

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2014-001388

RECEIVED

AUG 27 2015

S.C. Supreme Court

Latisha Cochran, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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Attorney General

J. CROOM HUNTER
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

1. Whether Petitioner's due process rights under the Fourteenth Amendment were violated when the state failed to disclose its plea agreement with c-defendant Quentin Epps and failed to correct Epps' false testimony during Petitioner's trial concerning the existence of the plea agreement.

STATEMENT OF THE CASE

Petitioner was indicted during the April 2009 term of the Florence County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2009-GS-21-422). Petitioner was represented by Jesse S. Cartrette, Esquire.

On October 19, 2010, Petitioner proceeded to trial before the Honorable Michael G. Nettles on the armed robbery charge. The jury convicted Applicant, and Judge Nettles sentenced her to thirteen years imprisonment.¹ Applicant filed a timely notice of appeal, and her sentence and conviction were affirmed by the South Carolina Court of Appeals. State v. Cochran, Op. No. 2012-UP-310 (S.C. Ct. App. Filed May 16, 2012). The Remittitur was sent on June 8, 2012.

Petitioner filed an application for post-conviction relief (PCR) on July, 2012. (App.pp.253-259). A hearing was held at the Florence County Courthouse on March 1, 2013. Petitioner was present and represented by Tristan Shaffer, Esquire. Tyson A. Johnson, Esquire of the South Carolina Attorney General's Office represented Respondent. (App.pp.279) The Honorable William H. Seals denied relief in an order filed March 22, 2013. (App.pp.398-407). On April 8, 2013, Petitioner filed a Motion to Reconsider pursuant to Rule 59(e), SCRPC. (App.pp.408-416). On June 2, 2014, the Court denied the motion. (App.pp.417-420).

SUMMARY OF THE FACTS

Petitioner, along with her four co-defendants, met at Petitioner's home on November 15, 2008 for the purpose of finding someone to rob. Petitioner anonymously telephoned the victim in an effort to lure him outside where he could be more easily ambushed. Thereafter, Petitioner and one co-defendant waited in the getaway car while the other three co-defendants, armed with handguns and wearing masks, robbed the victim of five hundred dollars in cash, as well as his credit cards. Petitioner drove the car both to and from the robbery. After the robbery, the devious

¹ The State did not pursue the weapons charge at trial.

cabal returned to Petitioner's home, where they divided up the fruits of their labor. (App.pp.105-116).

STANDARD OF REVIEW

The proper standard for review of 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, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

II. Certiorari is unwarranted to review whether Petitioner's due process rights were violated where testimony from the PCR hearing clearly indicated the State did not have a specific plea deal in place with Petitioner's testifying co-defendant.

A. Napue violation

Petitioner asserts that the post-conviction relief judge erred in denying Petitioner's Application for PCR because "Petitioner's due process rights under the Fourteenth Amendment were violated when the state failed to disclose its plea agreement with co-defendant Quentin Epps and failed to correct Epps' false testimony during Petitioner's trial concerning the existence of the plea agreement." Petitioner's PWC, p. 4. This argument is without merit.²

Petitioner argues the facts of her case are analogous with Napue v. Illinois, 360 U.S. 264, 269 (1959), where the Supreme Court held "It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the

² Petitioner argues that another co-defendant, Montarrío Graham, was granted PCR by Judge Hyman, and the State's decision not to appeal that ruling should be dispositive of the fact that a plea deal existed and was not revealed to Petitioner; however, the facts surrounding Graham's case are not relevant to Petitioner's PCR, as Graham had a separate trial and played a different role in the crime.

Fourteenth Amendment.” Petitioner also cites Giglio v. United States, 405 U.S. 150, 153 (1972), which states “[A] prosecutor’s deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.” “The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” Id. However, Judge Seals correctly distinguished Napue from Petitioner’s case in the Order denying the 59(e), writing “In Napue, the co-defendant unequivocally testified he had not been promised a reduced sentence in exchange for his testimony, even though the state’s attorney had made such a promise. Id. at 270-71. In Applicant’s trial, the co-defendant clearly testified he expected a better deal in exchange for his cooperation. (Trial Tr. 119:1-3).” (App.p.417).

Indeed, the testimony from the trial and the PCR hearing clearly indicates that Epps did not perjure himself at trial when he testified he did not have a special plea deal in place with the State. At trial, the following exchange took place between Epps and the solicitor:

Q: Okay. Mr. Epps, have you been offered anything special to testify here today?

A: No, sir.

Q: You hadn’t been offered any sort of special plea deal in order for you to testify here today; is that right?

A: Right.

(App.p.116-17). However, on cross-examination, the following exchange took place between Epps and Petitioner’s attorney:

Q: Isn’t it true that you hope to get a better deal because of your cooperation today?

A: Yes, sir.

(App.p.119:1-3). Petitioner argues that a plea deal clearly existed between the State and Epps at the time of Petitioner's trial, and that Epps' testimony was perjurious; however, Epps freely acknowledged that he hoped for a good deal by testifying. As such, his testimony clearly indicated that he hoped his testimony would result in a favorable plea deal, but nothing specific had been agreed to at that point.

Epps' testimony regarding his understanding of any potential deal reflected that of his attorney and the solicitor at the PCR hearing. At the PCR hearing, Hank Anderson, Epps' plea counsel testified he believed Epps would receive some type of benefit for his testimony, but he acknowledged there was no specific deal in place, stating he told his client "It's my understanding that these charges are going to be reduced. It's my understanding you'll be allowed to plead to something else so you're no longer facing 10 to 30." (App.pp.298-299). Anderson further responded affirmatively when asked at the PCR hearing if he would have brought it to the attention of the solicitor if he thought his client's testimony with regard to any agreement was inaccurate. (App.pp.301-02). Additionally, Patricia Parr, the solicitor who handled the case, was asked at the PCR hearing, "So you're saying that he did not have any specific agreement as to what he would plead to?" to which she responded, "Right, but that he would get some help or some consideration for his cooperation." (App.p.382:3-6).

Because Epps' testimony, corroborated by the testimony of his attorney and the solicitor at the PCR hearing, reflected that he hoped for a beneficial plea deal based on his testimony against Petitioner, but that no specific deal had been reached prior to his testimony, Respondent submits Petitioner has neither shown that the solicitor allowed false testimony to go uncorrected, nor has Petitioner shown Epps' testimony was false in any way. Because Petitioner has failed to show any such misconduct on the part of Epps, or the solicitor, Respondent submits the finding

of the PCR judge should be affirmed.

B. Brady violation

Petitioner further contends the solicitor committed a Brady³ violation by failing to reveal Epps' alleged plea deal to Petitioner. This argument is without merit.

“An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching.” Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). Evidence is material under Brady if there is a reasonable probability that the result of the proceeding would have been different had the information been disclosed. See State v. Proctor, 358 S.C. 424, 595 S.E.2d 480 (2004).

Petitioner attempts to equate this case with the holding in Riddle; however, that case dealt with false testimony. Respondent submits the testimony from the trial and the PCR hearing fail to show that Epps entered false testimony. Epps was forthcoming when Petitioner's trial counsel cross-examined him about his hope for a better deal if he testified against Petitioner. As such, his testimony was not falsely entered. Because his testimony was not false, the solicitor had no duty to correct it because there was nothing to correct.

Furthermore, even if the State had an agreement with Epps, Petitioner has failed to show any resulting prejudice from the non-disclosure. In other words, Petitioner has failed to show such evidence would have been material under Proctor. After all, Epps admitted on the stand that he expected a better deal for testifying against Petitioner. Additionally, Judge Seals was correct in finding in the Order denying the 59(e) that “any further information about the State's negotiations with the co-defendant would be cumulative impeachment evidence. See State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693-94 (1996) (no Brady violation where

³ Brady v. Maryland, 373 U.S. 83 (1963).

impeachment evidence was merely cumulative).” (App.p.418).

Finally, the PCR judge was correct in finding the overwhelming evidence against Petitioner, including her own incriminating statements, precluded any alleged violation from changing the outcome of the trial. See State v. Taylor, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) (court must consider alleged Brady violations in the context of the entire record (citing United States v. Agurs, 427 U.S. 97 (1976))). As such, Petitioner has failed to show any resulting prejudice.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

_____, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

The Honorable Michael G. Nettles, Circuit Court Judge

LATISHA COCHRAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **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:

Lara M. Caudy, Esquire
Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

This 27th day of August, 2015.


NORMA BIGBEE
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

August 27, 2015

VIA HAND DELIVERY

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

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AUG 27 2015

S.C. Supreme Court

RE: Latisha Cochran v. State of South Carolina
Appellate Case No: 2014-001388

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,

J. Croom Hunter
Assistant Attorney General
Bar No: 101253

JCH/nb
Enclosures

cc: Lara M. Caudy, Esquire (2 copies)