

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2014-001380

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JAN 19 2017

S.C. SUPREME COURT

LLOYD WRIGHT

Petitioner,

v.

STATE OF SOUTH CAROLINA

Respondent.

Opinion No. 2017-MO-001 (Filed January 5, 2017)

PETITION FOR REHEARING

The Court misapprehended, overlooked, or failed to address critical testimony and factors that bear directly on the Court's conclusion there was no evidence of probative value to support the PCR court's findings. The trial court judge confirmed Petitioner was served with the LWOP notice and understood he was forfeiting his plea offer before he went to trial. App. p. 6. The trial court's colloquy concerning the plea offer and defendant's LWOP notice cured any potential error by trial counsel. Trial counsel testified he discussed with Petitioner that he would be sentenced to Life Without Parole ("LWOP") if found guilty. App. p. 407-408. The PCR court found this testimony credible. App. p. 431. Petitioner claimed he did not understand that LWOP was mandatory if he went to trial. App. p. 393. The PCR court found this testimony not credible.

App. p. 431.

On January 5, 2017, this Court issued an opinion reversing and remanding Petitioner Lloyd Wright's conviction for Possession with Intent to Distribute Cocaine, Third Offense, and Possession to Distribute Cocaine within Proximity of a School. Wright v. State, Op. No. 2017-MO-001 (S.Ct. filed January 5, 2017). In its opinion, this Court found no evidence of probative value to support the post-conviction relief ("PCR") court's finding that Petitioner was aware that his conviction would result in a life sentence without parole.

ARGUMENT

The Court may have overlooked the trial court's colloquy with Petitioner before the trial concerning his decision to face life without parole and reject the plea offer of twenty-five years:

THE COURT: All right. **And you have actually filed the notice seeking life without parole**; is that correct?

MS. LINDER: Yes, Your Honor.

THE COURT: Mr. Wright, do you understand that once we call the jury here today, then Ms. Linder is going to revoke her offer to you of a negotiated twenty-five. Do you understand that, sir?

MR. WRIGHT: Yes, ma'am.

THE COURT: And knowing that, you reject her offer here today, and we are going to go forward at 2:30 selecting a jury.

MR. WRIGHT: Yes, Your Honor.

THE COURT: And you had sufficient time to meet with Mr. Smiley to discuss that offer?

MR. WRIGHT: Yes, Your Honor.

App. p. 6.

Petitioner was advised of his mandatory life sentence by the service of the LWOP notice by the State, and that service was confirmed by the trial judge before trial. App. p. 6. Petitioner testified at trial that he wanted to reject the plea offer and had sufficient time to speak with his attorney about his decision to reject the plea offer. App. p. 6. "[T]he transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the

information conveyed at the plea hearing.” Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 416 (1998). Trial counsel testified he told Petitioner he was looking at life without parole due to his criminal history and spoke with him about life without parole. App. p. 407. Trial counsel testified he discussed the mandatory nature of the LWOP and the court’s lack of discretion. App. p. 408.

Furthermore, trial counsel’s testimony was credible evidence on the record that Petitioner **was advised** concerning the mandatory nature of life without the possibility of parole when Petitioner and trial counsel first met:

SMILEY: Absolutely. Proximity to schools are strikes.

WILSON: Did you discuss that and discuss that as an outcome, if convicted, with Mr. Wright?

SMILEY: **Yeah. I talked to Lloyd that he was looking at life without parole the first time I met him because I knew his history.** Whether he understood what “life without parole” means or not, **I certainly talked to him about it.** App. p. 407 (emphasis added)

...

WILSON: So you didn’t - - you did discuss the mandatory nature and that the Court didn’t have any discretion on it?

SMILEY: **I believe that I did.** I don’t think there was question that if we lost that he wasn’t coming home - - period.” App. p. 408 (emphasis added).

Trial counsel’s testimony was found credible by the PCR Court. App. p. 431.

The following claims by Petitioner were **rejected** by the PCR court and found not credible:

Q: And you understand what constitutes a “strike” under the LWOP, life without the possibility of parole, procedure?

A: No, I can’t say that I did at the time.

Q: Tell me what you did understand after you were facing these charges?

A: I didn’t understand that it was mandatory that if I went to trial that the judge had no choice but to give me life without parole.

...

Q: Did you sign a document acknowledging that you knew that they were

seeking life without the possibility of parole?

A: Not that I remember. No, sir.

...

Q: Did you ever discuss the LWOP sentence with Mr. Smiley?

A: No, sir, he didn't – he just told me that the life without parole was dropped.

Q: Prior to going to trial, what was your understanding of what the sentencing options were if you were convicted?

A: That I could receive anywhere from ten to thirty years and that it was the option of the judge.

App. p. 392-393

The statements by Petitioner at the PCR hearing are further contradicted by the testimony elicited by the trial judge prior to the beginning of the trial. App. p. 6. The PCR judge's finding that Petitioner statements were not credible should be given strong consideration. "We give great deference to a judge's findings when matters of credibility are involved since we lack the opportunity to directly observe the witnesses." Solomon v. State, 313 S.C. 526, 443 S.E.2d 540, 542 (1994).

In reviewing the PCR court's decision, an appellate court is concerned only with whether any evidence of probative value exists to support that decision. We will uphold the findings of the PCR court when there **is any evidence** of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law. This Court gives great deference to the post-conviction relief (PCR) court's findings of fact and conclusions of law.

Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010) (citations omitted) (emphasis added).

The PCR court's decision to dismiss Petitioner's application was supported by probative evidence in the form of direct testimony by trial counsel and supported by the record at trial. The testimonial evidence on the record was credible, probative, and directly on point to the issue raised by Petitioner. This Court should reconsider its position, rehear this matter, and give proper weight to the testimony offered by trial counsel.

CONCLUSION

For all these reasons, the State submits this Court failed to address critical testimony raised by Respondent at the PCR hearing that bears directly upon this Court's ultimate decision to reverse and remand the Petitioner's conviction and sentence. The State respectfully asks this Court to reconsider its position in rehearing this matter.

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of the Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider, and rehear this matter, and issue an order affirming Petitioner's convictions and sentence.

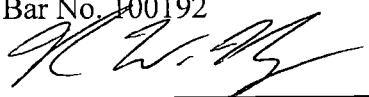
Respectfully submitted,

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Jan 19, 2017

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S.C. SUPREME COURT

Certiorari to Charleston County
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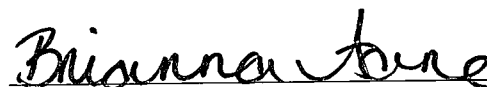
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Rehearing, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**John Strom, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201**

This 19th day of January, 2017.


BRIANNA ARNONE
LEGAL ASSISTANT