strickland*, an applicant must demonstrate counsel’s deficient performance prejudiced her such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In the context

of a guilty plea, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

In a PCR action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP.

This case involves a shocking act of random violence inflicted on the victim by Petitioner. Petitioner does not deny that he committed the offense. At the plea proceeding, Judge Addy briefly directed a few words of sympathy and encouragement toward the victim. Petitioner attempts to portray Judge Addy's utterly innocuous comments as an indication of some kind of secret bias or nefarious conflict of interest, rather than a laudable display of sensitivity toward the victim of a brutal crime.

A party claiming an unconstitutional risk of bias carries a "difficult burden of persuasion" and "must overcome a presumption of honesty and integrity in those serving as adjudicators." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

Petitioner freely admits that there is no evidence to support his calumnious interpretation of Judge Addy's remarks; however, in his view, the lack of evidence *is itself* a reason to grant relief. He argues that, because Counsel did not object to Judge Addy's statements, "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." (Pet.p.7). Petitioner complains throughout his petition that Counsel's failure to object deprived him of the opportunity to put evidence of Judge Addy's purported "conflict" on the record.

This argument completely ignores the burden of proof in PCR cases. It is *Petitioner* who bears the burden of showing that, but for Counsel's failure to object, the result of his proceeding would have been different. The PCR court correctly held Petitioner failed to meet that burden.

The PCR court's order recounted Petitioner's testimony that "Judge Addy appeared to know the name of one of the family members who spoke on the victim's behalf at sentencing, even before that person had been introduced" and that "Judge Addy made a small noise of recognition like 'um' at one point, which led [Petitioner] to believe that Judge Addy knew the person speaking on behalf of the victim." (App.pp.7-8). The PCR court noted, however, that "[n]either of these allegations is supported by the transcript," and it expressly found that Petitioner's testimony on this point was "not credible." (App.p.8).

The PCR court then addressed Counsel's testimony, in which she "denied hearing or seeing anything at the plea proceeding that would indicate that Judge Addy knew any member of the victim's family," finding her testimony credible.

Petitioner offers no explanation as to why this Court should upset the credibility findings of the PCR court, merely in order to entertain Petitioner's admittedly evidence-free accusations of partiality and bias on the part of Judge Addy. This Court, which is not in a position to observe the witnesses, should respect the credibility findings of the PCR court on this issue. *Frierson*, 423 S.C. at 262, 815 S.E.2d at 435.

Because Petitioner has not established any error in the decision of the PCR court, the State asks this Court to deny the petition for a writ of certiorari as to this issue.

II. The PCR court properly found Petitioner did not meet his burden of proving that he was misadvised of his potential sentence prior to his guilty plea, where the court specifically found that the plea colloquy was sufficient to cure any purported error,

that Counsel credibly testified she correctly explained the potential sentences Petitioner was facing prior to the plea, and that Petitioner’s contrary testimony was not credible.

Petitioner next argues that the PCR court erred in not granting relief on his claim that Counsel told him he would only receive five years’ probation if he pleaded guilty to ABHAN and attempted armed robbery. This argument is meritless.

In support of his position, Petitioner recites his own self-serving testimony from the PCR hearing, during which he implausibly claimed that he thought he would be sentenced to five years’ probation, conditioned on participation in the SC STRONG drug rehabilitation program. The PCR court, however, specifically found that Petitioner’s testimony on this point was not credible, as it was “flatly refuted” by Petitioner’s own sworn statements in the plea transcript admitting that he understood he was facing up to twenty years on each charge. (App.p.11). The PCR court instead credited Counsel’s testimony that she accurately explained Petitioner’s potential maximum exposure, that she *never* told Petitioner he would merely get probation, and that she actually *warned* him that asking for probation during sentencing would likely be futile; however, because Petitioner insisted on asking for probation, she ultimately deferred to his wishes. (App.pp.10–11). The PCR court’s credibility findings are entitled to substantial deference on appeal, especially since Petitioner himself has not offered any reasons for this Court to depart from those findings. In fact, Petitioner has consistently failed to even mention the PCR court’s findings of credibility.

In addition, the PCR court noted that Judge Addy’s plea colloquy would have cured any possible confusion. (App.p.11). In response, Petitioner merely repeats his ridiculous claim that he “didn’t really understand” Judge Addy’s perfectly clear explanation of his potential sentence. The PCR court did not believe Applicant’s absurd testimony, and neither should this Court.

Petitioner has not established any error in the decision of the PCR court. Therefore, the State asks this Court to deny the petition for a writ of certiorari as to this issue.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DON J. ZELENKA
Deputy Attorney General

ZACHARY W. JONES
S.C. Bar No. 104174
Assistant Attorney General

By: *s/Zachary W. Jones*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

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