

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

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The Honorable R. Lawton McIntosh, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2013-002619

Samuel J. Jeter, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

Does probative evidence exist to support the PCR Court's finding that Petitioner failed to meet his burden of proof that Counsel was ineffective for failing to investigate?

STATEMENT OF THE CASE

The Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Petitioner at the June 2011 and September 2011 terms of General Sessions for criminal domestic violence of a high and aggravated nature (CDVHAN) (11-GS-42-2889), distribution of methamphetamine or crack cocaine (11-GS-42-5604), and distribution of crack cocaine within one-half mile of school (11-GS-42-5603). The Petitioner was represented by James A. Cheek, Esquire. As a result of a plea agreement, the charge of distribution of crack cocaine within one-half mile of school (11-GS-42-5603) was *nolle prosequed* and the Petitioner pled guilty as indicted to the other charges on November 17, 2011. The Honorable J. Mark Hayes II sentenced the Petitioner to confinement for a period of seven and one-half (7.5) years for each charge, to run concurrent. The Petitioner did not appeal his guilty plea or sentence.

The Petitioner subsequently filed a PCR application on January 6, 2012. The Respondent made its Return on or about September 25, 2012. An evidentiary hearing into the matter was convened on June 26, 2013, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by Howard J. Kinard, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. Following the hearing, the Honorable R. Lawton McIntosh denied the PCR application by written Order dated October 31, 2013.

A timely Notice of Appeal was filed on Petitioner's behalf and a Petition for Writ of Certiorari was submitted. This Return to the Petition for Writ of Certiorari 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 judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. **Probative evidence exists to support the PCR Court’s finding that Petitioner failed to meet his burden of proof that Counsel was ineffective for failing to investigate.**

Petitioner pled guilty on November 17, 2011, to charges of criminal domestic violence of a high and aggravated nature and distribution of crack cocaine. (App. p. 11-23). Petitioner was sentenced to concurrent terms of seven and one half years on each charge. (App. p. 23). An additional charge of distribution of crack cocaine within one half mile of a school, which would have resulted in a strike, was *nol prossed* as a result of the Petitioner’s decision to plead to the other charges. (App. p. 15). At the plea, Petitioner was represented by Mr. James Cheek, Esquire (“Counsel”). At the PCR hearing, Petitioner argued Counsel was ineffective for failing to investigate the case.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of Counsel. First, the Petitioner must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland). Second, Counsel's deficient performance must have prejudiced the 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 reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id.

With respect to guilty plea counsel, the Petitioner 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

At the hearing, Petitioner testified that he only met with Counsel on the day of his plea. (App. p. 41). Petitioner asserted that he believed he was pleading guilty to both charges in exchange for concurrent sentences of one year on each charge. (App. p. 43-4; 47-8). The Petitioner testified that he was shown a still photo from the drug buy prior to his guilty plea. (App. p. 53). Petitioner introduced two documents received from Counsel's file, which referenced a suspect named "Tywan/Tyrell," in regards to the confidential drug buy. (App. p. 49). Petitioner testified that he had never used either of those names. (App. p. 51-2). Petitioner

testified that Counsel had never shared those documents with him before and had Petitioner seen them before his plea, it would have changed his decision to plead guilty to that charge. (App. p. 52).

Counsel testified that he only began working with Petitioner on the case once Petitioner indicated that he wished to plead guilty. (App. p. 57). Counsel testified that Petitioner was originally represented by Beverly Jones and had he wished to proceed to trial, Ms. Jones would have remained Petitioner's attorney. (App. p. 57). Counsel testified that he met with the Petitioner two times prior to his plea, in addition to meeting with Petitioner on the day of the plea. (App. p. 57). Counsel testified that Petitioner heard a portion of the audio of the drug buy to establish that it was Petitioner's voice on the tape and viewed still photos and acknowledged that it was Petitioner in those photos. (App. p. 58). Counsel again stated that Petitioner acknowledged to him that it was Petitioner on the audio and in the photos from the drug buy. (App. p. 60). Counsel also noted that Petitioner was faced with the possibility of receiving notice that the State would seek a life without parole sentence had he proceeded to trial on all charges. (App. p. 59).

The guilty plea transcript shows that the Petitioner acknowledged the facts as presented by the Assistant Solicitor at the guilty plea, including the fact that he sold crack cocaine to a confidential informant at 150 South Pine Street in Spartanburg, SC that day. (App. p. 15). Petitioner also acknowledged his guilt for the charge of distribution of crack cocaine to the plea court. (App. p. 16). Counsel informed the plea court that he had met with Petitioner and that Petitioner had reviewed the still photos from the drug buy. (App. p. 19). Respondent notes that when given the chance to speak at his guilty plea and at the PCR hearing, Petitioner focused almost solely on discussing the facts of the domestic violence charge and the situation which led

to the charge, but never raised any issues with the presentation of the facts surrounding the drug buy or his guilt.

The PCR Court had probative evidence to find that the Petitioner failed to meet his burden of proof to establish that Counsel was ineffective for failing to fully investigate the charges. (App. p. 73). The PCR Court found that Petitioner's testimony at the PCR hearing was not credible. (App. p. 73). "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting Strickland, 466 U.S. at 691, 104 S.Ct. 2052). Petitioner specifically requested to plead guilty to the charges and acknowledged his participation in the drug buy after listening to audio and viewing still photos from the buy. It would not have been reasonable for Counsel to conduct additional investigations based upon Petitioner's own statements to Counsel. Counsel made a reasonable decision to discuss the case with Petitioner first and then negotiate with the State to produce an outcome that was most beneficial for Petitioner once Petitioner acknowledged his guilt and expressed his desire to plead guilty.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General
SC Bar #78225

By: 
ATTORNEYS FOR THE RESPONDENT

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November 8, 2014

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Spartanburg County
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The Honorable R. Lawton McIntosh, Circuit Court Judge

SAMUEL J. JETER,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

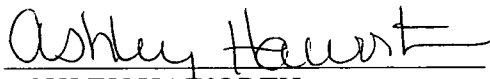
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Susan B. Hackett, Esquire
SC Commission of Indigent Defense - Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 18th day of November, 2014


ASHLEY HAWORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

November 18, 2014

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NOV 18 2014

S.C. Supreme Court

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

RE: Samuel J. Jeter v. State of South Carolina
Lower Court Case No: 2012-CP-42-0057
Appellate Case No. 2013-002619

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Suzanne H. White
Assistant Deputy Attorney General
SC Bar No. 78225

SHW/ah
Enclosures

cc: Susan B. Hackett, Esquire (2 copies)
Trisha Allen, Victim Services (1 copy)