

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CLARENDON COUNTY
Howard P. King, Plea Judge
D. Craig Brown, Post-Conviction Relief Judge

Appellate Case No. 2017-002415

ANTONIO TERRELL ROMEO,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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RESPONDENT'S STATEMENT OF ISSUES

Did the post-conviction relief court properly determine Petitioner failed to establish any constitutional deprivations entitling him to relief where Petitioner knowingly and voluntarily entered a guilty plea with the advice of competent counsel?

STATEMENT OF THE CASE

Petitioner Antonio Terrell Romeo is presently confined in the South Carolina Department of Corrections following his guilty pleas in Clarendon County. During its January 2016 term, the Clarendon County Grand Jury indicted Petitioner for two counts of second-degree criminal sexual conduct with a minor based on sexual conduct he engaged in with his girlfriend's minor daughter, including oral and penile penetration. He was represented on these charges by Scott L. Robinson, Esquire. Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office prosecuted the case on behalf of the State.

On April 4 and 7, 2016, Petitioner appeared in the Clarendon County Court of General Sessions before the Honorable Howard P. King, circuit court judge, and pled guilty as indicted. Pursuant to negotiations entered into between Petitioner and the State, the plea court sentenced Petitioner to ten years imprisonment suspended upon the service of five years with probation. Petitioner did not pursue a direct appeal.

On July 5, 2016, Petitioner filed a *pro se* application for post-conviction relief (2016-CP-14-00273), alleging the following grounds for relief:

- a. "I didn't see my [discovery] until after the trial. I made several attempts to view them, in and out of the attorneys office for close to a year. His office was provide with them less than two months before trial, I wrote his office in June 17 of this year."
- b. "I was not fully aware of my limitation in law of the courts, my attorney didn't remind me of this matter after trial, I was to upset to remind myself or whatever this was called, trial turned to plea, I was not adequately represented that's where the plea came in."
- c. "Minor told lies during her interview."
- d. "Minor gave conflicting stories throughout her forensic interview, DSS also have some documents when compare they don't add up."

- e. "There is a statement and audio of me being interviewed."
- f. "The date states that I could have been charge on the warrants before a crime could have even took place, two investigators and a Judge sign off on them without carefully reading them, warrants was defective and should have been corrected before being serve, the warrants and indictment have conflicting stories as well. The due process in the indictment is incorrect . . ."
- g. "I was not adequately represented, that's where the plea came in."
- h. "The indictments are defective and faulty. I am being held on fraudulent and illegal indictment. These matters should have been addressed before any other arraignments, or proceedings."
- i. "I never confessed to putting my penis in her vargina or molesting her in any manner what so ever."

On May 17, 2017, Respondent served its return to the application and requested an evidentiary hearing on the application. An evidentiary hearing was convened July 24, 2017, before the Honorable D. Craig Brown, circuit court judge. Petitioner was present alongside counsel Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. Petitioner testified on his own behalf. Respondent presented testimony from plea counsel. At the conclusion of the evidentiary hearing, Judge Brown took the matter under advisement.

Thereafter, Judge Brown denied relief, and, on August 27, 2017, issued a written order denying the application in full. This order was filed with the Clarendon County Clerk of Court on September 14, 2017.

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). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 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. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. 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

The post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations entitling him to relief where Petitioner knowingly and voluntarily entered a guilty plea with the advice of competent counsel.

On appeal, Petitioner argues the post-conviction relief court erred in finding he admitted to counsel and law enforcement that he committed the crime because there is no evidence in the record that he admitted to possessing criminal intent. Petitioner further asserts trial counsel failed to articulate what his strategy would have been had Petitioner proceeded to trial, which he asserts constitutes deficient performance. Petitioner further asserts he would not have pled guilty but for counsel's inability to craft a defense. Petitioner argues counsel was therefore constitutionally ineffective and this ineffectiveness warrants this Court vacating his guilty plea and remanding the matter back to the court of general sessions for a new trial. However, the post-conviction relief court properly found Petitioner did not meet his requisite burden of proof and denied relief. This Court should deny certiorari.

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. 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). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he 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, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Petitioner 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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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). Petitioner 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 Petitioner 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the

'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

At the evidentiary hearing, Counsel testified he reviewed all discovery materials with Petitioner, including Petitioner's statement to law enforcement wherein he acknowledges two instances of sexual contact between himself and the minor victim, both after heavy drinking. During the first incident, Petitioner claimed he awoke to the victim performing oral sex on him. During the second incident, Petitioner claimed he awoke to the victim engaging in sexual intercourse with him. (App. 102-103). Also in Petitioner's discovery was investigative notes revealing he had failed a polygraph examination pertaining to these incidents where he had given the same account to law enforcement. (App. 110-11). Petitioner's discovery also included the forensic interviewer's notes where the victim describes instances of oral sex and sexual intercourse. (App. 104-07). Counsel testified the version of events from Petitioner and the victim

were very similar except for who was the aggressor: the victim claimed Petitioner, who was a parental-type figure in the victim's life and had a child-in-common with her mother, had assaulted her, while Petitioner claimed the victim had assaulted him. Counsel testified that he discuss this with Petitioner and how it would be difficult to convince the jury that Petitioner had been sexually assaulted by the minor victim. (App. 78-82, 87). Counsel testified Petitioner ultimately elected to accepted a favorable plea offer from the State for a sentence of five years active imprisonment rather than proceed to trial and risk receiving a more significant sentence. (App. 84).

Petitioner testified similarly regarding his reasoning for accepting the State's plea offer:

I said, you know what, I said go and see if the Sate, see if they will take five. I don't have time to be playing 'cause I got two kids out here I, trying to get back home to, I don't have time to run around to be playing, to playing these mind games 'cause they're either gonna lead to where if we do go to trial, I'm gonna end up with these 20 years 'cause now it's like I don't see where you gonna represent me to the fullest of where I deserve to be represented.

(App. 62). Petitioner claimed he had never reviewed his discovery with counsel and did not receive a copy until after he arrived at SCDC. (App. 60, 66-67). He acknowledged the sexual contact between himself and the minor victim, but claimed he was assaulted by her. (App. 72).

After listening to the testimony of plea counsel and Petitioner, the post-conviction relief court found counsel's testimony was credible and that he had reviewed discovery and appropriately discussed the case with Petitioner before Petitioner elected to enter his plea. Conversely, the court found Petitioner's testimony was not credible and that he failed to show his plea was not voluntarily entered. These findings are supported by the record and should be afforded great weight. See Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 435 (2018) (“[W]e afford great deference to a PCR court's credibility findings.”).

Ultimately, Petitioner's guilty plea was induced not by any purported misadvice by counsel or claims that he was unaware of the evidence in his case, but by his own desire to secure a favorable plea offer for the lowest term of imprisonment possible. He asked counsel to secure a plea deal of five years, and once counsel was able to do so, elected to forego his right to trial and pled guilty. The post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations warranting relief and these findings are supported by the record. This Court should deny certiorari.


CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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MEGAN HARRIGAN JAMESON
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By: 
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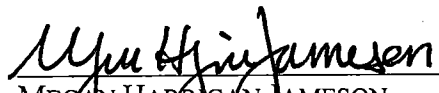
PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the interagency mail to be delivered to Petitioner at the address below:

Appellate Defender Joanna K. Delany
South Carolina Commission on Indigent Defense—Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 30th day of November, 2018.


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NOV 30 2018
S.C. SUPREME COURT

November 30, 2018

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

Re: Antonio Romeo v. State of South Carolina
Appellate Case No. 2017-002415

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Return to Petition for Writ of Certiorari in the above-referenced post-conviction relief appeal for filing with the Court. Petitioner is simultaneously being served with a copy of this brief.

Please let me know if I can provide anything additional to the Court on this matter.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
SC Bar No. 100108

MHJ/ks
Enclosures

cc: Joanna K. Delany, Esquire (2 copies)