

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 12 2019

S.C. SUPREME COURT

CERTIORARI TO HORRY COUNTY

Court of Common Pleas
Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2018-001820

SHANNON DEVANTE COOPER,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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

**The PCR court did not abuse its discretion when it held
Petitioner failed to demonstrate ineffective assistance of
counsel where Petitioner alleged counsel failed to relay
a plea offer but counsel testified Petitioner knowingly
rejected the offer.7**

CONCLUSION.....9

TABLE OF AUTHORITIES

Federal Cases

Strickland v. Washington, 466 U.S. 668 (1984) 3, 4

State Cases

Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) 4

Buckson v. State, 423 S.C. 313, 815 S.E.2d 436 (2018) 7

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) 3

Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) 4, 5

Goins v. State, 397 S.C. 568, 726 S.E.2d 1 (2012) 7

Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016) 3, 7

Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) 3

Solomon v. State, 313 S.C. 526, 443 S.E.2d 540 (1994) 8

Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) 4

STATEMENT OF THE ISSUE ON CERTIORARI

Petitioner alleged plea counsel failed to relay a plea offer. Counsel testified Petitioner knowingly rejected the offer. Did the PCR court abuse its discretion by denying relief?

STATEMENT OF THE CASE

In 2013, an Horry County grand jury indicted Petitioner for first degree burglary and kidnapping. In 2015, the grand jury returned an additional indictment for armed robbery. On April 20, 2015, Petitioner pled guilty before the Honorable Benjamin Culbertson to all charges and received a 22 year sentence on each charge, to be served concurrently. App. 99-101. J. Eric Fox, Esq. (plea counsel) represented Petitioner.

Petitioner filed a timely notice of appeal. By order filed July 1, 2015, the South Carolina Court of Appeals dismissed the appeal for failing to provide a sufficient explanation for appeal. The Remittitur was issued on July 20, 2015.

Petitioner filed an application for post-conviction relief on July 1, 2016. An evidentiary hearing into the matter was held before the Honorable Larry B. Hyman on May 25, 2018, at the Horry County Courthouse in Conway, South Carolina. Petitioner and plea counsel both testified. The PCR court denied relief in an order dated July 17, 2018. Petitioner filed a 59(e) motion to reconsider which was denied on September 4, 2018. This appeal follows.

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, a 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 a 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

The PCR court did not abuse its discretion when it held Petitioner failed to demonstrate ineffective assistance of counsel where Petitioner alleged counsel failed to relay a plea offer but counsel testified Petitioner knowingly rejected the offer.

Petitioner claims the PCR court erred by denying relief because he testified at the hearing that plea counsel failed to relay a 13 year plea offer and Petitioner ended up with a 22 year sentence. However, plea counsel disputed Petitioner's version of events, testifying he relayed the offer to Petitioner but Petitioner knowingly rejected the offer. The PCR court found plea counsel credible and Petitioner not credible. Petitioner's appeal is based on a disagreement with the PCR court's findings of fact, which are supported by the record. Certiorari should be denied.

Relevant Facts

Petitioner was arrested and charged in Horry County. He was not able to post bond. App. 140. Petitioner was on YOA parole at the time, and his parole was revoked in November 2013. App. 141. On January 9, 2014, Petitioner's was transferred to Turbeville Correctional Institute in the custody of the South Carolina Department of Corrections.

By letter dated the same day, the State sent Counsel a letter extending an offer to Petitioner to plead guilty to kidnapping in exchange for a sentence of 13 years. That letter provided an expiration date of February 28, 2014. On January 16, 2014, Counsel forwarded a copy of that letter and offer to Petitioner's address, an apartment at 4853 Meadowsweet Drive, Myrtle Beach, SC. Petitioner testified he never received Counsel's letter and that he did not learn of the offer until he returned to local detention in Horry County in July 2014. Petitioner asserted he told Counsel he wanted to accept the offer, but it had expired. App. 145.

Counsel testified he sent the letter to the address they had on file and that he had not been aware Petitioner was in Turbeville. App. 170. Counsel recalled speaking with the solicitor

during a roll call, at which time the solicitor informed Counsel orally that the offer was still open, despite the expiration date in the letter. App. 174-75. Counsel confirmed he met with Petitioner after he was transferred back to Horry County in July 2014 and discussed the plea offer with him at that time. Plea Counsel insisted he “absolutely communicated and discussed it with him, numerous times.” App. 184. Petitioner rejected the offer, telling counsel he would “not take 13, period.” App. 176. Counsel testified that after a motion for reduction in bond was denied in October 2014, Petitioner offered to plead guilty in exchange for a five year sentence. The solicitor rejected the proposal, but indicated the 13 year offer was still open. Counsel recalled Petitioner offered to plead in exchange for a 10 year sentence when they met in March 2015, but the solicitor rejected that proposal as well. Counsel testified Petitioner was still unwilling to accept a 13 year sentence in April 2015. App. 183-84.

Discussion

Petitioner and plea counsel presented conflicting accounts of what happened leading up to the plea. The PCR court believed plea counsel’s version of events. As the fact-finder, the PCR court’s determination is final. An appellate court is not free to make its own factual findings. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). Instead, an appellate court must give deference to the PCR court's factual findings, and must uphold them if there is any evidence of probative value to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). The PCR court's findings on matters of credibility are given great deference. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012); Solomon v. State, 313 S.C. 526, 443 S.E.2d 540 (1994) (appellate court deference to PCR judge's credibility findings is so great that it required the Court to uphold PCR judge's determination even where testimony at PCR hearing was unequivocally contradicted by the trial record).

Petitioner's argument rests entirely on his disagreement with the facts as determined by the PCR court. The record strongly supports the lower court's finding that plea counsel was credible and Petitioner was not credible. Plea counsel is an experienced criminal defense attorney who has practiced criminal law almost exclusively since 1994. App. 199. Petitioner is a criminal whose allegations are both self-serving and unbelievable. Certiorari should be denied.

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

2019

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Larry B. Hyman, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001820

SHANNON DEVANTE COOPER,

Petitioner,

v.

THE STATE,

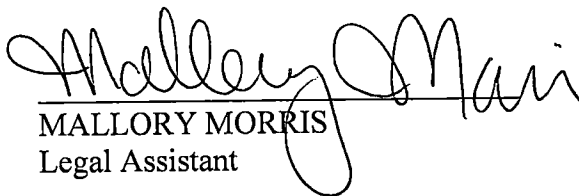
Respondent.

PROOF OF SERVICE

I, Mallory Morris, certify that I have served the within Return to Petition for Writ of Certiorari on Appellant by depositing two copies of the same in the U.S. Mail, addressed to:

J. Taylor Bell, Esquire
PO Box 1860
Lexington, SC 29071-1860

I further certify that all parties required by Rule to be served have been served.
This 12th day of April, 2019.


MALLORY MORRIS
Legal Assistant

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



ALAN WILSON
ATTORNEY GENERAL

April 12, 2019

RECEIVED

APR 12 2019

S.C. SUPREME COURT

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

RE: Shannon Devante Cooper v. State of South Carolina
Appellate Case No. 2018-001820
Lower Court Case No. 2016-CP-26-4435

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,

Joshua A. Edwards
Assistant Attorney General
S.C. Bar No. 101188

JAE/mm
Enclosures

cc: J. Taylor Bell, Esquire