

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO LAURENS COUNTY
Court of Common Pleas
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-002510

PHILLIP ANDREW BRIDGES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF THE ISSUES

Did the post-conviction relief court properly determine Petitioner failed to establish Counsel was constitutionally ineffective for not filing a speedy trial motion as Petitioner's own actions were determined to be the cause of the delay and Petitioner's decision to enter a plea did not arise out of exhaustion but rather the desire to take advantage of the concurrent sentence recommended by the State?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Laurens County Clerk of Court. During its July 2009 term, the Laurens County Grand Jury indicted Petitioner for trafficking methamphetamine (2009-GS-30-825).¹ Assistant Public Defender Thomas Adducci of the Eighth Circuit Public Defender's Office represented Petitioner at the time of the plea hearing. Petitioner had previously been represented by Claude Howe, III, Esquire (hereinafter Counsel) in this case. Assistant Solicitor Jared Simmons of the Eighth Circuit Solicitor's Office prosecuted the case. On December 13, 2016, Petitioner appeared before the Honorable Alexander S. Macaulay and pled guilty to the lesser included offenses of possession with intent to distribute (PWID) methamphetamine. Pursuant to a recommendation from the State, Judge Macaulay sentenced Petitioner to five years imprisonment.² Petitioner did not appeal his guilty plea.

Petitioner filed his application for post-conviction relief on March 22, 2017, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel as to Claude H. Howe, III:
 - a. "Counsel failed to file a motion for a speedy trial. Applicant's case was pending for approximately seven years."
 - b. "Failed to request the Solicitor to dismiss charges once the charges against Greg Bridges and Junior Woods were dismissed."
 - c. "Counsel failed to present to the Solicitor the letter from the co-defendant wherein the co-defendant admits responsibility for the drugs at the residence."
2. Ineffective Assistance of Counsel as to Thomas J. Adducci, Esquire:

¹ In the Petition for Writ of Certiorari, Petitioner references two indictments that were obtained during the May 2013 term of the Laurens County Grand Jury. However, those indictments are for a Phillip Justin Bridges, not the petitioner here, Phillip Andrew Bridges.

² At the time of the plea hearing, Petitioner was serving two five year sentences in Greenville County for manufacturing methamphetamine (second offense) and possession of methamphetamine (third offense). Upon sentencing Petitioner, the plea court also allowed the start of Petitioner's sentence to be back-dated to a June 24, 2016, which is the date Petitioner began serving the two five year sentences. The back-dating prevented any actual time from being added to Petitioner's current sentence in Greenville County.

- a. "Counsel failed to file a motion for a speedy trial since Applicant's case was pending for approximately seven years."
- b. "Counsel failed to argue what the co-defendant had gotten as a sentence in Applicant's sentencing phase of his guilty plea, co-defendant has taken responsibility for the crime, and the Applicant was merely present at the residence at the time. See State v. Dennis, 321 SC 413, 486 S.E.2d 674 (Ct App 1996)."
- c. "Counsel failed to present to the Solicitor the letter from the co-defendant wherein the co-defendant admits responsibility for the drugs at the residence."
- d. "Counsel told Applicant he could not have a jury trial. But for counsel's statement that Applicant could not have a trial, Applicant would not have pled guilty and would have insisted on going to trial."

An evidentiary hearing into the matter was convened on October 11, 2017, at the Laurens County Courthouse before the Honorable R. Scott Sprouse. Petitioner was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office represented Respondent. At the hearing, Petitioner testified on his own behalf. Assistant Public Defender Thomas Adducci and Counsel also testified. By order filed November 27, 2017, Judge Sprouse denied Petitioner's application in its entirety finding that Petitioner failed to demonstrate either counsels' performances were unreasonable under prevailing professional norms. Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his petition for writ of certiorari.

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 (2018). On appellate review, courts give great deference 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. Id. at 179 (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); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] 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. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

ARGUMENT

The post-conviction relief court properly determined Petitioner failed to establish Counsel was constitutionally ineffective for not filing a speedy trial motion as Petitioner's own actions were determined to be the cause of the delay and Petitioner's decision to enter a plea did not arise out of exhaustion but rather out of the desire to take advantage of the concurrent sentence recommended by the State.

Petitioner asserts he plead guilty to PWID methamphetamine because he was exhausted by the delay in the prosecution of his charge and wanted to get his case resolved. However, as the lower court properly found, Counsel, through no fault of his own, lacked the opportunity to communicate with Petitioner while his charge was pending and Counsel's failure to file a speedy trial motion was not unreasonable since Petitioner could not be located. Petitioner also asserts he pled guilty because he was "exhausted" by the delay, however, Petitioner received a great benefit by pleading guilty. First, Petitioner was originally indicted for trafficking in methamphetamine and, by pleading guilty, he was able to plead guilty to the lesser included offense of PWID methamphetamine. Second, Petitioner was facing up to fifteen years imprisonment on this charge, however, by accepting the plea offer, Petitioner was able to receive the recommended five year sentence, which runs concurrent with the sentence he is already serving in Greenville County. Petitioner's Greenville County sentence and the PWID methamphetamine sentence max out at the same time, so Petitioner did not receive any additional time by accepting the plea offer. The lower court properly found Counsel was not deficient in his representation of Petitioner and the record clearly indicates Petitioner's guilty plea was voluntary and not induced by the unavoidable delay in his prosecution. Consequently, this Court should deny certiorari.

The right to a speedy trial is guaranteed under Sixth Amendment of the United States Constitution. "This right 'is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an

accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.” State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (citing United States v. MacDonald, 456 U.S. 1, 8 (1982)). “In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: 1) length of the delay; 2) reason for the delay; 3) the defendant’s assertion of the right; and 4) prejudice to the defendant.” Barker v. Wingo, 407 U.S. 514, 530, (1972). “The ultimate responsibility for the trial of a criminal defendant rests with the State.” Id. at 531. “Therefore, the court should weigh heavily against the State any intentional delays to impede the defense.” Id. “However, the Court must also consider and weigh the defendant’s contribution to the delay in determining whether the defendant’s Sixth Amendment rights have been violated.” Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (citing State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978)).

While it is true Petitioner’s case experienced a lengthy delay, Petitioner’s case falls short of meeting the requisite factors set forth in Barker for a speedy trial violation. “Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary or unreasonable.” Pittman, 373 S.C. at 549, 647 S.E.2d at 156. Here, Petitioner’s delay of seven years is a result of his incarceration on other charges and his failure to keep in touch with his attorneys. As this Court stated in Pittman, Petitioner’s contribution to the delay should be weighed in evaluating whether there has been a violation of his Sixth Amendment right to a speedy trial.

A major factor in the delay of Petitioner’s case was Petitioner’s failure to stay in contact with his attorneys. As Counsel and Mr. Adducci testified, their office was unable to locate Petitioner at times while his charge was pending. Counsel testified, “I couldn’t locate him for a

while and that kind of went on until actually I got off the case.” (App. 49.) Mr. Adducci, who was assigned the case after Counsel left the Public Defender’s Office, also testified Petitioner had a bench warrant at the time he inherited the case because Petitioner failed to appear in Laurens County for roll call in February 2015. (App. 56.) Mr. Adducci testified, “our office had not had contact with [Petitioner] in some time.” (App. 56.) In fact, it was nearly a year after Mr. Adducci was assigned Petitioner’s case that he received a call from Petitioner’s brother indicting Petitioner was in custody on a violation of probation and wanted to get his “hold” in Laurens County “cleared up.” (App. 57.) The “hold” stemmed from the bench warrant Petitioner acquired after failing to appear in February 2015. Within three months of that contact, Petitioner was before Judge Macaulay pleading guilty to his charge. It stands to reason had Petitioner maintained contact with Counsel or Mr. Adducci a resolution to his charge would have occurred well before his 2016 plea hearing.

Additionally, during the plea hearing, Petitioner had the opportunity to address the judge and, instead of expressing his “exhaustion” with the delay in his proceeding, he admitted his guilt, told the judge he believed he would be found guilty at trial, agreed with the facts presented to the court by the State, and requested the judge accept his plea and recommended sentence. (App. 7-8, 10) Petitioner actually testified, “I just ask for forgiveness and I am ready to get all of this behind me, sir.” (App. 11.) It is clear from the record Petitioner was aware of his constitutional rights – including his right to a trial- prior to waiving his rights on the record during his plea hearing. (App. 6.)

Although Counsel acknowledged Petitioner wrote him about filing a speedy trial motion, Counsel does not recall doing so and testified, “I doubt it would have been considered very seriously back then. That was just the way it was with the backlog.” (App. 50.) Counsel

testified that a backlog and change in administration at the Solicitor's Office contributed to the delay. (App. 50.)

The ultimate responsibility for the trial of a criminal defendant rests with the State. Therefore, the court should weigh heavily against the State any intentional delays to impede the defense. Where the reason for delay is more neutral, the court should weigh it less heavily against the State. A valid reason presented by the State may justify an appropriate delay. However, the Court must also consider and weigh the defendant's contribution to the delay in determining whether the defendant's Sixth Amendment rights have been violated.

Pittman, 373 S.C. at 549, 647 S.E.2d at 155.

There are no allegations before this Court indicating the delay was intentional on behalf of the Solicitor's Office in order to hinder Petitioner's ability to present a defense to his charge. Petitioner maintains that he is not guilty and was simply in the room with his brother while his brother was packaging methamphetamine. According to Counsel, the State's theory was constructive possession and Petitioner's defense at trial would have been "I knew nothing about it." (App. 51.) Mr. Adducci testified he would have taken the case to trial if Petitioner desired and told Petitioner his brother would be able to testify on his behalf at that time. (App. 61.) The ability for Petitioner to assert this defense at trial was not harmed by the delay in prosecution. Petitioner was aware he could have a trial in this case and instead he chose to forgo a trial and plead guilty to a lesser included offense.

Petitioner has failed to show how he has been prejudiced by the delay. In fact, Petitioner appears to have benefited from the delay. Mr. Adducci testified, the State offered a deal that allowed Petitioner to plead to a lesser charge and backdate his sentence so it would run concurrent with the other five year sentences he was currently serving on Greenville County charges. (App. 58.) Counsel testified in the beginning of Petitioner's case, "there was no offer,

it was just a plea to a trafficking in meth.” (App. 50.) He further testified, “I don’t think I ever even got a five year offer while I was involved.” (App. 50.) Based on this testimony, Petitioner seems to have benefited from his delayed prosecution because, not only did he plead to a lesser offense, but the backdated sentence was structured to run concurrent with two other five year sentences he was currently serving. Petitioner’s deal in this case did not add any additional days to the sentence he is already serving.

In light of the analysis of Petitioner’s case under the Barker factors, it is clear Petitioner’s own actions were the major factor in the lengthy delay of his prosecution. Petitioner has fails to show how he was prejudiced by the delay in this case. Petitioner’s claim that his guilty plea was induced by the delay is not supported by the plea hearing record. During the extensive colloquy with Judge Macaulay, Petitioner states numerous times he is guilty of the charge and, although he has several opportunities to address the court, he fails to discuss his speedy trial concerns at his plea hearing. The post-conviction relief court properly denied Petitioner relief in this case and this Court should deny certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari 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,

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By: 
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Nov. 28, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO LAURENS COUNTY
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The Honorable R. Scott Sprouse, Circuit Court Judge

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PHILLIP ANDREW BRIDGES,

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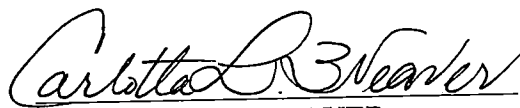
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

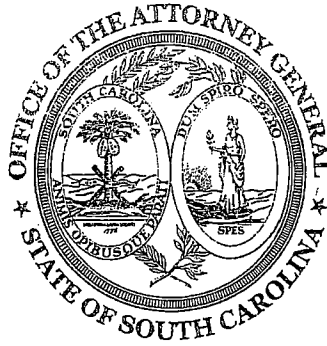
Victor R Seeger, Esquire
1330 Lady Street, Suite 401
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This 28th day of November, 2018



CARLOTTA L. WEAVER
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

November 28, 2018

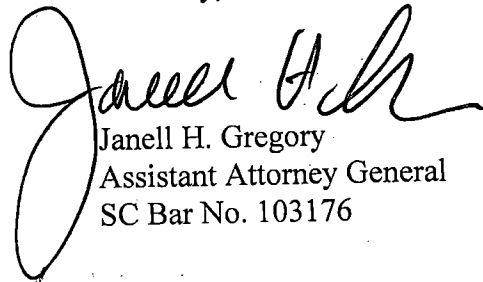
The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Phillip Andrew Bridges v. State of South Carolina
Appellate Case No. 2017-002510
Lower Court Case No. 2017-CP-30-0219

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,



Janell H. Gregory
Assistant Attorney General
SC Bar No. 103176

JHG/clw
Enclosures

cc: Victor R. Seeger, Esquire (2 copies)