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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post-Conviction Relief

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2018-001333

Corey Edmond, Petitioner,

vs.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the post-conviction relief court err in not granting relief on the basis that trial counsel was ineffective in not requesting a hearing pursuant to Blair¹ when she knew that Petitioner had severe mental health concerns and had earlier been found incompetent?

¹ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Petitioner was indicted during the December 2003 term of the Richland County Grand Jury for one count of carjacking with bodily injury and one count of armed robbery (2003-GS-40-6963, -6962). Petitioner proceeded to a jury trial on April 11, 2005 but entered a guilty plea to the charges as indicted. April Sampson, Esquire, represented Petitioner. On April 11, 2005, the Honorable James W. Johnson, Jr. sentenced him to a term of imprisonment of twenty-five (25) years for each indictment to be served concurrently. Petitioner did not appeal his conviction or sentence.

Petitioner filed an application for post-conviction relief, by and through Robert W. Mills, Esquire, on January 18, 2006 along with a first addendum. A return was filed June 13, 2007 by the State, and Petitioner filed a second addendum July 7, 2014. An evidentiary hearing on Petitioner's Application was convened on July 15, 2014, at the Richland County Courthouse. Petitioner was represented by Robert W. Mills, Esquire. J. Croom Hunter, Esquire represented the Respondent. An Order of Dismissal was signed by the Honorable L. Casey Manning on August 4, 2016. A timely Notice of Appeal was filed.

STATEMENT OF FACTS

Petitioner, Corey Edmond, was indicted during the December 2003 term of the Richland County Grand Jury for one count of carjacking with bodily injury and one count of armed robbery (2003-GS-40-6963, -6962). The Petitioner pled guilty as indicted on April 11, 2005 before the Honorable James W. Johnson, Jr. At the entry of the plea, Judge Johnson inquired regarding Petitioner's mental status and competence. Both Petitioner and trial counsel represented to the Court that Petitioner's symptoms were managed, and he understood what was occurring that day.

An Application for Post-Conviction Relief was filed January 18, 2006 along with a first addendum. The Application alleged ineffective assistance of trial counsel on several grounds: trial counsel did not have Petitioner evaluated for competence on the day of the plea; trial counsel assured Petitioner he would receive a ten year sentence; trial counsel did not have any meaningful discussions with Petitioner regarding the events on the day of question in the indictment, including failure to discuss facts necessary to fully challenge the indictment through legal motions and other defenses, leaving Petitioner unable to enter a knowing and intelligent waiver of his constitutional rights. A return was filed by the State on July 17, 2007. A second addendum was filed July 7, 2014, alleging that trial counsel's failure to hold a Blair hearing on the day of the plea constituted ineffective assistance of counsel. The hearing on the post-conviction relief application and addenda was held July 15, 2014 before the L. Casey Manning. Petitioner was represented by Robert W. Mills, Esquire. The State was represented by J. Croom Hunter, Esquire.

The underlying incident was that, on September 3, 2003, Petitioner entered Victim's vehicle and demanded Victim drive him up the street to a beauty salon. Solicitors stated that this was owned by Petitioner's sister, who had previously stated that Petitioner was disheveled, unkempt, may have been on drugs, and she had to call the police to have him removed. Victim waited while Petitioner was inside and, once Petitioner returned to the vehicle, Petitioner instructed victim to drive to another destination. At the plea, solicitors informed the court Victim stated Petitioner was reaching into his shirt as if he had a gun. Petitioner demanded Victim to hand over his wallet, from which Petitioner removed \$15.00 in cash. When the vehicle stopped, Petitioner opened the driver's door and pushed Victim to the street. Victim suffered a broken hip and, potentially due to side effects of medical treatment received as a result of this injury, died before the plea was entered.

In the Petitioner's Application for Post-Conviction Relief, he alleges two main grounds:

1. Ineffective assistance of counsel for
 - a. Failure to have Petitioner evaluated on the day of the plea;
 - b. Misinforming Petitioner regarding expected sentence;
 - c. Lack of preparation of Petitioner for plea;
 - d. Failure to request a Blair hearing; and
 - e. Failure to discuss potential conflict of interest with Petitioner.
2. Involuntary guilty plea.

The first witness at the post-conviction relief hearing was Dr. Geoffrey McKee, a forensic psychologist who met with and evaluated Petitioner on multiple occasions. He

was asked by trial counsel to evaluate Petitioner regarding competency to stand trial and Petitioner's mental state at the time of the offense. App. 67;24-68;3. Dr. McKee testified that Petitioner was competent when on the appropriate medications and those medications were being taken properly; however, there were several times when Dr. McKee met with Petitioner and Petitioner was not competent. He further testified that Petitioner was competent during their last meeting on November 19, 2004, but he did not see Petitioner between that date and the day of his plea, April 11, 2005. App. 69;2-7. Dr. McKee concurred with prior diagnoses of bipolar disorder, alcohol dependence, and poly-substance dependence, including cannabis and cocaine. App. 70;21-24.

Dr. McKee further testified that competency is fragile and always changing, so it is his policy to evaluate a defendant the day of their plea or trial. App. 72;12-73;6. Specifically, he testified that "competency is a contemporaneous issue, which is to say that mental competency or non-competency is perceived as to the Defendant's mental state at the time of the [Blair] hearing, not at the time of the trial." App. 73;23-74;2. On cross-examination, Dr. McKee testified that he had no way of knowing if Petitioner was competent between his last visit and the day of the plea, or on the day of the plea itself, as he had no way to know if Petitioner was in compliance with his medication regimen. App. 76;13-77;2.

Angela Riles, Petitioner's common law wife, testified regarding the fact that she understood trial counsel to have promised Petitioner a ten-year sentence. App. 81;24-82;19. Based on that discussion, she stated, Petitioner elected to plead guilty. After a chambers conference, though, Petitioner was given a twenty-five-year sentence. App. 82;21-83;6.

Petitioner, Corey Edmond, testified next, and it was reiterated that Dr. McKee found him competent the morning of the post-conviction relief hearing. Through questioning, Petitioner stated that he saw trial counsel several times, though there were delays due to her maternity leave, and also saw Dr. McKee several times. He also recalled reviewing his discovery with trial counsel. He further testified that he had not had his afternoon medication the day before the plea, and that was the bulk of his medication. App. 89;2-21. He confirmed that he thought he was heading to trial the day of the plea, and would not have pled if he thought he would get more than ten years, plus he was unaware why anyone would mention that he was schizophrenic, as he had never received that diagnosis. App. 90;19-92;8. Petitioner further testified that he was confused by the questions and answered them the way his lawyers instructed him. App. 95;1-20.

The State called trial counsel, April Sampson, to testify regarding her experience as defense attorney. She testified that she prepared for the case like any other, including explaining the charges, reviewing the discovery, and meeting with Petitioner. She testified that he was adamant he did not have a gun, so they attempted to get a reduced charge, but his defense at trial would be that he did not attempt to steal the car so it would not be an armed robbery, and he would be looking at time served. App. 103;23-104;6. Further, she testified that Petitioner had made a confession to the police, but he never signed it. App. 104;7-19.

Trial counsel testified extensively about his conversation with Ms. Riles (Petitioner's common-law wife) to get information about his mental health diagnoses and medication status while in jail. This included information that Petitioner heard voices and used drugs to help dull the voices. App. 106;7-24. Trial counsel felt that she and

Petitioner were not communicating adequately, so she began setting up an evaluation with the usual doctor, but eventually reached out to Dr. McKee due to problems in scheduling. App. 107;5-108;16. She further testified that the goal was to get Petitioner medicated and to a facility that would prioritize proper medication. App. 108;17-109;6. She recalled Dr. McKee stating that “as long as [Petitioner] had his medications, he would be competent.” App. 112;12-14. Because of this, as well as her personal impression, conversations with the doctor at the jail and Ms. Riles, trial counsel did not ask for a Blair hearing. App. 112;15-25.

Trial counsel testified that until the day of the plea, Petitioner wanted a trial. App. 113;14-17. He stated that he would only plead “if it were to strong arm [robbery] and carjacking. Not to the armed robbery.” App. 113;14-18. They further discussed his pleading to carjacking then proceeding to trial on the armed robbery, as we denied having a weapon. App. 11;21-25. Regardless, she testified that Petitioner ultimately decided to “plead to exactly what [he] did” and she knew she “never said that he would definitely get ten years.” App. 114;1-7. On cross-examination, trial counsel testified that a judge never ruled on Petitioner’s competency because “Dr. McKee had [sic] did not have anything to do with criminal responsibility and he found [Petitioner] was competent at the time, no, I didn’t request a hearing.” App. 115;24-116;2. She further elaborated that, by the time they were speaking in the courtroom, Petitioner had decided “he wanted to plead ... he didn’t think he would win at trial.” App. 118;6-8.

Post-Conviction Relief Court’s Findings

Involuntary Guilty Plea

The post-conviction relief court found Petitioner's testimony not to be credible regarding trial counsel's failure to prepare him for the plea. The court referred to the guilty plea transcript and the fact that it met all required criteria, reasoning that Petitioner likely realized he could have gotten more time by going to trial but is unhappy with the outcome. Regarding the promise of a ten-year sentence, the court found trial counsel's testimony to be more credible, including that she believed pleading was in his best interest and she never promised a certain sentence, only that she would try to get him what he wanted.

Ineffective Assistance of Counsel

In its order, the post-conviction relief court recounted the testimony of Dr. McKee, Petitioner, and trial counsel as they related to the allegation that trial counsel should have requested a Blair hearing. Ultimately, the post-conviction relief court relied on Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) for the proposition that an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea and, further, for the idea that counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. The court further found trial counsel and Dr. McKee's testimony credible while Petitioner's was not.

ARGUMENT

Did the Lower Court err in not granting Post-Conviction Relief on the basis that trial counsel was ineffective in requesting a hearing pursuant to Blair when she knew that Petitioner had severe mental health concerns and had earlier been found incompetent?

Standard of Review and Applicable Law

For post-conviction relief cases

In post-conviction relief actions, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant 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, 104 S.Ct. 2051 (1984); Butler, 286 S.C. at 442. The proper measure of performance is whether the attorney provide representation within the range of competence required in criminal cases. The court presume the counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Counsel’s assistance is considered constitutionally ineffective when “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland, 466 U.S. at 687-88.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Franklin v. Catoe, 346 S.C. 563, 570, 552, S.E.2d 718, 722 (2001). First, the applicant must prove that counsel’s performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, 286 S.E.2d at 625.

For post-conviction relief appeals

The standard of review in post-conviction relief cases is entirely dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). During review of factual findings made by the post-conviction relief court, the appellate court will defer to the findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Alternately, when reviewing a question of law, an appellate court will consider the matter *de novo* and is not required to defer to the post-conviction relief court's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

The post-conviction relief court erred in not granting relief on the basis that trial counsel was ineffective in not requesting a hearing pursuant to Blair when she knew that Petitioner had severe mental health concerns and had earlier been found incompetent.

Petitioner asserts his trial attorney as ineffective for failing to have him evaluated for competency on the day of the guilty plea and for failing to request a Blair hearing. At the post-conviction relief hearing, Petitioner testified he had been suffering from mental disorders for years and that he was prescribed medications to treat the same. Trial counsel was aware of these disorders and testified that they were severe enough to impede communications between she and Petitioner, thus leading her to seek an evaluation for

Petitioner. An evaluation was performed by Dr. Geoffrey McKee, which resulted in a letter to trial counsel dated December 4, 2004. This letter stated that, on several instances before November 1, 2004, Petitioner was not competent to stand trial due to his bipolar disorder but, on November 1, 2004, Petitioner as competent. At the post-conviction relief hearing, Dr. McKee testified that Petitioner's competence, like most, was fragile and had some likelihood of recurrence. He further testified that Petitioner's competence depended greatly on whether he was receiving his prescribed medications at the appropriate times.

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).

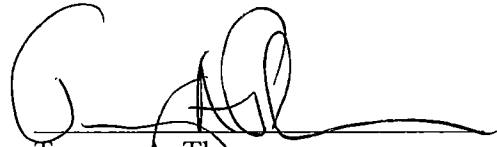
Here, trial counsel did not articulate a valid reason for not having Petitioner evaluated on the day of the guilty plea, nor for failing to request a Blair hearing. "Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." Jeter, 308 S.C. at 232, 417 S.E.2d at 596. In a post-conviction relief action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea. Id., 308 S.C. at 232, 417 S.E.2d at 596. In order to find Petitioner's trial counsel was ineffective for refusing to request a Blair hearing, he must show that counsel was deficient, and the deficiency prejudiced the

outcome of his proceedings. See Strickland, generally. In Jeter, this Court proclaimed that in proving prejudice as defined by Strickland within the context of counsel's failure to fully investigate a petitioner's mental capacity, "the [petitioner] need only show a 'reasonable probability' that he was either insane at the time [of the crime] or incompetent at the time of the plea." Matthews v. State, 596 S.E.2d 49, 358 S.C. 456 (2004), citing Jeter, 308 S.C. at 233, 417 S.E.2d at 596. See also Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966) (Holding a hearing regarding competency is necessary under the due process clause of the Constitution of the United States.); "Section 44-23-430 provides a competency to stand trial hearing 'shall' be held after a psychiatric examination has been ordered under Section 44-23-410." Blair, *supra*.

Through the testimony of Dr. McKee, Petitioner, and Angela Riles, Petitioner clearly established by a preponderance of the evidence there was a reasonable probability that he was incompetent at the time of his guilty plea and was, therefore, prejudiced by trial counsel's failure to request a Blair hearing. Similarly, by failing to have Petitioner examined for competency on the day of the plea and also failing to move for a Blair hearing, trial counsel fell below an objective standard of reasonableness. Cherry, *supra*. Whether viewed separately or in conjunction, the actions of trial counsel did not provide Petitioner with advice in the range of competence demanded of attorneys in criminal cases. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985); Shirley v. State, 306 S.C. 241, 411 S.E.2d 215 (1999). Therefore, Petitioner's petition for writ of certiorari should be granted, and the post-conviction relief court's ruling should be reversed.

CONCLUSION

The post-conviction relief court's decision should be reversed, and Petitioner should be granted a new trial.

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', with a long horizontal flourish extending to the right.

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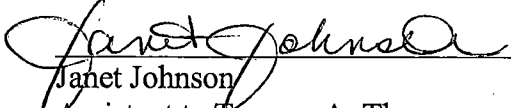
v.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Janet Johnson, assistant to Tommy A. Thomas, Attorney for Appellant, hereby certify that I hand delivered, a copy of the Petition for Writ of Certiorari and Appendix on this date with postage prepaid and the return address clearly shown on said envelope addressed to:

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