

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

Certiorari to Sumter County
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2016-000815

GREGORY WRIGHT,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUE PRESENTED

Did the PCR Court properly find Trial Counsel was not ineffective for choosing to stipulate to the authenticity of Petitioner's handwriting in a letter introduced by the State at trial?

STATEMENT OF THE CASE

Gregory Wright (“Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In July 2008, the Sumter County Grand Jury indicted Petitioner for possession of a firearm during commission of a violent crime (2008-GS-43-927), owning animals for the purpose of fighting (2008-GS-43-929), animal fighting (2008-GS-43-930), ill treatment of animals (2008-GS-43-931), trafficking in cocaine (2008-GS-43-932), possession with intent to distribute marijuana (2008-GS-43-933), and trafficking crack cocaine (2008-GS-43-934). Cameron B. Littlejohn, Jr., Esquire, represented Petitioner. On January 12-14, 2009, Petitioner proceeded to a jury trial before the Honorable Michael G. Nettles. The jury found Petitioner guilty as indicted for possession of firearm during commission of a violent crime, owning animals for the purpose of fighting, animal fighting, ill treatment of animals, and trafficking crack cocaine. The jury found Petitioner guilty of the lesser included offenses of trafficking cocaine (2008-GS-43-932), possession with intent to distribute marijuana. Judge Nettles sentenced Petitioner for each charge as follows:

- Possession of Firearm During Commission of a Violent Crime – 5 year term of imprisonment
- Applicant for Owning Animals for the Purpose of Fighting – 5 year term of imprisonment
- Animal Fighting – 5 year term of imprisonment
- Ill treatment of Animals – 5 year term of imprisonment
- Trafficking in Cocaine – 25 year term of imprisonment
- Possession of Marijuana – 30 day imprisonment
- Trafficking in Crack Cocaine – 25 year term of imprisonment

All sentences were to run concurrently. Petitioner filed a timely notice of appeal. Robert M. Pachak, Esquire, of the South Carolina Commission of Indigent Defense represented Petitioner

on appeal. The South Carolina Court of Appeals affirmed all convictions in an unpublished opinion filed July 17, 2013. State v. Wright, Op. No. 2013-UP-326. In an Order dated August 22, 2013, the South Carolina Court of Appeals denied the Petition for Rehearing. On September 18, 2013, Petitioner submitted a Petition for Writ of Certiorari to the South Carolina Supreme Court. The State filed its Return to the Petition for Writ of Certiorari on October 18, 2013. On April 2, 2014, the Supreme Court granted certiorari and full briefing. Oral arguments were heard by the Supreme Court on March 4, 2015. Thereafter, the South Carolina Supreme Court dismissed the appeal as improvidently granted in a memorandum opinion filed March 18, 2015. State v. Wright, Op. No. 2015-MO-011 (S.C. Ct. App. filed March 18, 2015). The remittitur was returned to the circuit court on March 19, 2015.

Petitioner filed a timely application for post-conviction relief on June 8, 2015, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Counsel Failed To Make Timely Objections...Counsel did not make objections to the evidence at trial"
 - b. "Counsel Failed to Sever Charges...Counsel failed to object to the charges being tried together"
 - c. "Conviction Obtained in Violation of Constitutional Rights"

Respondent made its Return on July 9, 2015, requesting an evidentiary hearing be held. Petitioner filed an amended application on January 28, 2016, alleging ineffective assistance of counsel for stipulating to the letter introduced at trial. During the evidentiary hearing, Petitioner requested to amend his application to include an allegation of ineffective assistance of counsel for failing to move to dismiss his charges during the preliminary hearing. The State had no objection to the amendment.

An evidentiary hearing was held at the Sumter County Courthouse on March 17, 2016 before the Honorable Brooks P. Goldsmith. Petitioner was present and represented by Lance S. Boozer, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented Respondent. Judge Goldsmith denied and dismissed the application in written order filed April 7, 2016. Petitioner filed a timely Notice of Appeal on April 18, 2016. Petitioner's Appendix and Petition for Writ of Certiorari were filed on May 8, 2017. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). 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 his or her application. Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant 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, 686 (1984); Butler 286 S.C. at 442, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different.”

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

ARGUMENT

I. Probative evidence supports the PCR court's finding that Trial Counsel was not ineffective for stipulating to the authenticity of Petitioner's handwriting in a letter introduced by the State at trial.

Petitioner argues Trial Counsel was ineffective for stipulating to the fact that a letter introduced by the State at trial was in Petitioner's handwriting. After observing the witnesses presented at the hearing, closely passing on their credibility, and weighing their testimony accordingly, the PCR court rejected this claim and correctly held that Trial Counsel acted well within reasonable professional norms when stipulating to the letter. In its Order of Dismissal, the PCR court found Trial Counsel was not ineffective for this stipulation because Petitioner admitted that he wrote the letter, Trial Counsel reasonably believed that challenging the authenticity of the letter would be pointless as it would have been proven anyway, and Trial Counsel mitigated the letter's content by arguing to the jury that the letter was implying that the State was attempting to push the drugs on him when they were not his drugs. App. 530.

At trial, the State moved to admit a letter written by Petitioner into evidence. App. 124. The letter was written to Petitioner's co-defendant, Larry Rose, also known as Hammer. App. 125. In the letter, Petitioner tells Hammer and the other participants of the crime not to speak to the investigators or give them statements about his involvement in the crime. App. 124-129. Although Trial Counsel stipulated to the fact that the letter was written in Petitioner's handwriting, he objected to the letter's admission because the State moved it into evidence through the testimony of Investigator Tripp Mays, rather than through Hammer, who actually received the letter. App. 119. The trial court allowed the letter into evidence over Trial Counsel's objection because there was no question the letter was written by Petitioner, and it

was eventually given to the testifying investigator. App. 120. The letter was published and read aloud to the jury. App. 124-129.

At the PCR hearing, Petitioner admitted he wrote the letter. App. 477, line 5-7. Trial Counsel testified when the State gave the letter to him before the trial, he asked Petitioner about it, and Petitioner admitted to him that he wrote the letter. App. 495, line 14-18. He stated the letter was used to show the jury that Petitioner was attempting to “circle the wagons” and “keep his codefendants from testifying against him or giving information against him...And that was awfully hard to refute.” App. 495, line 17-25. Trial Counsel testified he believed the letter was coming into evidence regardless of whether he stipulated to the handwriting. App. 499. Trial Counsel explained:

Mr. Wright admitted it was his handwriting. I discussed with him the process that could happen, where the state could require him to come in and give handwriting exemplars. They could put up an expert to testify that that was his handwriting. And to me, to fight that fight wasn't worth it, given the --- the posture of our defense, which was we're the innocent landlord. Okay?

So I don't think I had any choice but to stipulate that that was his handwriting. Now, once you put the handwriting to Mr. Wright, you put the content of the letter together, and I think it would've come in that way.

App. 499, line 8-19.

Although Petitioner contends that Trial Counsel was ineffective in his representation by choosing to stipulate to the authenticity of Petitioner's handwriting, Trial Counsel's testimony clearly shows he made strategic decisions to stipulate to this evidence and these decisions were reasonable. Furthermore, there can be no prejudice from this stipulation because, had Trial Counsel not stipulated, the State would have presented a handwriting expert to authenticate the letter and move it into evidence. Regardless of how the State got this letter into evidence, the

PCR Court correctly held that it would have come in and the result of the trial would have been the same.

First, Trial Counsel was not deficient for stipulating to the authenticity of the handwriting in the letter because he made a valid strategic decision to avoid fighting against the letter to maintain the “posture” of their defense—that Petitioner was the innocent landlord. App. 499. Trial Counsel’s defense strategy is demonstrated by his actions throughout the trial, starting with his opening statement, where he explains to the jury that all the drugs were found in Frank Lee Wilson’s home that he rented from Petitioner and Wilson gave a sworn statement that the drugs belonged to him. App. 70. Trial Counsel cross-examined Wilson at trial to confirm his testimony that the drugs were his and did not belong to Petitioner. App.276-281. Trial Counsel presented testimony from Petitioner’s wife at trial. App. 296-311. Her testimony supported his assertion that Petitioner was Wilson’s landlord and did not participate in his drug trade. App. 311, line 5-18. Her testimony further showed the jury that Petitioner owned a construction business which requires them to have large amounts of cash on hand. App. 300-301. Trial Counsel reiterated his argument to the jury in his closing argument, explaining that Frank Lee Wilson was responsible for all the drugs found on the property and Petitioner did not have possession of the drugs just because he was the landlord who owned the property. App. 333 line 12 - 336 line 12.

In his closing statement, Trial Counsel mitigated the damage done by the letter by explaining to the jury how the letter did not harm Petitioner. App. 336-337. He pointed out how Petitioner did not admit to owning the drugs in the letter, but rather expressed concern for being imprisoned for someone else’s illegal activity. App. 336-337. He submitted to the jury that “even with the letter, there is no evidence that Greg Wright possessed these drugs.” App. 337

line 20-22. Based on this strategy presented to the jury, it is clear that fighting against the authenticity of the letter did not support or align with Trial Counsel's valid trial strategy.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and 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). Strickland requires that trial counsel must 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." Id. at 691. A high degree of deference is granted to a defense attorney, and Trial Counsel's decisions should not be questioned in hindsight. Id. Therefore, because Trial Counsel strategically chose to stipulate to Petitioner's handwriting in order to avoid a bigger fight at trial that would be irrelevant to his theory of defense, he cannot be found deficient.

Secondly, notwithstanding the fact Trial Counsel's representation was not deficient in this case, Petitioner also fails to satisfy the prejudice prong of the Strickland standard. The PCR court held Petitioner "can show no prejudice due to Trial Counsel's stipulation because [Petitioner] freely admitted that he wrote the letter." App. 530. Even if Trial Counsel had chosen not to stipulate to Petitioner's handwriting, the State would have obtained a handwriting sample from him and called a handwriting expert to testify at trial to authenticate his handwriting in the letter. See State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (holding evidence of a defendant's handwriting is admissible for comparison where "introduced by

witnesses who saw the standards written, or to whom, or in whose hearing, the person sought to be charged acknowledged the writing thereof.”) The letter would have come into evidence regardless of Trial Counsel’s stipulation, and the jury would have viewed this damaging piece of evidence even over Petitioner’s objection. Therefore, Petitioner cannot meet his burden of proving that the stipulation changed the outcome of his trial, and there can be no prejudice.

Because the PCR court clearly relied on the probative evidence above in finding Trial Counsel was not deficient and there was no resulting prejudice from his actions, the PCR court’s findings must be affirmed. Therefore, the Petition should be denied, as Certiorari is not warranted in this case.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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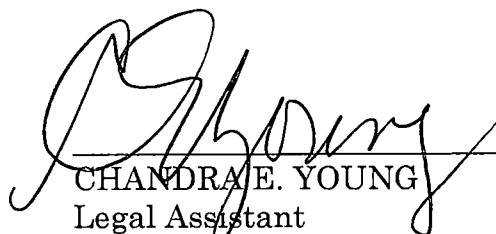
PROOF OF SERVICE

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:

Laura R. Baer, Esquire
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 6th day of September 2017.



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