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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ABBEVILLE COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-001256

ROBERT LAMONT BRYANT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES PRESENTED

I. Should this Court require post-conviction relief judges to draft the final orders in PCR cases in order to ensure the findings of fact and conclusions of law, required by S.C. Code Ann. § 17-27-80, are those of the court, rather than an advocate, and to preserve the separation of powers between the judicial branch and executive branch as required by S.C. Const. Art. I, § 8?

II. Is Robert Bryant entitled to belated review, pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), of his 1998 and 2004 uncounseled guilty pleas?

III. Was Robert Bryant denied his right to effective counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to object when the Solicitor changed the offense to a violent offense and for not moving to withdraw plea?

IV. Was Robert Bryant denied his right to effective counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to meaningly advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received?

RESPONDENT'S STATEMENT OF ISSUES PRESENTED

I. It is both common and entirely appropriate for a PCR judge to request that the prevailing party prepare a proposed order, and this practice does not reflect an abdication of the judge's duty to render an independent judicial judgment.

II. The PCR Court correctly found Petitioner's allegations regarding his 1998 and 2004 convictions are barred by laches and this undisputed finding provides an independent basis for affirmance.

III. The PCR Court correctly found Counsel was not ineffective for not moving to withdraw the plea where evidence supports the finding that Petitioner was not misinformed and understood he was pleading to a violent offense prior to his plea.

IV. The PCR Court correctly found Counsel was not ineffective for failing to convey a plea offer to Petitioner.

STATEMENT OF THE CASE

1998 Convictions

During its July 1998 term, the Abbeville County Grand Jury indicted Petitioner for one count of distribution of crack cocaine and one count of distribution of cocaine within proximity of a school or playground (1998-GS-01-00404).

On October 3, 1998, Petitioner pleaded guilty before the Honorable William P. Keesly. Petitioner proceeded *pro se*. Judge Keesly sentenced Petitioner to three (3) years for each count of the indictment, with those sentences to be served concurrently. Petitioner did not appeal his convictions or sentences.

2004 Convictions

During its August 2003 term, the Abbeville County Grand Jury indicted Petitioner for participating in a riot (2003-GS-01-00268). Subsequently, Petitioner was indicted at the October 2004 term of the Abbeville County Grand Jury for possession with intent to distribute (PWID) cocaine (2004-GS-01-00350, count 1), PWID cocaine within the proximity of a school or playground (2004-GS-01-00350, count 2), and assault on an officer while resisting arrest (2004-GS-01-00351).

On October 26, 2004, Petitioner pleaded guilty before the Honorable Wyatt T. Saunders, Jr. Petitioner proceeded *pro se*. Judge Saunders sentenced Petitioner to twelve (12) years of imprisonment for PWID cocaine, ten (10) years for PWID cocaine within proximity of a school or playground, ten (10) years for assault on an officer while resisting arrest, and two (2) years for participating in a riot, with those sentences to be served concurrently. Petitioner did not appeal his convictions or sentences.

2019 Conviction

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Petitioner was indicted by the Abbeville County Grand Jury for domestic violence of a high and aggravated nature (2018-GS-01-0342) and possession of a weapon during a violent crime (2018-GS-01-0342). Clark McCants and Walt Whitmire, Assistant Public Defenders represented Petitioner. Deputy Solicitor Yates Brown of the Eighth Circuit Solicitor's Office prosecuted the case.

On May 14, 2019, Petitioner pleaded guilty before the Honorable Roger M. Young to domestic violence of a high and aggravated nature. In exchange for Petitioner's plea, the possession of a weapon charge was dismissed. Pursuant to a negotiation between Petitioner and the State, Judge Young sentenced Petitioner to twenty years' imprisonment.

Petitioner subsequently filed a Notice of Appeal. The South Carolina Court of Appeals dismissed Petitioner's appeal for failing to provide a sufficient explanation for a guilty plea appeal, pursuant to Rule 203(d)(1)(B)(iv) of the SCACR. The Remittitur was sent August 12, 2019.

PCR Actions

Petitioner commenced three separate post-conviction relief (PCR) actions stemming from convictions in 1998 (Case No. 2019-CP-01-00141), 2004 (2019-CP-01-00142), and 2019 (2019-CP-01-00323). On January 27, 2020, Respondent filed a return in response to the PCR action commenced by Petitioner relating to his 2019 convictions (2019-CP-01-00323). On September 16, 2021, Petitioner, through counsel, filed a motion to consolidate the above PCR actions. On December 2, 2022, a hearing was held on the matter at the Abbeville County Courthouse before the Honorable R. Scott Sprouse. At the conclusion of the hearing, Judge Sprouse granted the motion to consolidate the three PCR actions, without prejudice to the State's right to seek summary

dismissal of any allegations raised therein. On June 20, 2023, Respondent filed a supplemental return and partial motion to dismiss the allegations pertaining to his 1998 (1998-GS-01-00404) and 2004 convictions (2003-GS-01-00268, -00350, -00351).

On August 21, 2024, a hearing into the matter was convened before the Honorable J. Derham Cole at the Laurens County Courthouse. Petitioner was present and represented by E. Charles Grose, Jr., Esquire. Assistant Attorney General Travis Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Petitioner and Clarke W. McCants, IV ("Counsel").

Following the evidentiary hearing, the PCR Court summarily dismissed Petitioner's allegations pertaining to his 1998 and 2004 convictions for failure to state a cognizable claim, barred by the statute of limitations, and barred by the equitable doctrine of laches. Additionally, the PCR Court denied and dismissed Petitioner's allegations pertaining to his 2019 conviction. This appeal follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id.; Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

I. It is both common and entirely appropriate for a PCR judge to request that the prevailing party prepare a proposed order, and this practice does not reflect an abdication of the judge's duty to render an independent judicial judgment.

As an initial matter, it is customary for the prevailing party to prepare the proposed order. It is both common and entirely appropriate for a PCR judge to request that the prevailing party prepare a proposed order. The preparation and finalization of a PCR order is often a collaborative effort, and South Carolina courts have long recognized that the prevailing party frequently drafts a proposed order at the court's direction for the sake of efficiency. Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019); Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency."). This practice does not reflect an abdication of the judge's duty to render an independent judicial judgment.

The propriety of the procedure is expressly confirmed by the commentary to South Carolina Appellate Court Rule 501, Canon 3 B(7)(e), which states that "[a] judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions." In Pruitt v. State, this Court further directed that counsel preparing a proposed order "should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it." 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992).

Although the South Carolina Supreme Court has highly recommended that PCR judges independently prepare their own findings of fact and conclusions of law in death penalty cases, it has expressly acknowledged that "in all other cases, it is common practice for judges to ask a party

to draft a proposed order for the sake of efficiency." Hall, 360 S.C. at 365, 601 S.E.2d at 341. The safeguards of notice, opportunity to respond, meticulous drafting, and careful judicial review ensure that the practice remains both efficient and constitutionally sound.

Furthermore, the PCR court ruled on every allegation in Petitioner's amended allegation. Petitioner does not state which allegation was not ruled upon by the PCR court. Therefore, this case should not be remanded to the circuit court as the order fully complies with S.C. Code § 17-27-80.

II. The PCR Court found Petitioner's allegations regarding his 1998 and 2004 convictions are barred by laches and this undisputed finding provides an independent basis for affirmance.

Petitioner alleges the PCR court does not adequately address his allegations pertaining to his 1998 and 2004 convictions. This is wholly without merit. The PCR court specifically addressed the issue that the trial court failed to advise him of his right to counsel and warn him against the dangers of self-representation and found it was not a cognizable post-conviction relief issue.1 (App'x. pp. 147–149). The PCR court further found that the allegations pertaining to Petitioner's 1998 and 2004 convictions are barred by laches. (App'x. pp. 151–153). The Supreme Court has explained that an unappealed ground will become the law of the case:

> Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. See Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996); see also First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct.App.1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance").

Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), abrogated on other grounds by Repko v. Cnty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018).

1 This finding, in addition to laches, is undisputed by Petitioner.

Here, Petitioner does not dispute the PCR court's finds of laches. Therefore, it is the law of the case and any allegations pertaining to his 1998 and 2004 convictions are barred by this doctrine alone. Thus, the PCR court properly ruled on all allegations pertaining to his 1998 and 2004 convictions and the PCR court's order fully complies with section 17-27-80.

Accordingly, this Petition should be denied.

III. The PCR Court correctly found Counsel was not ineffective for not moving to withdraw the plea where evidence supports the finding that Petitioner was not misinformed and understood he was pleading to a violent offense prior to his plea.

Petitioner alleges the PCR court erred in finding Counsel was not ineffective for failing to object when the Solicitor changed the offense to a violent offense and for not moving to withdraw the plea. Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence

or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73–74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton

v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

Petitioner entered his guilty plea on May 14, 2019. At his plea, the plea court informed Petitioner of the nature of his negotiated plea:

> The Court: The State was seeking, if you were convicted, to have the Court sentence you to life without parole because you had prior strike offenses. Enough of them that made it mandatory that if you either plead guilty or were convicted, you'd get life without parole. This plea negotiation takes life without parole off the consideration. I'm not going to sentence you to life without parole if this plea goes forward, but I will sentence you to 20 years in prison. Do you understand that?
>
> [Petitioner]: Yes, sir.
>
> The Court: All right. So that's a negotiated plea between you and the State.
>
> [Petioner]: Yes, sir.
>
> The Court: Do you understand that?
>
> [Petitioner]: Yes, sir.
>
> The Court: And you want me to accept that plea?
>
> [Petitioner]: Yes, sir.

(App'x. p. 10).

The following day, May 15, 2019, the record was reopened to address the Solicitor's clerical error in failing to check the boxes on the sentencing sheet indicating the offense was violent and serious. (App'x. p. 31–38). At this hearing, Counsel informed the plea court of the following:

> The Court: Okay. Tell me what's going on.
>
> Mr. McCants: Thank you, Judge. Yesterday there was, I think, a box marked "nonviolent," when in reality the CDR code and the statute on that form is actually what really matters to avoid any confusion at SCDC, and we told Robert this yesterday, that we are also handling, you know, potential appeal and PCR. And that later on down the road, we will revisit issues in the representation, but that we got to get through this clerical error today, and that he understands this now and that is his - -

The Defendant: (Interruption.)

The Court: Let me finish hearing from your lawyer.

Mr. McCants: That is his signature on this form. We went through the CDR code and the statute that is on the sentence sheet. *And he understood yesterday that that is what he was pleading to* and understands today that it has been, you know, corrected.

(App'x. pp. 31–32) (emphasis added).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin v. Alabama, 395 U.S. 238, 243 (1969). Additionally, the defendant "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).

Parole eligibility is collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). See Brown v. State, 306 S.C. 381, 412 S.E.2d (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "However, if trial Counsel actively misinforms the defendant about parole eligibility, the defendant must prove he relied on the misinformation to receive PCR". Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

At the PCR evidentiary hearing, Counsel testified to the following regarding this allegation:

Q. Was Mr. Bryant always under the understanding that this was going to be a guilty plea to a violent crime?

A. I never told him it was not a violent crime. If I told him about it, I only said it was a violent crime. If I mentioned it, which, I mean, I did at some point, but during the duration of the case. *I never said it was not a violent crime, for sure.*

Q. So, you never informed him it was a non-violent crime?

A. That's right.

(App'x. p. 121) (emphasis added).

The PCR court found this testimony to be credible. (App'x. p. 153). Furthermore, this testimony was corroborated by the statements Counsel made to the plea judge during the May 15, 2019, hearing. (App'x. pp. 31–32). The PCR court found that, based on Counsel's credible testimony and the record from the May 15, 2019 hearing, Counsel was not deficient and that Petitioner was aware at the time of the plea that he was pleading to a violent offense. (App'x. pp. 153–154). Thus, the record contains evidence supporting the PCR court's finding that Counsel was not ineffective for failing to move to withdraw Petitioner's plea.

Accordingly, this Court should deny this petition.

IV. The PCR Court correctly found Counsel was not ineffective for failing to convey plea offers to Petitioner.

Although the PCR court incorrectly stated that this allegation was not raised in Petitioner's application, it nevertheless considered the testimony and made appropriate findings on the issue. (App'x. p. 154). Thus, the PCR court's order complies with section 17-27-80 and should not be remanded to the circuit court.

Additionally, there exists ample evidence in the record to support the PCR court's finding that trial counsel was not ineffective for failing to convey the plea offer. At the PCR hearing, Counsel testified to the following regarding the initial 12-year plea offer:

Q. And at that time, did you have any discussions with Mr. Bryant about the plea offer in the case?

A. Yes.

Q. And what was that plea offer?

A. If I understand correctly, it was to plead guilty to the DVHAN. I cannot remember if it was negotiated or recommended 12 years, but the number was 12 years. I cannot remember. I think dismissing the weapons charge was part of that. In any event, it was all 12 years. He was on probation, and I know had 15 years hanging over his head. And that would either be run concurrent, or terminated, or whatever, but 12 years was the number that I remember.

Q. And does your file reflect whether or not that offer had been extended to Mr. Bryant before you took over the representation?

A. I see a note in here from Jana Gregory. I can't remember if that's her correct name. I know her last name changed. This would have been before I even joined the PD's office, is my understanding. I realize that's hearsay, but I'm happy to tell you what it says.

Q. I'm just asking for the information that's in your file.

A. Sure. Could you tell me the question again? Sorry.

Q. Well, if the plea offer had been extended before you took over the representation.

A. I don't know.

Q. We'll come back to that in a second. Did you have a conversation with Mr. Bryant about the plea offer?

A. *I did.*

Q. And can you explain what that conversation was?

A. Sure. I cannot remember exactly if I had - - or if I showed him all of the discovery at the courthouse, but my opinions were twofold. Basically, one, given the discovery that I had in this case, combined the fact that his prior record was not ideal, maybe not the best record that I've seen. If I remember correctly, he had several, at least more than one, serious conviction and, I believe, more than one most serious conviction. And I could be wrong about that. But based on the discovery in this case, his prior record, and actually the fact that he had a 15-year probationary sentence hanging over his head, it was my advice to accept the offer of the State at that time.

Q. And how was that received by Mr. Bryant?

A. *He told me no.* I can't exactly recall. I'm sure he was angry. I mean, 12 years is a long time. He declined to accept the offer at that time.

...

Q. Going back to the plea offer of 12 years. You said you did convey that offer to Mr. Bryant?

A. I did.

Q. Did he ultimately reject that offer?

A. He did.

...

Q. So, all plea offers you had received were conveyed to Mr. Bryant?

A. Yes

(App'x. pp. 109–111; 121; 123) (emphasis added).

The PCR court found this testimony to be credible in its findings denying the allegation. Therefore, there is evidence in the record to support the PCR court's findings and no meritorious reason exists to remand to the circuit court for further findings.

Furthermore, Petitioner testified regarding the initial 12-year plea offer:

Q. Does it sound right that it was December 4 the first time that you met Mr. McCants?

A. Yes, sir.

Q. Was that the first time you learned about any plea negotiations?

A. Yes, sir.

Q. When you learned about those plea negotiations, what was your thought process at that time?

A. The reason I didn't accept the plea, because the judge they had up there had stated if I ever come in front of him again - - and I was, like, I can't go in front of him. I done been in front of him before.

Q. Which judge was that?

A. Hocker.

Q. And when was it that he had said - - well, explain more about what you mean by, if you ever came in front of him again. What did you understand would happen?

A. That it would be a long time before I see the streets again.

Q. Were you willing to entertain the 12-year plea offer?

A. I would've took it if it had been a different judge. Yes, sir.

Q. Were you afraid that the judge might not follow - -

A. Yes, sir.

Q. - - - the plea offer?

A. Yes, sir.

Q. So, can you tell Judge Cole why it is that you chose not to accept the plea offer at that December 4 meeting?

A. The reason I didn't accept it? I didn't accept it, because the judge that I went in front of had already gave me the word that if I come back in front of him for another charge that it would be a long time before I see the streets again. So, I felt afraid to go in front of him and accept that plea, because I figured he might have not went with that plea.

Q. And, at some point, did that plea offer get revoked?

A. Yes, sir.

(App'x. pp. 124–126).

Petitioner himself testified that he received the plea offer and chose to reject it. Therefore, this admission corroborates Counsel's testimony and further supports the PCR court's finding that Counsel properly conveyed all plea offers to Petitioner.

Accordingly, the petition for writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari, as the post-conviction relief court properly determined Petitioner failed to establish any constitutional ineffectiveness. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully Submitted,

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This 6th day of April, 2026.