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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Lancaster County
Hon. Patrick C. Fant, III, Post-Conviction Relief Judge

Appellate Case No. 2025-000451

Ronvarus D. Henderson, #295569,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES ON PETITION FOR CERTIORARI

Whether Trial counsel erred in failing to schedule a mental evaluation for petitioner prior to the guilty plea proceeding because it appeared as though he was not mentally competent to enter guilty pleas in his case?

COUNTERSTATEMENT OF ISSUES ON PETITION FOR CERTIORARI

Whether the post-conviction relief court properly determined Petitioner failed to establish Plea Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on Plea Counsel's failure to have a competency evaluation performed before his guilty plea where Petitioner failed to present any credible evidence that in fact he was incompetent at the time of his guilty plea?

STATEMENT OF THE CASE

Petitioner Ronvarus D. Henderson, Lancaster County Grand Jury indicted Petitioner on different dates for his respective charges of Trafficking in Methamphetamine 10-28g—2nd Offense and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-29-2439), Failure to Stop for a Blue Light (2021-GS-29-2434), Resisting Arrest (2021-GS-29-2435), two counts of Sale or Delivery of a Pistol to Unlawful Persons (2021-GS-29-2436, -2437), Possession with Intent to Distribute Schedule IV—2nd Offense (2021-GS-29-2438).¹ Petitioner was represented by Lancaster County Public Defender John Freeman (Plea Counsel). Sixth Circuit Assistant Solicitor Nicole N. Workman prosecuted the case.

On May 24, 2022, Petitioner appeared before the Honorable Brian M. Gibbons and pleaded guilty with a negotiated sentencing range of eight to fifteen years. Judge Gibbons sentenced Petitioner to concurrent terms of twelve years for Trafficking in Methamphetamine 10-28g—2nd Offense; five years for Possession of a Weapon During the Commission of a Violent Crime (2021-GS-29-2439); three years for Failure to Stop for a Blue Light (2021-GS-29-2434); one year for

¹ The following *eighteen* charges were nolle pross'd as part of the negotiated plea: Possession of Firearm by Person Convicted of Violent Felony (2021-GS-29-1421); three counts of Pointing and Presenting Firearms at a Person (2021-GS-29-1422, -1423, -2440); Failure to Stop for Blue Light (2021-GS-29-1424); Grand Larceny \$2000.00 - \$10,000.00 (2020-GS-29-911); Burglary—1st Degree (2020-GS-29-912); two counts of Drugs/MDP, Narcotic Drugs in Schedule I(b) & (c), LSD, and Schedule II—3rd or Subsequent Offense (2021-GS-29-1414, -1420); Drugs/Manufacturing, Possession of Other Substance in Schedule I, II, III or Flunitrazepam, with Intent to Distribute—3rd or Subsequent Offense (2021-GS-29-1415); Distribution of Methamphetamine—3rd or Subsequent Offense (2021-GS-29-1416); three counts of Drugs/Possession of Narcotics in Schedule I(b),(c), LSD & Schedule II—3rd or Subsequent Offense (2021-GS-29-1417, -1418, -1427); Drugs/Possession of Other Controlled Substance in Schedule I to V—2nd or Subsequent Offense (2021-GS-29-1419); Drugs/Distribution, Etc. of Methamphetamine—2nd Offense (2021-GS-29-1425); Drugs/Possession of Less Than One Gram of Methamphetamine or Cocaine Base (2021-GS-29-1426); Stalking (2021-GS-29-2433). Magistrate-level charges against Petitioner were additionally dismissed in accordance with the entrance of this plea. (App'x p. 71).

Resisting Arrest (2021–GS–29–2435); five years for each count of Possession of a Weapon by Felon (2021–GS–29–2436, –2437); and five years for Possession with Intent to Distribute Schedule IV—2nd Offense (2021–GS–29–2438).

Petitioner filed a timely Notice of Appeal on July 1, 2022. On August 10, 2022, the South Carolina Court of Appeal dismissed Petitioner's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the lower court on August 29, 2022.

Petitioner filed his application for post-conviction relief on February 2, 2023. On March 27, 2023, Petitioner filed a *pro se* amended PCR application. The State filed its Return and Motion for a More Definite Statement on or around June 19, 2023. On February 20, 2024, an evidentiary hearing was held at the Lancaster County Courthouse before the Honorable Patrick Cleburne Fant, III. Assistant Attorney General Shayla Joan Flores represented the State. Petitioner was present and represented by Rodney W. Richey, Esquire. At the hearing, Petitioner, through counsel, stated for the record which allegations he intended to proceed on.² In support of these claims, Petitioner testified on his own behalf and presented testimony from Petitioner's Mother, Sharon Henderson, and Plea Counsel. Judge Fant denied relief by filed order on November 2, 2024.

Petitioner filed his notice of appeal on March 11, 2025. Petitioner filed his Petition for Writ of Certiorari and Appendix on September 18, 2025.

This Return to Petition for Writ of Certiorari follows.

² App'x p. 116, ll. 8-14.

STATEMENT OF FACTS

The facts giving rise to the convictions were articulated by the Solicitor at Petitioner's plea hearing as follows:

Your Honor, on July 25, 2021 Mr. Henderson -- officers were called out to a "shots fired" at 411 Gills Creek Drive, here, in Lancaster County. Upon arrival, officers told Mr. Henderson to stop. He was under arrest. At that point he was running and resisted arrest. When he was picked up there were trafficking amounts of meth, in total about 13 grams which was found. Subsequently, a search warrant was done of the home and two pistols with obliterated serial numbers were found within the home, as well as, some schedule 4 controlled substance, which gives rise to all the charges that we are here for today, as well as, a possession of a weapon. It's my understanding that he lived in that home and that was also possession of a weapon during a violent crime, which is a violent crime statutorily. We also have failure to stop for a blue light, which on June 12th of last year he failed to stop for a blue light when signaled by law enforcement with flashing lights and sirens. He increased his speed during initiation of a traffic stop on Carter Road, that's here in Lancaster County. That gave rise to the failure to stop for blue light. He was identified by law enforcement.

(App'x pp. 73, l. 18-74, l. 17)

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 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

The post-conviction relief court properly determined Petitioner failed to establish Plea Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on Plea Counsel's failure to have a competency evaluation performed before his guilty plea where Petitioner failed to present any credible evidence that in fact he was incompetent at the time of his guilty plea.

On appeal, Petitioner asserts that the post-conviction relief court erred in finding Plea Counsel not deficient for failing to schedule a mental evaluation for Petitioner prior to his pleading guilty. Petitioner further asserts that "it appeared as though he was not mentally competent to enter guilty pleas in his case." (PWC p. 3). However, Petitioner wholly ignores the post-conviction relief court's findings from the record and the court's conclusion that Petitioner's testimony on this issue was not credible or persuasive. Furthermore, the post-conviction relief court found Plea Counsel's testimony credible on this issue and that, based upon Plea Counsel's observations, he had no concerns with Petitioner's competency. Accordingly, this Court should deny certiorari.

Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence that he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland, though considered in reverse

as a practical necessity: applicant must demonstrate (1) a 'reasonable probability' that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel's failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

The law prohibits a criminal trial of an incompetent defendant, Pate v. Robinson, 383 U.S. 375, 378 (1966). The test for competency is the same whether a defendant pleads guilty or goes to trial—namely, "whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding" and the requirement that the defendant "have a rational as well as a factual understanding of the proceedings against him." Sims v. State, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993) (citing Godinez v. Moran, 509 U.S. 389, 398–401 (1993). (citing Drope v. Missouri, 420 U.S. 162, 171 (1975) (observing that a defendant is incompetent if he "lacks the capacity to understand the nature and object of the proceedings against him") (emphasis added). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues that undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Garren v. State, 423 S.C. 1, 13-14, 813 S.E.2d 704, 711 (2018).

Here, Petitioner contends that the post-conviction relief court erred in finding Plea Counsel's representation not constitutionally ineffective where Plea Counsel did not have a competency evaluation done on Petitioner and where "it appeared as though he was not mentally competent to enter guilty pleas in his case." (PWC p. 3). However, Petitioner's contention fails on multiple points to be discussed *infra*.

Initially, Petitioner wholly ignores the post-conviction relief court's credibility findings on this issue: Plea Counsel's testimony was found *credible*, while Petitioner's was found *not credible* and *not persuasive*. See *McWee v. Weldon*, 283 F.3d 179, 186 (4th Circ. 2002) (affording deference to a state court's credibility determination on testimony establishing underlying facts); *Hyman v. State*, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (citing *Solomon v. State*, 313 S.C. 526, 443 S.E.2d 540 (1994)) (The PCR court is entitled to extraordinary deference in determining the credibility of the witnesses before it.); *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.").

Next, Petitioner wholly ignores the record that was before the post-conviction relief court. See *Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984) (holding that when determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing). Specifically, the guilty plea transcript in which Plea Counsel stated to the court at the beginning of the plea that he believed Petitioner was competent. (App'x pp. 71–72). Additionally, during the sentencing phase, Plea Counsel presented to the plea court that he had no "doubt about [Petitioner's] competency or [Petitioner] knowing the difference between right or wrong." (App'x p. 86).

At the post-conviction relief hearing, Plea Counsel testified that he did not discuss Petitioner's ability to understand and comprehend information, as he believed Petitioner knew the

difference between right and wrong and was competent to proceed. (App'x p. 139, ll. 8-13). Plea Counsel testified that he believed Petitioner understood their conversations. (App'x pp. 143, l. 20-144, l. 5). Plea Counsel testified that he had no questions about Petitioner's competency during his representation, especially not to the point that he thought an evaluation was necessary. (App'x 148, l. 22-149, l. 1). Plea Counsel testified to his belief that Petitioner was competent at the time of his trial and his continued belief in Petitioner's competency. (App'x p. 149, ll. 1-3). Plea Counsel again testified that he had no reason to believe Petitioner did not know the difference between right and wrong. (App'x pp. 149, l. 18-150, l. 1). Plea Counsel stated that Petitioner never told him he did not understand key parts of the proceedings during the plea hearing. (App'x p. 150, ll. 2-6). Plea Counsel stated that he did not recall being informed by Petitioner or his family members about any mental disabilities or challenges faced by Petitioner. (App'x p. 150, ll. 7-14). Notably, this is the testimony that the post-conviction relief court found credible.

Moreover, counsel can rely on their perceptions to assess whether their client is competent or not. See Jeter v. State, 417 S.E.2d 594, 596 (S.C. 1992) (finding trial counsel not deficient for failing to request mental examination of defendant—which might have formed the basis of an insanity defense or determination that defendant was not competent to stand trial—where trial counsel reasonably relied on his own perceptions that defendant was not mentally deficient).

Lastly, as the post-conviction relief court found, Petitioner bears the burden of proving that he was incompetent at the time of his guilty plea, and he failed to produce credible evidence that he was—in fact—incompetent at that time. See Jeter, 417 S.E.2d at 596 ("In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea."); Palacio v. State, 511 S.E.2d 62, 66 (S.C. 1999) (finding the defendant failed to present any probative evidence showing how counsel's delay in obtaining

unproduced documents prejudiced his case, especially when the contents of challenged documents were not provided at the PCR hearing); Beaver v. Thompson, 93 F.3d 1186, 1195 (4th Cir. 1996) (noting that "an allegation of inadequate investigation does not warrant habeas relief absent a proffer of what favorable evidence or testimony would have been produced").

Accordingly, the post-conviction relief court properly determined that Petitioner failed to establish a reasonable probability that he was not competent at the time of the crime or at the time of the plea, and that Petitioner failed to show that Plea Counsel's failure to seek an evaluation was unreasonable. This Court should 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.

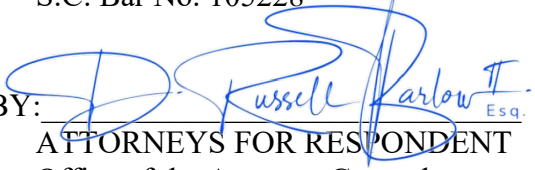
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