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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

ADAM THOMAS BYRUM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000876

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR judge erred by refusing to find counsel ineffective for failing to move for reconsideration of petitioner's sentence?

STATEMENT

The July 2020 term of the Greenville County grand jury indicted petitioner for two counts of attempted murder, three counts of possession of a weapon during the commission of a violent crime, and one count of murder. App. 88-93. Petitioner's case was called on December 10, 2020, before the Honorable Letitia Verdin. App. 1. Marcus Smith represented the state, and J. Christopher Shipman represented petitioner. App. 1. Petitioner pled guilty to two counts of attempted murder and one count of murder. App. 11, ll. 2-10. The court imposed a total sentence of fifty years' imprisonment comprising of fifty years for murder and thirty years as to each count of attempted murder, to be served concurrently. App. 24, ll. 16-20.

Plea counsel neither moved the court to reconsider its fifty-year sentence nor filed a notice of appeal.

Petitioner then filed an application for post-conviction relief (PCR), on August 20, 2021. App. 26-35. The state filed a return and partial motion for summary dismissal. App. 36-45. Thereafter, Susannah Ross, on behalf of petitioner, filed an amended PCR application. App. 47-48. On October 8, 2024, an evidentiary hearing was held before the Honorable Patrick Cleburne Fant, III. App. 49-76. Susannah Ross represented petitioner, and Tommy Evans, Jr. represented the state. App. 49.

On May 2, 2025, Judge Fant signed an order of dismissal denying and dismissing petitioner's application with prejudice. App. 77-87.

This petition follows.

ARGUMENT

The PCR judge erred by refusing to find counsel ineffective for failing to move for reconsideration of petitioner's sentence.

Relevant facts

Petitioner pled guilty to one count of murder and two counts of attempted murder, which the court accepted as freely and voluntarily made. App. 5, ll. 8-11; 11, ll. 5-10. Concerning the charges, the state alleged that on March 13, 2019, petitioner shot into a vehicle occupied by two people, both of whom were severely injured. App. 5, l. 18 – 7, l. 10. Both individuals gave statements that petitioner and his co-defendant were the individuals present and that petitioner fired the gun. App. 7, ll. 7-10. Petitioner's co-defendant provided a statement that she and petitioner planned to rob the driver of the vehicle but did not know the second individual would be there. App. 10, ll. 4-10. Four days later, on March 17, 2019, an individual was found deceased inside a vehicle that was a short distance from where the first incident occurred. App. 7, 11-23. Petitioner's co-defendant provided a statement that she and petitioner went to meet the deceased individual and planned to rob and kill him. App. 10, ll. 16-20. The two incidents were linked as related incidents, and petitioner was arrested. App. 8, ll. 8-19.

Thereafter, plea counsel presented mitigation, noting that petitioner was twenty-four years old, and any sentence given by the court would be longer than he had been alive. App. 18, l. 22 – 19, l. 1. He argued that petitioner had received mental health treatment since he was six years old. App. 19, ll. 11-14. He noted that by ten or twelve, petitioner had self-harmed and made several suicide attempts resulting in three involuntarily commitments before he reached the age of majority. App. 19, ll. 15-20. Several of his mother's boyfriends abused him, and specifically, petitioner was sexually assaulted by one of his mother's boyfriends. App. 19, l. 21

– 20, l. 1. Plea counsel continued that petitioner's mother was absent, relied on drugs, and "wanted to dope him up." App. 20, ll. 2-11. Plea counsel argued that the "gang lifestyle" gave him a sense of community and belonging, but he engaged in a lot of drug use. App. 20, ll. 12-17. He argued that petitioner's psychiatric records reflected both that his biological father disowned him and the step-fathers in his life abused him. App. 21, ll. 5-11. Plea counsel noted that in petitioner's psychiatric records, petitioner explained that he wanted to have a relationship with his father and mother and to get along with his brothers and sisters. App. 22, l. 20 – 23, l. 4. Plea counsel requested a range of thirty-five-to-forty years on the murder and thirty years as to each attempted murder. App. 24, ll. 1-9. The court imposed a total sentence of fifty years. App. 24, ll. 16-20.

Petitioner filed a PCR application, *see* App. 26-35, which was later amended to include an ineffective assistance of counsel claim for failing to move for reconsideration, App. 47.

During the evidentiary hearing, petitioner testified that his counsel did not move to reconsider his sentence, which he would have wanted counsel to do. App. 57, ll. 18-23. He testified that his counsel did not come talk with him after his sentence was imposed. App. 58, ll. 3-5. He then testified that after his plea he was sent "straight to lockup," and was not able to speak with his lawyer. App. 63, ll. 22-24. Petitioner also explained that his co-defendant got less time than him. App. 58, ll. 11-14. Plea counsel did not testify that he discussed a motion for reconsideration with petitioner and testified that he did not file a motion for reconsideration. App. 70, ll. 16-20. He further testified that he did not think that Judge Verdin would reconsider if he had asked for reconsideration. App. 70, ll. 21-23.

The PCR court denied and dismissed petitioner's application with prejudice. App. 87. Particularly, the PCR found plea counsel's testimony credible and that he rendered reasonably

effective assistance of counsel. App. 83-84. The PCR court found that petitioner testified that he wanted to appeal, but plea counsel "testified that he discussed a motion to reconsider [petitioner's] sentence with him but that they did not discuss an appeal." App. 84. The PCR court noted that petitioner testified that petitioner wanted plea counsel to move for resentencing because his co-defendant received a lesser sentence. App. 84. The PCR court again stated that testimony showed that plea counsel and petitioner discussed a motion to reconsider. App. 84. The court further determined that petitioner did not allege viable issues for appeal "other than dissatisfaction with his sentence, which he discussed with plea counsel." App. 84. Further, as to the motion to reconsider, the court stated that:

> plea counsel testified that he discussed the matter with [petitioner] and told him that it was unlikely that Judge Verdin would grant the motion. He testified that he believed he explained why the motion to reconsider would not prevail in detail to [petitioner] and that [petitioner] did not tell him that he didn't understand, nor did he appear to not understand.

App. 85. Therefore, based on the testimony presented, the PCR court found that petitioner did not show that plea counsel's advice was outside the range of reasonably effective assistance and gave "credence to plea counsel's testimony that he explained why the motion would not be successful." App. 86. The court continued that petitioner presented no evidence that would support the motion's success, other than his co-defendant's lesser sentence. App. 86. The PCR court concluded that petitioner failed to establish prejudice because he did not show that plea counsel was deficient and that but for the deficiencies, petitioner would have received a lower sentence. App. 86.

Discussion

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v.*

Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). In the context of a guilty plea, courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. *See Taylor v. State*, 404 S.C. 350, 359-60, 745 S.E.2d 97, 102 (2013); *see also Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 668, 104 S. Ct. at 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. *Strickland*, 466 U.S. at 687–88, 104 S. Ct. at 2065-65. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2064-65). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. *Taylor*, 404 S.C. at 359, 745 S.E.2d at 102 (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Concerning a claim of counsel's failure to file a notice of appeal, the United States Supreme Court has held that counsel has "a constitutionally imposed duty to consult . . . when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000) (parenthetical omitted). Even further, the Supreme Court stated that when making that determination, "courts must take into account all the information counsel knew or *should have known*." *Id.* (emphasis added).

Plea counsel was ineffective by failing to file a motion to reconsider the sentence once petitioner received a total imprisonment sentence of fifty years. Particularly, the testimony

presented during the evidentiary hearing reveals that plea counsel failed to visit petitioner after the total sentence of fifty years was imposed and failed to discuss a reconsideration motion with petitioner. App. 57, ll. 18-23; 58, ll. 3-5; 58, ll. 8-10; 63, ll. 22-24; 70, ll. 16-23. In fact, petitioner testified that he was unable to speak with counsel following his sentence because he was sent "straight to lockup," and thus, he did not have the opportunity to inquire or discuss with plea counsel about his desire for a reconsideration motion to be filed. App. 63, ll. 22-24. Importantly, petitioner testified that he would have wanted plea counsel to move for reconsideration. App. 57, ll. 18-23. Thus, given the significant sentence, plea counsel should have known that petitioner would have wanted plea counsel to move for reconsideration. *Roe*, 528 U.S. at 480, 120 S. Ct. at 1036. Further, the PCR court misstated counsel's testimony several times by finding that plea counsel discussed a reconsideration motion with petitioner and explained to him why it would not be successful. App. 84-86. Plea counsel did not testify that he discussed a reconsideration motion with petitioner nor did he testify that he explained to petitioner that he did not believe that such a motion would be successful. App. 70, ll. 16-20. Yet, the PCR court found credible testimony that plea counsel *did not give*. App. 84-86. Considering that petitioner received a significant sentence, combined with his mental health history, plea counsel should have filed a motion to reconsider the sentence and was defective for failing to do so. *See Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (explaining that "when counsel articulates a *valid* reason for employing a certain strategy, such conduct will generally not be deemed ineffective assistance of counsel.").

Plea counsel's deficient performance also prejudiced petitioner. In *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008), the South Carolina Court of Appeals wrote:

> The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. *State v. Smith,* 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. *Wasman v. United States,* 468 U.S. 559, 563, 104 S. Ct. 3217, 82 L.Ed.2d 424 (1984).

The sentencing judge in the present case had the authority to reconsider and reduce the fifty-year sentence imposed. *Hicks*, 377 S.C. at 325, 659 S.E.2d at 500; *see also Smith,* 276 S.C. at 498, 280 S.E.2d at 202. There is a reasonable probability that if plea counsel had filed a motion to reconsider sentence, despite his testimony to the contrary, that the plea judge would have granted the motion. App. 70, ll. 16-23; *Strickland,* 466 U.S. at 694, 104 S. Ct. at 2068. Petitioner's age, mitigating circumstances concerning his mental health, and his co-defendant's lesser sentence may have served as a basis for reconsideration. App. 18, l. 22 – 24, l. 9. In addition, plea counsel's mere testimony that he did not believe that a motion for reconsideration would be granted, provides no insight into why he held that belief and, without more, is an insufficient reason to refuse to file a motion to reconsider the sentence. App. 70, ll. 16-23. Therefore, plea counsel was ineffective for failing to discuss or file a motion to reconsider with petitioner, and petitioner was prejudiced by that deficient performance.

CONCLUSION

Based on the foregoing argument, petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented.

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ATTORNEY FOR PETITIONER

This 5th day of September, 2025.