

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. 2015-000781

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MAR 20 2010

SC SUPREME COURT

Reginald Sheftall,..... Petitioner,

v.

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

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

Does the record contain evidence of probative value to support the PCR judge's finding that Petitioner failed to satisfy his burden of proving counsel was ineffective for not asking the plea judge to reconsider Petitioner's sentence following his guilty plea?

STATEMENT OF THE CASE

Reginald Sheftall ("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 October 2010 term of the Spartanburg County Grand Jury for burglary, 1st degree (2010-GS-42-5724), and attempted murder (2010-GS-42-5722) (amended November 2011 to include charge of possession of firearm or knife during commission of or attempt to commit a violent crime (count 2)). Petitioner was represented by Tanya Jones, Esquire. On December 12, 2011, Petitioner pleaded guilty before the Honorable J. Mark Hayes, II. Judge Hayes sentenced Petitioner to confinement for concurrent terms of forty years for burglary – 1st degree, thirty years for attempted murder, and five years for possession of weapon during violent crime.

A timely notice of appeal was filed on Petitioner's behalf. The South Carolina Court of Appeals dismissed the appeal on March 8, 2012, for failure to demonstrate any issue was raised or ruled upon by the circuit court judge. The Remittitur was returned on March 30, 2012.

On June 12, 2012, Petitioner filed an application for post-conviction relief ("PCR").¹ An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse before the Honorable Deadra L. Jefferson. Petitioner was present at the hearing and represented by Stephen L. Denton, 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. Tanya Jones, Esquire, was sworn and testified by telephone. Judge Jefferson issued an Order of Dismissal, signed March 31, 2015, and filed April 6, 2015, denying and dismissing Petitioner's application.

¹ Petitioner filed an amended application on January 28, 2014.

STANDARD OF REVIEW

This Court must affirm the post-conviction relief ("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 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. 578, 589, 690 S.E.2d 73, 79 (2010). 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

I. The record contains evidence of probative value to support the PCR judge's finding that Petitioner failed to satisfy his burden of proving counsel was ineffective for not asking the plea judge to reconsider Petitioner's sentence following his guilty plea.

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).

This Court should deny review because there is ample evidence of probative value in the record to support the PCR judge's finding that Petitioner failed to show Counsel's performance fell below an objective standard of reasonableness or that he was prejudiced as a result.

A. The record contains ample evidence of probative value to support the PCR judge's finding that Petitioner failed to show Counsel's performance was deficient.

The PCR judge held that Petitioner "failed to present any meritorious claim supporting his argument that Counsel was obligated to file a motion for reconsideration of his sentence or that any such motion would have been successful." (App. p. 138). The record contains ample evidence of probative value to support this finding.

The facts supporting Petitioner's guilty plea were as follows: Petitioner forced entry into the victim's house while she and Petitioner's infant child were present; Petitioner shot the victim twice, once in the shoulder and once in the back of the neck, and then tried to shoot himself. (App. pp. 12-13). During the commotion, the six-month-old child fell from her seat. (App. p. 13).

At Petitioner's guilty plea hearing, Counsel told the judge that Petitioner studied at Francis Marion University, began having mental issues and sought counseling from a counselor there, and attended sessions for about seven months until just before the incident. (App. p. 23, lines 8-15). Counsel further stated that Petitioner was voluntarily committed to a mental health facility several times over the course of three months and was treated with medication. (App. pp. 23-25). James Cheek, Esquire, who also appeared at the guilty plea hearing on Petitioner's behalf, asked the court for mercy and to take Petitioner's illness into consideration, informed the court that Petitioner was raised in an abusive and violent home, and reiterated that Petitioner

voluntarily sought treatment for his mental health issues three times, but did not receive the help he needed. (App. pp. 29-33).

Petitioner testified at the PCR hearing that Counsel never discussed with him the possibility of filing a motion to reconsider the sentence. (App. p. 99, line 9). Counsel testified that at Petitioner's guilty plea hearing, Petitioner "sounded like when he got out he would continue to stalk [the victim]." (App. p. 70, lines 17-19). Counsel was questioned about whether she advised Petitioner that he had "a right to file a motion to reconsider [his] sentence[,] and she testified she had "no independent recollection" of doing so. (App. p. 71, lines 17-20). Counsel testified she would sometimes ask the judge to reconsider a sentence, but that she "generally [did not] have a lot of luck with that." (App. p. 71, line 24-p. 72, line 1). PCR counsel questioned Counsel about whether she agreed that "filing a motion to reconsider maybe should have been done[,] and counsel replied that she did not recall the specifics of that or whether she and Petitioner discussed it, but that "always, when [there is] an issue of reconsidering, there's a chance you're [going to] get more time. . . but . . . I don't think it's always in the client's best interest to file something like that, no." (App. p. 72, lines 5-19). Counsel further testified that "given . . . the evidence in the case, the witness testimony, . . . [she did not] think [she] would [have] advised him to file a motion to reconsider because he could end up with life." (App. p. 72, line 25-p. 73, line 6).

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (citing State v. Cagle, 84 S.E.2d 649, 653 (N.C. 1954)). Counsel testified she did not recall discussing a motion to reconsider with Petitioner, but that she did not think such motion would have been in his best interest, that she generally did not have luck with

motions to reconsider, and that, in fact, Petitioner could have ended up with life on reconsideration. Petitioner simply testified he never discussed it with her.

The record supports the PCR judge's finding that Counsel was not deficient because Petitioner failed to present evidence that Counsel had a duty to make a motion to reconsider in this case or that there was a particular reason she should have done so.

Furthermore, the PCR judge found credible Counsel's "testimony that she could discern no basis to file a motion [to reconsider] and, in fact, believed filing [such motion] would [have been] against her advice and against [Petitioner's] best interest." (App. p. 138). 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.

Accordingly, the record contains ample evidence of probative value to support the PCR judge's finding that Petitioner failed to satisfy his burden of proving Counsel's performance fell below an objective standard of reasonableness.

B. The record contains ample evidence of probative value to support the PCR judge's finding that Petitioner failed to show prejudice.

The record supports the PCR judge's finding that Petitioner failed to satisfy his burden of proving that any alleged deficiency in Counsel's performance prejudiced him.

Counsel testified that she had Petitioner evaluated, but he was found competent to stand trial. (App. p. 61, lines 15-19). She stated she and Petitioner discussed the sentencing ranges and that "[they] felt that the best way to handle [the] case was to plead guilty, ask for mercy from the Court, and hope that the judge had mercy." (App. p. 62, line 17-p. 63, line 8). The transcript of

Petitioner's guilty plea reflects that during mitigation, Counsel explained Petitioner's mental health problems, including treatment he had received. (App. pp. 22-26). The transcript further reflects that James Check, Esquire, made statements in mitigation related to Petitioner's mental health. (App. pp. 29-33).

The PCR judge found at the PCR hearing that Petitioner "has a burden of proving he would have had some success on the merits of [the motion to reconsider], and [the judge] agree[d] with [Counsel] that generally defendants have very little luck, if any, with a motion for reconsideration[.]" (App. p. 111, lines 9-14). In her order, the PCR judge stated Petitioner "failed to present any meritorious claim . . . that [a motion to reconsider] would have been successful." (App. p. 138).

To satisfy the second prong of Strickland, Petitioner must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. 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).

Here, Counsel extensively covered Petitioner's history of mental health issues and treatment during mitigation at the guilty plea hearing. (App. pp. 23-33). Therefore, the record supports the PCR judge's finding that there is no reasonable probability that, but for the alleged errors of Counsel, the outcome of the proceeding would have been different.

Furthermore, though Petitioner contends that Counsel should have challenged the substantive reasonableness of Petitioner's sentence. Petitioner failed to present any evidence that

the sentence was unreasonable in light of the facts of the case, and the PCR judge's order made no finding as to the reasonableness of the sentence. Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992) (holding an issue must be raised to and ruled on by the PCR judge to be preserved for review). Therefore, Petitioner's argument about the propriety of the sentence made pursuant to State v. Franklin, 276 S.C. 240, 226 S.E.2d 896 (1976) and Gall v. United States, 552 U.S. 38 (2007), is without merit.

Accordingly, the record fully supports the PCR judge's finding that Petitioner failed to show that Counsel's performance was deficient or that he was prejudiced by any alleged deficient conduct. Therefore, this Court should deny review.

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 29, 2016.

STATE OF SOUTH CAROLINA
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Certiorari to Spartanburg County
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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:

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This 29th day of March, 2016


ASHLEY HAWORTH
LEGAL ASSISTANT