

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-000362
Lower Court Case No. 2012-CP-10-2655

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JUL 17 2015

S.C. Supreme Court

DARRYL LOUIS, #279494,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE**

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QUESTION PRESENTED

I.

Whether the PCR court abused its discretion in denying the Petitioner's motion for a continuance?

STATEMENT OF THE CASE

The Petitioner, Darryl Louis, was charged in Charleston County, Berkeley County, and Dorchester County for sixteen separate offenses, including armed robbery, carjacking, kidnapping, and firearm offenses. On May 28, 2008, the Petitioner pleaded guilty as charged to two counts of armed robbery. The remaining charges were dismissed in exchange for the plea. The Petitioner was represented at this proceeding by F. Renee Gaters, Esquire. The Honorable James C. Williams, Jr., presiding circuit judge, sentenced the Petitioner to concurrent thirty-year prison terms. The Petitioner did not appeal his convictions or sentences.

On October 21, 2008, the Petitioner filed his first Application for Post-Conviction Relief with the Charleston County Clerk of Court. An evidentiary hearing into the matter was convened on January 15, 2010, before the Honorable Deadra L. Jefferson, presiding circuit judge. The Petitioner was represented at this proceeding by Charles T. Brooks, III, Esquire. On February 9, 2010, the PCR court filed an Order of Dismissal which denied relief on all of the Petitioner's claims. The Petitioner did not appeal the denial of his first PCR.

On April 20, 2012, the Petitioner filed his second PCR application with the Charleston County Clerk of Court, which was subsequently amended on May 19, 2014. The State served its Return and Motion to Dismiss on March 31, 2014. A Conditional Order of Dismissal was filed by the Honorable Stephanie P. McDonald on April 23, 2014. The Petitioner filed his Response to Conditional Order of Dismissal on May 19, 2014. On June 23, 2014, Judge McDonald filed an Order permitting the case to proceed to a hearing. An evidentiary hearing was convened on December 10, 2014, before the Honorable J.C. Nicholson, Jr., presiding circuit judge. The Petitioner was represented at this proceeding by Jeremy A. Thompson, Esquire. On January 20, 2015, the PCR court filed an Order Granting an Appeal Pursuant to Austin v. State. The Petitioner

served its Notice of Appeal from this order on February 23, 2015, and this Court received the appeal on February 24, 2015.

Notice of appeal was timely served and filed. The Petitioner now seeks a writ of certiorari.

ARGUMENT

I. The first PCR court abused its discretion in denying the Petitioner's motion for a continuance.

A. How the Issue Arose Below

At the outset of the PCR hearing, PCR counsel stated that he was moving for a continuance on the Petitioner's behalf because the Petitioner "indicated that he wished to have a bit more time to be prepared for today's hearing." App. p. 151, lines 5-7. The PCR court then questioned PCR counsel about his preparation, and PCR counsel responded that he was prepared to go forward. App. p. 151, lines 8-10. The State opposed the request due to PCR counsel's preparedness, the State's preparedness, and the presence of defense counsel at the hearing. App. p. 152, lines 8-11. The PCR court denied the continuance motion, concluding that

There has been no basis articulated to justify a continuance. The Court has had extensive experience with Mr. Brooks and his abilities in post-conviction relief actions.

This is a very—there is nothing particularly complicated about this case. It is a post-conviction relief application from a guilty plea, which in guilty pleas what is most dispositive is the transcript of record, unless there are some other allegations of some undue influence or otherwise.

There are no allegations in that case of that where other witnesses would be required, therefore the motion for continuance is denied.

App. p. 152, lines 12-25. The PCR judge would not permit the Petitioner to state his reasons for the continuance, and stated that she would not reconsider her decision. See App. p. 162, line 15- p. 163, line 1.

Immediately after the PCR court denied the continuance motion, the Petitioner was called to testify. The Petitioner's primary argument for relief centered on defense counsel's failure to advise him that he could end up serving a potentially limitless prison sentence for successive

revocations of his community supervision once he was released from prison. See App. p. 155, line 25-p. 157, line 10. The PCR court then stopped the Petitioner from testifying and questioned PCR counsel:

The Court: Have you explained to your client that that is inaccurate, and that based on Justice Beatty's most recent opinion, you can only receive up to your actual sentence when your community supervision is revoked? So you will never serve more than 30 years.

Mr. Brooks: *I did not, Judge, but I will explain that to him.* Give me a minute.

The Court: The supreme court [sic] has clarified that. You cannot receive any more than your actual sentence on community supervision revocations.

Mr. Brooks: Do you understand that?

The Applicant: No, I do not understand it.

The Court: That is the status of the law, sir.

App. p. 157, lines 10-23 (emphasis added). Over the course of the next several pages of the PCR hearing transcript, both the judge and PCR counsel attempted to explain to the Petitioner, while he was still on the stand, that this Court's decision in State v. McGrier, 378 S.C. 320, 663 S.E.2d 15 (2008), should relieve his concerns about the community supervision program. See App. pp. 157-162.

After hearing that his primary issue had no merit whatsoever, the Petitioner and his counsel floundered to raise any additional grounds for relief. See App. p. 162, line 15-p. 163, line 19. The PCR court then admonished the Petitioner, who was still on the stand, stating that he should work more closely with PCR counsel in developing his issues:

The Court: Mr. Louis, I need to make an observation for the record. You need to cooperate with Mr. Brooks. He is your lawyer. You do not represent yourself. There is no hybrid representation; either you have a lawyer, or you don't.

Your failing to cooperate with him only prejudices you. This is your only time to present this case. You need to tell him everything he needs to know so that he can advocate in your best interest.

If you have any witnesses you want him to call, you need to tell him. If there is any testimony or things you want on this record, you need to answer his questions. Your body language and your posture is telling me that you are making it very difficult for him to represent you. That is hurting you, it is not hurting Mr. Brooks.

You only get one record. I suggest you make the best of it. Now, I am going to ask Mr. Brooks to ask you the question again, and I'm going to direct you to answer his questions yes or no, and then to explain your answers. Okay?

App. p. 163, line 20-p. 164, line 16. Eventually, the Petitioner testified that his plea was involuntary because he didn't realize that there was a possibility that he could be acquitted of all of his charges through several trials. See App. p. 166, line 14-p. 167, line 3. PCR counsel did not ask defense counsel any questions regarding this issue during his examination of her. See App. pp. 170-173.

At the conclusion of the hearing, the PCR court orally denied the Petitioner's application. See App. pp. 176-182. A formal order of dismissal was later filed. See App. pp. 185-192. The Petitioner now contends that the PCR court erred in denying his motion for a continuance.

B. Discussion

Rule 40(i)(1), SCRCPC, provides that continuances in civil matters may be granted "[i]f good and sufficient cause ... is shown." "It has long been the rule in this State that motions for a continuance are addressed to the sound discretion of the trial judge, and his ruling will not be upset unless it clearly appears that there was an abuse of discretion to the prejudice of the applicant." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "[R]eversals of the denial of a continuance are 'about as rare as the proverbial hens' teeth.'" Morris v. State, 371 S.C.

278, 283, 639 S.E.2d 53, 56 (2006) (quoting State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957)).

As an initial matter, the Petitioner notes that the PCR court did not address the continuance motion in its final order. The Petitioner, however, contends that the PCR court's failure to address the continuance request in its order of dismissal does not prohibit this Court from reviewing the decision. In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), this Court held that a PCR court must "make specific findings of fact and state expressly the conclusions of law relating to *each issue* presented" and that "[t]he failure to specifically *rule on the issues* precludes appellate review of the issues." 375 S.C. at 408, 653 S.E.2d at 266 (emphasis added). This preservation requirement was based on S.C. Code Ann. § 17-27-80, which provides that "[t]he court shall make specific findings of fact and state expressly its conclusions of law, relating to each issue presented." This Court also noted that an additional requirement to rule on all of the issues presented is included in Rule 52(a), SCRPC. See id. at 410 (citing Pruitt v. State, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992)). Rule 52(a), like § 17-27-80, requires that civil courts make formal findings of fact and conclusions of law "which constitute the grounds of its action." Rule 52(a), however, explicitly states that "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

A motion for a continuance is not an "issue" within the context of § 17-27-80, as it is not a claim or ground for relief. Rule 52(a), SCRPC, explicitly provides that motions, including motions for a continuance, need not be expressly ruled upon in a final order. Consequently, the PCR court was not required to rule on the continuance issue in its order. Accordingly, Marlar presents no bar for this Court's review of the PCR court's denial of the Petitioner's request for a continuance.

Turning to the merits, the Petitioner recognizes that trial courts are vested with wide latitude in ruling on continuance motions. The Petitioner respectfully submits, however, that this case is one in which the PCR court abused its discretion. The primary bases for the PCR judge's continuance motion were PCR counsel's representation that he was prepared for the hearing and her trust in his ability to properly represent the Petitioner. Those bases were completely undermined the moment the hearing began because PCR counsel was not prepared for the Petitioner's primary ground for relief. Indeed, PCR counsel admitted that he had not explained to the Petitioner that the legal basis for his argument was not viable, and had not been viable since this Court decided McGrier. See App. p. 157, lines 16-17. There are only two possible reasons for his failure to explain this crucial decision to the Petitioner: (1) PCR counsel was not aware of McGrier; or (2) PCR counsel had not sufficiently communicated with the Petitioner to know what allegations the Petitioner intended to present. Under either scenario, PCR counsel could not have been prepared to represent the Petitioner at his PCR hearing.

While PCR counsel never raised the continuance issue again to the PCR court, the Petitioner attempted to do so, and was resolutely told that the PCR court would not change its ruling. See App. p. 162, line 15-p. 163, line 1. At that point, however, the PCR court should have realized that neither the Petitioner nor his counsel were prepared to go forward because of the confusion regarding McGrier and should have reversed its decision to deny the continuance motion. Instead, the PCR court forced the Petitioner to continue forward with his arguments, and would not even hear what the Petitioner had to say regarding the continuance request. This was clear error and an abuse of discretion.

The PCR hearing was a fiasco. The conversation that the Petitioner and PCR counsel should have had in private regarding his arguments and what would or would not be viable

occurred while the Petitioner was on the stand. The PCR court even admonished the Petitioner to tell PCR counsel what witnesses he wanted called, see PCR App. p. 164, lines 5-6, as if it would have done any good to do so. It is not as if PCR counsel could go find the witnesses in the middle of the hearing that the PCR court would not continue. It should be of little surprise that the Petitioner was reticent to work with PCR counsel at that point. As the PCR court made clear, the Petitioner only had one hearing in which to make his record, see App. p. 164, line 12, and PCR counsel's failure to prepare for the hearing resulted in a *de facto* forfeiture of that hearing. The Petitioner should be afforded an opportunity to actually prepare for a hearing on the merits where he can present viable claims on the merits. The Petitioner respectfully requests that this Court reverse the PCR court's denial of the continuance motion to afford him that opportunity.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on this issue.

Respectfully submitted,



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This 17th day of July, 2015.