

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-000757

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DEC 16 2015

S.C. Supreme Court

Travis F. Hipp, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Does the record contain evidence to support the post-conviction relief court's finding that Petitioner failed to show counsel did not sufficiently communicate both plea offers where Petitioner signed a sentencing sheet indicating he was rejecting an offer?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the September 2011 term of the Spartanburg County Grand Jury for petit larceny—third or subsequent (2011-GS-42-5722, -5724), breaking into a motor vehicle (2011-GS-42-5723), burglary—first degree (2011-GS-42-5725), the October 2011 term for malicious injury to real property—third or subsequent (2011-GS-42-6162), and the February 2012 term for burglary—second degree (2012-GS-42-0593). Andrea Price, Esquire represented Petitioner on all charges. On March 19, 2012, after proceeding to trial on the burglary—second degree charge, Petitioner chose to plead guilty to all of his pending charges as listed above. The Honorable Roger L. Couch sentenced Petitioner to concurrent sentences of 30 years for burglary—first degree, 15 years for burglary—second degree, ten years for each count of petit larceny—third or subsequent and malicious injury—third or subsequent, and five years for breaking into a motor vehicle. Petitioner did not appeal his conviction or sentence.

Petitioner filed an Application for Post-Conviction Relief (PCR) on March 12, 2013. Respondent made its Return on March 28, 2014. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse, before the Honorable Deadra L. Jefferson. Petitioner was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. At the hearing, Petitioner testified on his own behalf. Lt. Mark Freeman and Andrea L. Price ("Counsel") also testified. The court had before it records of the Spartanburg County Clerk of Court regarding the subject convictions, Petitioner's records from the South Carolina Department of Corrections, the Return, and the guilty plea transcript.

STANDARD OF REVIEW

This Court must affirm the PCR court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court "gives great deference to the [PCR] court's findings of fact and conclusions of law." Id. (quoting Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005)).

ARGUMENT

The record contains sufficient evidence to support the PCR court's finding that Petitioner failed to show counsel was ineffective for failing to communicate two plea offers where Petitioner signed a sentencing sheet rejecting the offer and stating he understood the three strikes law.

The PCR judge found the guilty plea transcript compelling. (App. p. 127). At his guilty plea, Judge Couch asked Petitioner if he was offering a guilty plea on his charges and Petitioner said yes. (App. pp. 31-32). Petitioner told Judge Couch that he had fully discussed these matters with Counsel. (App. p. 32). Petitioner alleged at the PCR hearing that Counsel did not advise him of a plea offer. (App. pp. 86-87, p. 72). However, the plea offer was dated November 4, 2011, and Counsel testified she had James Cheek, Esquire, also of the public defender's office, communicate the offer to Petitioner. (App. p. 87). Petitioner testified his handwriting appeared on a sentencing sheet dated November 28, 2011, stating he was rejecting the plea offer and that he understood the three strikes law. (App. pp. 104-105, p. 181). The sentencing sheet also was made part of the record. (App. p. 181). Counsel testified that she and James Cheek worked on the plea offer with the State. (App. p. 116). She testified that James Cheek was "actually the one [who] went and talked to [Petitioner] at the jail and had this sentencing sheet." (App. p. 116). Counsel further testified that Petitioner rejected the plea offer and acknowledged on the sheet that he was aware of the three strikes law. (App. p. 116). Petitioner was subsequently served with a notice that the State intended to seek a sentence of life without parole at Petitioner's trial for burglary second. (App. pp. 116-117). Just before the start of trial, the State extended an offer that would allow Petitioner to plead guilty to all charges but without the exposure to life without parole. (App. p. 117). Petitioner accepted the offer and was sentenced to 30 years rather than life. (App. p. 117, p. 165).

In a PCR action, the applicant has the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must show 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant must prove both that counsel's performance was deficient and that such deficient performance prejudiced him. Strickland, 466 U.S. at 688.

The Court measures counsel's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117-18, 326 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). In other words, the question is whether counsel "provided representation within the range of competence required" in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

To show prejudice, the applicant must affirmatively prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). With respect to guilty plea counsel, the Applicant 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 (1985).

Petitioner, by his own testimony and at the plea hearing, indicated he discussed the plea offers with Counsel. Petitioner admitted it was his handwriting on the sentencing sheet rejecting the plea offer. Accordingly, the record contains ample evidence of probative value to affirm the PCR court's finding that Petitioner failed to show Counsel failed to communicate the plea offers. Therefore, this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, the State submits that this Court should deny the Petition. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

ALICIA A. OLIVE
Assistant Attorney General
Bar No. 102089

By: 
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December 16, 2015

STATE OF SOUTH CAROLINA
In The Supreme Court

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Certiorari to Spartanburg County
Court of Common Pleas

S.C. Supreme Court

The Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2015-000757

TRAVIS HIPP,

PETITIONER,

v.

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 16th day of December, 2015



ASHLEY HAWORTH
LEGAL ASSISTANT



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S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

December 16, 2015

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Travis Hipp v. State of South Carolina
Appellate Case No.: 2015-000757

Dear Ms. 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,

Alicia A. Olive
Assistant Attorney General
SC Bar No. 102089

AAO/ah
Enclosures

cc: Benjamin J. Tripp, Esquire