

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN - 4 2015

CERTIORARI TO YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2014-002071

Ronald Boozer..... Petitioner,

v.

State of South Carolina..... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
SC Bar # 78871

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

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

QUESTIONS PRESENTED.....2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW.....4

ARGUMENTS

 I. The PCR court correctly found Petitioner pled guilty freely and voluntarily.....5

 II. The issue of whether the PCR court erred in not granting Post-Conviction Relief on the basis that Counsel failed to adequately argue Suppression Motion is not preserved for appeal. Nevertheless, this argument is without merit.....7

CONCLUSION.....9

QUESTIONS PRESENTED

- I. Did the PCR correctly find Petitioner pled guilty freely and voluntarily?
- II. Is the issue of whether the PCR court erred in not granting Post-Conviction Relief on the basis that Counsel failed to adequately argue Suppression Motion preserved for appeal? Nevertheless, does this argument have merit?

STATEMENT OF THE CASE

Respondent agrees with the Petitioner's statement of the case.

STANDARD OF REVIEW

The proper standard for reviewing a PCR 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 PCR proceeding, the Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENTS

I. The PCR court correctly found Petitioner pled guilty freely and voluntarily.

Petitioner asserts his guilty plea was not freely and voluntarily made. This argument is directly refuted by the record and therefore, is completely without merit.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

During Petitioner's guilty plea, the Petitioner stated he understood the charges against him and the penalties the charges carried. (App. p. 266 line 2). He then stated he wanted to plead guilty to the charges. (App. p. 266 lines 3-14). Petitioner testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (App. p. 266 line 21). He stated he was entering the plea freely and voluntarily. (App. p. 267 line 2). Petitioner also testified he understood his constitutional rights and waived those rights. (App. p. 267 lines 3-14; lines 17-21). He further stated he agree with the facts as presented during the trial phase of his case. (App. p. 268 line 16). Further, during the plea, Petitioner admitted he was in violation of his probation by pleading guilty to these charges, among other violations. (App. p. 269 line 18; 22; p. 270 line 8; 17).

At the PCR hearing, Petitioner freely admitted he testified to all of the above at his guilty plea on cross-examination. (App. pp. 315-319). Additionally, Petitioner stated he understood if he was successful in his PCR action that not only would the original charges be reinstated and he would be facing over thirty-five years' imprisonment, but also understood the solicitor was allowed to reinstated other charges which were dropped in exchange for his guilty plea. (App. p. 315; 318-319). While Petitioner testified that he did not understand many aspects of the legal system, that he did not enter his plea freely and voluntarily and that he did know what he was doing when he entered his guilty plea, the PCR court found his testimony not credible, while finding Counsel's testimony credible. (App. p. 368). See Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999) (Great deference is given to the PCR court's findings on matters of credibility, as the reviewing court lacks the opportunity to observe witnesses).

Clearly, Petitioner's guilty plea was knowingly, freely and voluntarily made. Accordingly, there is ample evidence of probative evidence to affirm the PCR court's Order of Dismissal.

II. The issue of whether the PCR court erred in not granting Post-Conviction Relief on the basis that Counsel failed to adequately argue Suppression Motion is not preserved for appeal. Nevertheless, this argument is without merit.

Petitioner asserts "the Lower Court erred in not granting Post-Conviction Relief on the basis that Defense Counsel failed to adequately argue Suppression Motion."

"To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal." State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974).

This issue was not specifically raised in Petitioner's PCR application, not ruled upon by the PCR court, nor properly raised in a 59(e), SCRCF motion and thus, is not properly preserved for appeal.

Nevertheless, the issue is meritless. Petitioner's argument on appeal rests solely on information from Petitioner's mother, who testified that there were no batteries on the scene of the incident and thus, no probable cause for a search warrant or a protective sweep.

First, Petitioner provides no legal support for this assertion.

Second, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v.

State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. “Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment.” State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea “admits all matter of fact averments of the accusation.” Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6). By pleading guilty, Petitioner waived his right to challenge the sufficiency of the evidence, including evidence sufficient for probable cause for a search warrant or a protective sweep.

Third, the testimony during the suppression hearing directly refutes Mrs. Boozer’s testimony at the PCR hearing. Deputy Daniel Seaford testified he responded to a call from Mrs. Boozer concerning a possible trespass. (App. pp. 19-21). While talking to Mrs. Boozer, he witnessed a small fire left unattended and smelled a chemical odor emanating from the fire. (App. p. 21 lines 10-13). When Deputy Seaford went to check on the fire, he found lithium batteries inside a bucket, along with blister packs from medicine. (App. p. 22 line 24-p. 23 line 1). Deputy Seaford also testified he found camping fuel and a bag of ammonium nitrate located in a vehicle within close proximity to the fire. (App. p. 23 lines 6-12). Based on his experience, Deputy Seaford stated these chemical were used for the making of methamphetamine. (App. p. 24 lines 13-17). Additionally, Officer Lewis Cantey testified that when he arrived on the scene, he witnessed a bucket which contained “a partially burned blister pack of the small what

appeared to be the thirty milligram pseudoephedrine tablets and some burnt lithium batteries.” (App. p. 42 lines 10-13). Based on this testimony, Counsel would not have had a reason to challenge the presence of lithium batteries on the property. It is noteworthy that Mrs. Boozer’s did not testify at the suppression hearing, but rather over two years later at the PCR hearing. Accordingly, Petitioner has failed to meet his burden of proof.

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

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar # 78871

By:



ATTORNEYS FOR RESPONDENT

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

June 4, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

The Honorable Edgar W. Dickson, Circuit Court Judge

RONALD BOOZER, #342268

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

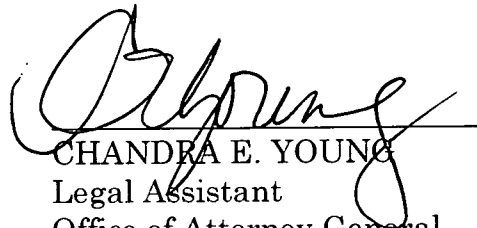
PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tommy A. Thomas, Esquire
PO Box 88
Irmo, SC 29063

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

This 4th day of June 2015.



CHANDRA E. YOUNG
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

JUN - 4 2015

June 4, 2015

S.C. Supreme Court

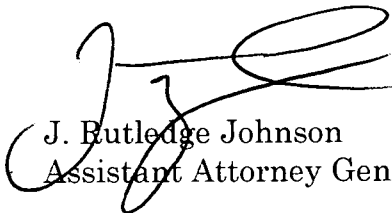
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Ronald Boozer, #342268 v. State of South Carolina
2014-002071**

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,


J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Tommy A. Thomas, Esquire
Trisha Allen, Victim Services