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STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-001777

ALONZO COLUMBUS JETER, III.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
S.C. Bar No. 102259
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

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ISSUES PRESENTED

I.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief due to improper sentencing enhancements where Petitioner failed to prove that Counsel was deficient in advising him to plead guilty to the charges and Petitioner was further not prejudiced by Counsel's conduct where the State had substantial evidence of Petitioner's guilt and the weight of the charges against Petitioner could have resulted in a sentence of life without parole rather than the fifteen year term of imprisonment Petitioner received pursuant to the terms of his guilty plea. (Petitioner's Issue III).

II.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to make factual challenges to the two indictments for distribution of methamphetamine within one-half mile of a park or school and Petitioner was not prejudiced whatsoever by any error where Petitioner would still be serving the same sentence regardless of whether the indictments at issue.

III.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to have Petitioner's mental competency examined where Petitioner made no statements or engaged in any behavior that would lead Counsel to question Petitioner's competency. Further, Petitioner failed to establish prejudice from Counsel's alleged error where he produced no evidence that he was actually mentally incompetent. (Petitioner's Issue I).

IV.

The post-conviction relief judge properly denied Petitioner's Motion for Discovery where Petitioner failed to establish good cause for the PCR judge to grant the motion.

V.

The post-conviction relief judge properly granted the State's Motion to Reopen the Record

STATEMENT OF THE CASE

Petitioner was charged with two counts of distribution of methamphetamine, third or subsequent offense (2015-GS-11-0461, 2015-GS-11-0463), two counts of distribution of methamphetamine within one-half mile of a park or school (2015-GS-11-0462, 2015-GS-11-0464), and one count of trafficking in methamphetamine 10–28 grams, third offense (2015-GS-11-0465). Petitioner was represented by Christopher Kennedy, Esquire. On July 16, 2015, Petitioner waived presentment to the grand jury on all charges and pleaded guilty to the lesser included offenses of two counts of distribution of methamphetamine, second offense, and trafficking in methamphetamine 10–28 grams, second offense. Pursuant to a negotiated recommendation of 15 years with all sentences being served concurrently, the Honorable Lee S. Alford sentenced Petitioner to imprisonment for concurrent terms of 15 years for each count of distribution of methamphetamine and trafficking in methamphetamine, and 10 years for each count of distribution of methamphetamine within one-half mile of a park or school.¹ Petitioner did not appeal his guilty plea or sentence.

During Petitioner's guilty plea, he indicated he wanted to plead guilty to all five charges he was facing. App. p. 9. Petitioner stated he was, in fact, guilty of all the charges he was facing. App. p. 15. After the solicitor provided the court with a factual recitation, Petitioner indicated he did not disagree in any way with the State's version of events. App. p. 17. After the plea judge asked what Petitioner's prior offenses were for enhancement purposes, the solicitor stated Petitioner had a 2005 conviction for possession of either methamphetamine or crack cocaine.

¹ Petitioner was also charged with possession of an ounce or less of marijuana (2014-GS-11-591), second offense, and pleaded guilty to that charge in the same proceeding. Judge Alford sentenced him to time-served. Petitioner does not challenge that conviction in his application.

App. p. 21. The solicitor further stated Petitioner had a 2013 conviction for possession of a controlled substance. App. p. 21.

On April 28, 2016, Petitioner filed an application for post-conviction relief (PCR) alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
 - a. "Counsel failed to investigate and request continuance. . . . A continuance would have given counsel more time to investigate, prepare for mitigation and bargaining, as well as time to discover the applicant's state of mind and needs."
 - b. "Counsel failed to challenge insufficient indictments."
 - c. "Counsel failed to present nor allow me to present mitigating evidence and factors at opportunity."
 - d. "Counsel failed to obtain the original plea offer of seven (7) years."
 - e. "Counsel failed to inform me of my right to appeal and make sure I understood what it was and how to do it."
 - f. "Charges were erroneously enhanced – Prior marijuana conviction should not have been used to enhance my charges. It also had been 11 years since my first conviction and therefore should not have been used to enhance."
2. Due Process Violation
 - a. "My constitutional rights of due process under the Fourteenth Amendment, and applicable case law, was violated as counsel failed to request a competency hearing."
 - i. Absent counsel's errors there is a reasonable probability that the evidence would have been reweighed and thus it would have been concluded that the balance of aggravating and mitigating circumstances did not warrant such harsh sentencing and punishment.
 - ii. Applicant also had the right to be competent when entering a guilty plea and a complete picture of the Applicant's mental condition would have established that the Applicant was suffering from a mental or emotional disturbance both at the time the crimes were committed and at the time of entering a plea of guilty.
 - iii. Due process prohibits this conviction therefore the conviction is illegal.
3. Lack of Subject Matter Jurisdiction

- a. "The court lacked subject matter jurisdiction to accept my guilty pleas."

The State filed its Return on November 15, 2016. An evidentiary hearing into the matter was convened on March 20, 2017, at the Spartanburg County Courthouse before the Honorable Robin B. Stilwell. At the conclusion of the evidentiary hearing, the PCR judge denied post-conviction relief with regard to Petitioner's two charges for distribution of methamphetamine and took Petitioner's claims as to the remaining charges under advisement. App. p. 113.

On June 30, 2017, the PCR judge held a hearing on a motion by the State to reopen the record in light of further investigation into Petitioner's criminal record. App. p. 121. Subsequently, on July 24, 2017, Judge Stilwell signed an order denying relief. App. pp. 174-88. On August 8, 2017, Petitioner filed a motion for reconsideration pursuant to Rule 59, SCRPC. App. pp. 193-95. The PCR court denied the motion on August 14, 2017. App. p. 209. On August 23, 2017, Petitioner timely filed a Notice of Appeal, appealing the PCR court's denial of his application for PCR. Petitioner filed his Petition for Writ of Certiorari and the Appendix on June 6, 2016. Petitioner subsequently made a Motion to Relieve Counsel and Proceed Pro Se. Petitioner's request was subsequently granted. On November 2, 2018, Petitioner filed his Pro Se Petition. This Return on behalf of the State now follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The appellate court will defer to a post-conviction relief court’s findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839-40 (2018).

ARGUMENT

I.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief due to improper sentencing enhancements where Petitioner failed to prove that Counsel was deficient in advising him to plead guilty to the charges and Petitioner was further not prejudiced by Counsel's conduct where the State had substantial evidence of Petitioner's guilt and the weight of the charges against Petitioner could have resulted in a sentence of life without parole rather than the fifteen year term of imprisonment Petitioner received pursuant to the terms of his guilty plea. (Petitioner's Issue III).

Relevant Facts

At the March 20, 2017, evidentiary hearing, Petitioner testified he pled guilty to a cocaine base charge in October of 2004 and that the ten year limitations period for enhancement purposes ended in October of 2014. App. p. 59. Petitioner stated the solicitor was incorrect when he said he had a 2005 cocaine base charge. App. p. 59. Petitioner also contended the solicitor erred when he told the trial judge that Petitioner had an August 2013 charge for the possession of a controlled substance because that charge actually pertained to the possession of marijuana. App. pp. 59-60. Petitioner clarified that the only prior offense that could have possibly been used for enhancement purposes was a 2004 conviction that was time barred at the time of his guilty plea. App. p. 61. Petitioner claimed that if he knew that the State was improperly enhancing his charge to a second or subsequent offense, he would have gone to trial instead of pleading guilty. App. p. 67. Petitioner stated Counsel was mistaken when he told him that any conviction would be his third offense because his only non-marijuana prior conviction was in 2004. App. p. 68.

Following Petitioner's testimony, the State called Counsel to testify. App. p. 80. Counsel stated Petitioner's first charge stemmed from an incident where Petitioner was in a garage behind

his home, Petitioner's mother did not know who was in the garage and called the police, and police subsequently arrived and found marijuana and methamphetamine. App. p. 83. Counsel testified Petitioner had a good defense as to that first charge because one of his co-defendants initially wrote a statement claiming the drugs were his, although there was apparently discussion later regarding whether that co-defendant would retract that statement. Counsel testified Petitioner's second round of charges stemmed from a controlled buy conducted by a confidential informant. App. p. 83. Counsel reviewed the video of the controlled buy and obtained two screenshots that showed Petitioner and his face. App. p. 84. Counsel noted he did not see any defects in the controlled buy procedure. App. p. 84. Counsel also discovered law enforcement found methamphetamine in Petitioner's sock. App. p. 89. Counsel testified, "Now I will say that in terms of the warrants even the first warrant was, um, a third or subsequent offense which was not accurate but and I can explain why I think that, you know, the second was valid later, but - - I think they had enough if they went to trial, perhaps not on the first charge, uh, on the other charges to convict him." App. p. 84. When asked whether Petitioner ever told him he was guilty, Counsel testified, "I believe he did," and added Petitioner never denied he conducted the transaction and never denied he had drugs in his sock. App. p. 89. Counsel noted that, as part of his preparations in the case, he reviewed a SLED report containing Petitioner's past convictions. App. p. 85. In explaining the charges Petitioner was facing, Counsel stated:

[H]e had a methamphetamine case that was fairly strong in his favor then he had two more distributions I believe and a trafficking, my understanding from the State was that they were going to try the cases individually which subjected him to a significant amount more time potentially if he were convicted consecutively and probably I think coulda been subject to a, an LWOP charge - - - if that were the case which obviously LWOP's life without parole, so, you know, he had the potential if he were found guilty individually on all the charges to be subjected to basically never getting outta prison again."

App. p. 91. Counsel testified it did not matter to him whether Petitioner's charges were second offenses or third offenses because the potential that the cases would be tried separately by the State would have increased his exposure to a much more substantial sentence regardless. App. p. 91. Counsel explained the guilty plea was designed to limit Petitioner's exposure to a significant jail term from his current charges. App. pp. 91-92. Counsel stated that, while he recommended Petitioner plead guilty, Petitioner was the one who ultimately made the decision to plead guilty. App. p. 92.

At the conclusion of the evidentiary hearing, the PCR judge denied post-conviction relief with regard to Petitioner's two charges for distribution of methamphetamine. App. p. 113. The PCR judge found that Counsel did not render ineffective assistance as to those two charges, and, even if Counsel had been ineffective, Petitioner was not prejudiced because he was sentenced within the maximum allowable range for a first offense. App. p. 113. The PCR judge took Petitioner's PCR claims as to the remaining charges under advisement. App. p. 113.

On June 30, 2017, the PCR judge held a hearing on a motion by the State to reopen the record in light of further investigation into Petitioner's criminal record. App. p. 121. At the hearing, the State explained it was discovered that Petitioner had two charges for possession of crack cocaine that Petitioner pled guilty to on October 12, 2004. App. p. 122. The charges stemmed from two separate indictments, 2004-GS-11-926, and 2004-GS-926, which resulted from two separate events. App. p. 122. The State noted that because of these charges, Petitioner's 2015 charge was subject to enhancement under Section 44-53-470 of the South Carolina Code. App. p. 122. The PCR judge agreed, stating, "now I see there were two convictions to substantiate a third." App. p. 143. The PCR judge noted Petitioner's 2004 convictions constituted

two “violations” as required by the language of § 44-53-70. App. p. 145. The PCR judge articulated his understanding of the statute and Petitioner’s offenses, explaining:

But the statute for an offense involving a controlled substance, which it is, okay, other than marijuana, which it is, pursuant to this article the offender has at any time, at any time, been convicted of a second or subsequent violation of a controlled substance offense provision, other than marijuana offense provision of this article, or of another state or federal statute related to narcotic drugs, depressants, stimulants, or hallucinogenic drugs, it can be considered a second or subsequent offense. So, under my reading of the statute, it seems pretty clear. Now, the only real room for disagreement is whether - - how you define a second or subsequent offense. And most courts have interpreted that as a numerical number and not the precise charges to which one is convicted. In this case, you got two. So, it wouldn’t matter if it was ten years or not. It would only matter where there were two and it happened in your lifetime. Okay. That’s my reading of it.

App. pp. 146-47.

On July 24, 2017, Judge Stilwell signed an order denying relief. App. pp. 174-88. In the order, the PCR court concluded that, because of the credible strategy behind his negotiations, Counsel was not ineffective for declining to challenge Petitioner’s enhancements. App. p. 185. In support of this conclusion, the PCR court pointed to Counsel’s testimony that his strategy was to negotiate a plea deal to allow Petitioner to plea to a lesser sentence because he believed the State could reasonably convict Petitioner on all three drug buys which would result in three strikes and a mandatory sentence of life without the possibility of parole. App. p. 184. The PCR court emphasized Counsel’s testimony that there was video evidence of Petitioner selling drugs and it was not likely that Petitioner would prevail at trial, thus making a guilty plea in Petitioner’s best interest. App. pp. 184-85. The PCR court further found Petitioner was not prejudiced by Counsel’s failure to challenge the charges against him because Petitioner had the requisite

charges to make his charge a second or subsequent offense under the enhancement statute. App. p. 185.

Discussion

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When an applicant 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. 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but

for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In the current case, Petitioner failed to prove that counsel was deficient and that he was prejudiced by any alleged error. Section 44-53-470 of the South Carolina Code provides that an offense is considered a second or subsequent offense if:

(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

S.C. Code Ann. § 44-53-470(A)(5). In Petitioner's case, as was established at the hearing after the State re-opened the record, Petitioner pled guilty to two charges of possession of crack cocaine in 2004 that stemmed from different indictments that related to separate events. The PCR judge properly concluded that Petitioner was thus subject to the enhancements under which he ultimately pled guilty. Counsel was thus not ineffective for failing to challenge the enhancement of Petitioner's 2015 methamphetamine convictions because Petitioner had the requisite predicate convictions.

Furthermore, Petitioner was not prejudiced whatsoever by Counsel not arguing Petitioner's charges were incorrectly being enhanced. Counsel testified that the State had video evidence of a controlled buy that showed Petitioner's face and the State thus had adequate evidence to convict Petitioner on most of the charges against him. Counsel added he believed Petitioner told him he was guilty, and further noted Petitioner never denied conducting the drug transactions and never denied he had drugs in his sock. Critically, Counsel testified it was immaterial whether Petitioner's offenses were second or third offenses because he believed the

solicitor would try the cases separately and that Petitioner would be subject to a mandatory sentence of life without parole. Counsel thus made a valid strategic decision to encourage Petitioner to plead guilty and receive a fifteen year sentence, given the strength of the case against him and the severity and number of charges he was facing. Critically, Counsel noted that, while it was his recommendation to plead guilty, Petitioner was the one who made the ultimate decision to accept the State's plea offer. Petitioner therefore failed to meet his burden to prove both deficiency on the part of Counsel and resulting prejudice. The writ of certiorari should be denied.

II.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to make factual challenges to the two indictments for distribution of methamphetamine within one-half mile of a park or school and Petitioner was not prejudiced whatsoever by any error where Petitioner would still be serving the same sentence regardless of whether the indictments at issue.

Relevant Facts

In his PCR application, Petitioner listed, "Counsel failed to challenge insufficient indictments" as one of the grounds for relief. App. p. 34. At the evidentiary hearing, Petitioner testified the charge of distribution within proximity to a park or school related to the proximity of Macedonia Baptist Church. App. p. 64. Petitioner testified the church only had a basketball goal, and there was not a school inside the church. App. p. 64. Petitioner testified he never mentioned these facts to Counsel because he thought Counsel knew the law on everything. App. p. 65.

Counsel testified, "in terms of investigation, I didn't know anything about the church but a church under the statute complies with the half mile. . . ." App. p. 85, Petitioner's PCR Counsel

subsequently argued the indictment was facially invalid because Petitioner was charged with distribution within proximity to a church rather than a school. App. p. 105.

In his Order of Dismissal denying relief, the PCR judge found Petitioner's challenge to the classification of the park was a factual argument against the State's evidence rather than a challenge to the sufficiency of the indictment. App. p. 183. The PCR judge ruled Counsel was not deficient for failing to challenge the classification as an attack on the sufficiency of the indictments. App. p. 183. The PCR judge further found Petitioner failed to prove prejudice because he knowingly and intelligently pled guilty to the offense and received a ten year sentence for the charges, which Petitioner is serving concurrently to his fifteen year sentence for his other charges. Even if the indictments at issue had been dismissed, Petitioner would still be serving a fifteen year sentence. App. p. 183.

Discussion

In his Petition, Petitioner claims Counsel failed to provide adequate advice concerning the charge for distribution within proximity to a park or school. Petitioner provides a lengthy description of the property that was not presented to the PCR judge, and avers Counsel was incompetent for advising him to plead guilty to the two charges. This argument lacks merit. Initially, Petitioner's argument is not preserved for appellate review where he failed to argue the specific grounds in his Petition at the PCR hearing. Critically, Petitioner framed the issue, and the trial judge subsequently ruled on the issue, as a failure by Counsel to challenge the sufficiency of the indictment. Petitioner has now changed his argument to advocate the position that Counsel's alleged misadvice concerning the proximity charge caused him to erroneously plead guilty to the charge. Issue preservation requires that an issue be raised to and ruled upon by

the trial judge; the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. Malloy v. Thompson, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731(1998)). An issue cannot be raised for the first time on appeal. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). A party cannot argued one ground below then argue another on appeal. State v. Hudgins, 319 S.C. 233, 237, 460 S.E.2d 388, 390-91 (1995). Prior to filing his Petition, Petitioner never argued Counsel was ineffective for misadvising him concerning possible defenses to his proximity charge. Instead, Petitioner argued Counsel failed to challenge insufficient indictments. Petitioner is therefore raising a new and distinct argument for the first time on appeal. The issue has not been properly preserved for review by this Court.

Error preservation concerns aside, the PCR judge properly concluded that Petitioner's arguments concerning the sufficiency of the indictments were factual challenges to the offense that Petitioner waived when he chose to plead guilty.² The PCR judge found Counsel's testimony that he saw no basis to challenge the indictments credible, and therefore properly concluded Counsel was not ineffective. All of the factual controversies concerning the church playground would have been sound argument to the jury or in a motion for directed verdict, however Petitioner chose to plead guilty instead of proceeding to trial.

The PCR judge also properly concluded Petitioner was not prejudiced by any error related to the indictments for distribution within proximity to a park or school. Petitioner knowingly and intelligently pled guilty to the offense and received a favorable ten year sentence, which he is serving concurrently to his fifteen year sentences for each count of trafficking in

² See State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (“[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.”)

methamphetamine and distribution of methamphetamine. Even if Counsel somehow got the indictments dismissed or if Petitioner decided to not plead guilty to the offense due to disagreement regarding the facts, Petitioner would still be serving the same sentence.

III.

The post-conviction relief judge properly found Petitioner was not entitled to post-conviction relief where Counsel was not ineffective for failing to have Petitioner's mental competency examined where Petitioner made no statements or engaged in any behavior that would lead Counsel to question Petitioner's competency. Further, Petitioner failed to establish prejudice from Counsel's alleged error where he produced no evidence that he was actually mentally incompetent. (Petitioner's Issue I).

Relevant Facts

At Petitioner's post-conviction relief hearing, Petitioner testified that at the time of his guilty plea, he was not, "in my, uh, right state a thinkin', I just, I couldn't ge - - I couldn't get myself together." App. p. 67. Petitioner added he was unable to think or help his attorney with the case. App. p. 67. Petitioner claimed he was having trouble in the jail and was physically assaulted and that he showed Counsel an injury to his face. App. p. 68.

Counsel testified he recalled Petitioner mentioning he was having issues in the detention center, but nothing in his discussions with Petitioner led him to think he did not know what was going on. App. p. 87 After being asked whether he saw anything that gave him cause to investigate Petitioner's mental health, Counsel stated:

No, he did have some records - - so when he first came in with me and I had these, I actually gave them back to his girlfriend after the plea, he had two folders full of information, uh, about some mental health background that he had applying for jobs, um, he'd actually been in school, um, but there was never a time that I met with him where I felt like he didn't know what was going on or anything like that. He did tell me that he was stressed out about being at the detention center, uh, and that he wanted to get out of the detention center, he's having issues with people there, - - - he did he say that he wasn't able to get, um,

all of the medication that he, uh, needed to take but there - - I was never given a prescription medication that would have, um, uh, he never gave me a name of any prescriptions, um, but as I said he never appeared to me to not well know what was going on while went over his rights with him prior to the plea, he seemed to understand those too.

App. p. 88. Counsel stated Judge Alford accepted Petitioner's guilty plea and he believed Judge Alford would not have accepted Petitioner's guilty plea if he thought Petitioner was not mentally capable of pleading guilty. App. pp. 88-89.

In his Order, the PCR judge found Counsel was not deficient in choosing not to challenge Petitioner's mental capacity because Petitioner always understood what was going on and did not appear to have mental issues. App. p. 186. The PCR judge further found Petitioner failed to meet his burden of proving prejudice because he never proved he actually lacked mental competency. App. p. 186.

Discussion

Petitioner contends Counsel was ineffective for failing to have his mental competency examined. This argument lacks merit. Counsel testified Petitioner seemed to understand what was going on and Petitioner never made any statements or engaged in any behavior that caused him to question Petitioner's mental health. Counsel thus was not deficient for not challenging Petitioner's competency when he had no cause to. Further, Petitioner failed to establish any resulting prejudice from Counsel's alleged deficiency. Petitioner did not present any evidence at the PCR hearing called his mental competency into question.

“Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” Tucker v. Ozmint, 350 F.3d 433, 442 (4th

Cir. 2003) (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). In the current case, Counsel testified there were no indications that Appellant’s mental competency was in question, as Petitioner’s actions and statements did not indicate he did not understand the proceedings or that his mental health was not good. While Petitioner indicated he was having disagreements with other inmates at the county jail, Petitioner did not offer any evidence that was affecting his mental health or influencing him to plead guilty. Counsel could not be deficient for failing to challenge the competency of a client who by all indications seemed competent.

Similarly, Applicant failed to establish any resulting prejudice from this alleged deficiency. Petitioner neither produced any medical records concerning his mental health “nor offered the testimony [of some mental health expert] in some other manner consistent with the rules of evidence,” what this additional testimony would have been, and similarly what her medical records would have shown, is “purely speculative.” Bannister v. State, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). Petitioner therefore failed to prove he was prejudiced by Counsel’s alleged error.

IV.

The post-conviction relief judge properly denied Petitioner's Motion for Discovery where Petitioner failed to establish good cause for the PCR judge to grant the motion.

Relevant Facts

At the beginning of the PCR hearing, Petitioner's PCR Counsel noted he filed a Motion for Discovery in the case. App. p. 51. PCR Counsel argued:

As you know on a PCR discovery is, uh, extremely limited, may be the most, uh, a a liberal way of saying it. Your Honor, my client, the underlying plea for which we're here about today involves, uh, drug transactions or alleged drug transactions that took place January 2nd, 14 and 15th of July of 2015, uh, he is requesting the SLED drug analysis and as, uh, as he terms it, I I use the drug analysis records as in my request, the BEST bags what he's asked for, uh, literally to contest the actual drug tra - - drug transaction of January 12th and, uh, there's a trafficking charge on the date of January 15th to, uh, to show that that charge would not lie because of the weight, we dispute or he disputes the weight of the, uh, the sale a as it's related in the indictment, he's also asking for medical records and disciplinary records with the Cherokee County Sheriff's Detention Center from January to July of 2015 to corroborate his mental condition at the time of the underlying guilty pleas, uh, related to this PCR, he's asking for his, uh, medical records from the Cherokee County Department of Mental Health to, uh, to corroborate his mental condition at the time of the underlying guilty plea, he is also asking since we're talking about the mental, um, records he's requesting, he's asking for his medal or his mental health or or mental treatment records from the SCDC, uh, since he's been in, uh, related to this plea, he is asking for the transcript from his, we'll say his August 2013 plea because that during that plea he had asked the Court for some assistance regarding his mental condition and; lastly, he is asking for family court transcripts in the case of Jeter vs. Jeter, that's Mr. Jeter and, uh, and his, uh wife?

App. pp. 52-53. Counsel for the State opposed the motion, noting the mater was not relevant because Petitioner pled guilty and waived his right to challenge the evidence. App. p. 54. The PCR judge asked Petitioner's PCR Counsel, "cause we're not talkin' about the underlying mental health evaluation at the time of the proceeding, we're talking about his continuous mental health records, correct." App. p. 55. Petitioner's PCR Counsel replied, "Correct, Your Honor." App. p.

55. The PCR judge indicated he would take the discovery matters under advisement. App. p. 56.

After hearing testimony from Petitioner and Counsel, The PCR judge ruled:

[W]ith respect to the discovery request, those discovery requests go not to whether or not the, there was ineffective assistance of counsel, they go to the weight, sufficiency of evidence, that was an issue which clearly in the plea was waived, um, therefore I I'm not going to continue or leave the record open for purposes of additional discovery. With regard to mental health records, um, the Applicant had the opportunity to take the stand and at a threshold give evidence regarding a lack of capacity, uh, and a lack of his ability to assist in his defense. I recognize that there may be records that, uh, the Applicant, Mr. Jeter, doesn't have access to because of, well because, uh, he wasn't able to subpoena the same, however, there are, there clearly based on the record is information, uh, and there are records which are within his control, um, and which he could have presented at trial to support his assertion that he was suffering from some sort of mental defect and that that significantly affected the underlying plea, however, the self-serving assertion that he couldn't get it together is not sufficient to meet the burden to demonstrate that he lacked mental capacity to, uh, to enter his plea at the time. . . .

App. pp. 111-12. The PCR judge also noted the record indicated there was an intelligent dialogue between Petitioner and the plea judge and Counsel indicated Petitioner was active in his representation during the negotiation of the plea. App. p. 112.

Discussion

Petitioner asserts the PCR court erred in denying his Motion for Discovery because it would have provided the PCR judge with facts and evidence of Petitioner's PCR claims. The PCR judge correctly found that the information sought by Petitioner in his discovery quest either was irrelevant for PCR purposes because he waived his right to challenge the evidence by pleading guilty or that the information was not necessary because Petitioner's testimony could have provided ample evidence to support his claims of mental health issues, however Petitioner failed to meet his burden.

Section 17-27-150 of the South Carolina Code provides:

(A) A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

(B) A party in a capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure.

S.C. Code Ann. § 17-27-150. In the current case, Petitioner failed to meet his burden under the statute to show good cause for the PCR court to grant his request. Petitioner sought information through his Motion for Discovery to: (1) challenge the sufficiency of the State's evidence, (2) offer mitigation evidence, and (3) provide information concerning his mental health that was not directly relevant because none of the mental health records sought addressed his mental health at the time of the plea. As was recognized by the trial judge, Petitioner waived his ability to challenge the sufficiency of the State's evidence and offer mitigation when he made the strategic decision to plead guilty to the charges and received a favorable sentence. Further, the PCR judge correctly noted that Petitioner could have presented testimony about his mental health at the time of the plea and how it affected his decision to plead guilty or assist in his defense, but Petitioner failed to provide any substantive testimony other than that he was not "in his right state of thinking." Petitioner thus failed to establish good cause that medical records from a time other than his guilty plea were necessary for the proceeding.

V.

The post-conviction relief judge properly granted the State's Motion to Reopen the Record

Petitioner contends the PCR Court erred in granting the State's Motion to Reopen the Record. Specifically, Petitioner avers that the PCR judge's allowance of the State to clear up Petitioner's prior convictions violated his Due Process rights under the Fourteenth Amendment. Petitioner's argument lacks merit. The PCR judge properly exercised his discretion by reopening the record and allowing the State to correct its early mistake as to what prior convictions of Petitioner's were used to enhance his current charges, as the PCR court needed to have correct information before it in order to accurately rule on Petitioner's application.

The manner in which a criminal trial is conducted is largely left to the sound discretion of the trial judge, and a ruling in this regard will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). A ruling on a motion to reopen the evidentiary record and to allow additional evidence or testimony is likewise addressed to the sound discretion of the trial judge. State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981). "A trial is a search for the truth; concomitantly, liberality is the linchpin of the rule." State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996).

In Petitioner's case, the trial judge properly acted within his discretionary authority in permitting the State to reopen the record and clarify Petitioner's criminal history because the testimony was necessary and relevant for a proper review of Petitioner's application for post-conviction relief. The State's presentation of Petitioner's two 2004 convictions for distribution of methamphetamine gave the trial judge the accurate information he needed to make a ruling on all of Petitioner's ground for relief. Petitioner cannot reasonably claim prejudice from the State

correcting the record to reflect Petitioner's full criminal history. This Court should deny certiorari.

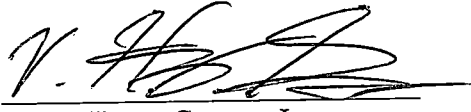
CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

By: 
V. Henry Gunter, Jr.
Bar # 102259

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 15, 2019.

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHEROKEE COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-001777

RECEIVED
FEB 15 2019
S.C. SUPREME COURT

ALONZO C. JETER, III,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

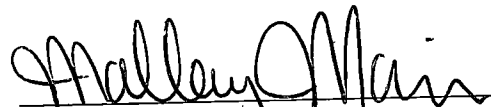
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **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:

**Alonzo C. Jeter, III, #282902
Dorm-Room-Bunk: U9-0216-B
Tyger River Correctional Institution
100-200 Prison Road
Enoree, SC 29335**

This 15th day of February, 2019.


MALLORY MORRIS
Legal Assistant for Respondent



RECEIVED
FEB 15 2019
S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

February 15, 2019

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

RE: Alonzo C. Jeter, III v. State of South Carolina
Appellate Case No. 2017-001777
Lower Court Case No. 2016-CP-11-0293

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
S.C. Bar No. 102259

VHG/mm
Enclosures

cc: Alonzo C. Jeter, III, #282902