STATE OF SOUTH CAROLINA
In The Supreme Court

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SC SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-000818

Tony Paul Medford, ... Petitioner,

v.

State of South Carolina, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Should this Court deny review because the record contains evidence of probative value to support the post-conviction relief judge's finding that Petitioner failed to satisfy his burden of proving his claim that his guilty plea was not voluntary?

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. Petitioner was indicted at the March 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-1821). Matthew Shealy, Esquire, and Clay T. Allen, Esquire, represented Petitioner.

Petitioner initially proceeded to trial before the Honorable J. Derham Cole and a jury on January 9, 2012, but on January 11, 2012, Petitioner pleaded guilty under Alford[1] to voluntary manslaughter. Pursuant to a negotiated sentence, Judge Cole sentenced Petitioner to confinement for a period of fifteen years. Petitioner did not appeal his conviction or sentence.

Petitioner filed an application for post-conviction relief ("PCR") on October 8, 2012. Respondent made its Return on October 2, 2013, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was held before the Honorable Deadra L. Jefferson on January 13, 2015, at the Spartanburg County Courthouse. Petitioner was present and represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Petitioner testified on his own behalf. Danny Crisp also testified on behalf of Petitioner. Matthew W. Shealy, Esquire ("Counsel") also testified.

On April 6, 2015, Judge Jefferson filed a written order denying and dismissing with prejudice Petitioner's application for post-conviction relief.

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

STANDARD OF REVIEW

In reviewing a PCR court's decision, an appellate court is concerned only with whether there is any evidence of probative value that supports the decision. Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011) (citing Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). This Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. at 589, 690 S.E.2d at 79. Furthermore, 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

This Court should deny review because the record contains evidence of probative value to support the post-conviction relief judge's finding that Petitioner failed to satisfy his burden of proving his claim that his guilty plea was not voluntary.

Petitioner was originally indicted for murder. (App. p. 288, lines 23-24; pp. 270-71). Petitioner initially proceeded to trial on the murder charge. (App. pp. 1-260). The State introduced Petitioner's statement through the testimony of Allen Wood at trial. (App. pp. 154-62). Wood testified that Petitioner told him he shot Rick Hayes, the victim. (App. p. 157, line 17). Petitioner and the victim had been riding in a car together with a third individual, Danny Crisp. (App. pp.158-62). Wood testified that Petitioner said he "look[ed] over his shoulder[,]. . . saw a flash of chrome[,] [and] [s]eeing that flash of chrome he felt like—his gun was out. So he—he shoots." (App. p. 160, line 10-13). Wood testified Petitioner said he "[p]ulled his gun, ducked down and shot all at the same time[,]" unsure of whether he hit the victim. (App. p. 169, lines 5-17).

Wood testified that Petitioner had "described the [victim] as having a chrome .45 or . . . a shinier gun than his." (App. p. 160, lines 17-25). Wood testified that the .45 was never found. (App. p. 161, lines 2-6). He testified that Petitioner told him "he threw [the .22 caliber] gun that he used to shoot [the victim] out the window" of the car while driving over a bridge. (App. p. 159, lines 13-22). Wood also pointed out that Petitioner and Crisp "went to the trouble of getting rid of his gun but not the [victim's] gun. There was no mention of it." (App. p. 161, lines 6-7). Wood then testified that he "didn't see the .45" and that Petitioner "didn't see a .45. [Petitioner] saw a flash of chrome of what he thought was the gun, but . . . didn't tell [him] anything about the .45 other than he saw—thought he saw a flash of chrome of what he thought was a .45 and threw his gun away." (App. p. 179, lines 11-17). Wood testified that investigators did not "look

for a .45 on [highway] 295 . . . . [but] looked for anything that could be construed as evidence on Blanchard Road." (App. p. 179, lines 22-25). Wood testified that the victim was a maker of methamphetamine. He testified on cross-examination that "[p]eople who make drugs" "sometimes" carry guns. (App. p. 168, line 17-p. 169, line 4).

Frank Parris, the passerby who discovered the victim's body lying near the road way, gave a statement and testified that he saw some "ammunition" or "bullets" laying near where he found the victim. (App. p. 129; p. 135). A paramedic who treated the victim further testified that an ammunition clip was found in the victim's pocket. (App. p. 140, lines 10-13). David Brandon with the Spartanburg County Sheriff's Office testified that he and another deputy "did a canvass of the area for a firearm that may have possibly been involved." (App. p. 190, lines 7-10). Brandon testified that they were "specifically looking for firearms . . . a .45 caliber[,]" and that they found "four unfired .45 caliber rounds laying in the roadway." (App. p. 190, lines 19-25). No .45 caliber gun was recovered. (App. p. 161, lines 2-6).

After both the State and defense rested, the State extended a plea offer of voluntary manslaughter with a negotiated fifteen year sentence. (App. p. 323, line 24-p. 324, line 9). Counsel testified that the State initially offered a twenty-five year deal and a twenty year deal prior to trial. (App. p. 323, lines 21-23). Counsel testified that Petitioner had been open to pleading guilty before the fifteen year offer was extended, but always asked for a ten year deal, which the State was not willing to offer. (App. p. 323, lines 18-23). Petitioner acknowledged that he knew he was facing thirty years to life if he was convicted of murder. (App. p. 302, line 20-p. 303, line 1). Counsel testified that Petitioner "ultimately . . . decided that he wanted to take the [fifteen]." (App. p. 324, lines 19-21). Counsel also testified that Petitioner never indicated that he

did not wish to plead and that if he had, Counsel had a closing argument prepared and "would [have] done it." (App. p. 325, lines 17-21).

Petitioner testified Danny Crisp gave a statement indicating that "after he heard the gunshot, he stopped the vehicle and [Petitioner] reached into the back seat and grabbed Rick's gun and pulled it into the front seat and said 'man, he just pulled his gun on me.'" (App. p. 293, lines 10-18).

Crisp testified at the PCR hearing that after he drove the victim to a woman's house, Rick and Paul started arguing, and then he heard a gunshot and stopped the car. (App. p. 312, lines 11-14). He testified that the victim got out of the car and then Crisp and Petitioner left. (App. p. 312, lines 14-15). He testified he asked Petitioner why he was shooting a gun in his car and Petitioner said "he pulled a gun on me," and then Crisp said he "told [Petitioner], [Petitioner] was full of mess." (App. p.313, lines 17-18). Crisp testified he heard a gunshot but never saw the victim pull a gun on Petitioner because he was driving. (App. p. 314, lines 16-19). Crisp had also been indicted for an offense in connection with the shooting. (App. pp. 306-307). Crisp never testified that he would have testified for the defense at Petitioner's trial. (App. pp. 308-316)

Counsel testified he did not think, based on his understanding or experience, that Crisp would have been helpful as a witness. (App. p. 321, lines 11-13). Counsel testified he assumed Crisp would have testified that there was a gun on the floorboards, but that "he couldn't testify as to the firing—who fired what, who pulled what gun, that sort of thing." (App. p. 321, lines 16-19). Counsel also testified that the solicitor told him he had a deal with Crisp for testimony and that Crisp was going to "testify that the arguing that was going on, one, was over stuff due and, two, was—didn't rise to the level of a fight . . . . [I]t was bickering . . . , and since it was—it didn't explain why somebody would pull a gun and fire." (App. p. 321, line 20-p. 322, line 5).

Counsel testified that "there was also the fact that [he] would lose final argument." (App. p. 322,lines 6-7).

Counsel testified that Petitioner's statement had already been read into the record and was in evidence, giving "[the defense] an uncontroverted version of events." (App. p. 322, lines 7-10). As further support for his decision not to call Crisp to testify, Counsel stated: "[The State] called no other witnesses who could gain say [*sic*] that position. [The defense] had gotten out the fact that there were .45 caliber bullets found on [the victim]. There was a clip . . . also found with [the victim]." (App. p. 322, lines 10-13). Counsel stated, in sum, that he did not think that what Crisp would have added was sufficient to give up final argument, and that had he testified, "there may [have] been some conflicting statements given." (App. p. 323, lines 1-6). Counsel testified he believed "Crisp's testimony would not have been an allowed good [sic] and there would [have] been issues with his representation, whether he would [have] actually testified at all." (App. p. 330, lines 8-14).

Counsel also testified that he did not think Crisp's testimony would have been valuable enough to give up final argument because many of the facts were not in contention, and "the only question was who shot [whom] first . . . and whether [Petitioner] did it in self-defense. The only eye witness . . . evidence we had was [Petitioner's] statement, and if [he] got that jury last, [he] thought [he] could pound that home pretty solidly[.]" (App. p. 323, lines 7-13).

In a PCR action, the applicant bears 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 prove that "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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not

"within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). In determining issues relating to guilty pleas, the circuit court considers the entire record, including the transcript of the guilty plea and evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The PCR judge found the testimony of Counsel to be more credible than the testimony of Petitioner as to all allegations. (App. p. 348). On review, this Court "gives great deference to a PCR judge's findings where matters of credibility are involved." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citing Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993)). Accordingly, this Court should give deference to the PCR judge's finding that Counsel's testimony was more credible.

Here, the PCR judge found that Petitioner failed to meet his burden of proving that counsel was ineffective or that his plea was involuntary. (App. p. 357). The PCR judge found that Counsel's performance did not fall below an objective standard of reasonableness because Counsel articulated a valid trial strategy in choosing not to call Crisp as a witness. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317, S.C. 292, 294, 454 S.E.2d 312, 313 (1996). See also Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011) (finding counsel articulated valid trial strategy where he testified he did not call a co-defendant to testify because his testimony would have been cumulative and he was concerned about his credibility); Accord

Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (finding counsel's decision to not call witnesses reasonable where their testimony would have been of no value to the case and they made inconsistent statements in the past).

Counsel testified that, first, he did not think that Crisp's testimony was going to be helpful, and, second, that he did not think Crisp's testimony would add enough value to justify giving up the last argument. Counsel also testified that he had already gotten in Petitioner's statement in which he told the investigator that the victim pulled a gun on him. Furthermore, the .45 caliber magazine and bullets and four unfired .45 caliber bullets that were found at the scene were entered in as exhibits at trial. (App. p. 195; p. 208). Counsel testified he was concerned that Crisp's testimony—if it was even allowed in or if he even testified at all—would have introduced conflicting statements. (App. p. 330, lines 8-14).

Accordingly, the record contains probative evidence supporting the PCR judge's finding that Counsel gave valid strategic reasons for not calling Crisp as a witness.

The record also supports the PCR judge's finding that Petitioner did not satisfy his burden of proving that he was prejudiced by any alleged deficient performance. Petitioner testified he knew he was facing a minimum of thirty years if he was convicted of murder. Counsel testified Petitioner had been open to taking a plea deal throughout the process, but simply wanted a ten year deal that the State was not willing to give. The record supports the PCR judge's finding that there is no reasonable probability that Petitioner would have chosen not to plead guilty if Crisp had testified.

Lastly, the record contains evidence of probative value supporting the PCR judge's finding that Petitioner's guilty plea was entered freely, voluntarily, knowingly, and intelligently. (App. p. 349). A defendant alleging that his guilty plea was induced by ineffective assistance of

counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). As stated above, the record supports the PCR judge's finding that Petitioner failed to show counsel rendered deficient performance. In addition, Petitioner affirmed he was pleading guilty of his own will and accord and that his plea was free of force, pressure, or coercion. (App. p. 265, line 19-p. 266, line 3). Counsel also testified it was Petitioner's decision to plead guilty. Accordingly, the record contains evidence supporting the PCR judge's decision that Petitioner's guilty plea was knowingly, voluntarily, and intelligently entered.

CONCLUSION

For the foregoing reasons, this Court should deny the Petitioner's 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

March 7, 2016.

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Spartanburg County
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2015-000818

TONY PAUL MEDFORD, #349218, 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:

Kathrine H. Hudgins, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 7th day of March, 2016

Ashley Haworth
ASHLEY HAWORTH
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAR - 7 2016
SC SUPREME COURT

March 7, 2016

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

RE: **Tony Paul Medford v. State of South Carolina**
Appellate Case No.: 2015-000818

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: Kathrine H. Hudgins, Esquire