STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED
JUN 30 2016
SC SUPREME COURT

The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-001062
Lower Court Case No. 2013-CP-42-02352

James Edward Johnson, Jr., #353643 ....Petitioner,

v.

State of South Carolina, ...Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

ALICIA A. OLIVE
Assistant Attorney General
S.C. Bar No. 102089

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 4

ARGUMENTS 5

I. The record contains substantial evidence of probative value to support the PCR judge's finding that Petitioner failed to prove Counsel was ineffective 5

II. The record contains substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to satisfy his burden of proving Counsel was ineffective for not challenging the sufficiency of his indictments 11

III. The record contains substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to prove that his guilty plea was involuntary 13

CONCLUSION 17

ISSUES PRESENTED

I. Does the record contain substantial evidence of probative value to support the PCR judge's finding that Petitioner failed to prove Counsel was ineffective?

II. Does the record contain substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to satisfy his burden of proving Counsel was ineffective for not challenging the sufficiency of his indictments?

III. Does the record contain substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to prove that his guilty plea was involuntary?

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 August 2012 term of the Spartanburg County Grand Jury on eleven total charges; four counts of kidnapping (2012-GS-42-4476, -4477, -4481, -4482), three counts of armed robbery (2012-GS-42-4475, -5167, -4474), two counts of attempted armed robbery (2012-GS-42-4483, -4484), one count of failure to stop for a blue light without injury or death, first offence (2012-GS-42-4478), and one count of unlawful possession of a stolen pistol (2012-GS-42-4485). (App. pp. 145-66). Andrea L. Price, Esquire, represented Petitioner. On December 18, 2012, Petitioner pleaded guilty as indicted to all charges before the Honorable J. Derham Cole. (App. p. 1). Judge Cole sentenced Petitioner to concurrent terms of thirty years for each count of armed robbery, twenty years for each count of kidnapping, twenty years for each count of attempted robbery, five years for unlawful possession of a stolen pistol, and three years for failure to stop for a blue light. (App. pp. 36-38). Judge Cole also revoked Petitioner's probation in full and imposed Petitioner's active sentence of fifteen years imprisonment. (App. p. 37). Petitioner's thirty year sentence on 2013-GS-42-4474 on one count of armed robbery was consecutive to Petitioner's probation revocation on indictment number 2007-GS-42-4434. (App. p. 37). Petitioner did not appeal his plea, sentences, or probation revocation.

Petitioner subsequently filed an application for post-conviction relief ("PCR") on January 29, 2013. (App. p. 40). An evidentiary hearing into the matter was convened on January 12, 2015. (App. p. 56). J. Brandt Rucker, Esquire, represented Petitioner. Respondent was represented by Suzanne H. White, Esquire, of the Office of the Attorney General. Judge

Jefferson denied and dismissed Petitioner's application for PCR by written order filed March 31, 2015. (App. pp. 127-144).

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)). A reviewing 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." Dempsey, 363 S.C. at 368, 610 S.E.2d at 814. 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)).

ARGUMENTS

I. The record contains substantial evidence of probative value to support the PCR judge's finding that Petitioner failed to prove Counsel was ineffective.

Petitioner argues the PCR judge erred in finding he failed to satisfy his burden of proving that counsel was ineffective for failing to "provide adequate advice concerning the State's ability to prove 'Intent to Permanently Deprive.'" The PCR judge found that Petitioner failed to satisfy his burden of proving any deficiency in Counsel's performance. There is ample evidence of probative value in the record to support that finding.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. The court presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 668).

The court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. 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 professional norms." Id. (citing Strickland, 466 U.S. at 688). 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). "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." Strickland, 466 U.S. at 700.

This case arises out of the armed robbery of a Family Dollar store. Petitioner pleaded guilty to eleven charges, including several counts of kidnapping, armed robbery, and attempted armed robbery. Kidnapping, armed robbery, and attempted armed robbery constitute "most serious" offenses under section 17-25-45(C)(1) of the South Carolina Code of Laws, otherwise known as the "two-strike" law. The statute provides that: "upon a conviction for a most serious offense as defined by [subsection (C)(1) of] this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . one or more prior convictions for . . a most serious offense[.]" S.C. Code Ann. § 17-25-45(A)(1)(a). Petitioner had a prior conviction for attempted armed robbery, making him eligible for life without parole if he were to be convicted of another most serious offense. (App. p. 27, lines 19-21; p. 28, lines 1-4). S.C. Code Ann. § 17-25-45(C)(1). At the guilty plea hearing, Counsel informed the judge that "in consideration for [the] plea [the State] ha[d] agreed not to seek life without parole in this instance in exchange for his straight-up plea." (App. p. 16, line 25-p. 17, line 2). The plea judge then stated to Petitioner: "that's a concession [the State has] made, and that might be some circumstance or reason why you've made a decision to plead guilty today. But you understand it's still your decision, you don't have to." (App. p. 17, lines 19-25). Petitioner then told the judge that he understood and that he did not want to go to trial. (App. p. 17, line 25-p. 18, line 3). Counsel also stated to the plea judge that Petitioner had no defense to the charges and that she explained that to Petitioner. (App. p. 26, lines 21-25). Petitioner acknowledged at the PCR

hearing that he was provided with the "paperwork from [the solicitor] stating about the life without parole eligibility." (App. p. 81, lines 21-24).

Petitioner testified that Counsel told him he had no defense, and that he should not go to trial because he would be found guilty and would be sentenced to life without parole and that it was in his best interest to plead guilty. (App. p. 63, lines 22-25). He also admitted that he committed crimes. (App. p. 63, lines 13-14). Petitioner argues that his acts did not show the "intent to permanently deprive" element of armed robbery. (App. p. 65, lines 1-5). Petitioner's argument is based on a statement provided by one of the victims in which she stated that the person holding the long gun told her to get down on the ground and give him her phone, and that when she did so, he kicked the phone away. (App. p. 67, line 21-p. 68, line 3). Petitioner testified that kicking the phone away—but not taking it—was not sufficient to convict him of armed robbery. (App. p. 68, lines 4-15).

Counsel testified she reviewed all discovery and went over all discovery with Petitioner and that she discussed with him the possibility of any defenses. (App. pp. 100-103). Counsel testified she did not feel that Petitioner had any defenses and that she thought it was in his best interest to plead guilty to avoid life without parole and that Petitioner agreed. (App. p. 101-02). Counsel stated the same to the plea judge. (App. p. 27, lines 19-23). Petitioner admitted that he was advised on the record at his guilty plea that he had the right to trial, to confront witnesses, and to present a defense. (App. p. 91, lines 3-7). Counsel testified that she was aware that the phones had been found in the back of the store in a trash can, but that she did not think that was something she would have been able to present as a viable defense, and still does not. (App. p. 102, lines 17-22). Counsel further testified that she was aware of the statements of one of the victims where she stated that the phone was kicked away at one point, but did not feel that was a

viable legal defense to an armed robbery. (App. p. 103, lines 10-16). Counsel testified she believed that testimony would have been presented at trial that would indicate Petitioner and his co-defendant picked up the phones and then put them in the trash bin. (App. p. 106, lines 15-21). Counsel testified that one of the witnesses also told the police that the assailants took everyone's cell phones. (App. p. 106, lines 1-8).

Further, the robbery of the store was caught on video, the police were already there when the assailants left, and there were multiple witnesses to the robbery. (App. p. 26, lines 25-p. 27, line 7; p. 100-01). Counsel stated that the video was not a good video for the defense. (App. p. 103, lines 2-9). Counsel also testified that after the robbery, the assailants fled the scene, were chased by police, and wrecked the car they were in. (App. p. 100; p. 103). Petitioner also gave a full statement to the police in this matter and that the statement implicated him. (App. p. 102, lines 1-12). Counsel testified that she talked to Petitioner and explained to him what she expected the State to show, and stated that she did not believe he had any defenses. (App. p. 101, lines 23-p. 102, line 5). Based on the charges Petitioner was facing, the evidence against him, and based on the likelihood he would be served with notice of life without parole if he chose to proceed to trial, Counsel advised him it was in his best interest to accept the plea offer. (App. p. 101, lines 8-16, App. p. 102, lines 2-5).

Petitioner's arguments at the PCR hearing and before this Court are that because two victims gave statements that the phones were "kicked away" (instead of taken) and because the phones were later found behind the store in the trash bin, he had a viable defense to the attempted armed robbery and armed robbery charges. However, Petitioner cannot now challenge the sufficiency of the evidence, because a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. <u>State v. Munsch</u>, 287 S.C. 313, 338 S.E.2d 329 (1985).

Regardless, Petitioner has never alleged that he was innocent; rather, he testified at the PCR hearing that he did not deny a crime was committed and admitted that he entered the store carrying a weapon. As part of the same plea arrangement, Petitioner also pleaded guilty to four counts of kidnapping, which is also a most serious offense under § 17-25-45, and is punishable by up to thirty years of imprisonment. S.C. Code Ann. § 16-3-910. In addition, when providing the factual basis for Petitioner's plea, the solicitor stated that "one of the employees was forced to open the stores safe. [And] [t]hey took cash and cell phones from people inside the store and fled out of the back of the store as police were arriving." (App. p. 22, lines 15-18).

Although Petitioner testified he would have proceeded to trial but for the alleged errors of counsel, the PCR judge found Counsel's testimony to be "more credible and compelling than [Petitioner's] testimony as to all allegations." (App. p. 134). See Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738,739 (2010) ("[An appellate court] gives great deference to a PCR [court's] findings where matters of credibility are involved."). Furthermore, "[the] prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have ple[aded] guilty but would have gone to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The PCR judge ultimately found that Petitioner failed to show that Counsel's performance was deficient. (App. p. 136). The PCR judge found that Counsel "demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal saw in South Carolina." (App. p. 136). The Court additionally found that Counsel adequately conferred with Petitioner, conducted a proper investigation, and provided thorough representation. (App. p. 136). This Court "gives great deference to the [PCR] court's findings of fact and conclusions of law," Dempsey, 363 S.C. at

368, 610 S.E.2d at 814, and must affirm the PCR court if there is any evidence of probative value to support its findings Id. Here, there is ample probative evidence in the record to support the finding. Counsel gave credible testimony that Petitioner had no defenses. She was familiar with Petitioner's argument regarding the cellphones, but gave credible testimony that it was not a viable defense. The record reflects that there was substantial circumstantial evidence that the phones of the victims were removed and placed in the trash bin from which the jury could have easily inferred that the Applicant and his co-defendant placed them there. Petitioner made no showing that his Counsel overlooked dispositive facts or legal arguments, or that his case was prejudiced by his Counsel's advice to plead guilty. Furthermore, Petitioner made no showing of how this alleged defense would have been successful, especially in light of the substantial evidence against him—including his statement to police. In addition, the PCR Court found that there was substantial circumstantial evidence indicating that Petitioner had control over the victim's phones, the victim's testimony at trial would reflect this, and the jury could easily infer that Petitioner had placed the victims' phones in the trash bin. (App. p. 138). If Petitioner had gone to trial, he would have been served with notice of life without parole, and if convicted of only one most serious charge, he would have been sentenced to life.

The record reflects that Petitioner failed to show either deficiency or prejudice with respect to this claim. Accordingly, there is ample probative evidence to support the PCR judge's findings that Petitioner failed to satisfy his burden of proving ineffective assistance of counsel. See Strickland, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). Therefore, this Court should deny review as to this claim.

II. The record contains substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to satisfy his burden of proving Counsel was ineffective for not challenging the sufficiency of his indictments

A. Issue Preservation

As an initial matter, Respondent submits that Petitioner's argument that the indictment was duplicitous is not preserved. No testimony was presented on this matter and Petitioner never testified at the PCR hearing that this had any effect on his decision to plead guilty. Furthermore, this argument was never raised to the PCR court. At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). Furthermore, "It is axiomatic that an issue cannot be raised for the first time on appeal." Id. Therefore, the argument that the indictments were duplicitous is not preserved for review.

To the extent Petitioner asserts an allegation of violation of due process, that issue is not preserved for this Court's review. At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). The PCR judge found that although Petitioner raised an allegation of due process violation in his application, he failed to proceed with presenting any evidence or testimony in support of his claim at his evidentiary hearing, and therefore, the issue was voluntarily abandoned. Accordingly, any allegation that Petitioner was denied due process is not preserved.

B. Merits[1]

Nevertheless, the record supports the PCR judge's finding that Petitioner failed to show that Counsel was ineffective for not challenging Petitioner's indictments. An indictment is purely a notice document. S.C. Code Ann. § 17-19-20 (2012) ("Every indictment shall be deemed and judged sufficient and good in law which . . . charges the crime . . . so plainly that the nature of the offense charged may be easily understood."). "The primary purpose of an indictment is to put the defendant on notice of what he [charged with], by apprising him of the elements of the offense, and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgement to pronounce if the defendant is convicted." State v. Smalls, 364 S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005). The court determines the sufficiency of an indictment by analyzing: "whether (1) the offense is stated with sufficient certainty . . . to enable the court to know what judgement to pronounce, and the defendant to know what he is called upon to answer . . . and (2) whether it apprises [him] of the elements of the offense." State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003)). "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." Id. (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). "[W]hether the indictment could be more definite or certain is irrelevant." Id. (citing State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003)). See also State v. Tumbleston, 376 S.C. 90, 97-98, 654 S.E.2d 849, 853 (2007) (citing Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)) (noting

[1] Respondent notes that the issue as framed in the issue statement differs from the argument Petitioner makes. Without waiving its preservation arguments that the substance of Petitioner's arguments are not preserved, because Petitioner is pro se, Respondent still wishes to address the merits of his assertion contained in his issue statement because the PCR judge did rule on the sufficiency of the indictments in her order.

that all of the surrounding circumstances must be weighted to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment).

Here, the record reflects that Petitioner was fully aware of the charges he was facing. In fact, he was on probation at the time of the armed robbery for the charge of attempted armed robbery. The PCR judge found that the indictments sufficiently describe the offenses to place Petitioner on notice of the charged offenses and found them sufficient on their face because they charge two separate armed robberies of two separate individuals of their cell phones. (App. p. 119).

Petitioner faced a potential sentence of life without parole even if the State had prevailed on only one armed robbery charge at trial because of his prior record. Further, the evidence of the case contained a contemporaneous video of the events, which would be the most damaging evidence and support a charge of accomplice liability even without a charge of conspiracy. Applicant presented no evidence or testimony to support a claim that he had any viable defenses for trial. Accordingly, the record contains evidence of probative value to support the PCR judge's finding that Petitioner failed to show either deficiency or prejudice.

III. The record contains substantial evidence of probative value to support the PCR judge's findings that Petitioner failed to prove that his guilty plea was involuntary

There is ample evidence to support the PCR judge's finding that Petitioner failed to satisfy his burden of proving that his guilty plea was involuntary. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel's performance was deficient, 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, 20, 546 S.E.2d 417, 419 (2001) (citing Al-Shabazz v. State, 338 S.C. 354,

363-64, 527 S.E.2d 742, 747 (1999)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing," Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.G. 392, 271 S.E.2d 602 (1980)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

The PCR judge found Petitioner failed to meet his burden of proving either deficiency of counsel, or that he would have proceeded to trial but for the alleged deficiencies. (App. p. 142). The PCR judge found the transcript of the guilty plea to be most compelling. (App. p. 141). The PCR judge acknowledged that the plea judge thoroughly questioned Petitioner to ensure that he was pleading guilty with full knowledge of the charges, potential sentences, and constitutional rights he waived. (App. p. 141). At the plea, Petitioner affirmed he understood the potential

penalties associated with each charge, the fact that they were classified as violent, most serious, and no-parole offenses, (App. pp. 13, line 11-p. 14, line 23, App. p. 17, lines 3-18), and the fact that the plea judge was bound to impose a mandatory minimum sentence and could impose the maximum penalty based on Petitioner's plea to the charges "straight up." (App. pp. 6-9). The plea judge determined that Petitioner entered his guilty plea freely and voluntarily, (App. p. 18, lines 4-8), understood and had ample opportunity to discuss with his attorney the charges and potential penalties he was facing, (App. p. 12, lines 13-16), understood and had ample opportunity to discuss with his attorney the consequences of entering a guilty plea, (App. p. 12, lines 4-8), and that Petitioner understood he was waiving his right to assert any defenses to the charges. (App. p. 4, lines 15-24). Further, Petitioner affirmed that he was able to explain and understand the facts and circumstances of the offense and any possible defenses with his lawyer (App. p. 12, line 18-3:8). Petitioner affirmed that he understood he was waiving his constitutional rights. (App. p. 14, line 24-15, line 17). Petitioner told the plea judge that he was not promised anything to plead guilty and had not been threatened or forced into entering his plea (App. pp. 15-18). Additionally, Petitioner told the plea judge that he did not suffer from any addiction, mental illness, or emotional condition that prevented him from fully understanding the guilty plea proceeding (App. p. 19, line 20-23). Petitioner asserts that Counsel should have researched and set forth a defense. However, Counsel testified that she was aware prior to the plea that the cell phones were found in the back of the store and that a victim gave a statement that her phone was kicked away, but that she saw no viable legal defense arising from those facts. Regardless, the record reflects that by pleading guilty, Petitioner waived his right to assert any defenses he might have. Petitioner made no showing that he should be permitted to depart from the statements he

made at the plea hearing. Therefore, the record contains evidence to support the PCR judge's finding that Petitioner failed to show that Counsel's performance was deficient.

Furthermore, at the PCR hearing, Petitioner acknowledged that he would be facing a sentence of life without parole if he had gone to trial. (App. p. 81, lines 21-24). Petitioner also informed the plea judge that he agreed with the facts as articulated by the solicitor and that he wanted to plead guilty. (App. pp. 26-27). Petitioner also stated at the plea that he did not want to go to trial. (App. p. 18, lines 1-3). On the record at Petitioner's PCR hearing, the PCR judge noted that the State would have only needed to succeed on one charge against Petitioner to seek the life without parole sentence. (App. p. 117, lines 1-4). Petitioner was facing life without parole and both he and Counsel testified that Counsel advised him that pleading guilty to avoid the life without parole sentence was in his best interest. Counsel further testified that the evidence against Petitioner included a voluntary statement that he made to police, a video of the inside of the store, victim's statements, and the victim's testimony. Accordingly, there is evidence in the record to support the PCR judge's findings that Petitioner failed to show that he was prejudiced by any alleged error of Counsel.

Based on the above, the there is ample evidence of probative value to support the PCR judge's findings that Petitioner failed to show that his guilty plea was involuntary. Therefore, this Court should deny review.

CONCLUSION

For the reasons stated above, this Court should affirm the PCR court's ruling and deny the petition for writ of certiorari.

Respectfully submitted,
ALAN WILSON
Attorney General

ALICIA A. OLIVE
Assistant Attorney General
S.C. Bar No. 102089

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:______________________
ATTORNEYS FOR RESPONDENT

June 30, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Spartanburg
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-001062

JAMES E. JOHNSON, 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:

James Edward Johnson, Jr., #353643
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

This 30th day of June, 2016

ASHLEY HAWORTH
LEGAL ASSISTANT