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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

D. Craig Brown, Circuit Court Judge

2013-CP-02-0401
Appellate Case No. 2015-001612

SHELDON OAKMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ISSUE PRESENTED

I. **Whether the PCR Court erred in finding plea counsel provided effective assistance of counsel where plea counsel failed to articulate any strategic reason for Petitioner's participation in a multi-defendant guilty plea and where Petitioner was prejudiced in that he received a greater sentence than several of his more culpable and less cooperative co-defendants?**

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Petitioner was true billed indicted at the July 2008 term of the Aiken County Grand Jury for Kidnapping (2008-GS-02-1086). Everett K. Chandler, Esquire, represented him. On April 27, 2009, Petitioner pled guilty as indicted. The Honorable Doyet A. Early, III, sentenced Petitioner to thirty years imprisonment.

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected by Julie M. Thames, Esquire. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Oakman, Op. No. 2012-UP-062 (Ct. App. filed February 8, 2012). The Remittitur was issued on February 27, 2012.

Petitioner subsequently filed an application for post-conviction relief (PCR) on February 15, 2014 (C.A. No. 2013-CP-02-0401). An evidentiary hearing into the matter was convened on January 12, 2015, at which Petitioner was present and represented by Tricia Blanchette, Esquire. The Honorable D. Craig Brown denied and dismissed Petitioner's application with prejudice by written Order dated April 13, 2015 and filed May 8, 2015.

Petitioner, through counsel, submitted a Motion to Alter or Amend Judgment on May 18, 2015 (which was received by Respondent on May 26, 2015). Respondent filed a Return to Petitioner's 59(e) motion on June 2, 2015. The Honorable D. Craig Brown denied the motion in an Order dated June 24, 2015 and filed July 24, 2015.

Petitioner filed a timely Notice of Appeal of the denial of his post-conviction relief application on July 29, 2015. Petitioner's Appendix and Petition for Writ of Certiorari were filed on February 29, 2016.

This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief 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, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. Probative evidence supports the PCR Court's finding that plea counsel was not ineffective for allowing Petitioner to plead guilty along with his codefendants.

Petitioner argues that the PCR Court erred in finding that plea counsel was not ineffective for allowing Petitioner to participate in a multi-defendant guilty plea.

In a PCR action, the petitioner 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 petitioner 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, 104 S.Ct. 2052, 2064 (1984); Butler, supra.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, supra. Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Petitioner such 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. Because

Petitioner pled guilty, he must show there is a reasonable probability that, but for plea 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, 59 (1985).

Petitioner's argument is without merit. There is certainly evidence of probative value to support the PCR Court's ruling. First, it is important to note that the PCR Court found Counsel's testimony to be credible. App. 474. The PCR judge was in the best position to determine credibility and, as such, his findings must be given 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); 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.").

At the PCR hearing, plea counsel testified as follows:

> Q. Did you ever push the issue or address the matter with the Court that you did not want your client lined up with seven other co-defendants, you wanted him to have his own individual day in court to make sure his rights were protected?
>
> A. No, ma'am. No, ma'am. Before then and since then I've done, I guess what you call a cattle call or multiple-defendant pleas. And, I've never seen—and even since, I've never seen the prejudice in multiple-defendant pleas and I didn't see it in Sheldon's case.
>
> But I will, I will say that the circus of it probably added to, you know, added to what ultimately led to the judge giving him such a harsh sentence but, you know, it was well within the range of the plea agreement. It was after a victim who has the right to testify offers some information. And as disappointed as I was in the 30 years, I certainly understood what the judge's position was, obviously, until I heard the second day that there were more-culpable defendants who were given lighter sentences.
>
> Q. Mr. Oakman and his family retained you to represent him and to be his advocate—

A. Absolutely.

Q. --to help him through this what can be an adversarial process. You just characterized the first day of the plea proceeding as a circus. What did you specifically do on that first day to protect his rights and to make sure that he received the best possible sentence in this case?

A. First, I was making reference to your reference of the circus. In many ways especially for high-profile cases you can't avoid having press there or cameras there. And those things that obviously can't be avoided in a free and open society.

But the reality of it is, I think I made an effective argument about the, basically how Sheldon—and separated Sheldon from these bad actors more specifically—all of them, but even more importantly the three that he was sentenced with on the first day with those who had already received those serious sentences. And it is the reason why in the transcript that the judge felt compelled to give a reason why he was going to give Sheldon the 30 years because it was already laid out that Sheldon should have gotten it.

App. 426, ll. 15 – 428, ll. 9.

In the Order of Dismissal, the PCR court held that Petitioner was in no way prejudiced by pleading guilty along with his codefendants. App. 479. "To the contrary, by pleading guilty with his co-defendant's Plea Counsel was able to articulate and argue to the judge the reasons why [Petitioner] should receive less time than his co-defendants." App. 479. "Furthermore, this Court notes that [Petitioner] knowingly and intelligently pled guilty." App. 479. The PCR court held that plea counsel's actions were reasonable under the circumstances and did not fall below the professional norms of reasonableness. These findings were based upon the evidence presented through plea counsel's testimony that he was able to present to the plea judge all of the reasons why he should have received a lesser sentence than his codefendants.

Petitioner argues that the PCR court's error was based on plea counsel's failure to articulate a strategy for having Petitioner participate in the multi-defendant plea. However, federal courts have held that a strategy need not be specifically stated by counsel on record but

can be inferred from the record. A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. See Wood v. Allen, 558 U.S. 290, __, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). Respondent submits that plea counsel's strategy was executed when he was able to give his reasons to the judge for giving Petitioner a lesser sentence than his codefendants. Because plea counsel's strategy in participating in the plea can be inferred from the record, this argument is meritless.

Furthermore, Petitioner has not only failed to show that counsel was ineffective, but also that Petitioner would have insisted on going to trial rather than plead guilty. Thus, neither prong of the Strickland test is fulfilled. The PCR court's holding is clearly supported by probative evidence and should be affirmed.

II. Probative evidence supports the PCR Court's finding that there was overwhelming evidence of Petitioner's guilt.

Petitioner argues that the PCR Court erred in finding that there was overwhelming evidence of Petitioner's guilt. In the Order of Dismissal, the PCR Court based this finding on the following evidence:

> Initially this Court notes [Petitioner] reaffirmed his guilt during the PCR evidentiary hearing. Regardless, all seven codefendants related similar versions of the events. The co-defendants agreed that Victim was picked up by [Petitioner] and two co-defendants. [Petitioner] along with his two codefendants drove Victim to a trailer where he was beaten and burned. After being tortured, Victim was transported in a vehicle that contained several of [Petitioner]'s co-defendants. [Petitioner] followed the lead vehicle containing Victim to a desolate area where a discussion over guns began. Victim attempted to flee for his life, at which point Frankie Gantt shot Victim. It was disputed whether [Petitioner] provided the kill shot. Following the brutal murder of Victim, [Petitioner] and his co-defendants went back to the trailer to devise a plan. Ultimately, all of the co-defendants went

> back to the scene of the murder, picked up the body, transported it over county lines, and dumped the Victim's body in a wood pile.
>
> Notably, [Petitioner] fully cooperated with police and was the first of seven additional codefendants to come forward and confess. [Petitioner] attempted to use his cooperation with police as mitigation in an effort to receive a lesser sentence. During the evidentiary hearing, [Petitioner] did not dispute that he along with his two co-defendants picked up Victim and took him to the trailer. [Petitioner] did not dispute that he was inside the trailer when Victim was beaten and burned. [Petitioner] did not dispute he was with Frankie Gantt when he shot Victim. [Petitioner] did not dispute that he was with his co-defendants when they returned to the scene of the murder, picked up Victim's body, and dumped it in a wood pile. Based off of the foregoing, this Court finds that there is clear overwhelming evidence of guilt.

App. 483.

Petitioner's failure at the PCR hearing to dispute or contradict his involvement in the crimes are clearly probative evidence used to support the PCR Court's finding of overwhelming evidence. The PCR Court explained the basis of their finding in great detail, and it clearly had enough evidence to rule firmly on this issue. Overwhelming evidence of guilt negates any claim that plea counsel's deficient performance could have reasonably affected the result of a defendant's trial. Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332 (2002).

Additionally, Petitioner waived his right to challenge the characterization of the evidence against him when he pled guilty. "[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 is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after

the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

Therefore, since Petitioner can show neither a deficiency in plea counsel's representations nor prejudice based on this deficiency, the PCR Court's findings should be upheld.

CONCLUSION

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

Respectfully submitted,

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July 15, 2016

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The Honorable D. Craig Brown, Circuit Court Judge

SHELDON OAKMAN, #334454

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 15th day of July 2016.

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