

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Appellate Case no. 2015-002327

YOREL WILLIAMS,Petitioner,

v.

State of South Carolina,Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the PCR court erred in finding that plea counsel rendered effective assistance of counsel where his lack of preparation so undermined Petitioner's confidence that Petitioner felt compelled to accept the State's plea offer rather than proceed to trial?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Petitioner was indicted, during the January term of the Orangeburg County grand jury, for murder. He was represented by Gerald Davis, Esquire. On September 13, 2012, Petitioner pled guilty to voluntary manslaughter. He was sentenced by the Honorable Edgar W. Dickson to confinement for a period of twenty-five years.

Petitioner filed an application for post-conviction relief (PCR) on August 22, 2013. Respondent made its Return on March 6, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed for the Applicant by the Orangeburg County Clerk of Court. With Applicant and Counsel present, a hearing was held on May 20, 2015, before the Honorable Maite Murphy at the Dorchester County Courthouse. After questioning Applicant, counsel, and witnesses, the Court denied and dismissed the application by order dated October 1, 2015. Petitioner timely filed a notice of intent to appeal and subsequently submitted a Petition for Writ of Certiorari. This Return to Petition for Writ of Certiorari follows.

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)).

ARGUMENT

I. Probative evidence supports the PCR Court's finding plea counsel adequately prepared and investigated Petitioner's case and adequately advised his client.

Petitioner argues that plea counsel's lack of preparation undermined Petitioner's confidence in plea counsel's ability to take his case to trial, thus rendering his guilty plea involuntary. This argument is without merit.

An Applicant 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 Applicant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being

waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). 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 PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court should deny review because the record fully supports 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. No transcript of the guilty plea was able to be recovered or produced. However, during cross-examination, Petitioner stated that he did not remember:

1. The judge’s name.
2. Whether the judge went over the maximum sentence.
3. Whether the judge read the charges in the indictment.
4. Whether the judge read the facts of the indictment and the facts that led to the charges in the indictment.
5. Whether the judge told Petitioner the recommendation of 25 years.
6. Whether the judge asked Petitioner if he’d been promised anything for the plea.
7. Whether the judge asked Petitioner if he were on drugs or taking medication.
8. Whether the judge asked Petitioner if he had any mental illnesses.
9. Whether the judge advised Petitioner that he could go to trial if he chose not to plead guilty.
10. Whether the judge asked Petitioner if he was guilty.

Petitioner also stated he didn’t say anything during the plea, had ‘no conversation’ with the judge, and the judge did not ask him any questions. App. p. 32 – p. 35. This testimony is not credible. Judge Dickson is the resident judge in Orangeburg County and handles a significant amount of General Sessions work. If Petitioner were to be believed, Judge Dickson fully failed to give his colloquy and did not have Petitioner admit that he was guilty of the crime of which he

was charged. The PCR Court specifically ruled, “This Court finds Applicant’s testimony not credible. This Court finds that Applicant presented *no* credible evidence that he pled guilty involuntarily.” This testimony was directly contradicted by plea counsel. Plea counsel stated that he has been before Judge Dickson numerous times and that Judge Dickson went through his normal colloquy. App. p. 39 – 42. Plea counsel also stated that it is his standard practice to follow along with a plea sheet and he would not have proceeded forward if the judge had not asked the appropriate questions in the colloquy. App. p. 40. The PCR Court found “Counsel’s testimony credible and persuasive.” Therefore, the plea judge necessarily gave his standard colloquy because plea counsel did not stop the plea and the plea went forward to completion. Petitioner entered his guilty plea with a full understanding of the consequences and was fully aware of the charges brought against him and his constitutional rights.

Petitioner’s contention that plea counsel’s lack of preparation undermined Petitioner’s confidence such that Petitioner was compelled to plea is without merit. The PCR Court found, “[a]s to Applicant’s contention that Counsel did not meet with him enough and was therefore not prepared, this Court finds that allegation without merit.” App. p. 59. Petitioner alleges that plea counsel spent “sparse time” with Petitioner, failed to discuss particular defenses, and failed to discuss evidence as it related to potential jury charges. The only evidence presented in support of these allegations was the discredited and self-serving testimony of Petitioner.

Petitioner’s assertions rely solely on his own discredited testimony. Petitioner argues that he plead guilty “because defense counsel said he was likely to be convicted if he went to trial” and “was unprepared for a trial and “urging” him to plead guilty.” Plea counsel’s testimony contradicts that, “early onset Mr. Williams indicated that he wanted me to try to work out some kind of deal for him.” App. p. 47, lines 4-6. The only credible evidence shows that plea counsel

sought to negotiate with the State for a plea deal at the request of Petitioner.

Petitioner argues that plea counsel failed to properly advise him of the value of the recorded statements to a potential self-defense claim. This argument is unpersuasive. There was no credible evidence presented at the evidentiary hearing that plea counsel did not advise Petitioner that the threats on the phone would not change the outcome of the case. Plea counsel stated that he and his investigator reviewed and downloaded the contents of Petitioner's phone. Plea counsel stated that, after reviewing the contents of the phone, he didn't see "anything that would turn this case around." App. p. 47. There was no credible evidence presented at the hearing that plea counsel did not fully and completely go over Petitioner's entire case with him. Nor was there any evidence that plea counsel failed to investigate any potential witnesses or defenses raised by his client. "The applicant bears the burden of proving the allegations in their application." Butler, *supra*. The Petitioner fails to meet this burden.

CONCLUSION

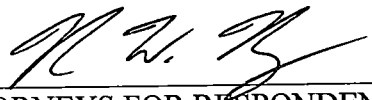
For all of the foregoing reasons, the State respectfully requests that the petition be denied. If this Court sees fit to grant the petition for writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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BY: 
ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 24, 2016

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THE 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:

**Laura R. Baer, Esquire
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This 24th day of August, 2016



ASHLEY HAWORTH
LEGAL ASSISTANT