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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.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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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.

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.

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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?

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.

The Respondent states in their reply, "Petitioner attempted 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." However, during the plea hearing, 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.

Judge Addy directly addresses the victim and her Pastor regarding her church, thus beginning a potential conflict (App. P. 160, lines 1-14, lines 19-25, P. 161, lines 1-2), with no objection being made by Plea Counsel regarding this dialogue.

Again, 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.

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.

The Respondent states in their Return, "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." 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. (App. P. 35, lines 2-22). 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.

By not objecting to this, either by Plea Counsel's 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.

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.

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. This argument is not "meritless" as stated by the Respondent as the Appellant believes that he was not prepared and that his Plea counsel failed to advise him.

During the plea, when Petitioner's counsel addressed the court, Counsel mentioned the Strong Program, "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 State then opposes this request. (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, 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 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.

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

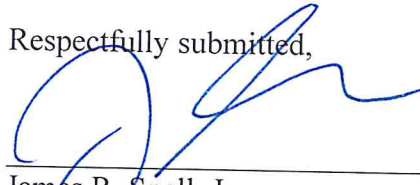
from the record of the Post Conviction Relief evidentiary hearing that the Petitioner was under the full belief that he would be going into the SC STRONG program on a probationary sentence and should that have not been an option then he would not have pled.

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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