

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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DEC - 6 2013

Certiorari to Sumter County

S.C. Supreme Court

William Jeffrey Young, Circuit Court Judge

COREY PETERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001082

PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

1.

Did the PCR court err in granting a directed verdict in favor of the state where there is no probative evidence in the record to support the PCR court's claim that the state moved for a directed verdict or, in the alternative, for summary judgment at the conclusion of the evidentiary hearing?

2.

Did the PCR court err in dismissing Petitioner's PCR application due to Petitioner's insistence on pursuing an issue not raised in his application since the proper response would have been to hold a contempt proceeding to determine whether Petitioner should be held in contempt of court?

STATEMENT

A Sumter County Grand Jury indicted Petitioner at the October 2010 term of General Sessions for possession with intent to distribute cocaine, possession with intent to distribute cocaine within a half mile of a school or park, possession with intent to distribute marijuana, and possession with intent to distribute marijuana within a half mile of a school or park. App. 258-259. Petitioner's case was called to trial on September 12, 2011 before the Honorable R. Ferrell Cothran, and a jury. Assistant Solicitor Bronwyn McEleveen appeared on behalf of the prosecution, and David Sullivan represented Petitioner. App. 1.

On September 15, 2011, during jury deliberations, Petitioner pled guilty to all four charges. App. 215, l. 5 – 219, l. 2. Judge Cothran sentenced Petitioner to six years imprisonment for possession with intent to distribute cocaine (second offense), five years concurrent for possession with intent to distribute cocaine within a half mile of a school or park, four years concurrent for possession with intent to distribute marijuana, and five years concurrent for possession with intent to distribute marijuana within a half mile of a school or park. App. 227, ll. 11-19. Petitioner did not appeal his guilty plea or sentences.

On November 10, 2011, Petitioner filed an application for post-conviction relief (PCR). App. 230-236. The state filed a return to this application dated January 18, 2012. App. 237-241. The matter proceeded to an evidentiary hearing on March 19, 2013 before the Honorable William Jeffrey Young. App. 242. Assistant Attorney General Megan E. Harrigan represented the state, and Richard Strobel represented Petitioner. Id. By order dated April 11, 2013, Judge Young denied Petitioner relief. App. 254-257.

This petition for writ of certiorari follows.

ARGUMENT

1.

The PCR court erred in granting a directed verdict in favor of the state where there is no probative evidence in the record to support the PCR court's claim that the state moved for a directed verdict or, in the alternative, for summary judgment at the conclusion of the evidentiary hearing.

PCR Hearing

At the beginning of the PCR hearing, the attorney for the state summarized the allegations listed in Petitioner's PCR application. The allegations included "ineffective assistance of counsel for failure to investigate and prepare for trial," "prosecutorial misconduct for the prosecutor disclosing his criminal background in front of the jury," and "newly discovered evidence from a SLED report." App. 245, ll. 6-14.

Shortly after Petitioner began testifying, he stated that he was not interested in proceeding with his ineffective assistance of counsel claim, but rather wished to proceed with allegations of lack of subject matter jurisdiction, which "could be raised at any given time," and violations of his due process rights. The state objected arguing that "we are here on the allegations as set forth in the Applicant's petition." The PCR court agreed stating, "Right. We are just here on your PCR application." App. 246, l. 24 – 247, l. 22.

Petitioner then answered several questions posed by his attorney, but again stressed that he wished to proceed with the claims of lack of subject matter jurisdiction and violations of his due process rights. Petitioner stated that he amended his application to include these new allegations on January 16, 2013. However, both the state and the judge stated that there was no record of any amended pleadings. The PCR judge then told Petitioner twice that "we are not taking that up today."

When Petitioner again stated that he wished to argue lack of subject matter jurisdiction, the judge demanded, “Answer your attorney’s questions. This is not for you to get up and say whatever you want to say. You will answer your attorney’s questions.” App. 247, l. 23 – 251, l. 12.

After Petitioner insisted four times, “I have the right to argue what I want to argue,” the PCR court *sua sponte* ordered, “Take him off the stand. This case is dismissed.” The attorney for the state responded, “Thank you, Your Honor, the State will prepare an Order” and the hearing was concluded. No motions were made by either side. App. 251, l. 13 – 252, l. 5.

Order of Dismissal

The PCR court stated in the Order of Dismissal that “after [Petitioner] left the witness stand, counsel for the [state] moved for directed verdict or, in the alternative, summary judgment because no evidence had been presented in support of the PCR application.” The court held that the state’s motion for a directed verdict was granted because Petitioner failed to set forth any evidence or testimony in support of the issues raised in his application. The court thus denied Petitioner’s application and dismissed it with prejudice. App. 256-257.

Discussion

The PCR court erred in granting a directed verdict because the record does not support the assertion that the state made either a motion for a directed verdict or a motion for summary judgment and thus there is no evidence in the record to support the PCR court’s ruling.

“This Court will uphold the findings of the PCR judge when there is *any* evidence of probative value to support them” and “it will reverse the PCR judge’s decision when it is controlled by an error of law.” Suber v. State, 371 S.C. 554, 558-559, 640 S.E.2d 884 (2007)

(internal citations omitted) (emphasis added); McHam v. State, 404 S.C. 465, 472-473, 746 S.E.2d 41, 45 (2013) (internal citations omitted).

There is no probative evidence in the record to support the PCR court's ruling. There is ***absolutely no evidence*** that the attorney for the state moved for a directed verdict after Petitioner was removed from the witness stand. Instead, the PCR court *sua sponte* dismissed Petitioner's case without any argument from the state or from Petitioner's counsel. See App. 251, l. 25 – 252, l. 5. Therefore, this case should be remanded and Petitioner granted a new evidentiary hearing to explore his PCR allegations.

The PCR court erred in dismissing Petitioner's PCR application due to Petitioner's insistence on pursuing an issue not raised in his application since the proper response would have been to hold a contempt proceeding to determine whether Petitioner should be held in contempt of court.

Discussion

The PCR court's sudden decision to dismiss Petitioner's PCR application due to Petitioner's insistence on pursuing an issue not raised in his application was, respectfully, hasty and improper. The proper action would have been for the PCR judge to warn Petitioner that if he did not change his conduct he would be held in contempt of court. If Petitioner's behavior did not improve, the PCR judge should then have held a contempt proceeding to determine whether Petitioner's conduct amounted to the level of contempt. See Rhoad v. State, 372 S.C. 100, 105, 641 S.E.2d 35, 37 (Ct. App. 2007) ("Inherent in all courts is the power to punish for contempt to preserve order and maintain decorum in judicial proceedings . . . A person may be found guilty of direct contempt if his conduct interferes with judicial proceedings, exhibits disrespect for the court, or hampers parties or witnesses. Direct contempt that occurs in the court's presence may be immediately adjudged and sanctioned summarily.") (internal citations omitted).

It is evident from the record that Petitioner, as a lay person, did not understand that he was not permitted to raise new allegations at his evidentiary hearing without first notifying the state. There is also evidence that Petitioner mistakenly thought he had amended his application on January 16, 2013. See App. 250, ll. 1-25. Petitioner was thus understandably frustrated that he was unable to argue the issues he thought were most important during his "one bite at the apple." See Odem v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Petitioner was also

correctly under the impression that he could raise lack of subject matter jurisdiction at any time. See App. 247, ll. 13-15; See Campbell v. State, 342 S.C. 100, 102, 535 S.E.2d 928, 929 (2000) (“Lack of subject matter jurisdiction may not be waived, and may be raised at any time . . .”).

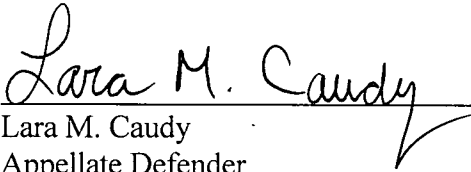
A fair reading of the record also indicates that Petitioner’s PCR counsel was annoyed with him and often appeared to be working against him. See App. 247, l. 23 – 249, l. 10. This undoubtedly frustrated Petitioner even further and led the proceeding to be anything but adversarial. Considering these circumstances and a review of Petitioner’s actions at the hearing, Petitioner’s conduct did not rise to the level of contempt.

Therefore, the PCR court erred in dismissing Petitioner’s PCR application and Petitioner should be granted a new evidentiary hearing to fully explore his PCR allegations.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
William Jeffrey Young, Circuit Court Judge

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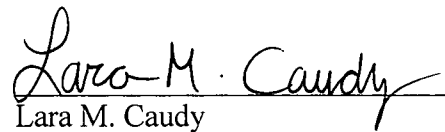
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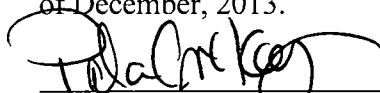
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of December, 2013.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of December, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.