

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 20 2015

S.C. Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2013-002756

Ronnie Goggins, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

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

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTION PRESENTED1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

 Petitioner failed to meet his burden of proof of establishing that
 Counsel was ineffective in his representation of Petitioner at trial3

CONCLUSION7

QUESTION PRESENTED

Did Petitioner fail to meet his burden of proof of establishing that Counsel was ineffective in his representation of Petitioner at trial?

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 February 2009 term of General Sessions for armed robbery (09-GS-46-1068). Robert B. Hall, Esquire, represented the Petitioner. On October 28, 2009, the Petitioner was convicted of this charge by a jury. The Honorable Roger L. Couch sentenced the Petitioner to confinement for fifteen years.

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. An Anders brief was filed on Petitioner's behalf. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Goggins, Op. No. 2012-UP-092 (filed February 22, 2010). The Remittitur was returned on March 12, 2012.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 15, 2012. The Respondent made its Return on or about February 21, 2013. An evidentiary hearing into the matter was convened on June 27, 2013, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Petitioner testified on his own behalf. Robert B. Hall, Esquire, testified on behalf of the State. Following the hearing, the Honorable R. Lawton McIntosh denied the PCR application by written Order dated November 25, 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. Petitioner failed to meet his burden of proof of establishing that Counsel was ineffective in his representation of Petitioner at trial.

On October 28 and 29, 2009, Petitioner proceeded to trial on a charge of armed robbery. (App. p. 6). After deliberating for approximately an hour, the jury found Petitioner guilty of the charge. (App. p. 182, lines 17-18; p. 184, lines 22-23; p. 185). Petitioner was sentenced to fifteen years of prison. (App. p. 192). In his PCR application and at the PCR hearing, Petitioner alleged Counsel was ineffective for failing to effectively present the defense to the jury.

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.

Petitioner testified that he was convicted and sentenced to a fifteen year sentence for armed robbery in October 2009. (App. p. 221-2). Petitioner stated that he believed Counsel had adequate knowledge of what Petitioner's position on the case was. (App. p. 224). Petitioner testified that the victim in the case made two statements, approximately fourteen months apart. (App. p. 225). Petitioner testified that the victim did not identify Petitioner as one of the perpetrators of the robbery in his first statement. (App. p. 225, lines 11-14). However, Petitioner testified that the victim then indicated in his second statement that Petitioner took his money and then claimed Petitioner approached victim's house approximately one month following the robbery. (App. p. 226-7). Petitioner testified that Counsel failed to effectively cross-examine the victim as to his failure to identify Petitioner in his first statement. (App. p. 229, lines 2-12). However, Petitioner did acknowledge that Counsel questioned the victim about his different stories regarding the robbery more than fourteen months apart. (App. p. 240).

Counsel testified that he felt that he was able to cross-examine the victim and point out the discrepancies in his statements. (App. p. 248). Counsel acknowledged that he questioned the victim about his different statements regarding which perpetrator held the gun on him and which took the money. (App. p. 249-250). Counsel also stated that he was able to have the jury hear that the victim did not identify Petitioner in the first line-up. (App. p. 252, lines 5-12). Counsel testified that he prepared an outline for his closing statement and reviewed it with Petitioner, at which time he said Petitioner thought everything had been covered and Petitioner indicated that after closing arguments as well. (App. p. 248).

During trial, Counsel questioned the victim about the fact that he originally claimed the man with the gun stole his money, but then was testifying that the short man identified as “Little Bull,” was the one who took the money. (App. p. 119; p. 123). Counsel also cross-examined Investigator Porter about the fact that the victim had failed to pick out Petitioner in the first line-up shown to victim, but then picked Petitioner out in the second line-up. (App. p. 140, lines 5-7). Counsel also pointed out that the Petitioner was the only repeat picture in the two line-ups. (App. p. 140, lines 10-12). During closing arguments, Counsel focused on the inconsistencies in victim’s story, including the failure of the victim to identify the Petitioner as the perpetrator of the robbery in the first line up, as well as the victim’s inconsistent statements regarding seeing the gun, but yet only looking forward. (App. p. 158-9). Counsel pointed out the fact that the victim claimed Petitioner appeared at victim’s home one month following the robbery, but yet the victim did not call the police. (App. p. 159). Counsel further noted the illogical nature of the victim’s statement that the Petitioner introduced himself to victim by his known nickname, “Little Bull,” before committing the robbery. (App. p. 160).

The PCR court correctly found that Petitioner failed to meet his burden of proof of establishing that Counsel was ineffective in his representation at trial for failing to effectively bring out particular issues to the jury. (App. p. 276). The court found Counsel's testimony to be most credible and found that the Petitioner failed to offer any evidence or testimony to support a claim that Counsel deviated from the standard expected from an attorney. (App. p. 277-8). “[Counsel] is not required to be infallible, nor to do the impossible, since the defendant is entitled to a fair trial and not a perfect one or a perfect result.” State v. Lewis, 255 S.C. 466, 471, 179 S.E.2d 616, 618 (1971).

Petitioner failed to establish that Counsel failed to fully explore or present defenses that would have resulted in a different outcome at trial. Therefore, the PCR court had probative evidence to deny the application and relief.

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

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 20, 2015

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Spartanburg County
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

RONNIE GOGGINS,

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:

Benjamin J. Tripp, Esquire
SC Commission of Indigent Defense - Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 20th day of February, 2015


ASHLEY HAWORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

FEB 20 2015

S.C. Supreme Court

February 20, 2015

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

RE: Ronnie Goggins v. State of South Carolina
Lower Court Case No: 2012-CP-42-1197
Appellate Case No. 2013-002756

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: Benjamin J. Tripp, Esquire (2 copies)
Trisha Allen, Victim Services (1 copy)