

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000050

Frederick Van Anderson, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

1. Did the PCR court err in finding that the indictments charging Petitioner Anderson with murder, burglary first degree, and discharging a weapon into a home were sufficient to grant jurisdiction to the trial court when the indictments were stamped "true bill" but were not signed by the grand jury foreperson and were not published by the clerk in court according to the procedure as outlined in Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986) which deprived the circuit court of jurisdiction?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the July 2009 term of General Sessions for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). (App.pp.157-58; pp.161-62; pp.165-66). Frank Eppes, Esquire and John I. Mauldin, Esquire represented Petitioner.

On December 22, 2010, Petitioner pled guilty.¹ The Honorable Robin B. Stilwell sentenced Petitioner to concurrent sentences of life imprisonment for murder, thirty years for first-degree burglary, and ten years for discharging a firearm into a dwelling.² (App.p.159; p.167; p.169). Petitioner did not appeal.

Petitioner filed an application for post-conviction relief (PCR) on December 19, 2011 (2011-CP-23-8447). (App.pp.1-24). Respondent filed a return on June 5, 2012 and an amended return on April 8, 2015. (App.pp.25-29; pp.30-35). A hearing was held at the Greenville County Courthouse on April 23, 2015 before the Honorable Edward W. Miller.³ (App.pp.36-110). Petitioner was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent.

At the conclusion of the PCR hearing, Judge Miller directed the parties to (1) contact the Grand Jury foreperson and (2) submit memoranda on the issue of whether the plea judge had jurisdiction to accept Petitioner's guilty pleas. The parties met with the Grand Jury foreperson,

¹ Court's Exhibit 1 at the PCR hearing was a letter dated June 5, 2014 from South Carolina Court Administration indicating the guilty plea transcript was unavailable. (App.p.112).

² Pursuant to S.C. Code Ann. § 16-23-490(A), the plea judge did not sentence Petitioner on the charge of possession of a weapon during commission of a violent crime. (App.p.163).

³ The PCR judge also reconstructed the guilty plea hearing and found "the guilty plea was able to be satisfactorily reconstructed." (App.p.145).

an affidavit from that individual was filed with the Clerk of Court on June 30, 2015, and the parties submitted memoranda. (App.pp.125-38; pp.139-44). Judge Miller denied relief in an order dated December 8, 2015 and filed December 9, 2015. (App.pp.145-55).

STANDARD OF REVIEW

The proper standard for review of a PCR 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, 119, 386 S.E.2d 624, 626 (1989). The appellate court gives great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. See Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC.

ARGUMENT

The PCR judge did not err in finding Petitioner failed to meet his burden of proving he is entitled to post-conviction relief.

Petitioner argues the indictments in his case were stamped “true bill” but not signed by the grand jury foreperson and that this deprived the plea judge of jurisdiction to accept his guilty pleas to the charges. This argument is without merit.

A.

At the PCR hearing, Petitioner stated “it’s not signed by a grand jury foreman on the indictments.” (App.p.70). Prior to Respondent’s cross-examination of Petitioner, the PCR judge stated someone was “going to get the originals.” (App.p.70). At the conclusion of Petitioner’s testimony, the PCR judge noted the clerk’s office was going to provide the original indictments in Petitioner’s case. (App.p.79).

Chief Public Defender John Mauldin testified he would not have looked at “the back side

of the indictment, which is where the true bill stamp is” before the court appearance. (App.p.97). Mauldin testified Petitioner pled guilty in December 2010 and the case had been scheduled for a capital trial in January 2011. As such, Mauldin testified “there would not have been a – no indictment at that point. I mean, that would have been completely – or it would seem to me like that would have been impossible because they would not have been able to indict him before a January trial.” (App.pp.97-98).

After both parties rested, the PCR judge noted he had been presented with a copy of the grand jury report from the grand jury meeting on July 28, 2009, that it was signed by the grand jury foreperson and chief administrative judge, and that it had been filed in the clerk’s office on August 3, 2009.⁴ (App.p.103). Respondent cited Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986) and the PCR judge noted that case indicated “the regular procedure was to have the clerk publish the indictment in open court after the grand jury returned a true bill. That is not the practice in Greenville County.”⁵ (App.pp.104-06) (emphasis added). The PCR judge held the record open for the parties to obtain an affidavit from the grand jury foreperson and then submit briefs on the issue. (App.pp.106-08). The affidavit from the grand jury foreperson was filed in the clerk’s office on June 30, 2015 and the parties filed briefs on July 21, 2015. (App.pp.125-38; pp.139-43; p.144).

B.

In denying Petitioner’s application for post-conviction relief, the PCR judge found Petitioner “failed to meet his burden of proving there were irregularities with the Grand Jury

⁴ The report was marked as Court’s Exhibit 2. (App.pp.103-04; pp.113-20).

⁵ The PCR later re-stated “we do not normally publish the indictments in open court.” (App.p.107).

procedure that invalidate[d] his indictments.” The PCR judge found Petitioner “failed to meet his burden of proving either that his indictments were defective or that the plea judge did not have jurisdiction to impose sentence upon them.” (App.pp.152-53).

C.

There is probative evidence to support the PCR judge’s finding that Petitioner failed to meet his burden of proof in this matter. Petitioner has failed to demonstrate the plea judge did not have jurisdiction to accept his guilty pleas.

In State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), this Court concluded indictments are notice documents and do not affect a court’s subject matter jurisdiction. This Court further noted indictments should apprise the defendant of the elements of the offense charged and be stated sufficiently to allow a defendant to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. See id. at 102-03, 610 S.E.2d at 500. This Court held that “if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards.” Id. at 101, 610 S.E.2d at 499.

In Petitioner’s case, it is clear that no challenge to the sufficiency of the indictments⁶ was made prior to Petitioner’s guilty pleas being made and accepted. There is no evidence Petitioner’s indictments are defective or the grand jury process used in the presentation of his indictments was irregular. “The regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated.” State v. Batchelor, 377 S.C. 341, 344,

⁶ (App.pp.157-58; pp.161-62; pp.165-66).

661 S.E.2d 58, 59 (2008). The affidavit from the grand jury foreperson indicated indictments were presented to the grand jury, voted upon, and those deemed to be true billed were placed to one side. (App.p.144). The grand jury foreperson stated she later stamped all of these indictments with a true bill stamp and a signature stamp and did not know why Petitioner's indictments were not stamped with the signature stamp. (App.p.144). The grand jury foreperson confirmed the indictments did not contain either stamp before they were presented to the grand jury. (App.p.144). The record before this Court is clear that: (1) Petitioner's indictments were stamped true bill but do not have a signature stamp, (2) the indictments were presented to the grand jury with neither a true bill nor a signature stamp on them, (3) the indictments would not be stamped true billed until after the grand jury had voted, and (4) the indictments were listed as true billed on the grand jury's report to the chief administrative judge. The lack of a signature stamp on Petitioner's indictments is not fatal because Petitioner has failed to demonstrate the grand jury process was improper or that his indictments were defective in any way. The indictments were properly presented to – and voted upon – by the grand jury and were sufficient to convey notice of the charges to Petitioner and his counsel. See Gentry, 363 S.C. at 102-03, 610 S.E.2d at 500. Petitioner has failed to demonstrate the plea judge did not have subject matter jurisdiction in this case. See id.

This Court's holding in Pringle is also instructive. In Pringle, the indictments were stamped "True Bill" but the grand jury foreman's signature was not on them. The Supreme Court found the trial judge had jurisdiction in that case because the "regular indictment procedure" was followed. See Pringle, 287 S.C. at 411, 339 S.E.2d at 128. Similarly, in Petitioner's case the grand jury foreperson detailed the usual indictment procedure in her

affidavit. (App.p.144). The sole deviation appears to be that she stamped Petitioner's indictments – which were blank before they were presented to the grand jury – with the true bill stamp but not her signature stamp. The grand jury foreperson did not know if the indictments were formally published because she did not know what happened to them after they were stamped. (App.p.144). While Petitioner argues Pringle indicates the clerk should have published the indictment in open court, the PCR judge noted at the PCR hearing that a formal publishing of the indictments in open court was not a procedure followed in Greenville County. (App.p.106). As such, Petitioner has failed to demonstrate the “regular indictment procedure” noted in Pringle was not followed by the grand jury regarding his Greenville County indictments.

Regardless, Petitioner did not suffer any prejudice resulting from the fact that his indictments were stamped true bill but did not have the grand jury foreperson's signature. The language of Gentry makes it clear the plea judge was not deprived of subject matter jurisdiction because of the absence of the grand jury foreperson's signature. Gentry also holds indictments are merely notice documents. Neither Petitioner nor his counsel testified they were unaware of the nature of the offenses that Petitioner was facing. Rather, Eppes and Mauldin had reviewed the discovery materials from the State and were acquainted with the underlying facts of the offenses. (App.p.81; pp.89-92). Mauldin testified he was preparing for this case to proceed to a jury trial the following month. (App.p.95). Petitioner pled guilty to the charges without a recommendation from the State and received sentences within the statutorily-prescribed ranges. Petitioner has failed to demonstrate how the lack of the grand jury foreperson's signature on his indictments caused him to suffer any resulting prejudice.

D.

As Petitioner failed to meet his burden of proving he is entitled to post-conviction relief, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”); see also Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRPC.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the 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: 
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September 9, 2016

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The Honorable Edward W. Miller, Circuit Court Judge

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CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same into inter-agency mail and addressed to:

LaNelle C. DuRant, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 9th day of September, 2016.


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