STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Aiken County
Court of Common Pleas
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2013-000781

STEPHEN CORLEY, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Is there evidence of probative value in the record to support the post-conviction relief court's finding that Petitioner's guilty plea was knowing and voluntary, where the record provides ample evidence that Petitioner elected to forgo a trial and plead guilty with a full understanding of the consequences of his guilty plea?

STATEMENT OF THE CASE

Petitioner was indicted during the May 2013 term of the Aiken County Grand Jury for two counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol (2011-GS-02-0636, -0637). He was represented by Fred Wallace Woods, Jr., Esquire (hereinafter "Counsel"). On September 21, 2011, Petitioner appeared before the Honorable William H Seals, Jr., where he pled guilty as indicted to both counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol; two related Reckless Homicide charges were dismissed pursuant to plea negotiations with the State. Petitioner acknowledged during the plea that he understood there were no negotiations or recommendations from the State regarding sentencing and that he could receive up to fifty years imprisonment. Judge Seals sentenced Petitioner to two consecutive terms of twenty-two years imprisonment for an aggregate sentence of forty-four years imprisonment. Petitioner did not appeal his guilty plea or sentences.

Petitioner filed an application for post-conviction relief on February 27, 2012, alleging that he was being held in custody unlawfully based on the allegations:

1. Ineffective assistance of counsel
   a. Failure to file appeal
   b. Conflict of interest
   c. "Counsel failure to investigate"
   d. "Counsel failed to investigate the crime scene was prejudiced to Mr. Corley's case"
2. Involuntary plea
   a. "Plea was not entered into with full knowledge of the totality of the circumstances surround the case"

Following the appointment of counsel, Petitioner filed a *pro se* amendment to his application on April 17, 2012, where he alleged thirty additional allegations of ineffective assistance of counsel.

Respondent made its Return on May 30, 2012, requesting an evidentiary hearing be held. At the evidentiary hearing, Applicant proceeded forward on allegations that Counsel was ineffective for failing to conduct a sufficient investigation, failing to file an appeal, and that his guilty plea was involuntary.

An evidentiary hearing was convened on January 23, 2013, at the Aiken County Courthouse before the Honorable Doyet A. Early, III. Petitioner was present and represented by Jacqueline F. Busbee, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. Petitioner testified on his own behalf. Counsel was also present and testified at the hearing. By Order filed March 13, 2013, Judge Early denied and dismissed Petitioner's application for post-conviction relief.

Petitioner filed a Petition for Writ of Certiorari on December 6, 2013. This Return follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "'*any* evidence' of probative value" exists to sustain the post-conviction relief court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). This Court will affirm if there is any evidence to support the post-conviction relief court's ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, Id.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland; supra. An applicant must overcome this presumption in order to receive relief. Cherry, supra.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, supra. Second, counsel's deficient performance must have prejudiced the applicant 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. Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pled guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (internal citations omitted).

In post-conviction relief actions, an applicant asserting a constitutional claim must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant; statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

ARGUMENT

There is evidence of probative value in the record to support the post-conviction relief court's finding that Petitioner's guilty plea was knowing and voluntary, where the record provides ample evidence that Petitioner elected to forgo a trial and plead guilty with a full understanding of the consequences of his guilty plea and Petitioner testified that he is indeed guilty and did not want to proceed to trial.

Petitioner asserts that the post-conviction relief court erred in determining that his guilty plea was knowing and voluntary "where plea counsel misadvised Petitioner that the two counts of reckless homicide that were dismissed pursuant to the plea carried more severe consequences than the felony DUI counts to which Petitioner pled guilty." PWC p. 2, p. 6. Specifically, Petitioner contends that "[b]y advising Petitioner to plead to the two counts of felony DUI with the dismissal of the two reckless homicide charges, plea counsel took away the possibility that Petitioner could have been convicted by a jury of only reckless homicide at trial, thereby receiving a much shorter sentence than the forty-four (44) years he did receive and at the maximum a twenty (20) year sentence." PWC p. 8. However, this argument with without is merit, as the record is replete with Petitioner's own admissions of guilt, Petitioner's testimony that he did not want to proceed to trial, and that he fully understood the consequences of his guilty plea.

In its Order of Dismissal, the post-conviction relief court found that "[Petitioner]'s plea was knowing and voluntary with a full understanding of the charges and consequences of the plea." App. p. 125. The post-conviction relief court elaborated that Petitioner "testified that he did not have any defenses to present" at a trial, "told the plea court under oath that he understood his plea was without any negotiations or recommendation from the State and that he could receive a sentence of fifty years imprisonment," and "testified that he is indeed guilty." App. p.

126. These findings are supported by ample evidence in the record from both Petitioner's guilty plea proceeding and the evidentiary hearing.

The record is abundant with Petitioner's own testimony that he knew he could receive a sentence of up to fifty years imprisonment, was guilty, and did not want a jury trial. At his guilty plea proceeding, Petitioner told the plea court that he understood the potential sentence he could receive if proceeding forward with his guilty plea:

> THE COURT: Do you understand that with this plea you are facing up to 50 years in jail today? Do you understand that?
> THE DEFENDANT: Yes, sir.
> THE COURT: Understanding that, do you still wish to go forward with this plea?
> THE DEFENDANT: (nods head). Yes sir.
> THE COURT: Speak up.
> THE DEFENDANT: I'm saying, yes, sir.
> THE COURT: Now I want you to understand that you do not have to go forward with this plea. If you would rather have a jury trial instead, I'll make sure the State of South Carolina gives you one. Do you understand that you have that right?
> THE DEFENDANT: Yes, sir.

App. p. 4 ln. 20-p. 5 ln. 8. Petitioner told the plea court while under oath that he was guilty and had answered all questions truthfully. App. p. 8 lns. 1-6. At the evidentiary hearing, Petitioner testified that he had no defenses that he could have presented at a trial on these charges. App. p. 81 ln. 22- p. 83 ln. 7; App. p. 85 lns. 10-18. Petitioner testified that he never told Counsel he wanted to proceed to trial. App. p. 85 ln. 24- p. 86 ln. 7. Petitioner testified that he is guilty. App. p. 89 lns. 5-19.

Furthermore, Counsel testified at the evidentiary hearing that he had "constant contact" with Petitioner and his family and that he discussed his case with them "ad nauseum." App. p. 93 lns. 5-14; p. 111 lns.14-21. Counsel testified that he advised Petitioner that he could receive a sentence between two to fifty years and that the only negotiation or recommendation from the State was for the dismissal of two related reckless homicide charges. App. p. 94 ln. 15 – p. 95 ln. 7; p. 98 lns. 4-17. Counsel elaborated for the court that it was an important consideration to have two charges dismissed because he was trying to seek the smallest sentence exposure for his client:

> THE COURT: Well. What were you saying – telling us, Mr. Woods, you wanted the reckless homicide because you thought it was better to go forward on DUI Felony?
> THE WITNESS: No, your Honor, he had -- It is my understanding that he had four total charges and that what we were trying to do was get a reduction as much as we possibly could and the only thing that the state would agree to was the dismissal of the reckless homicides and for him to be able to plea to the DUI with death results. That's the only thing that the state would consider at all as opposed to him just going straight up on all four. So with those two charges they carried a sentence range of one to 25 years through which I believed that Mr. Corley with no record and as I explained to him might have received a lesser amount of time because of his lack of a record than he actually received, but, again, you know, between one to twenty five years is a big jump, but that's the amount of time that of course Your Honors decide what he gets.

App. p. 97 ln. 12- p. 98 ln. 2. This testimony directly refutes Petitioner's contention that Counsel misinformed Petitioner that reckless homicide carried harsher penalties than the felony DUI charges to which he pled. See PWC p. 8.

Based on the foregoing testimony from Petitioner at both his guilty plea proceeding and the evidentiary hearing, coupled with Counsel's testimony from the evidentiary hearing, provides more than ample evidence to support the post-conviction relief court's findings that "[Petitioner]'s plea was knowingly and voluntarily entered with a full understanding of the charges and the consequences of the plea." App. p. 125.

Furthermore, Petitioner's reliance on Banshee v. State, 308 S.C. 369, 418 S.E.2d 313 (1992) to support his position is misguided. In Banshee, the defendant was convicted of armed robbery, kidnapping, possession of a sawed-off shotgun, and conspiracy following a jury trial. Id. "The evidence against Banshee was circumstantial, consisting of bank bags, cash, dark ski-masks and two sawed-off shotguns, all recovered from his trailer. None of the robbery victims could identify Banshee as one of the perpetrators. Throughout trial, Banshee denied any involvement in the robbery/kidnapping, contending that he had received the recovered items from two acquaintances as part of a 'business transaction.' He testified, 'I was to maintain the security of these items until they were ready to move them on.' He further denied any knowledge of the robbery prior to its occurrence, learning only of it at a later date." Id. at 369, 370, 418 S.E.2d at 313. Banshee's counsel moved to dismiss the receiving stolen good's charge on the ground that there was no evidence of receiving stolen goods, which the court dismissed with the state's consent. Id. Following his conviction, Banshee filed an application for post-conviction relief, alleging ineffective assistance of counsel in failing to consult with him prior to having the charge

of receiving stolen goods removed from the jury's consideration. He contended that, had the receiving stolen goods charge remained in the case, the jury might well have convicted him of this lesser, and non-violent, offense, rather than the violent crimes for which he was convicted. Id. at 370-71, 418 S.E.2d at 314. This Court agreed with Banshee, finding that "[w]ith removal of the non-violent charge of receiving stolen goods, the jury was left with two extreme alternatives, to-wit, convict him of the violent crimes or acquit him. There being in the record abundant evidence upon which to base a conviction for receiving stolen goods, the jury should have been permitted to consider this third alternative." Id. at 371, 418 S.E.2d at 314.

However, the present case is clearly distinguishable from Banshee for several reasons. First, Banshee proceeded to trial, whereas Petitioner freely admitted his guilt numerous times and elected to forgo trial in favor of a guilty plea. Furthermore, while there was evidence in Banshee to support conviction on the lesser offense of receiving stolen goods rather than the more serious charges, the evidence in Petitioner's case clearly supports conviction for both counts of Causing Death by Operating a Vehicle While under the Influence of Drugs or Alcohol rather than reckless homicide. Law enforcement and medical personnel responding to the scene all noted a strong odor of alcohol emitting from Petitioner and his car, Petitioner's blood alcohol content was .133 more than two hours and fifteen minutes after the fatal wreck, and Petitioner admitted to drinking alcohol before operating his motor vehicle. App. p. 10 lns. 15-25. Based on this evidence, coupled with Petitioner's own admissions that he had no defense to put forth at trial, conviction on both counts of Causing Death by Operating a Vehicle While Under the Influence of Drugs or Alcohol was all but certain had Petitioner proceeded to trial.

The record contains evidence of probative value to support the post-conviction relief court's findings that Petitioner's guilty plea was knowingly and voluntarily entered. This Petition should be denied.

CONCLUSION

For the foregoing reasons, the State submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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March 24, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
The Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2013-000781

STEPHEN CORLEY, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

PROOF OF SERVICE

I, Megan E. Harrigan, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 24th day of March, 2014.

Megan E. Harrigan

MEGAN E. HARRIGAN
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ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAR 24 2014
S.C. Supreme Court

March 24, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Stephen Corley v. State of South Carolina
Appellate Case No. 2013-000781

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above case.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General
S.C. Bar No. 100108

MEH/kk
Enclosures

cc: Carmen V. Ganjehsani, Esquire
Trisha Allen, Victim Services