

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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R. Markley Dennis, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 2017-UP-378 (S.C.Ct.App. filed Oct. 18, 2017)

Ronald Coulter, #300410,

Petitioner,

v.

State of South Carolina,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF PRO SE PETITIONER

Petitioner, acting pro se, certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on December 14, 2017.

QUESTIONS PRESENTED

1. Whether the criminal petitioner has standing under South Carolina's constitutional and statutory habeas corpus laws to reasonably raise the question of whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution affords him a protected liberty interest that would entitle him to the procedural protection against arbitrary state action in the first-tier collateral review of a Sixth Amendment right to counsel claim, under the Uniform Post-Conviction Procedure Act.

2. Whether the criminal petitioner has standing under South Carolina's constitutional and statutory habeas corpus laws to reasonably raise the question of whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as an equitable matter, entitles him to the effective assistance of counsel in the first-tier collateral review of a Sixth Amendment right to counsel claim, under the Uniform Post-Conviction Procedure Act; where, the State's post-conviction procedure appointed counsel for the collateral review of the Sixth Amendment claims.

QUESTIONS PRESENTED

3. Whether the Court of Appeals erred in affirming the circuit court's decision, below, on independent grounds not stated in the circuit court's ruling.

4. Whether the Court of Appeals, in its opinion below, erred in failing to state, in writing, the Fourteenth Amendment due process claims raised on appeal.

STATEMENT OF THE CASE

The petitioner is presently confined in the South Carolina Department of Corrections as the result of a conviction and sentence for kidnapping. The Charleston County Grand Jury indicted the petitioner during the May 2002 term for kidnapping, conspiracy to commit kidnapping, and murder. The petitioner was represented, at trial, by Rodney Davis, Esquire.

On February 23, 2004, the petitioner proceeded to trial with his codefendant in the Court of General Sessions of Charleston County. On February 25, 2004, the petitioner's codefendant reached a plea agreement and agreed to testify against the petitioner, on behalf of the State. That same day, the petitioner entered a negotiated guilty plea to kidnapping and was sentenced to thirty (30) years. The other charges were nolle prossed. A timely appeal was not perfected.

On July 16, 2004, the petitioner filed a pro se application for post-conviction relief (PCR). On June 23, 2005, the State filed its Return requesting an evidentiary hearing, and counsel

was appointed for the petitioner. On May 26, 2006, the petitioner filed a pro se Brief of Amended Issues to supplement his PCR application. On June 2, 2006, the Honorable William P. Keesley held an evidentiary hearing into the matter. Immediately following the evidentiary hearing, Judge Keesley issued a Form 4 Order, that same day, denying the petitioner's application for post-conviction relief. In that order, Judge Keesley further ordered the Attorney General to submit a proposed order in the case within thirty (30) days. On November 6, 2006, Judge Keesley filed an Order of Dismissal, which denied relief and dismissed the application with prejudice.

The petitioner served and filed a timely Notice of Appeal. On June 8, 2007, counsel for the petitioner filed a Johnson Petition for Writ of Certiorari. The petitioner filed a pro se response to the Johnson petition on July 12, 2007. The South Carolina Court of Appeals filed an Order, dated May 19, 2008, denying certiorari and granting counsel's petition to be relieved.

On August 4, 2008, the petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court, which was denied on September 16, 2009. On August 10, 2010, the Fourth Circuit Court of Appeals denied leave to appeal. The United States Supreme Court denied the petitioner's Petition for Writ of Certiorari on October 1, 2012.

On April 11, 2013, the petitioner filed a Petition for Writ of State Habeas Corpus and an Application to Proceed Without Payment of Costs in the Court of Common Pleas in Charleston County. The Honorable R. Markley Dennis Jr. held a hearing on the

petitioner's Petition for State Habeas Corpus on August 9, 2013. The court filed a form order denying the petitioner's petition on August 22, 2013. The petitioner filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF on September 13, 2013. The court denied the petitioner's motion to alter or amend by order filed on September 30, 2013. The petitioner served and filed a timely Notice of Appeal.

By order filed April 22, 2014, the Court of Appeals extended the deadline for the respondent to file its brief and designation of matter to May 19, 2014. On May 22, 2014, the Court of Appeals granted the respondent's second request to extend the filing deadline, for its brief and designation, to June 18, 2014. By order filed May 27, 2014, the Court of Appeals granted the petitioner's request to draft fewer than fifteen (15) copies of the record on appeal and final briefs. The Court, thereby, required the petitioner to file nine (9) copies.

On August 6, 2014, the Court of Appeals granted the respondent's request to hold the appeal in abeyance pending its receipt of the lower court transcript. On December 30, 2014, the Court of Appeals granted the respondent's motion to require the petitioner to amend the record on appeal with the respondent's cross-designations. By order filed March 9, 2015, the Court of Appeals denied the respondent's motion to dismiss appeal, and relaxed the filing requirements under Rules 210(b) and 211(a), SCACR, for the petitioner, thereby, requiring only one original and one copy to be served upon the respondent. On June 5, 2015, the Court of Appeals dismissed the appeal on the grounds that the

petitioner failed to comply with the March 9, 2015 Order. The petitioner filed a timely Petition for Rehearing.

By order filed November 12, 2015, the Court of Appeals reinstated the appeal and appointed the Division of Appellate Defense for the sole purpose of printing the required record on appeal and final briefs, on behalf of the petitioner. Mr. Robert Dudek, Chief Appellate Defender, provided: 1) the record on appeal on February 12, 2016; 2) the final brief and final reply on September 20, 2016; and, 3) the certificates of counsel on December 16, 2016.

By order filed October 18, 2017, the Court of Appeals affirmed the circuit court's denial of the petitioner's Petition for Writ of State Habeas Corpus. A timely Petition for Rehearing was filed by the petitioner. The Court of Appeals denied the request for rehearing on December 14, 2017.

This action follows:

ARGUMENT

1. THE COURT OF APPEALS DECLINED TO PASS UPON WHETHER THE TWO-PRONG APPROACH TO PROCEDURAL DUE PROCESS QUESTIONS UNDER THE FOURTEENTH AMENDMENT IS COGNIZABLE IN A STATE HABEAS CORPUS PROCEEDING.

This Honorable Court should grant certiorari to reexamine the circumstances under which the Uniform Post-Conviction Procedure Act (the Act) affords criminal defendants a liberty interest protected by the Fourteenth Amendment Due Process Clause when raising Sixth Amendment right to counsel claims for the first time, as required, under the Act.

The availability of the habeas corpus procedure, although limited, to safeguard the liberty of all persons within the jurisdiction of South Carolina against infringement through any violation of the Constitution is uncontroverted. A prisoner in custody pursuant to the final judgment of a state court of criminal jurisdiction may have a judicial inquiry in a court of South Carolina into the very truth and substance of the causes of his detention, although it may become necessary to look behind and beyond the record of his conviction to a sufficient extent to test the jurisdiction of the state court to proceed to judgment against him.

Since the Sixth and Fourteenth Amendments constitutionally entitle a person charged with a crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to state court's authority

to deprive an accused of his life or his liberty. If the Sixth Amendment right to counsel is not complied with, the jurisdiction of the trial court is lost, and the judgment of conviction pronounced by the trial court is void.

The post-conviction relief process created by this State is the result of the United States Supreme Court's determination that the Fourteenth Amendment may require the States to afford state prisoners some adequate corrective process for the hearing and determination of claims of violation of federal constitutional guarantees.

When a state prisoner raises a Sixth Amendment ineffectiveness claim under the Act, the determination made by the post-conviction court, under this State's "uniform jurisdiction" court structure, validates, or nullifies, both the constitutional mandate of the assistance of counsel at trial, as well as the trial court's jurisdiction to render judgment and impose sentence.

Therefore, the determination of the post-conviction court, with regards to a Sixth Amendment ineffectiveness claim, should be cognizable under habeas corpus laws, as it involves a question of jurisdiction occurring during the course of trial.

Furthermore, the procedures employed by the post-conviction court, in adjudicating Sixth Amendment counsel claims, should be subject to scrutiny under the Due Process Clause of the Fourteenth Amendment, especially when the rule for adjudicating ineffectiveness claims is binding upon state courts through the Supremacy Clause. See Evitts v. Lucey, 469 U.S. 387, 393 (1985) (If a State has created appellate courts as an integral part of

the ... system for finally adjudicating the guilt or innocence of a defendant, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution); See also, Henry v. City of Rock Hill, 376 U.S. 776 (1964) (When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the Supremacy Clause).

When the state post-conviction court failed to follow the U.S. Supreme Court rule, based upon the Fourteenth Amendment, in adjudicating the petitioner's ineffectiveness claims, the petitioner's constitutional protection against arbitrary state action had been violated. The Supremacy Clause makes federal law paramount over the contrary position of state officials, and States have a good faith obligation to comport with constitutional design under the Supremacy Clause.

If habeas corpus acts as an ultimate insurer of fundamental constitutional rights, its procedure should be proper to consider the constitutionality of the actions of state officials under the Act, in order to preserve - not destroy - the safeguards of life and liberty under the Constitution; and equally important, propose change that could obviate procedural due process challenges to state action in federal court.

Consequently, where a judicially recognized liberty interest emanating directly from the Due Process Clause was at stake in the post-conviction court's determination of the petitioner's ineffectiveness claims, the two-prong approach to all procedural due process questions, pursuant to the Fourteenth Amendment,

should have been cognizable in the habeas proceeding below.

2. THE COURT OF APPEALS DECLINED TO PASS UPON WHETHER THE EFFECTIVENESS OF AN ATTORNEY, APPOINTED FOR SIXTH AMENDMENT COUNSEL CLAIMS ON APPEAL, UNDER THE ACT, IS COGNIZABLE IN A STATE HABEAS CORPUS PROCEEDING.

This Honorable Court should grant certiorari to determine, as an equitable matter under the Fourteenth Amendment Due Process Clause, whether the first-tier post-conviction review of a Sixth Amendment ineffectiveness claim, under the Act, represents an appeal as of right with respect to the ineffectiveness claim, for purposes of analysis under Evitts v. Lucey, 469 U.S. 387 (1985).

The Due Process Clause assures that when a State provides an avenue or means to vindicate a constitutional right, the State must assure the indigent defendant an adequate opportunity to present his claim fairly within the context of the State's appellate process. See Ross v. Moffitt, 417 U.S. 600, 616 (1974).

The Sixth Amendment counsel guarantee stands as a jurisdictional bar to a valid conviction and sentence depriving a criminal defendant of life or liberty.

The habeas corpus inquiry should, therefore, be proper to determine whether the corrective process, under the Act, for the hearing of claims of violation of the Sixth Amendment right to counsel guarantee, comports with the demands of due process of the Constitution.

In raising an ineffectiveness claim for the first time on

collateral review, under the Act, a criminal defendant does not enjoy the benefit of the constitutionally guaranteed right to counsel, as is the case on direct appeal. In addition, under the Act, post-conviction counsel, whether retained or appointed, is not required to prepare a brief addressing a Sixth Amendment ineffectiveness claim on behalf of his or her client.

South Carolina rules do, however, appoint counsel, for indigent defendants, if the claims presented under the Act require an evidentiary hearing, as claims of ineffective assistance often do. Rule 71.1(d), SCRCP. Under this procedural rule, appointed counsel "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary". Unfortunately, the State provides neither a guaranty of counsel's compliance, nor any sanctions against counsel's non-compliance, with the relevant portion of Rule 71.1(d), SCRCP.

Due process emphasizes a fundamental fairness between the State and the defendant. A habeas court should be alert to the realistic recognition of the obvious truth that a defendant, in a criminal appeal, does not have the professional legal skill to meet the adversarial presentation of the State's attorney. The assistance of an expert professional lawyer is necessary in a legal system governed by complex rules and procedures for any defendant to obtain a decision at all - much less a favorable decision - on the merits of the case.

To permit the indigent petitioner to run the gantlet of a first-tier collateral review, with respect to a Sixth Amendment

ineffectiveness claim, which was reviewed on the merits without the benefit of any organization or argument by appointed counsel, constituted a denial of fundamental fairness. Without the adequate assistance of counsel during the collateral review of his Sixth Amendment claims, the petitioner, unlearned in the law, was unable to comply with the procedural rules and misapprehended the substantive details of federal constitutional law, as clearly stipulated by the post-conviction court in its Form Order Denying Post-Conviction Relief. (R.p.35).

The habeas court's failure to consider the effectiveness of the appointed counsel during the first-tier collateral review of a Sixth Amendment counsel claim deprived the petitioner of an adequate opportunity to present an appeal in a form suitable for appellate consideration on the merits.

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and the use of methods and procedures meeting the standards of competent practitioners. The appointed post-conviction counsel never obtained or reviewed any discovery in the petitioner's criminal case below. Appointed counsel made no attempt to amend the petitioner's PCR application in accordance with Rule 71.1(d), SCRCP, although the petitioner made multiple inquiries, through written correspondences, with regards to the amendment process. As a result of counsel's refusal to, or lack of interest in, filing an amendment on behalf of the petitioner, the petitioner ultimately submitted his own amended brief two months before the scheduled post-conviction hearing. Ironically,

the post-conviction court accepted, and filed, the petitioner's amended brief despite the State's hybrid representation laws. (R.pp.24-34). Appointed counsel proceeded into the hearing solely on the basis of the arguments advanced by the petitioner. The appointed counsel never submitted any documents, to the court, reflecting any contention that the petitioner's post-conviction action was frivolous. Finally, during the post-conviction proceeding, appointed counsel made no effort to marshal any legal arguments, on behalf of the petitioner, regarding his Sixth Amendment right to counsel claims.

The central concern of habeas corpus is the fundamental fairness of the proceeding being challenged.

This Honorable Court should grant certiorari to determine if the habeas corpus inquiry is proper to examine whether the Due Process Clause tolerated nominal representation in the first-tier collateral review of the petitioner's Sixth Amendment right to counsel claims, under the Act; where, the State created a procedural right to counsel, for the petitioner, in such a collateral review.

3. THE COURT OF APPEALS' AFFIRMATION FAILED TO STATE ANY FINDINGS OF FACT TO SUPPORT THE INDEPENDENT CONCLUSION OF THE APPELLATE COURT.

The Court of Appeals should be precluded from affirming habeas dismissal on authoritative grounds absent ruling by the circuit court on the merit, or cognizability, of the claims

presented. In the instant case, the circuit court provided no findings of fact, or conclusions of law (R.p.969), with respect to the claims presented in the habeas petition below (R.p.940), despite the petitioner's timely request to amend the circuit court's cryptic dismissal (R.pp.970-72). Nevertheless, the Court of Appeals, in its own view of the record, affirmed the circuit court's decision pursuant to McWee v. State, 593 S.E.2d 456, (2004), and Williams v. Ozmint, 671 S.E.2d 600 (2008), without distinctly expressing the facts in support of its affirmation.

When an appellate court chooses to find facts in accordance with its own view of the evidence, the court must state distinctly its findings of fact and the reason for its decision.

4. ISSUES INVOLVING THE CONSTRUCTION AND APPLICATION OF THE FEDERAL CONSTITUTION IN A CRIMINAL STATE APPEAL CANNOT BE REASONABLY FOUND TO BE MANIFESTLY WITHOUT MERIT, PURSUANT TO RULE 220(b), SCACR.

Rule 220(b), SCACR, states, in pertinent parts, that "[I]n every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reasons for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

... (2) The Court of Appeals need not address a point which is manifestly without merit".

The issues on appeal were "distinctly stated" in the petitioner's Final Brief of Appellant, Statement of Issues on Appeal, page 1. Nevertheless, the Court of Appeals refused to state, in writing, the issues on appeal in the instant case, in its order affirming the circuit court's decision.

Because, however, a number of due process and other federal constitutional rules do in fact regulate the form and substance of the procedures the States use in criminal prosecutions, generalizations about the cognizability of these issues in habeas corpus are dangerous and no substitute for a careful analysis of the constitutional principles that govern the particular issues and of the factual circumstances recognized as implicating those principles.

It would be counterintuitive to conclude that an inquiry into what procedures supplied an adequate level of fairness in a criminal appeal under the Act is manifestly without merit; especially, where a genuine liberty interest arising from the Due Process Clause of the Fourteenth Amendment was at stake in that proceeding under the Act.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ or certiorari.

Respectfully submitted,


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