

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Hon. Robin B. Stilwell, Circuit Court Judge
Appellate Case Tracking No. 2018-000751

RECEIVED

APR 25 2019

S.C. SUPREME COURT

Christopher Javier Cobb,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTIONS PRESENTED

I. The PCR court correctly concluded subject matter jurisdiction was not at issue for the acceptance of Petitioner's plea to assault and battery of a high and aggravated nature even though he was indicted for murder and there is no explicit waiver of presentment on the record.

STATEMENT OF THE CASE

Procedural History

In September of 2014, the Greenville County Grand Jury indicted Petitioner for murder and possession of a weapon during the commission of a violent crime. Carlyle Steele, Esquire, represented Petitioner. Assistant Solicitor Katryna Salisbury prosecuted the case. On April 4, 2016, Petitioner pled guilty to assault and battery of a high and aggravated nature (ABHAN) before the Honorable Edward W. Miller. The court deferred sentencing pending Petitioner's testimony in related cases. On December 6, 2016, Petitioner was sentenced by the Honorable Petty H. Gravely to ten years imprisonment which was suspended upon the service of four years and three years' probation. Petitioner did not appeal his conviction or sentence.

On June 13, 2017, Petitioner filed an application for post-conviction relief. (App. 27 – 34). It contained allegations of ineffective assistance of counsel, lack of subject matter jurisdiction, and prosecutorial misconduct. The State filed its Return and a Motion for More Definite Statement on or about October 11, 2017. (App. 35-41). An evidentiary hearing was held on December 11, 2017 before the Honorable Robin B. Stilwell. (App. 42). R. Mills Ariail, Jr. represented Petitioner, and DeShawn Mitchell appeared on behalf of the State. Judge Stilwell, by Order of Dismissal dated March 21, 2018, denied relief.

On December 21, 2018, Petitioner served and filed his Petition for Writ of Certiorari. This Return follows.

STANDARD OF REVIEW

The Court defers to the PCR court's factual findings and will uphold them if supported by any evidence in the record. Smalls v. State, 422 S.C. 174, 179–181, 810 S.E.2d 836, 839 (2018). Furthermore, the appellate court affords great deference to a PCR court's credibility findings. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012). Questions of law are reviewed *de novo*, and the Court will reverse the PCR court if its decision is controlled by an error of law. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

ARGUMENT

- I. **The PCR court correctly concluded subject matter jurisdiction was not at issue for the acceptance of Petitioner's plea to assault and battery of a high and aggravated nature even though he was indicted for murder and there is no explicit waiver of presentment on the record.**

The PCR court correctly found the circuit court had subject matter jurisdiction to accept a guilty plea to ABHAN. To the extent the issue is one of a lack of notice, the plea colloquy clearly indicates Petitioner had notice of the charge to which he was pleading guilty. Finally, even if the issue is an ineffective assistance of counsel claim for failing to inform Petitioner of the requirement of an indictment for ABHAN or a waiver of presentment, Petitioner has failed to establish his entitlement to relief because he never indicated the failure rendered his plea not knowing and voluntary or that he would have refused to plead guilty.

In order to establish a claim of ineffective assistance of counsel, Petitioner has the burden of proving "(1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case." McKnight v. State, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008). In order to establish prejudice when challenging a guilty plea, Petitioner must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial." Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018) (citing Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991)).

The South Carolina Supreme Court “abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment.” State v. Smalls, 364 S.C. 343, 346-347, 613 S.E.2d 754, 756 (2005) (citing State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) and Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005)). Noting the circuit court is the general trial court with original jurisdiction in civil and criminal matters, our Supreme Court determined an indictment is not necessary for the circuit court to acquire subject matter jurisdiction. See S.C. Const. Art. V, § 11 (“The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.”). The presentment of an indictment or a waiver of that presentment is no longer required to establish the subject matter jurisdiction of the court. See Gentry, 363 S.C. at 101–02 n. 6, 610 S.E.2d at 499 n. 6 (“We note that a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court.”).

While, the Court concluded an indictment is a notice document required by our state constitution and statutes, Smalls, 364 S.C. at 346-347, 613 S.E.2d at 756, Petitioner never raised his challenge as a constitutional infirmity or a lack of notice. He specifically raises an argument related solely to the lack of subject matter jurisdiction. As a result, this Court is only asked to consider whether the circuit court had subject matter jurisdiction over his plea to ABHAN. Clearly, based on Gentry and the cases since Gentry, a circuit court in South Carolina can hear a plea to ABHAN.

Even if Petitioner’s argument can be construed as one involving a lack of notice or ineffective assistance of counsel for failing to require a waiver of presentment or new true-billed

indictment, the PCR court correctly determined Petitioner suffered no prejudice and received the benefit of the bargain he knowingly and voluntarily sought. The plea colloquy clearly indicates Petitioner knew he was originally indicted for murder, but was pleading guilty at that time to ABHAN. He had notice of the charges being brought against him and was able to sufficiently determine whether to plead guilty to ABHAN. As found by the PCR Court, and not challenged on appeal, Petitioner “freely, voluntarily, knowingly, and intelligently” pled guilty to ABHAN and received a significantly reduced sentence in comparison to the minimum 30 year sentence he faced on the murder charge. (App. 72). Finally, Petitioner never presented any evidence, through his testimony or otherwise, that he would not have pled guilty to ABHAN had he known the requirement of either an indictment for ABHAN or a waiver of presentment. He also never indicated he would not have been willing to waive presentment. As a result, he cannot demonstrate how he was prejudiced by the failure to challenge the lack of an indictment for ABHAN or the failure of the plea court to obtain a waiver of presentment. See Hill v. Lockhart, 474 U.S. 52, 59 (1985) (“[I]n order to satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.”).

Accordingly, the plea court had subject matter jurisdiction to hear Petitioner’s plea to ABHAN. Additionally, Petitioner clearly had sufficient notice of the charge for which he was knowingly and voluntarily pleading guilty as the charge was discussed throughout the plea colloquy. Finally, Petitioner never proved how he was prejudiced by the failure to obtain a waiver of presentment or a new indictment because he never indicated he would not have chosen to plead guilty to ABHAN but for the errors. As a result, this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Attorney General

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S.C. Bar No. 15608

BY: 

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ATTORNEYS FOR RESPONDENT

April 25, 2019

STATE OF SOUTH CAROLINA

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Hon. Robin B. Stilwell, Circuit Court Judge
Appellate Case Tracking No. 2018-000751

Christopher Javier Cobb,

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v.

State of South Carolina,


Respondent.

PROOF OF SERVICE

I, Judy A.C. Carey, certify that I have served the within Return to Petition For Writ of Certiorari by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Taylor D. Gilliam, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 25th day of April, 2019.


JUDY A.C. CAREY
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ALAN WILSON
ATTORNEY GENERAL

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S.C. SUPREME CO

Taylor D. Gilliam, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

Re: Christopher Javier Cobb v. State of South Carolina
Appellate Case Tracking No. 2018-000751

Dear Mr. Gilliam:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

cc: ~~Honorable Daniel E. Shearouse (original and six enclosed)~~
Victim Services (enclosure)