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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-001769

ISAAC GLENARD LYLES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION OF CERTIORARI

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Because the witness’s credibility was called into question by the admission of five prior convictions of crime’s involving dishonesty, Petitioner was not prejudiced by any failure to address two additional prior convictions and the PCR court properly denied relief.

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STATEMENT OF THE ISSUE

Did the post-conviction relief (“PCR”) court properly find Petitioner failed to meet his burden of proof for ineffective assistance of counsel when his trial counsel did not use additional criminal convictions for impeachment purposes against a State witness?

STATEMENT OF THE CASE

On October 9, 2012, Petitioner Isaac Glenard Lyles was arrested in relation to a search warrant executed by the Spartanburg City Police department. (App. p. 457). Upon entering the front door of a suspected drug house, Petitioner attempted to evade arrest and exited the back door of the home. (App. p. 457). He was unsuccessful and was apprehended almost immediately. (App. p. 457). When he was detained, Petitioner was in possession of a firearm, marijuana, cocaine, and over one thousand dollars in cash. (App. p. 458). A bag containing large quantities of cocaine, crack cocaine, marijuana, caffeine powder, and a set of digital scales was found near Petitioner and was attributed to him at trial. (App. p. 458).

During its October 2013 term, the Spartanburg County Grand Jury indicted Petitioner for possession with intent to distribute (“PWID”) cocaine within one-half mile of a school or park (2013-GS-42-4570), PWID marijuana within one-half mile of a school or park (2013-GS-42-4571), PWID marijuana 2nd offense (2013-GS-42-4573), trafficking cocaine, 10-28 grams, 3rd or subsequent offense (2013-GS-42-4574), trafficking in cocaine base (2013-GS-42-4575, Count 1), and possession of a firearm or knife during the commission of or attempt to commit a violent crime (2013-GS-42-4575, Count 2). (App. p. 454-455). Petitioner was represented by William S. Bean, IV, Esquire. (App. p. 455). Respondent was represented by Assistant Solicitor Scott D. Spivey. The case was presented before a jury and the Honorable Roger L. Couch on December 4, 2013. (App. p. 455).

During trial, the State called Edward Wesson as a witness against Petitioner. (App. p. 142). Mr. Wesson testified that Petitioner used Wesson’s apartment to sell drugs every day during the summer and that he always carried with him a black bag. (App. p. 142-145). When the search warrant was executed, Mr. Wesson exited the home just prior to Petitioner and was apprehended

near the front of the house. (App. p. 83-84). Petitioner was apprehended after exiting the same door, but running in the opposite direction. (App. p. 84).¹ During his testimony, it was revealed that Mr. Wesson had five prior convictions for fraudulent checks. (App. p. 142). Trial counsel also wished to present evidence of Mr. Wesson's additional prior convictions for armed robbery² and burglary³, but following a proffer of the evidence outside the presence of the jury, Judge Couch ruled the evidence was inadmissible.

Petitioner was convicted and received the following concurrent sentence: five terms of life without parole for the two trafficking charges and three proximity charges, ten years imprisonment for PWID marijuana 2nd, and five years imprisonment for possession of a firearm during the commission of a violent crime. (App. p. 303-304). Petitioner filed a timely notice of appeal and it was perfected by Laura Baer, Esquire, of the Office of Appellate Defense. (App. p. 437). The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. (App. p. 450). The Remittitur was issued on April 26, 2016. (App. p. 453).

Petitioner filed his application for post-conviction relief on April 18, 2016. (App. p. 306).

In his application for PCR, Petitioner alleged the following:

"c. Counsel failed to impeach the state's star witness with his prior convictions for armed robbery and third degree burglary offenses.

- i. Wesson's armed robbery and third degree burglary conviction were punishable by imprisonment in excess of one year. S.C. Code 16-11-313; 16-11-330. Thus, the crimes were as a matter of law admissible under Rule 609(a)(1) to attack Wesson's credibility. Counsel's failure to argue the application of Rule

¹ In the Petition for Writ of Certiorari, Petitioner claims that "the officer intentionally let Wesson run by him and then apprehended Petitioner about 'three steps' from the side door. App. 84, ll. 15-24." The record contradicts this assertion and clearly shows that Wesson and Petitioner were both apprehended by officers quickly after exiting the home.

² At trial, Mr. Wesson testified that he was convicted of armed robbery in 1995 or 1996, over ten years prior to Petitioner's trial. Petitioner has never provided evidence of Mr. Wesson's release from prison on this charge or if Mr. Wesson was ever incarcerated for the crime.

³ Mr. Wesson testified that he was arrested for third degree burglary after sleeping on a construction site. Mr. Wesson testified that he was sleeping on the concrete, since he was homeless at the time. He further testified that he was not attempting to steal anything.

609(a)(a), SCRE, to impeach Wesson's credibility was ineffective assistance of counsel..."

(App. p. 306)⁴

Respondent made its Return on February 6, 2017. On June 28, 2017, an evidentiary hearing was held on Petitioner's application before the Honorable Robin B. Stilwell in Spartanburg County, South Carolina. (App. p. 345). Petitioner testified on his own behalf. (App. p. 353). Petitioner's trial counsel also testified on behalf of Respondent. (App. p. 378). Trial counsel testified that he believed Mr. Wesson's prior convictions for armed robbery and burglary would be inadmissible under SCRE 609(a)(1), because they occurred over ten years prior. (App. p. 387). Therefore, he instead attempted to argue for their use in impeaching Mr. Wesson under SCRE 609(a)(2), as he argued they involved dishonesty. (App. p. 387). Trial counsel admitted he misunderstood the time limit in SCRE 609(a)(1) to only include criminal convictions within the last ten years, rather than within ten years of release of the witness from confinement resulting from the conviction. (App. p. 392). Judge Stilwell, by written order on August 7, 2017, denied and dismissed with prejudice the allegations by Petitioner. (App. p. 454).

⁴ Petitioner alleged eight total violations entitling him to post-conviction relief, but has only appealed the denial of PCR for trial counsel's failure to impeach Wesson under SCRE 609(a)(1).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Smalls, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Because the witness's credibility was called into question by his five prior convictions of crime's involving dishonesty, Petitioner was not prejudiced by any failure to address two additional prior convictions and the PCR court properly denied relief.

Petitioner asserts his trial counsel provided him with ineffective assistance of counsel for failing to impeach the State's witness with prior convictions of armed robbery and burglary. Petitioner asserts that "hearing about convictions for fraudulent checks cannot equate to convictions for armed robbery and burglary." He further asserts that "had the jury heard that Wesson had convictions for serious crimes of armed robbery and burglary, not only would it have affected his credibility but also caused doubt about who really owned the backpack containing drugs. Petitioner's first assertion is belied by the rule itself which properly places a premium on the impact of crimes involving dishonesty and false statements. Petitioner's second assertion demonstrates a misunderstanding of the purpose of the rule – to attack the credibility of the witness. Both mistakes support the conclusion that Petitioner failed to meet his burden of proof in showing he was prejudiced by any failure to further impeach the witness at trial and the PCR court properly denied relief.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d

at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Petitioner first failed to show that trial counsel was deficient for failing to further impeach Mr. Wesson with the additional prior convictions, because he has failed prove the convictions were admissible under SCRE 609. For the purpose of attacking the credibility of a witness, evidence that a witness other than an accused has been convicted of a crime shall be admitted, *subject to Rule 403*, if the crime was punishable by death or imprisonment in excess of one year. (emphasis added) SCRE 609(a)(1). Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction. SCRE 609(b). For Mr. Wesson's conviction of

armed robbery⁵, Petitioner has failed to prove that his conviction or release from confinement imposed as a result of his conviction was within ten years of December 4, 2013.⁶ Therefore, Petitioner failed to show trial counsel was deficient for failing to impeach Mr. Wesson with inadmissible evidence of a prior conviction for armed robbery.

Further, the prior convictions of armed robbery and burglary were inadmissible under SCRE 403. Under the rule governing use of prior convictions to impeach a witness, the pivotal issue of the probative value of a conviction turns largely on a consideration of the nature of the conviction itself, because the purpose of impeachment is *not to show that the witness is a "bad" person*, but rather to show background facts which bear directly on whether jurors ought to believe him. (emphasis added) State v. Black, 400 S.C. 10, 22, 732 S.E.2d 880, 887 (2012). During the proffer, Mr. Wesson provided important context for his convictions of armed robbery and burglary. Neither involved dishonesty nor deceit of any kind. Instead, his burglary conviction was the result of his homelessness and attempting to find somewhere to sleep for the night. Petitioner asserts that "[h]ad the jury heard about Wesson's violent past, it would have impeached his credibility well beyond the fraudulent check convictions." Petitioner continued, asserting "hearing about convictions for fraudulent checks cannot equate to convictions for armed robbery and burglary." However, these are not proper grounds for admitting evidence of prior convictions under the Rule. On the contrary, the grounds argued by Petitioner perfectly demonstrate the danger of unfair prejudice which would substantially outweigh the probative value. Petitioner has failed to prove that simply having convictions for armed robbery and burglary relate to his believability to the jurors. Instead, this evidence would only be offered to show Mr. Wesson is a bad person with a

⁵ Mr. Wesson's prior conviction for burglary third degree was in 2006, clearly within ten years of his testimony.

⁶ At the PCR hearing, Petitioner provided the court with a copy of Mr. Wesson's rap sheet, which indicates he pled guilty to armed robbery in 1996. Petitioner, however, failed to provide any information relating to Mr. Wesson's release date from his confinement imposed for this guilty plea.

violent past. This is improper for impeachment, was properly excluded at trial, and Judge Stilwell properly denied relief.

Petitioner failed to prove he was prejudiced by any potential deficiency of his trial counsel not impeaching Mr. Wesson with prior convictions of armed robbery and burglary, as he was thoroughly impeached with five other prior convictions. The exclusion of impeaching evidence is not prejudicial where it has no meaningful impact on a witness's credibility. State v. Gunn, 313 S.C. 124, 137, 437 S.E.2d 75,82 (1993). The nondisclosure of evidence did not deprive [defendant] of a fair trial where the evidence had limited impeachment value and the witness was thoroughly impeached with other evidence. State v. Cheeseboro, 346 S.C. 526, 553-554, 552 S.E.2d 300, 314-315 (2001). The additional impeaching evidence of the inconsistent statement would not have had a meaningful impact on [witness's] credibility. State v. Duncan, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984).

Mr. Wesson admitted to five prior convictions of check fraud during his testimony at trial. This evidence was presented to the jury for their use in evaluating his credibility. Petitioner has failed to prove that revealing to the jury that Mr. Wesson had two additional prior convictions would have had a meaningful impact on his credibility as a witness. With the five admitted convictions, there was an abundance of evidence detailing Mr. Wesson's disrespect for the truth and Petitioner has failed to show he was denied a fair trial. Petitioner has failed to prove that the outcome of the trial would have been different had the jury heard about two additional prior convictions. Therefore, the PCR court properly denied relief.

CONCLUSION

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

Respectfully submitted,

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August 6, 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-001769

Isaac Glenard Lyles,.....Petitioner,

v.

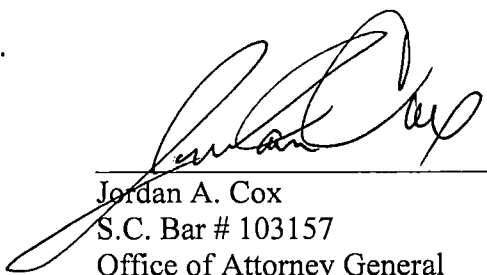
State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Jordan A. Cox, certify that I have today served the within **Return to Petition for Writ of Certiorari** upon Appellant by depositing a copy of the same in interagency mail and in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia South Carolina 29211-1589

This 10th day of August, 2018.



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August 10, 2018

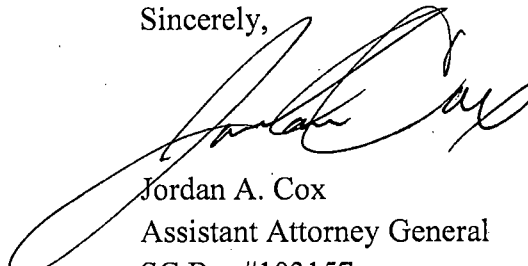
The Honorable Daniel E. Shearouse
Clerk of Court — SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Isaac Glenard Lyles, #209983 v. State of South Carolina
Appellate Case No.: 2017-001769
Lower Court Case: 2016-CP-42-1479

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case.

Sincerely,



Jordan A. Cox
Assistant Attorney General
SC Bar #103157

JAC/lm
Enclosures

cc: David Alexander, Esquire
Trisha Allen, Director - Victim Advocacy Division