

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Williamsburg County  
Steven H. John, Circuit Court Judge

---

2014-CP-45-027  
Appellate Case No. 2015-002202

---

ANDRE A. ROBINSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

JULIE A. COLEMAN  
Assistant Attorney General  
Bar No. 102214

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEY FOR RESPONDENT

**RECEIVED**

DEC 16 2016

S.C. SUPREME COURT

**INDEX**

PETITIONER'S ISSUE PRESENTED.....2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW .....4

ARGUMENT

I. Probative evidence supports the PCR court's finding that the plea judge correctly found Applicant's plea was freely, voluntarily, and intelligently made. ....5

CONCLUSION.....8

**PETITIONER'S ISSUE PRESENTED**

- I. Did the PCR court err in finding Petitioner knowingly, voluntarily, and intelligently pled guilty where plea counsel failed to adequately advise Petitioner of the elements of murder, the definition of malice, and his possible defenses?**

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Petitioner was true bill indicted at the October 2012 term of the Williamsburg County Grand Jury for Murder (2012-GS-45-0269). Doward Harvin, Esquire represented Petitioner. On March 5, 2013, Petitioner pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Petitioner to a thirty year term of imprisonment. Petitioner did not appeal his sentence or conviction.

Petitioner subsequently filed an application for post-conviction relief (PCR) on January 15, 2014<sup>1</sup> (C.A. No. 2014-CP-45-027). Respondent filed its Return on September 24, 2014. An evidentiary hearing was held on July 14, 2015, at the Sumter County Courthouse. The Honorable Steven H. John issued an Order of Dismissal denying and dismissing the application signed on August 4, 2015 and filed on September 16, 2015.

Petitioner filed a timely Notice of Appeal of the denial of his post-conviction relief application on October 23, 2015. Petitioner's Appendix and Petition for Writ of Certiorari were filed on July 18, 2016. This Return to the Petition for Writ of Certiorari follows.

---

<sup>1</sup> The application was received by Respondent on July 18, 2014.

## 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 the plea judge correctly found Applicant's guilty plea was freely, voluntarily, and intelligently made.**

Petitioner argues the PCR Court erred in finding that Applicant's guilty plea was knowingly, voluntarily, and intelligently made. Respondent submits that the PCR Court correctly relied on probative evidence in making its decision, and this Court should affirm its findings.

#### Relevant Law

In order to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

### Discussion

Petitioner argues that he did not knowingly, voluntarily, and intelligently plead guilty because Plea Counsel failed to adequately advise Petitioner of the elements of murder, the definition of malice, and possible defenses. However, the PCR Court properly found that Petitioner was fully informed of the nature and consequences of his plea by his attorney and further by the plea court, and Petitioner failed to present valid reasons why he should be allowed to depart from the truth of his statements at the guilty plea.

First, it is important to note that the PCR Court found Plea Counsel's testimony to be credible. App. 73. 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 evidentiary hearing, Petitioner testified that he was not informed on the charges he was pleading guilty to.

A: Well, I pled to a murder. I pled to murder, but, you know, it was not without a clear a well-informed understanding of what I was pleading to, you know, and I didn't know the exact definition of malice. I didn't know that manslaughter would be the taking of someone's life with legal, you know, provocation. You know, things like that I was not informed of by my – by my attorney then. You know, I didn't know that I could've maybe could've gone to trial and might have got charged, you know, guilty under a lesser-included offense.

Q: Okay. And did you go over these things with Mr. Harvin?

A: No, sir.

App. 44 lines 9-18, 45 lines 6-7.

Plea Counsel testified that he had spent quite a lot of time on Petitioner's case. App. 56. He stated that he negotiated the possibility of pleading guilty to manslaughter rather than murder with the Solicitor, but she would not allow it. App. 58. He stated that he discussed with Petitioner how and why a trial would likely not work in his favor. App. 58-59. Plea Counsel testified that, before the guilty plea, he explained to Petitioner "in fairly good detail" the difference between a manslaughter case and a murder case, as well as the fact that murder was a day-for-day sentence as opposed to a non-parole-able offense. App.60-61.

The PCR Court relied on this testimony, as well as the colloquy between Petitioner and the plea judge, in making its ruling. The PCR Court pointed out on the record at the hearing that the plea judge specifically questioned Petitioner about all of these issues, including the fact that murder is a non-parole-able offense and the issue of whether the crime was intentional or unintentional. App. 63-64. The PCR Court noted that the plea judge specifically asked Petitioner if he wished to waive his right to present defenses and if he was pleading guilty to intentionally killing the victim, and Petitioner responded that he did. App. 64.

All of the relevant testimony from the PCR hearing and the guilty plea is probative evidence that the PCR Court relied on in making its decision to deny post-conviction relief. Petitioner failed to present any credible evidence to allow him to depart from his statements at the guilty plea, and thus he failed to meet his burden of proving that his guilty plea was involuntary. Because the PCR Court's decision in denying the petition for post-conviction relief was supported by the probative evidence above, this Court should affirm its denial of the application and deny this Petition for Writ of Certiorari, as certiorari is not warranted in this case.

**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,

ALAN WILSON  
Attorney General

JULIE A. COLEMAN  
Assistant Attorney General  
Bar No. 102214

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

December 16, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Williamsburg County

The Honorable Steven H. John, Circuit Court Judge

RECEIVED

DEC 16 2016

S.C. SUPREME COURT

ANDRE ROBINSON, #319391

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

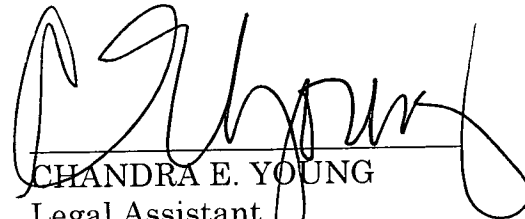
PROOF OF SERVICE

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:

John H. Strom, Esquire  
Post Office Box 11589  
Columbia, SC 29211

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

This 16<sup>th</sup> day of December 2016.

  
CHANDRA E. YOUNG  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737