

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO ORANGEBURG COUNTY

Court of Common Pleas
Hon. Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-001059

RECEIVED

JAN 24 2019

S.C. SUPREME COURT

RICHARD LANARD SPRINKLE MAVINS,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR WRIT OF CERIORARI

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW5

ARGUMENT7

**I. Evidence supports the PCR court’s determination that
 Petitioner’s shackles were not improperly displayed to
 the jury.7**

CONCLUSION.....9

TABLE OF AUTHORITIES

Federal Cases

Strickland v. Washington, 466 U.S. 668 (1984)..... 4, 5

State Cases

Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007)..... 5

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) 4

Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) 5, 6

Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016)..... 4

Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) 4

Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018) 7

Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992)..... 5

STATEMENT OF ISSUES ON CERTIORARI

I.

Evidence supports the PCR court's determination that Petitioner's shackles were not improperly displayed to the jury.

STATEMENT OF THE CASE

In October 2012, an Orangeburg County grand jury indicted Petitioner for two counts of armed robbery and one count of attempted murder. Petitioner was subsequently indicted for first degree burglary. Jillian D. Ullman, Esq. and Mark Wise, Esq. represented Petitioner. On April 8-10, 2013, Petitioner proceeded to trial before the Honorable Edgar W. Dickson. The jury found Petitioner guilty as indicted for both counts of armed robbery, first-degree burglary, and the lesser included offense of first-degree assault and battery. Judge Dickson sentenced Petitioner to imprisonment for thirty years for each count of armed robbery, ten years for first-degree assault and battery, and thirty-five years for first-degree burglary, all to run concurrently.

Petitioner filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense, Tina Cudari, Esquire, and Alexander E. Davis, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Petitioner's conviction on December 23, 2014. State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014). The remittitur was issued on April 28, 2015.

Petitioner filed a post-conviction relief (PCR) application filed on September 2, 2015. An evidentiary hearing was held before the Honorable Maite Murphy on February 27, 2018, at the Dorchester County Courthouse. Petitioner was present at the hearing and was represented by Jonathan Waller, Esquire. Petitioner testified on his own behalf. Petitioner also presented testimony from Jillian Ullman, Esq., and Mark Wise, Esq. ("Trial Counsel"). Respondent presented testimony from former Assistant Solicitor Sarah Ford, Esquire.

Petitioner's sole issue on appeal concerns his allegation that trial counsel allowed him to be viewed by the jury pool while shackled. Petitioner testified at the PCR hearing that he was wearing street clothes but was restrained with shackles, including a belly chain. App. 660. Trial

counsel could not remember specifically whether Petitioner was shackled during jury selection, but testified that he would not have allowed this to occur. App. 668. Trial counsel stated that it was his policy never to allow a defendant to appear before a jury while shackled. App. 668. Trial counsel Wise has been admitted to the practice of law since 1983 and practiced primarily in the field of criminal law. App. 678. The PCR court found trial counsel's testimony credible, and did not find Petitioner's testimony credible. App. 717. The lower court found Petitioner failed to demonstrate deficiency and resulting prejudice, and dismissed the PCR application. App. 723.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id.; Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

In a post-conviction relief action, an Petitioner has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an Petitioner alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (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. Strickland, 466 U.S. at 687. "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 Petitioner must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

Strickland, 466 U.S. at 689. “[E]very effort be made to eliminate the distorting effects of hindsight” and to evaluate counsel’s decisions at the time they were made. Id. Accordingly, courts must be wary of second-guessing counsel’s tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the petitioner must prove that 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, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the 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. 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. Strickland, 466 U.S. at 696. 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. Id. at 697. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id.

ARGUMENT

I.

Evidence supports the PCR court's determination that Petitioner's shackles were not improperly displayed to the jury.

Petitioner asks this court to overturn the PCR court's explicit finding of fact that Petitioner's shackles were not improperly displayed to the jury pool. Petitioner and trial counsel presented opposing testimony in this regard, and the PCR court found the experienced trial attorney credible and Petitioner not credible. App. 717. An appellate court will defer to the PCR court's credibility findings as to witnesses who testified before the PCR court. Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018), reh'g denied (June 12, 2018). Therefore, the PCR court's ruling is final in this regard and this is not a proper issue for appellate review. Even if Petitioner had been shackled during jury selection, he never testified that the shackles were visible to the jury (e.g. whether he was standing behind the bar that separates the court from the gallery). Therefore, even if the PCR court had believed his testimony in this regard, he did not adequately prove his allegation. Because evidence supports the lower court's ruling, this court must affirm.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BY: 

Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 24, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari from Orangeburg County
The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-001059

RICHARD L. SPRINKLE MAVINS, #172425, PETITIONER,

v.

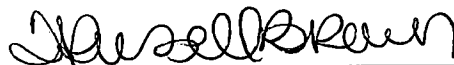
THE STATE OF SOUTH CAROLINA, RESPONDENT,

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
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29901**

This 24th day of January, 2019



TAMIEKA RUSSELL-BROWN
LEGAL ASSISTANT



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JAN 24 2019

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

January 24, 2019

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

Re: Richard L. Sprinkle Mavins, #172425 v. State of South Carolina
Appellate Case No. 2018-001059
Lower Court Case No. 2015-CP-38-1075

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,

Joshua A. Edwards
Assistant Attorney General
SC Bar No. 101188

JAE/trb
Enclosures

cc: Victor Seeger., Esquire (2 copies)