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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County
Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2016-002388

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NOV 27 2017

S.C. SUPREME COURT

SHONTA HELTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**BRIEF OF RESPONDENT
PURSUANT TO WHITE V. STATE**

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STATEMENT OF ISSUE ON APPEAL

- I. Did the trial judge properly find there was no conflict of interest between himself and Petitioner where Petitioner's brother had burglarized the judge's home several years earlier, but Petitioner was not involved in the burglary in any manner?

- II. Did the trial court properly chose not to redact Petitioner's name from co-defendant Gary Dargan's letters where Petitioner did not object or ask the court to remove her name because the use of her name did not implicate her in the crime?

STATEMENT OF THE CASE

Shonta Helton (“Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Petitioner was true bill indicted at the February 2013 term of the Sumter County Grand Jury for accessory before the fact of murder (2013-GS-43-0239). Shaun Kent, Esquire represented Petitioner. Petitioner proceeded to trial on April 14-17, 2014. Petitioner was found guilty as indicted. The Honorable W. Jeffrey Young sentenced Petitioner to a thirty-five year term of imprisonment.

A Notice of Appeal was filed on Petitioner’s behalf. By Order filed August 21, 2014, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 263(b) SCACR for failing to timely serve the notice of appeal on opposing counsel. The Remittitur was issued on September 8, 2014.

Petitioner filed a timely application for post-conviction relief on September 24, 2017, alleging she was being held unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Attorney failed to suppress hearsay evidence.
 - b. Failing to file a direct appeal.
 - c. Denied discovery motion.
 - d. Counsel failed to pursue a motion to sever Applicant's case from co-defendant's case.
 - e. Counsel failed to pursue a motion to recuse the trial Judge where the trial Judge was the victim in a criminal case involving Applicant's brother as the Defendant.
 - f. Counsel failed to object or prevent co-defendant's letters from being entered into evidence or otherwise properly redacted.
2. “6th amendment entrapment statute.”
 - a. “Convicted on theory of co-defendants.”
3. “Hearsay testimony.”
4. “No DNA evidence or scientific proof to connect me with the...”
 - a. “actual innocence/no DNA evidence.”
5. “excessive sentence in violation of the 14th amendment U.S.C.A.”

An evidentiary hearing was held on April 16, 2015, at the Sumter County Courthouse. Petitioner was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. The Honorable George C. James, Jr. issued an Order of Dismissal signed on October 14, 2016, and filed on November 2, 2016, denying and dismissing the application with prejudice and granting Petitioner a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Petitioner filed a timely Notice of Appeal of the denial of her post-conviction relief application on November 22, 2016. Petitioner's Appendix, Petition for Writ of Certiorari, and Brief of Appellant Pursuant to White v. State were filed on July 14, 2017. This Brief of Respondent Pursuant to White v. State follows.

ARGUMENT

- I. **The trial judge did not abuse his discretion by choosing not to recuse himself from Petitioner's case where Petitioner's brother had burglarized the judge's home several years earlier because evidence in the record shows Petitioner was not in any way involved in the burglary case and there was no conflict or bias from the trial judge.**

Petitioner contends the trial judge abused his discretion by refusing to recuse himself where Petitioner's brother had pled guilty to burglarizing the judge's house six years prior to this case, resulting in the judge's appearance of impartiality being called into question. However, the trial judge properly disclosed the connection on the record and made a finding that there was no conflict of interest that would affect his impartiality in Petitioner's case. Because there was no actual conflict of interest, the judge's finding was not an abuse of discretion, and Petitioner's conviction should be affirmed.

The Code of Judicial Conduct requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned. Parker v. Shecut, 340 S.C. 460, 497, 531 S.E.2d 546, 566 (Ct. App. 2000), rev'd on other grounds by 349 S.C. 226, 562 S.E.2d 620 (2002) (citing Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (Ct.App.1994)). Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S.E.2d 856 (1993). It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias. Christensen v. Mikell, 324 S.C. 70, 476 S.E.2d 692 (1996); Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996).

During the trial, counsel for Petitioner stated on the record outside the presence of the jury that it had come to his attention that the presiding trial judge was the victim of a burglary several years before which had been committed by Petitioner's brother, Jamal Helton. App. 90. He explained that all parties had discussed this issue with the judge in chambers, and Petitioner's family was concerned about the impression of impartiality where he had been the victim of a crime to which Petitioner's brother pled guilty. App. 91. Counsel for Petitioner then asked the trial judge to recuse himself from her case based on a potential impartiality. App. 91. The trial judge made a finding on the record that there was no conflict of interest. App. 92. The trial judge explained:

THE COURT: I find there is no conflict of interest. I, like I said, I never even drew the correlation until you told it [to] me. And I didn't even know [Petitioner] existed. So there is no conflict."

App. 92, line 18-22.

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." State v. Laney, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

Here, the evidence in the record clearly supports the trial judge's finding that there was no conflict of interest and, accordingly, no potential impartiality. Counsel for Petitioner, the Solicitor, and the trial judge all agreed on the record that Petitioner was not involved in any way in the burglary of the trial judge's home. App. 90-92. The trial judge explained on the record that he did not know Petitioner was correlated in any way with the burglary. App. 92. There is no evidence whatsoever in the record of any bias from the trial judge. Accordingly, because

evidence in the record supports the trial judge's finding that there was no actual conflict of interest, the trial judge properly denied Petitioner's motion to recuse himself from the case, and Petitioner's conviction should be affirmed.

II. The trial court properly ruled on Petitioner's motion to redact Gary Dargan's letters where Petitioner did not object or ask the court to remove Petitioner's name from the letters because the use of her name did not implicate her in the crime.

Petitioner contends the trial court erred by not granting Petitioner's motion to completely redact and remove any reference to Petitioner from co-defendant Gary Dargan's letters as a violation of her rights to confrontation under Bruton v. United States, 88 S.Ct. 1620 (1968). However, this issue is unpreserved for appellate review because Petitioner did not object to the use of her name in the letters. Furthermore, the trial court committed no error in choosing not to order the redaction of her name or give a limiting jury instruction because the use of Petitioner's name in the letters did not implicate her in the crime. Therefore, the trial court did not err in its ruling, and Petitioner's conviction should be affirmed.

First, Petitioner's assertion that the trial court erred in failing to fully redact the letters and give a limiting jury instruction is not preserved for appellate review because Petitioner did not move for either of these actions or object to them at trial. The Bruton issues in Gary Dargan's letters were discussed on the record outside the presence of the jury before testimony about them was presented. App. 419-432. After the discussion, Counsel for Petitioner and the Solicitor worked together to redact all incriminating references of "he" and "she" to gender neutral language. App. 431. After the Bruton issues were resolved between the parties, Petitioner informed the trial court that they had agreed on a solution and he no longer had an objection under Bruton. Counsel for Petitioner specifically stated on the record why he chose not to object:

THE COURT: Have we worked out all the Bruton issues?

MR. KENT: We have, Judge. And as I discussed with you in chambers, we've gone over all of the discussions. There will be some points in which the actual name Shonta is mentioned. However myself and the solicitor would agree that those times would not implicate her.

THE COURT: So there is no objection.

MR. KENT: It would be no objection.

App. 432, line 9-17. It is well settled that an issue that has not been presented to or passed upon by trial judge will not be considered on appeal. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. Id. Therefore, because Petitioner did not object to this particular language, the trial court did not rule on the issue, and it should not be considered on appeal.

Moreover, even if the issue were preserved for appellate review, the trial court did not err in failing to redact Petitioner's name from Gary Dargan's letters because the use of her name in those specific incidents did not implicate her in the crime. Bruton applies in the context "where the powerfully incriminating extrajudicial statements of a co-defendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial." Bruton, 88 S.Ct. at 1620. The Supreme Court in Bruton held that a defendant's rights under the Confrontation Clause are violated by the admission of a non-testifying codefendant's statement that expressly inculcates a defendant, even if a cautionary instruction is given. State v. Evans, 316 S.C. 303, 450 S.E.2d 47 (1994). Error is harmless where it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

In the present case, Petitioner's name was used in portions of Gary Dargan's letters. However, none of the portions in which her name was used implicated her in the crime. For example,

Now I don't know what the fuck happened to Mario because all he did was pick **Shonta** up from by the curb. Bring her to and holler at me. Then drop her on south side at her friend's house. That's all he did. He don't know shit about the

murder or didn't know a murder was about to happen or didn't know anything was going to happen to Mario. He didn't find out that Mario and **Shonta** have got into something until the next day and we started hearing rumors he didn't have shit to do with this."

App. 463, line 8-18 (emphasis added). Although the letter mentions Petitioner's name, it does not implicate her in the murder. Therefore, Bruton does not apply, and and Petitioner's rights under the Confrontation Clause were not violated. The trial court did not err in failing to order the redaction of her name or a limiting jury instruction because the use of Petitioner's name was not a Bruton violation.

Accordingly, because the use of Petitioner's name in the letters did not implicate her in the crime, there was no Bruton violation, and the trial court properly allowed the letters to be read as they were entered into evidence. Therefore, Petitioner's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Brief of Respondent complies with Rule 211(b), SCACR.

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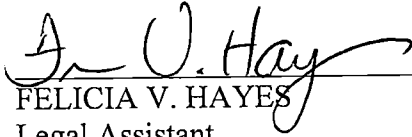
PROOF OF SERVICE

I, Felicia V. Hayes, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Robert M. Dudek, Esquire
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I further certify that all parties required by Rule to be served have been served.

This 27th day of November, 2017.


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