

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO AIKEN COUNTY
Court of Common Pleas

The Honorable Craig Brown, Circuit Court Judge

Appellate Case No.: 2015-001798

RECEIVED
OCT 28 2016
S.C. SUPREME COURT

SHAWN MADISON, #328499

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JULIE A. COLEMAN
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ATTORNEYS FOR RESPONDENT

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PETITIONER'S ISSUE PRESENTED

- I. Did the PCR court err in finding that Plea Counsel was not ineffective at the suppression hearing, when counsel failed to fully present arguments for suppression of drugs discovered during a traffic stop and instead relied solely on an argument that the officer's subjective motive for the stop invalidated the stop.

STATEMENT OF THE CASE

Petitioner (Shawn Madison) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Petitioner was indicted at the February 2008 term of the Aiken County Grand Jury for trafficking in cocaine greater than ten grams but less than twenty-eight grams – third offense (2008-GS-02-0089). Everett Chandler, Esq. was retained to represent Petitioner. On May 19, 2008, a suppression motion hearing was held and the motion was denied. On May 20, 2008, Petitioner pled guilty and was sentenced by the Honorable Doyet A. Early, III, to twenty years imprisonment and a \$50,000 fine. Petitioner did not appeal his conviction or sentence.

Petitioner filed an application for post-conviction relief on March 3, 2009. An evidentiary hearing was held on July 12, 2011, before the Honorable James C. Barber, III, at the Aiken County Courthouse. At the conclusion of the hearing, Petitioner's PCR counsel, Demal I. Mattson, Jr., renewed a previously filed motion for discovery to obtain the 911 phone call audio tape and the officer's ticket books in order to explore the possibility of a pretextual stop. Judge Barber issued a Form 4 order retaining jurisdiction and continuing the case until the September 2011 term of PCR Court. By Order dated September 16, 2011, Judge Barber ordered that the case be continued and placed on the next available roster before the next presiding judge. On September 17, 2012, the Honorable Doyet A. Early, III signed a consent order of substitution of counsel and Tara Dawn Shurling, Esq., was substituted as counsel of record for Demal I. Mattson, Jr., Esq.

From the representation of Counsel, at some point, Judge Barber decided not to release jurisdiction. It was decided that a new hearing should be convened.

Petitioner's second evidentiary hearing was heard by the Honorable D. Craig Brown on January 12, 2015. Petitioner was represented by Ms. Shurling, and Respondent was represented by Assistant Attorney General Daniel Gourley. The PCR Court denied relief in an order dated April 22, 2015. Petitioner filed a Motion to Alter or Amend on May 25, 2015. The PCR Court denied Petitioner's Motion to Alter or Amend in an order dated June 24, 2015. On June 28, 2016, Petitioner filed a Petition for Writ of Certiorari to this Court. This Return follows.

STANDARD OF REVIEW

The proper standard for reviewing 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, 386 S.E.2d 624 (1989). In a PCR 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 at the suppression hearing when Plea Counsel's sole argument was that the traffic stop was pretextual and therefore invalid.

Petitioner's argument that the PCR Court erred in finding that plea counsel was not ineffective for failing to present other arguments for suppression of evidence is without merit.

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).

First, it should be recognized that the PCR Court found Petitioner's testimony to be self-serving and not credible, while Plea Counsel's testimony was found to be credible. 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).

The PCR Court correctly held that Petitioner's allegations failed to satisfy the standard set forth in Strickland. First, the PCR Court found that Plea Counsel's actions were reasonable in the circumstances and did not fall below professional norms of reasonableness. The PCR Court recognized that Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland v. Washington, 466 U.S. 668, 691 (1984). Therefore, a high degree of deference is granted to the trial counsel. Moreover, where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). In this case, Petitioner's plea counsel employed the strategy of challenging the validity of the traffic stop on the basis that the stop was pretextual in nature, that Petitioner was "a lone black male pulling out of an apartment parking lot, [who] was stopped pretextually because of a tag when they really just wanted to stop and ask to search his car." (App. p. 91). Plea Counsel's argument was not without basis. At the suppression motion hearing, Plea Counsel argued that the warning ticket for an illegal tag was merely a post-justification for the stop. (App. p. 176). This argument was supported by the arresting officer's statement at the preliminary hearing that he never mentioned

the illegal tag during the stop, as the PCR Court observed. In fact, Petitioner was not even presented with a ticket for the tag until the ticket was “stuffed” in his property at the detention center. (App. p. 146). The aforementioned facts clearly constitute probative evidence in support of the PCR Court’s finding that Plea Counsel’s argument was reasonable in the circumstances and did not fall below professional norms of reasonableness.

The PCR Court correctly held that Petitioner’s allegations also failed to satisfy the second prong of the Strickland analysis requiring a Petitioner to demonstrate a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different. The PCR Court recognized that Petitioner failed to present any persuasive arguments that Plea Counsel’s strategy during the suppression motion was invalid. To the contrary, the court recognized, Petitioner merely stated alternative arguments Plea Counsel *could* have chosen to assert without demonstrating how they might have convinced the judge to rule in Petitioner’s favor. (App. p. 176-177). Again, the PCR judge’s findings on Petitioner’s arguments must be given great deference because they were in the best position to determine credibility. See Drayton v. Evatt, 312 S.C. 4, 13, 430 S.E.2d 517, 522 (1993). Petitioner would have the Court believe that he would have prevailed in his motion for suppression had Plea Counsel used other arguments, but this position is not supported by the facts of this case. Plea Counsel researched and confirmed that a tinted tag cover was a violation of the law. (App. p. 180). Officers noticed that Petitioner’s vehicle had a tinted license plate cover which is in violation of that law. (App. p. 19). Petitioner, after being pulled over, consented to a search of his vehicle. When he got out of the vehicle, cocaine fell from his pants. (App. p. 179). Given that Petitioner was pulled over subject to a violation of the law and consented to a search of his vehicle at which time cocaine

fell from his pants, it is unlikely that Petitioner would have prevailed in suppressing the evidence through any other arguments or asserted Fourth Amendment violations.

The PCR Court's finding that Plea Counsel's actions were reasonable in the circumstances and not prejudicial was well-supported by the factual record as well as testimony of the parties. Therefore, since the PCR Court's findings were supported by probative evidence, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's denial of post-conviction relief.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
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By:


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October 28, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

The Honorable Craig Brown, Circuit Court Judge

SHAWN MADISON, #328499

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

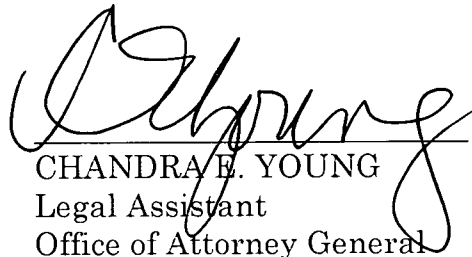
PROOF OF SERVICE

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:

Tristan M. Shaffer, Esquire
Post Office Box 1161
Irmo, SC 29063

I further certify that all parties required by Rule to be served have been served.

This 28th day of October 2016.



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OCT 28 2016

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

October 28, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Shawn Madison, #328499 v. State of South Carolina
2015-001798**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:cey
Enclosures

cc: Tristan M. Shaffer, Esquire
Trisha Allen, Victim Services