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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2015-000543

Travis McLaughlin,.....Petitioner,

v.

State of South Carolina,.....Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

1. Whether the PCR court erred by finding trial counsel provided effective representation in Petitioner's murder case where counsel did not hire a private investigator to conduct an independent assessment of the evidence collected at the crime scene, since Petitioner pled guilty only because counsel incorrectly stated Petitioner had no defense at trial where self-defense and involuntary manslaughter were viable verdicts.

STATEMENT OF THE CASE

Petitioner is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Marion County Clerk of Court. In May 2010, the Marion County Grand Jury indicted Petitioner for murder and possession of a weapon during a violent crime (2010-GS-33-0176). (App.pp.94-95). Henry M. Anderson, Jr., Esquire, represented Petitioner. On December 2, 2011, Petitioner pled guilty to the lesser included offense of voluntary manslaughter. The Honorable William H. Seals sentenced Petitioner to twenty-five (25) years imprisonment. (App.pp.1-23). Petitioner did not appeal his plea or sentence.

Petitioner filed for post-conviction relief (PCR) on March 9, 2012. (App.pp.24-28). Respondent made its return on February 4, 2013. (App.pp.32-36). Petitioner filed an amended application for post-conviction relief on September 6, 2013. (App.pp.29-31). An evidentiary hearing into the matter was convened on October 8, 2014, at the Florence County Courthouse. Petitioner was present at the hearing and was represented by Joshua A. Bailey, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office. (App.pp.37-78). By Order signed December 10, 2014 and filed December 19, 2014, the Honorable Edgar W. Dickson denied and dismissed the application. This appeal follows.

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

The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel was ineffective for not retaining a private investigator where plea counsel thoroughly advised Petitioner with regard to self-defense and involuntary manslaughter, and Petitioner made an informed decision to plead guilty.

Petitioner argues the PCR judge erred by finding trial counsel provided effective representation in Petitioner's murder case where counsel did not hire a private investigator to conduct an independent assessment of the evidence collected at the crime scene, since Petitioner pled guilty only because counsel incorrectly stated Petitioner had no defense at trial where self-defense and involuntary manslaughter were viable verdicts. This argument is without merit.

A.

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). " 'A guilty plea represents a break in the chain of events which has preceded it in the criminal process.' " Id. at 332, 737 S.E.2d at 486 (quoting Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)). By entering a guilty plea, "[a]n accused [ ] waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions." Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). "A plea of guilty is an admission or a

confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury." State v. Fuller, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); see North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). A valid guilty plea must be treated as final in the vast majority of cases. Indeed, "[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof." McMann v. Richardson, 397 U.S. 759, 773, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). "Furthermore, there must be some consequence attached to the decision to plead guilty." People v. Schneider, 25 P.3d 755, 761 (Colo.2001). Jamison v. State, 410 S.C. 456, 468-69, 765 S.E.2d 123, 129 (2014), reh'g denied (Dec. 3, 2014), cert. denied, 135 S. Ct. 2387, 192 L. Ed. 2d 173 (U.S.S.C. 2015).

B.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052

(1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 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 trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

C.

Deficiency

The PCR judge did not err in finding Petitioner failed to meet his burden of proving plea counsel was deficient for electing not to retain the services of a private investigator. Petitioner failed to prove the first prong of the Strickland test – that plea counsel was deficient. At the PCR hearing, Plea Counsel testified he has been practicing law for twenty-three years, with the vast majority of his practice devoted to criminal defense. (App.p.67). Counsel testified he discussed the elements of murder, voluntary manslaughter, and involuntary manslaughter with Petitioner. (App. p.68, 72). Counsel testified that after discussing the case with Petitioner, he believed it was in Petitioner's best interests to plead guilty, and he agreed with Petitioner's decision to do so. (App.p.70). Counsel testified he told Petitioner he was prepared to go to trial, but the case had some problems. (App.p.69). Counsel elaborated by testifying, "I thought that if we'd have tried this case ten times, we might have gotten involuntary once or twice. It might have been murder once or twice. It probably would have been voluntary most of the

time." (App.p.70, lines 12-15). Finally, Counsel testified he did not believe there was any need to bring in an expert in Petitioner's case. (App.p.70). In fact, Counsel testified at the PCR hearing that the evidence against Petitioner was straightforward, and "I think if you have read what we said at the guilty plea, it followed in line with a lot of what Mr. Girndt (Petitioner's expert at the PCR hearing) said." (App.p.70, lines 21-23). Counsel went further, testifying,

> "We talked about the wounds to Travis. We talked about the struggle over the gun. We talked about the injuries to his hand. When I say his hand, the victim's hand. We talked about wounds on the victim's forearms and his chest and his face. We talked about the angle of the bullets at the house indicating there had been a struggle over the gun or at least what we thought was a struggle over the gun. I thought we covered all of that in our – I guess our mitigation."

(App.p.71, lines 4-11).

With regard to Petitioner's testimony at the PCR hearing, Petitioner testified he only admitted his guilt at the plea because "I had to say I was guilty in order to get him to accept my plea." (App.p.65, lines 10-11). When questioned about lying to the plea judge, Petitioner testified, "... it was on the advice of my counsel." (App.p.65, line 18). The PCR judge specifically found Counsel's testimony was credible, while finding Petitioner's testimony was not credible. (App.p.8). As such, this Court must give this finding great deference. See Drayton v. Evatt, 312 S.C. 4, 13, 430 S.E.2d 517, 522 (1993) (finding great deference is given to the PCR judge's findings on the credibility of witnesses); see also Menne v. Keowee Key Prop. Owners' Ass'n, Inc., 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006) ("Because the appellate court lacks the opportunity

for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved.").

Petitioner cannot demonstrate trial counsel was ineffective for not hiring a private investigator because Petitioner has failed to show that the added testimony would have been enough to change the outcome if the case went to trial. Counsel's testimony indicated he had a firm grasp on the facts of the case, and he explained the differences in murder, voluntary manslaughter, and involuntary manslaughter to Applicant prior to his plea. Counsel testified that based on his experience, investigation, and understanding of the case, he did not believe an investigator was necessary, and he felt voluntary manslaughter was the most likely outcome at trial. "Counsel has a duty ... to make a reasonable decision that makes particular investigations unnecessary" Strickland, 466 U.S. at 691. Finally, the record indicates Applicant's plea was freely and intelligently entered. As such, he should not be allowed to depart from his plea merely because he regrets his decision.

Prejudice

Petitioner failed to prove the second prong of the Strickland case – that trial counsel's performance prejudiced his case. The expert testimony presented by Don Girndt at the PCR hearing presented no new evidence that would have changed the likely outcome at trial. Counsel's presentation during the mitigation phase of the plea closely mirrored what was testified to by Girndt. The record clearly indicates Counsel was prepared to go to trial and would have been prepared to argue voluntary and involuntary manslaughter defenses to the jury. The fact remains that Applicant was aware of these

issues prior to his plea, and he made an informed decision to plead guilty rather than potentially be convicted of murder. As such, Petitioner has presented no new evidence that indicates he would not have pled guilty.

E.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance.

As Petitioner failed to meet his burden of proving ineffective assistance of trial counsel on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

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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

January 14, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County

The Honorable Edgar W. Dickson, Circuit Court Judge

TRAVIS MCLAUGHLIN,

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:

Tiffany L. Butler, Esquire
Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

This 14th day of January, 2016.

Norma Bigbee

NORMA BIGBEE
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

January 14, 2016

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

RE: **Travis McLaughlin v. State of South Carolina**
Appellate Case No: 2015-000543

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: Tiffany L. Butler, Esquire (2 copies)