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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Laurens County
Court of Common Pleas
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2025-001249

STEPHEN TRASE FINCHER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENTS OF ISSUES ON CERTIORARI 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 4

ARGUMENT 5

I. The PCR Court correctly found Petitioner failed to demonstrate he did not voluntarily waive his right to be present at his trial; therefore, Counsel was not ineffective for failing to raise a meritless objection to the trial proceeding *in absentia*. 5

CONCLUSION 11

STATEMENTS OF ISSUES ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

I. Did the PCR Court err by holding trial counsel was not ineffective for failing to object to trial proceeding in Petitioner's absence because counsel did not know why Petitioner was absent and Petitioner did not actually know when his trial would be held since he thought it would be continued.

Respondent's Counterstatement of Issue on Certiorari

I. Did the PCR Court correctly find Counsel was not ineffective for failing to object to the trial proceeding *in absentia* where the record supports the PCR court's finding that Petitioner voluntarily waived his right to be present at his trial?

STATEMENT OF THE CASE

In May 2016, the Laurens County Grand Jury indicted Petitioner for two counts of burglary, first degree (2016-GS-30-00759, 2016-GS-30-00757), and grand larceny, value more than $2,000 but less than $10,000 (2016-GS-30-00758). Petitioner was represented by Lawrence W. Crane, Esquire. Deputy Solicitor C. Dale Scott and Assistant Solicitors A. Lyon Bixler, III, and James Todd, prosecuted the case.

Petitioner proceeded to a trial before the Honorable Benjamin H. Culbertson and a jury on March 27, 2017. Petitioner was tried *in absentia*. At the conclusion of the trial, the jury convicted Petitioner of one count of burglary in the first degree and acquitted him of the second count of burglary in the first degree. At the conclusion of the trial, Judge Culbertson sealed Petitioner's sentence. During a May 26, 2017, hearing, after Petitioner was apprehended, the Honorable Donald B. Hocker unsealed and published Judge Culbertson's sentence. Judge Culbertson ordered Petitioner be sentenced to imprisonment for a term of twenty-five years. Petitioner, through his counsel, filed a "Motion to Dismiss Charges or In the Alternative Grant a New Trial" on June 1, 2017. Judge Culbertson denied this motion by Order dated November 7, 2017. Following Judge Culbertson's Order, Petitioner timely filed a notice of appeal.

Petitioner's appeal was perfected by Elizabeth Franklin-Best, Esquire. Petitioner raised the following issues on appeal:

1. Did the trial court err in allowing the trial to proceed in Petitioner's absence without finding that Petitioner voluntarily waived his right to be present;
2. Did the trial court err in denying Petitioner's motion for a directed verdict on the Metric Road instruction because the garage was not a "dwelling" for purposes of Burglary 1st degree statute because the garage was detached from the house, and was used as a wood-working workshop for the owner?

In an unpublished opinion, the South Carolina Court of Appeals affirmed Petitioner's conviction, finding neither of Petitioner's issues were properly preserved for appellate review.

State v. Fincher, 2020-UP-141, (S.C. Ct. App. filed May 20, 2020). The case was remitted back to the circuit court on July 8, 2020.

On April 23, 2021, Petitioner filed an application for post-conviction relief. An evidentiary hearing into the matter was convened before the Honorable J. Derham Cole on August 20, 2024. Petitioner was present and represent by PCR counsel, Tommy Thomas. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Petitioner and Lawrence W. Crane, Esquire ("Counsel"). After hearing the testimony at the evidentiary hearing and upon full review of the record, Judge Cole issue an order denying and dismissing the application with prejudice on June 10, 2025.

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, 180-181, 810 S.E.2d 836, 839 (2018).

ARGUMENT

I. The PCR Court correctly found Petitioner voluntarily waived his right to be present at his trial; therefore, Counsel was not ineffective for failing to raise a meritless objection to the trial proceeding *in absentia.*

Petitioner contends the PCR court erred by finding Counsel was not ineffective for failing to object to Petitioner's trial being held in his absence. However, the record supports the PCR court's finding that Petitioner (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Counsel notified Petitioner of his trial date, and Petitioner received written notice through his bond and bail forms which expressly warned him he would be tried in his absence if he failed to appear. Therefore, the PCR court did not err in finding Counsel was not ineffective for failing to object to the trial proceeding *in absentia.*

Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Where, as in this case, a PCR Petitioner alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland: first, the Petitioner must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

"reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Strickland, 466 U.S. at 670. The Petitioner bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRCP.

Waiver of Right to Be Present at Trial

"It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence." State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010). However, "before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial." State v. Fairey, 374 S.C. 92, 100, 646 S.E.2d 445, 448 (Ct. App. 2007). "The Judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Ravenell, 387 S.C. at 456, 692 S.E.2d at 558. See also Rule 16 SCRCrimP ("...a person indicted for misdemeanors and/or felonies may voluntarily

waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court."). "Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present." City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). "Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear." Ravenell, 387 S.C. at 456, 692 S.E.2d at 558.

Discussion

At Petitioner's trial, following jury selection, the solicitor stated, "Judge, at this point, as far as the bench warrant is concerned, we've got a pretty good warrant division team that can - - lay hands on folks usually, but - -." (App. p. 35). The trial court replied, "Any reason why we shouldn't issue a bench warrant?" (App. p. 35). To which, Counsel replied, "I don't think so, Judge." (App. p. 35). At which point, a bench warrant was issued for Petitioner. The following day, prior to the start of Petitioner's trial, the trial judge asked, "Do we have a defendant or not?" (App. p. 39). Counsel replied, "No, sir." (App. p. 39).

After the jury verdict, Counsel informed the Court of the following:

> I have no idea where he is. I sent him a text this morning to the last phone number I had simply asking him to text me to let me know he's okay. Because I'm afraid he's taken his own life, quite honestly. His daddy is here. His daddy has not heard from him since Sunday. His momma hasn't heard from him. They don't know where he is. I just he hasn't done something really stupid. But that's kind of the situation.

(App. pp. 330–331).

At the PCR evidentiary hearing, Petitioner testified that Counsel "called [Petitioner's] daddy on a Friday and told [his] daddy...he'll need to get with him and give him some money

because *we got to go to trial Monday*." (App. p. 386) (emphasis added). Petitioner testified that Counsel informed him had another trial scheduled for that week and Counsel "was going to see if he could get this put off." (App. p. 388). Petitioner further testified that he was in Asheville at the time of the trial and sold his phone to purchase a boat. Petitioner testified he informed Counsel to talk to his dad. (App. p. 389). Petitioner testified he signed the bond form which informed him of his right to be present and warned him he would be tried in his absence if he did not appear. (App. p. 405).

Counsel testified to the following regarding Petitioner's notice of trial:

Q. And coming up to trial - - so he was on the trial docket and then did you contact Mr. Fincher to let him know?

A. He knew about it. I don't know if I contacted him or not, but he knew about it. He knew that it was - - as a matter of fact, I think he sent an email to the solicitor basically, like he said, begging to go into drug court. But in that email he says, "I've got two counts of burglary first coming up next week in trial." So he knew about the trial coming up.

Q. And do you know why he didn't show up?

A. I do not.

Q. But you believe he had adequate notice?

A. I think he did, yes, sir.

(App. p. 410)

Q. And you did give Mr. Fincher notice; correct?

A. Yes, sir.

Q. So he knew about the trial?

A. Yes, sir.

Q. And he didn't show up?

A. That's correct.

> Q. So if you had made the motion, do you believe the judge easily would have been able to satisfy both those prongs?
>
> A. Yes, sir.

(App. p. 428).

Here, the PCR court found that Petitioner had notice of his trial date and was warned he would be tried in his absence if he did not appear at trial. The record contains ample evidence supporting this finding. First, the PCR court found credible Cousel's testimony that he informed Petitioner of the trial date and that Petitioner was aware of when his trial was scheduled. Petitioner himself acknowledged that he knew his trial was set for that week, but he nevertheless voluntarily traveled to Asheville and sold his phone, thereby eliminating the ability of Counsel to contact him. Petitioner admitted at the evidentiary hearing that he signed a bond waiver form which expressly warned him he would be tried in his absence if he failed to appear.

Counsel testified that, had he objected to proceeding in Petitioner's absence, the trial court would have readily satisfied both prongs required to try Petitioner *in absentia*. Counsel's pretrial statement to the trial court that he saw no reason for a bench warrant not to be issued, along with his post-verdict statement that he did not know why Petitioner failed to appear and had been unable to contact him, corroborates this assertion. Accordingly, the PCR court did not err in concluding Petitioner failed to establish that his absence was involuntary. As a result, Petitioner cannot show that Counsel was deficient for failing to raise a meritless objection, nor can he demonstrate prejudice, as he has not established a reasonable probability that the trial court would have found he did not voluntarily waive his right to be present if counsel had objected.

Additionally, at the evidentiary hearing, Petitioner admitted to committing the offense, specifically acknowledging that he entered the garage and stole the tools while under the influence

of methamphetamine. (App. p. 389–390; p. 405). Petitioner requests relief in the form of a new trial, which would be futile considering his admission of guilt in open court. Therefore, review of Counsel's performance at trial is unnecessary. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("[R]eview of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."); State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) ("Any doubt about the correctness of this conclusion is eliminated by the admission of appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge, that he participated in the robbery with a sawed-off shotgun. Further review of the record, therefore, is rendered unnecessary").

Accordingly, this petition should be denied.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

For the reasons stated above, this Court should deny certiorari. However, if this Court decides to grant the Petition of Writ of Certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully Submitted,

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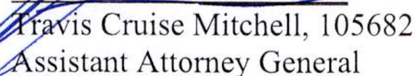

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This 8th day of June 2026.