

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Kershaw County
Court of Common Pleas
James R. Barber, III, Circuit Court Judge

Appellate Case No. 2013-001679

HENRY R. WOODS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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JUN 23 2014

S.C. Supreme Court

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ISSUES PRESENTED

- I. Is there evidence of probative value to support the post-conviction relief court's finding that Counsel was not ineffective for failing to investigate Vincent Bracey as a potential defense witness?
- II. Is there evidence of probative value to support the post-conviction relief court's ruling that Counsel sufficiently communicated with Petitioner, where Petitioner refused to communicate with Counsel, keep meetings with Counsel, or assist Counsel in any way regarding his defense, and Counsel informed Petitioner of gunshot residue evidence and the testimony of witnesses prior to Petitioner's guilty plea?

STATEMENT OF THE CASE

Petitioner was indicted during the November 2006 term of the Kershaw County Grand Jury for Murder (2006-GS-28-0421) and during the March 2009 term of the Kershaw County Grand Jury for Lynching in the Second Degree (2009-GS-28-0358). Petitioner was represented by Cornelius J. Riley, Esquire (hereinafter "Counsel"). On July 26, 2010, Petitioner appeared before the Honorable J. Ernest Kinard, Jr. and pled guilty pursuant to North Carolina v. Alford¹ to the lesser included offense of Voluntary Manslaughter and as indicted to Lynching in the Second Degree. Judge Kinard sentenced Petitioner to twenty-two years imprisonment for Voluntary Manslaughter and to twenty years imprisonment for Lynching in the Second Degree, with the sentences to be served concurrently. Petitioner filed a timely motion to reconsider his sentence, which was heard and denied by the plea court on August 26, 2010.

Petitioner filed a timely notice of appeal. Following the submission of briefs, the South Carolina Court of Appeals affirmed Petitioner's guilty plea and sentences. State v. Henry Woods, Op. No. 2012-UP-102 (Ct. App. filed Feb. 22, 2012). The Remittitur was sent on March 12, 2012.

On October 24, 2009, Petitioner filed an application for post-conviction relief. Respondent made its Return on November 13, 2012, requesting an evidentiary hearing be held. Thereafter, Petitioner, through his counsel, amended his application on April 22, 2013 and again on May 1, 2013. An evidentiary hearing into the matter was convened on June 4, 2013, before the Honorable James R. Barber, III, at the Richland County Courthouse. Petitioner was present at the hearing and was represented by Kristy G. Goldberg, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's

¹ 400 U.S. 25, 91 S. Ct. 160; 27 L. Ed. 2d 162 (1970).

Office. Petitioner testified on his own behalf and presented the testimony of Vincent Bracey and Maurice Chisholm. Respondent presented testimony from Counsel.

On July 9, 2013, Judge Barber issued an Order of Dismissal denying Petitioner's application for post-conviction relief in full; this Order was filed on July 17, 2013.

Thereafter, Petitioner filed a Petition for Writ of Certiorari on March 21, 2014. This Return follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review in a post-conviction relief action 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). The reviewing 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, supra.

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 and both prongs must be established by an applicant to receive relief. Strickland, supra. First, an 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

ARGUMENT

- I. **There is evidence of probative value to support the post-conviction relief court's finding that Counsel was not ineffective for failing to investigate Vincent Bracey as a potential defense witness, as Counsel was aware of Bracey's likely testimony, Bracey's testimony is not credible, unhelpful, and ultimately inconclusive to Petitioner's case, and numerous other witnesses identified Petitioner as possessing and firing a weapon during the altercation.**

Petitioner's first allegation is that Counsel was ineffective for failing to investigate Vincent Bracey, an associate of the decedent who was present during the altercation, as a potential defense witness and that the post-conviction relief court erred in denying Petitioner relief based on this allegation. Petitioner elaborates that Bracey's testimony at the evidentiary hearing establishes that Petitioner was not the shooter and that he denied giving a statement to law enforcement; and therefore, Bracey would have been beneficial to Petitioner's case. However, this argument is without merit, as the post-conviction relief court properly discerned that Bracey was not credible and his testimony would have had no bearing on Petitioner's case in light of the numerous other witnesses who saw Petitioner shooting during the altercation.

At the evidentiary hearing, Counsel testified that he received a copy of the State's potential witness list in advance of trial and noted that Bracey was already subpoenaed to testify on behalf of the State. App. p. 127-28. Counsel testified that he reviewed all discovery materials, including Bracey's statement to law enforcement, with Petitioner when Petitioner finally met with him after Counsel's numerous attempts. App. p. 123. Petitioner testified that he never informed Counsel of Bracey's potential testimony but that Counsel did inform him that Bracey would be present at trial and could be called as a defense witness. App. p. 104-05. Additionally, both Counsel and Petitioner testified that Counsel reviewed potential defense witnesses, including Maurice Chisholm and Bracey, with Petitioner prior to his guilty plea

proceeding. App. p. 106; 127-28. As Counsel correctly noted during the evidentiary hearing, Chisholm's testimony wholly related to Bracey's statement being inaccurate, and therefore, Counsel clearly knew of Bracey's potential testimony that could be beneficial to Petitioner. App. p. 133-134. Based on this testimony, the post-conviction relief court correctly found that Counsel was clearly aware of Bracey's potential testimony on behalf of the defense at trial. App. p. 162. Further, because it was Petitioner himself who suggested Chisholm be included as a witness for the defense, there can be little doubt that Petitioner was also aware of Bracey's potential testimony. App. 134. Because a post-conviction relief court's finding of facts and conclusions of law will be upheld if there is any probative evidence to support them, Petitioner is unable to meet his burden.

Furthermore, Petitioner's argument also fails on the prejudice prong of Strickland. Petitioner has failed to meet his burden in showing that but for Counsel's unprofessional errors, there is a reasonable likelihood that Petitioner would have elected to go to trial. Cherry, supra. Bracey's testimony was not credible, unhelpful, and ultimately inconclusive. Additionally, numerous additional witnesses all identified Petitioner as having *and firing* a gun during the altercation.

As an initial matter, the post-conviction relief court found Bracey to not be credible after observing his demeanor and overall testimony at the evidentiary hearing. Secondly, Petitioner's assertion that Bracey "was prepared to testify that he had seen the back of the shooter and Petitioner was not the shooter" is misleading, if not a complete mischaracterization of the record. See PWC p. 14. Bracey maintained, throughout direct and cross examination, that he only heard gunshots and never saw who possessed or fired the gun and ultimately had no idea who was the shooter. App. p. 72-73; 81. Bracey admits that he cannot say conclusively that Petitioner is or is

not the shooter, *because he does not know*. App. 81. Bracey also testified that Petitioner was near the decedent when he heard gunshots. App. p. 79. Furthermore, numerous witnesses, including Petitioner's co-defendants Jeanette Haile, Shanasia Danzey, and Ebony Danzey, all provided written statements or testimony that Petitioner either had and *was firing* a gun during the altercation or was the shooter. Therefore, Bracey's testimony is ultimately not exculpatory to Petitioner and would not likely have had any impact on Petitioner's case.

As there is evidence of probative value to support the post-conviction relief court's findings, the post-conviction relief court's denial of relief on this allegation must be upheld.

II. There is evidence of probative value to support the post-conviction relief court's ruling that Counsel sufficiently communicated with Petitioner, where Petitioner refused to communicate with Counsel, keep meetings with Counsel, or assist Counsel in any way regarding his defense, and Counsel informed Petitioner of gunshot residue evidence and the testimony of witnesses prior to Petitioner's guilty plea.

Petitioner next argues that Counsel was ineffective and that his guilty plea was made unknowingly and involuntarily because he did not know that the results of the gunshot residue tests indicated that he did not have gunshot residue on his hands at the time of arrest or that none of his co-defendants testified that he was the shooter. This claim is without merit, and directly contradicted by both the record and the post-conviction relief court's factual findings.

Based on the testimony presented at the evidentiary hearing, Petitioner's claim amounts to little more than an allegation that Petitioner is more credible than Counsel; however, this was already ruled upon by the post-conviction relief court, who appropriately found Counsel credible and Petitioner to be less credible. App. p. 160. Petitioner testified that Counsel did not show him the gunshot residue test. App. p. 95; 99. Counsel testified, to the contrary, that he did show Petitioner the gunshot residue report and recalled discussing it with Petitioner. App. p. 123.

Petitioner further testified that Counsel never shared with him what his co-defendants said in their proffered testimony. Counsel testified that he attended the hearing in which Petitioner's co-defendants proffered testimony, that he took notes during that hearing, and that he reviewed those notes during his meeting with Petitioner. Finally, Petitioner's claim that none of his co-defendants testified that he was the shooter is directly contradicted by the facts in the record. Supp. App. p. 121 (Jeanette Haile testified that Petitioner had a gun and fired shots at decedent and his associates during the altercation). Additionally, Petitioner signed and dated an advisement of rights form, introduced at the evidentiary hearing as Defendant's Exhibit No. 1, indicating that his guilty plea was voluntarily and knowingly entered into and that he was satisfied with Counsel's services. Second Supp. App. p. 1-2.

As discussed above, the post-conviction relief court, after having ample time to observe both Petitioner and Counsel throughout the evidentiary hearing and during their testimony, has already heard and ruled upon this issue. Ultimately, the post-conviction relief court found that Counsel's testimony was credible while Petitioner's testimony lacked credibility. App. 160. The post-conviction relief court's findings on matters of credibility are given great deference on appellate review. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012). This is due, in large part, to the inability of appellate courts to directly observe witnesses during their testimony and the recognition that rehashing the credibility of the witnesses on appeal, without the benefit of hearing their testimony directly, would be unwise and inappropriate. Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993).

As there is evidence of probative value to support the post-conviction relief court's findings, this Court should affirm the post-conviction relief court's ruling in regards to this allegation.

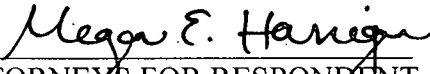
CONCLUSION

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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By: 
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June 23, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County
The Honorable James R. Barber, III, Circuit Court Judge
Case No. 2012-CP-28-00901
Appellate Case No. 2013-001679

HENRY WOODS,

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:

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 23rd day of June, 2014.


MEGAN E. HARRIGAN
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ALAN WILSON
ATTORNEY GENERAL

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JUN 23 2014

June 23, 2014

S.C. Supreme Court

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

Re: Henry Woods v. The State of South Carolina
Appellate Case No. 2013-001679

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, Esquire, Appellate Defense
Trisha Allen, Victim's Services