

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County
Court of Common Pleas
W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2013-001082

COREY PETERSON,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
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ATTORNEYS FOR RESPONDENT

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APR 21 2014

S.C. Supreme Court

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ISSUES PRESENTED

- I. Did the post-conviction relief court err in dismissing Petitioner's case, where Petitioner failed to present any evidence in support of his application?
- II. Did the post-conviction relief court err in dismissing Petitioner's application rather than hold a contempt proceeding?

STATEMENT OF THE CASE

Petitioner was indicted during the October 2010 term of the Sumter County Grand Jury for possession with intent to distribute marijuana, possession with intent to distribute marijuana within half a mile of a school or park, possession with intent to distribute cocaine, and possession with intent to distribute cocaine within half a mile of a school or park (2010-GS-43-1305). Petitioner was represented by David Sullivan, Esquire. On September 12-15, 2010, Petitioner proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. During jury deliberations, Petitioner elected to conclude his trial and plead guilty as indicted to all charges. Judge Cothran sentenced him to six years imprisonment for possession with intent to distribute cocaine (second offense), to five years imprisonment for possession with intent to distribute cocaine within half a mile of a school or park, to four years imprisonment for possession with intent to distribute marijuana, and to five years imprisonment for possession with intent to distribute marijuana within half a mile of a school or park, with all sentences to be served concurrently. Petitioner did not appeal his guilty pleas or sentences.

Petitioner filed an application for post-conviction relief on November 10, 2011, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel/Conflict of Interest: "Counsel failed to investigate and prepare for trial;"
2. Prosecutor Misconduct: "Prosecutor Disclosed Criminal Background Prematively [sic] in front of jury before I took the stand;" and
3. Newly Discovered Evidence: "SLED Report."

Respondent made its Return on January 18, 2012, requesting an evidentiary hearing be held. An evidentiary hearing was convened on March 19, 2013, at the Sumter County Courthouse before the Honorable W. Jeffrey Young. Petitioner was present and represented by Richard Strobel, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. During Petitioner's testimony, Petitioner refused to answer the questions set forth by his attorney and argued with the court regarding new issues he wished to present. The Court removed Petitioner from the stand and dismissed his case. An Order dismissing Petitioner's cases was signed April 11, 2013 and filed April 17, 2013.

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).

ARGUMENT

I. The post-conviction relief court did not err in dismissing Petitioner's application, where Petitioner failed to present any evidence in support of his application.

At the post-conviction relief proceeding, Petitioner refused to answer his attorney's questions, was combative with the court, and failed to present any testimony or evidence regarding his application. App. p. 246-252. Furthermore, Petitioner stated that he did not intend to present any evidence on the grounds listed in his application, but instead wanted to proceed on new claims pertaining to subject matter jurisdiction. App. p. 247 Ins. 3-17. Respondent objected, citing a lack of notice, which the court sustained. App. p. 247 Ins. 18-22. Following Petitioner's repeated refusal to conform his conduct as requested by the court, the court removed Petitioner from the stand and dismissed Petitioner's application on the record. App. p. 251 ln. 25 – p. 252 ln. 1.

In its Order of Dismissal, the court affirms its dismissal of Petitioner's application as set forth on the record, but incorrectly states that the dismissal was upon motion of Respondent rather than *sua sponte*. This is merely a scrivener's error and does not affect the overall disposition of the case. The Order correctly notes that Petitioner "failed to present any evidence or testimony to corroborate the issues raised in his post-conviction relief action." App. p. 256. This is supported by the record and therefore, the post-conviction relief court should be affirmed.

II. The post-conviction relief court did not err in dismissing Petitioner's application rather than holding a contempt proceeding.

Throughout his brief time on the stand, Petitioner repeatedly refused to answer his counsel's questions and challenged the court's authority despite repeated warnings from the court. App. p. 246 – p. 252. After numerous admonishments, the court removed Petitioner from

the witness stand and dismissed his post-conviction relief action. App. App. p. 246 – p. 252. Petitioner argues that the court’s decision was “hasty and improper” and that the “proper action” would have been to warn Petitioner that he would be held in contempt if he did not alter his conduct. PWC p. 7. In support of this position, Petitioner cites to Rhoad v. State, 372 S.C. 100, 105, 641 S.E.2d 35, 37 (Ct. App. 2007), where another post-conviction relief court held an applicant in contempt for his conduct following the voluntary withdraw of his post-conviction relief application.

“[A] trial judge has the inherent authority to maintain order in the courtroom and the exercise of this duty will not be overturned on appeal absent an abuse of discretion.” State v. Jones, 325 S.C. 310, 317, 479 S.E.2d 517, 521 (Ct. App. 1996). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013) (internal citations omitted).

In the present case, Petitioner refused to display the decorum necessary for court proceedings despite repeated admonishment from the Court. The post-conviction relief court had the inherent authority to maintain the order of its courtroom through whatever means it saw fit so long as the manner did not amount to an abuse of discretion. While the post-conviction relief court *could have* elected to hold Petitioner in contempt of court as the post-conviction relief court did in Rhoad, it did not abuse its discretion in removing Petitioner from the stand and dismissing his case for failing to present evidence entitling him to relief. This Court should affirm the post-conviction relief court’s dismissal as it is supported by the record.


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,

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
SC Bar No. 100108
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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April 21, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
The Honorable W. Jeffrey Young, Circuit Court Judge
Case No. 2011-CP-43-2125
Appellate Case No. 2013-001082

COREY PETERSON,

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RESPONDENT.

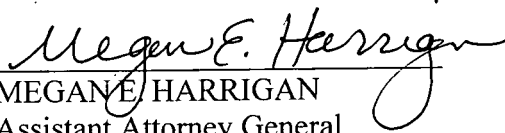
PROOF OF SERVICE

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:

Lara M. Caudy, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

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

This 21st day of April, 2014.


MEGAN E. HARRIGAN
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ALAN WILSON
ATTORNEY GENERAL

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S.C. Supreme Court

April 21, 2014

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

Re: Corey Peterson v. The State of South Carolina
Appellate Case No. 2013-001082

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Writ of Certiorari.

Sincerely,

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

MEH/ko
Enclosures

cc: Lara M. Caudy, Appellate Defender
Trisha Allen, Victim's Services