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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
Honorable R. Markley Dennis, Plea Judge
Honorable R. Kirk Griffin, PCR Judge

Appellate Case No. 2025-000439

ALEXANDER REID,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION
FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner's Questions

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when trial counsel incorrectly advised Petitioner that he would be able to appeal the trial court's denial of his pretrial motions to suppress despite pleading guilty, and where Petitioner was prejudiced because if he would have known he could not appeal the pretrial rulings, he would have rejected the State's favorable plea offer and proceeded to trial, which was scheduled to begin the day Petitioner pled?

Respondent's Counterstatement of Questions

1. Does probative evidence support the PCR court's finding that Petitioner failed to prove prejudice when (1) Petitioner's own statements to the plea court show he was aware of the multitude of benefits he received from this favorable negotiated plea, and (2) because Petitioner believed he would be convicted by a jury, and he faced a potential life-without-parole sentence, it is patently irrational that he would have rejected this plea and proceeded to trial on the sole basis that he hoped to appeal the pretrial motions?

2. Does probative evidence support the PCR court's finding that Petitioner pled guilty knowingly, intelligently, and voluntarily, and Petitioner failed to overcome the strong presumption that counsel rendered effective advice when counsel credibly testified he understood that appealing a guilty plea was very difficult to do, and Petitioner himself acknowledged at the plea proceeding that he had not been promised anything other than the on-the-record negotiations?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In March 2016, the Charleston County Grand Jury indicted Petitioner for trafficking cocaine, one hundred grams or more (2016-GS-10-01949), and two counts of unlawful conduct towards a child (-01947, -01948). In September 2017, the Charleston County Grand Jury indicted Petitioner for possession with intent to distribute (PWID) crack cocaine (2017-GS-10-06457). On October 16, 2017, Petitioner appeared before the Honorable R. Markley Dennis, Jr. and pled guilty, pursuant to a negotiated twenty-year active sentence, to trafficking cocaine, 28 to 100 grams; PWID crack cocaine; and both counts of unlawful conduct towards a child.[1] Aaron Mayer, Esquire, represented Petitioner, and Assistant Solicitors Stephanie Linder and Charles Patrick represented the State. Judge Dennis imposed concurrent terms of twenty years for each drug charge and ten years for each unlawful conduct charge.

Petitioner filed a timely notice of appeal, which was perfected by Deputy Appellate Defender Wanda H. Carter through the filing of an Anders brief. The Court of Appeals dismissed the appeal pursuant to Anders, and the remittitur was sent January 24, 2019.

On January 24, 2019, Petitioner timely filed this PCR application alleging:

1. Ineffective Assistance of Counsel: Petitioner was denied counsel at critical stage of proceedings;

2. Involuntary guilty plea: counsel advised Petitioner to plead guilty after inadequate investigation of law and facts;

3. Prosecution Misconduct: prosecution interfered with counsel during critical stage of proceedings.

On April 19, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin.

[1] Petitioner pled guilty after the Court denied his motions to suppress drug evidence and his statements. Petitioner pled pursuant to Alford on the unlawful conduct charges.

Petitioner was present and represented by Christopher L. Murphy, Esquire. At the hearing, Petitioner proceeded only on his allegation that his plea was involuntary. Specifically, he asserted he believed he could appeal the denial of his pretrial suppression hearings after pleading guilty. Following the hearing, Judge Griffin issued an order on March 3, 2025, denying relief and dismissing the application with prejudice.

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). When reviewing factual findings, the appellate courts defer to the PCR 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. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR 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

1. Probative evidence supports the PCR court's finding that Petitioner failed to prove prejudice when (1) Petitioner's own statements to the plea court show he was aware of the multitude of benefits he received from this favorable negotiated plea, and (2) because Petitioner believed he would be convicted by a jury, and he faced a potential life-without-parole sentence, it is patently irrational that he would have rejected this plea and proceeded to trial on the sole basis that he hoped to appeal the pretrial motions.

Petitioner contends he would have rejected this favorable plea and proceeded with trial had counsel not provided deficient advice related to his ability to appeal pretrial motions. However, his own statements to the plea court show he was aware of the multitude of benefits he received from this plea—thus negating his post-hoc self-serving testimony that he would have rejected this plea had he understood he could not appeal the pretrial motions. Further, because he admitted to the plea court that he believed he would be convicted at trial, and because he faced a potential life-without-parole sentence, probative evidence supports the PCR court's finding that he did not prove he would have rejected this favorable plea and proceeded to trial. Finally, it is patently irrational that he would have rejected this favorable plea and proceeded to trial on the sole basis that he hoped to appeal the pretrial suppression motions.

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, an applicant must prove (1) counsel was deficient, and (2) Applicant was prejudiced by counsel's deficiency. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985).

To show prejudice in the context of a guilty plea, Petitioner must show a reasonable probability "that, but for counsel's [alleged] errors, he would not have pled guilty and would have

insisted on going to trial." Hill, 474 U.S. at 59. "Moreover, to obtain relief on this type of claim, **a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances**." Padilla, 559 U.S. at 372 (citing Roe v. Flores-Ortega, 528 U.S. at 489 (emphasis added)). "Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S. at 369. "Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive." Hinson, 297 S.C. at 458, 377 S.E.2d at 339.

At the plea hearing, Petitioner himself acknowledged the myriad of benefits he received in exchange for the plea. For example, he agreed he was receiving a benefit of avoiding exposure to a more serious possible punishment.[2] (App. 103). He likewise agreed that having other charges—including three firearm charges, two proximity charges, and charges from an additional arrest (App. 97)—dismissed was a benefit to him. (App. 103). Critically, based on his statements to the plea court, he thought the jury would find him guilty beyond a reasonable doubt, he understood a jury was "downstairs and all they have to do is come up and we can pick them and we can make the State prove its case as to each one of these cases," and he believed the offer was "a significant benefit" to him. (App. 113-14). Petitioner should not now be able to depart from his statements at the plea hearing. See Hinson, 297 S.C. at 458, 377 S.E.2d at 339 ("Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive."); Lee, 582 U.S. at 369 ("Courts should not upset a plea solely because

[2] The trafficking charge carried a minimum of twenty-five years. As part of the negotiated plea, Petitioner pled to a lesser-included trafficking charge.

of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies."); c.f. Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."); Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.").[3]

It is clear from the plea transcript that Petitioner received many benefits from this plea—and he was aware of those benefits. Further, it is clear the court was prepared to select a jury that day and proceed to trial if Petitioner rejected this favorable, negotiated plea offer; and if convicted, the trial court would have sentenced Petitioner to more than twenty years. (App. 105-06, 115). Finally, plea counsel testified at the PCR hearing that the State had threatened LWOP. Based on

[3] Petitioner's testimony from the first PCR hearing supports that he pled guilty because he feared a conviction and a lengthy sentence. In fact, at the first PCR hearing, he testified he pled guilty because counsel "told him he would never see the street again." (App. 212). Although he additionally testified that he pled guilty because his attorney said he would appeal the sentence (App. 214), he did not offer that testimony at the second PCR hearing—leaving that judge unable to assess its credibility. Petitioner's failure to offer this testimony at the second hearing should be weighed in determining its credibility. In other words, if Petitioner truly would have rejected this favorable plea if he understood he was waiving his right to appeal, that is something he would have testified to at the second PCR hearing. In light of the general admonishment against upsetting a plea based on post-hoc statements by a criminal defendant and Petitioner's failure to offer this testimony at the second PCR hearing (to the judge that was determining this issue), this Court should not find Petitioner's testimony at the first hearing that he decided to plead guilty because his lawyer said he would appeal it to be credible. See Lee, 582 U.S. at 369 ("Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies."). To the extent this Court considers the testimony from his first PCR hearing (which the second PCR judge could not assess for credibility), Petitioner's initial response to the question—"Why did you decide to plead guilty"—should be considered in assessing the overall credibility of his current contention that he would have gone to trial if he had understood he was waiving the right to appeal the suppression hearings.

the foregoing, and especially in light of Petitioner's own admission that he believed the State would be able to meet its burden of proof at trial, probative evidence supports the PCR court's finding that Petitioner did not prove he would have rejected this favorable plea and proceeded to trial. Likewise, and for the same reasons, it would not have been rational for Petitioner to reject the plea under these circumstances. See Padilla, 559 U.S. at 372 ("Moreover, to obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." (citing Roe, 528 U.S. at 489)). Thus, probative evidence supports the PCR court's finding that Petitioner failed to prove prejudice.

2. Probative evidence supports the PCR court's finding that Petitioner pled guilty knowingly, intelligently, and voluntarily, and Petitioner failed to overcome the strong presumption that counsel rendered effective advice when counsel credibly testified he understood that appealing a guilty plea was very difficult to do, and Petitioner himself acknowledged at the plea proceeding that he had not been promised anything other than the on-the-record negotiations.

Petitioner asserts his plea was involuntary because it was based on deficient advice that he could appeal the denial of his pretrial motions to suppress drug evidence after pleading guilty. In support, he contends no evidence supports the PCR court's finding that he failed to prove deficient advice. However, this argument shifts the burden of proof and ignores the presumption of effectiveness embedded in Strickland—which Petitioner has failed to overcome. Further, this argument overlooks plea counsel's credible testimony that he understood appealing a guilty plea was very difficult—making it not rational to conclude counsel affirmatively advised Petitioner he could appeal the pretrial motions after pleading guilty. Finally, this argument ignores Petitioner's statements to the plea court that he had not been promised anything in exchange for the plea other than the on-the-record negotiations. Based on counsel's credible testimony and Petitioner's statements to the plea court, probative evidence supports the finding that Petitioner pled guilty knowingly, voluntarily, and intelligently.

When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Petitioner must show counsel's representation fell below an objective standard of reasonableness. Id. at 58-59. Under the deficiency prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. **"Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,"** and the applicant must overcome this presumption to receive relief. Id. at 117-18, 386 S.E.2d at 625 (emphasis added). Courts should "presume that counsel satisfied their obligation to render competent advice at the time their clients considered pleading guilty." Padilla v. Kentucky, 559 U.S. 356, 372 (2010).

"Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee v. United States, 582 U.S. 357, 369 (2017). "Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive. The fact that trial counsel candidly admits that he cannot now recall the advice given is [likewise] not dispositive." Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

At the PCR hearing, Petitioner offered the following regarding his understanding of an

appeal: "Well, I didn't really know too much about law but, you know, I was just going from his experience. You know what I'm saying? I just wanted to, you know, like—figured that if I did what he told me to, you know, I could appeal whatever." (App. 195). He clarified that he believed he could appeal the denial of his suppression motions, and he did not learn he could not appeal those rulings until after he was sentenced. (App. 195-96).

Plea counsel testified the case hinged on the suppression hearing, and the solicitor had threatened life-without-parole (LWOP) based on Petitioner's prior charges. (App. 190). He stated it was his general practice to discuss options and rights with clients. (App. 190). Although counsel did not recall if he discussed an appeal with Petitioner, he stated that at the time of the plea, he understood it was very difficult to appeal a guilty plea, and a defendant had much less ability to seek relief through an appeal. (App. 190). When questioned about conditional pleas, counsel testified his criminal experience was "[p]retty much exclusively in the state system," he was unsure if he had ever heard the term "conditional plea," and he did not understand the difference between a conditional plea being accepted in federal court versus state court.

Initially, for the first time on appeal, Petitioner asserts the deficient advice he received was related to whether the plea was conditional. (Pet. 8). However, Petitioner never testified that he was advised this was a conditional plea or asserted he would have proceeded to trial if he had known a South Carolina state court cannot accept a conditional plea. There is simply *no e*vidence that Petitioner was advised this was a conditional plea, nor is there any evidence that this newly-alleged advice impacted his decision to plea. Likewise, Petitioner asserts for the first time on appeal that the Notice of Appeal explanation constitutes evidence of deficient advice. However,

this was never argued to the PCR court and should not be considered for the first time on appeal.[4] See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007) (reiterating preservation rules apply in PCR notwithstanding the extraordinary relief of remanding the case because the PCR order did not comply with section 17-27-80 of the South Carolina Code).

Here, the alleged deficient advice related to whether Petitioner was advised he could appeal the denial of his suppression motions after he pled guilty. However, Petitioner's argument that he believed he could appeal the suppression hearings post-plea is belied by his statement to the plea court. See Lee, 582 U.S. at 369 ("Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences."). Specifically, Petitioner told the plea court no one had promised him anything in exchange for the plea other than the on-the-record promises that were part of the negotiated plea.

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[4] Should the Court believe these are proper considerations for appeal, the proper procedure would be to remand this to the PCR court to reconsider its ruling in light of these new arguments. Although counsel offered brief testimony about conditional pleas, Petitioner never made any allegation related to a conditional plea (other than the one related to his belief that he could appeal the suppression motions). Because this issue was not clearly raised or pled, the PCR court did not consider the credibility of that testimony. Likewise, because Petitioner never argued the Rule 203 explanation was evidence of deficient advice, the PCR court did not consider that argument as part of its ruling. Petitioner had an opportunity to raise these allegations in his application; at the first hearing; and again at the second hearing, but he never did. Thus, he has waived his right to argue them on appeal.

On the merits, counsel's testimony that he was unfamiliar with conditional pleas and would not have used that terminology highly suggests he did *not* advise Petitioner this was a conditional plea. Further, the Rule 203 explanation is not evidence of counsel's advice to Petitioner. It is not uncommon for lawyers to submit arguments to courts even when they believe (and have advised their client) the likelihood of success is slim, and the court filing itself thus does not constitute evidence of counsel's advice on this issue. Because this argument was not clearly raised, the PCR court did not have an opportunity to hear testimony related to it. Should the Court wish to consider this as evidence, this case should be remanded so counsel can testify about his thought process in filing the Rule 203 notice.

(App. 110-11). Although he was asked if there were any additional promises, he did not tell the Court he believed he would be able to appeal the denial of the suppression motions. Likewise, he told the Court he had answered truthfully. (App. 114). Petitioner should not now be able to depart from his statements at the plea hearing. See Hinson, 297 S.C. at 458, 377 S.E.2d at 339 ("Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive."); Lee, 582 U.S. at 369 ("Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies."); c.f. Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."); Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.").

Petitioner's post-hoc, self-serving testimony that he "figured that if I did what he told me to, you know, I could appeal whatever" is not dispositive. (App. 195). See Hinson, 297 S.C. at 458, 377 S.E.2d at 339. ("Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive."). Likewise, the fact that counsel did not specifically recall discussing an appeal from this guilty plea is not dispositive. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be

informed of the right to a direct appeal from a guilty plea."); Hinson, 297 S.C. at 458, 377 S.E.2d at 339 ("The fact that trial counsel candidly admits that he cannot now recall the advice given is not dispositive.").

Here, plea counsel testified he understood it was difficult to appeal a guilty plea, and the PCR court—who was in the best position to assess credibility—found counsel's testimony on this issue credible. See Foye, 335 S.C. at 589, 518 S.E.2d at 267 ("Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses."). Counsel's foregoing credible testimony constitutes probative evidence to support the PCR court's finding that Petitioner did not overcome the strong presumption that counsel's advice was effective. See Padilla, 559 U.S. at 372 (providing courts should "presume that counsel satisfied their obligation to render competent advice at the time their clients considered pleading guilty"); Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. (providing "[c]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and the applicant must overcome this presumption to receive relief). In other words, here, where counsel credibly testified it was his understanding at the time of the plea that it was very difficult to appeal a guilty plea, it is not rational to believe that he advised Petitioner he could, in fact, successfully appeal the denial of the suppression motions after he pled guilty, nor is it rational to believe Petitioner's decision was based on this alleged deficient advice. Petitioner has failed to overcome the strong presumption that counsel's advice was reasonable under prevailing professional norms, and probative evidence supports the PCR court's finding that Petitioner failed to prove deficiency. Likewise, the PCR court properly found Petitioner entered this pela knowingly, intelligently, and voluntarily.

CONCLUSION

Based on the foregoing, this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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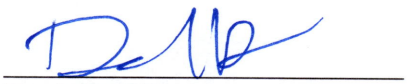

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This 8th day of December, 2025