STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY
Court of Common Pleas
Kristi F. Curtis, Post-Conviction Relief Judge
W. Jeffrey Young, Plea Judge

Appellate Case No. 2018-002041

CHARLES GARY SINGLETARY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JANELL H. GREGORY
Assistant Attorney General
SC Bar No. 103176

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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PETITIONER'S STATEMENT OF THE ISSUE ON APPEAL

Did the PCR judge err in refusing to find plea counsel ineffective for failing to have Petitioner evaluated to determine criminal responsibility and capacity to conform?

RESPONDENT'S STATEMENT OF THE ISSUE

Did the post-conviction relief court properly find Counsel was not constitutionally ineffective for failing to have Petitioner's mental health evaluated for criminal responsibility prior to his guilty plea where Counsel had no reason to believe Petitioner could not distinguish right from wrong and conform his behavior at the time of the crime and Petitioner failed to establish he would have been deemed not criminally responsible had counsel had him evaluated?

a. Did the post-conviction relief court properly find Counsel was not deficient in his representation of Petitioner as Counsel credibly testified he did not think an evaluation for criminal responsibility was necessary because, based on their discussions, Counsel reasonably believed Petitioner could distinguish right from wrong at the time of the crime, thereby negating any need for an evaluation to determine criminal responsibility?

b. Did the post-conviction relief court properly find Petitioner failed to show any resulting prejudice from Counsel's failure to have him evaluated for criminal responsibility where Petitioner failed to establish he was not criminally responsible for the crime?

STATEMENT OF THE CASE

Charles Gary Singletary (Petitioner) is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's order of commitment. During its August 2014 term of court, Sumter County Grand Jury indicted Petitioner for murder, attempted murder, second degree assault and battery, and possession of a weapon during the commission of a violent crime (2014-GS-43-0714). Petitioner was represented by Calvin Hastie, Esquire (Counsel). Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case. On April 12, 2016, Petitioner appeared before the Honorable W. Jeffrey Young, circuit court judge, and pled guilty as indicted to murder, attempted murder, and second-degree assault and battery. Pursuant to a negotiations entered into between Petitioner and the State, Judge Young sentenced Petitioner to imprisonment for forty years for murder, thirty years for attempted murder, and three years for assault and battery to run concurrently. Petitioner did not appeal his guilty plea or sentence.

Petitioner then filed his application for post-conviction relief on March 27, 2017, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
    a. Failure to properly prepare and investigate
    b. Failure to ensure that plea was knowingly and voluntarily entered
    c. Failure to properly address issues involving mental health
2. Involuntary Guilty Plea[1]

[1] During the evidentiary hearing, testimony was elicited from Petitioner regarding Counsel's failure to investigate or call alibi witnesses. The lower court allowed Petitioner to hold the record open for thirty days to supplement the record with additional testimony from the potential alibi witnesses. However, Counsel later informed the lower court that there would not no additional testimony needed in this matter.

Lance S. Boozer, Esquire, represented Petitioner in his PCR action. A hearing was held on July 25, 2018, at the Sumter County Courthouse before the Honorable Kristi F. Curtis, circuit court judge. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office represented Respondent. Petitioner proceeded on the following allegations at his evidentiary hearing:

1) Ineffective Assistance of Counsel
    a. Counsel failure to properly investigate and prepare;
    b. Failure to ensure the plea was knowingly and voluntarily entered;
    c. Failure to properly address issues involving mental health.
2) Involuntary Guilty Plea

At the hearing, Petitioner testified on his own behalf. Counsel also testified. By order filed November 8, 2018, Judge Curtis denied and dismissed Petitioner's application for post-conviction relief finding Petitioner failed to meet his burden to prove Counsel was ineffective in any regard. Judge Curtis found Counsel's credible testimony shows he investigated Petitioner's case and there was no indication Petitioner suffered from a mental illness. (App. 106.) The lower court further found at the plea hearing, Petitioner testified he was not on medication and that he understood what he was doing, so Counsel did not have a reason to question his competency or voluntariness of his plea. (App. 106.) Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his petition for writ of certiorari.

STATEMENT OF FACTS

On June 11, 2014, Petitioner had permission to stay at the home of a close family friend, Timothy Kyle Hodge (Hodge). (App. 7-8.) The next day, around 4 P.M., Hodge told Petitioner he was no longer welcome to stay at his home because he believed Petitioner had stolen a pair of headphones from him. (App. 8.) When confronted about the stolen headphones, Petitioner denied taking them and pulled a gun on Hodge. (App. 8-9.) Hodge backed off and left. (App. 9.) Later that night, Petitioner returned to Hodge's home, where Hodge, his mother (Margaret Charles, "Charles"), and a friend (Joshua Brown, "Brown"), were staying. (App. 9-10.) Hodge told Petitioner he could stay the night because he knew Petitioner did not have another place to go. (App. 10.) Petitioner, Hodge, and Brown all went to sleep in the same room, and Charles slept in another room. (App. 10.) Early the next morning, Petitioner attacked all three victims. (App. 10.) Brown was shot in the head and killed. (App. 11.) Hodge was shot in the head, but survived. (App. 11.) Charles chased Petitioner through the house after the shots were fired and Petitioner hit her in the head with his handgun, resulting in serious injury and a hearing problem. (App. 11.) Petitioner fled the scene through the bedroom window and was eventually apprehended by law enforcement. (App. 11.)

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 179, 810 S.E.2d at 839 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 179, 810 S.E.2d at 840. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood, 338 S.C. at 109, 525 S.E.2d at 517; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (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. "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 applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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.

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 670. 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. 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 post-conviction relief court properly found Counsel was not constitutionally ineffective for failing to have Petitioner's mental health evaluated for criminal responsibility prior to his guilty plea where plea counsel had no reason to believe Petitioner could not distinguish right from wrong and conform his behavior at the time of the crime and Petitioner failed to establish he would have been deemed not criminally responsible had counsel had him evaluated.

Petitioner alleges the post-conviction relief court erred in refusing to find Counsel constitutionally ineffective for failing to have Petitioner evaluated for criminal responsibility prior to entering his guilty plea. Specifically, Petitioner argues Counsel should have been aware of Petitioner's mental illness because Petitioner was prescribed medications during Counsel's representation, Counsel was familiar with Petitioner's brother's mental health issues, and admitted Petitioner told him he was hearing voices at some point. However, the post-conviction relief court properly found Counsel's failure to have Petitioner evaluated for criminal responsibility was reasonable based on their conversations and interactions and his review of the case. Moreover, the court found Petitioner could not meet his burden of establishing prejudice because he failed to present evidence that he was not criminally responsible or would have been found not criminally responsible had Counsel had him evaluated prior to his guilty plea. There is evidence of probative value to support these findings. This Court should deny certiorari.

(a) The post-conviction relief court properly found Counsel was not deficient in his representation of Petitioner as Counsel credibly testified he did not think an evaluation for criminal responsibility was necessary because, based on their discussions, Counsel reasonably believed Petitioner could distinguish right from wrong at the time of the crime, thereby negating any need for an evaluation to determine criminal responsibility.

Petitioner alleges Counsel was deficient for failing to have Petitioner evaluated for criminal responsibility during his representation, however, Counsel's credible testimony is dispositive on this issue. Counsel credibly testified that he represented Petitioner for two years

prior to his guilty plea. (App. 82, 83.) Counsel credibly testified Petitioner asked Counsel on more than one occasion whether Counsel could beat the charges. (App. 83.) Counsel credibly testified Petitioner made it clear he wanted Counsel to get the best plea deal he could from the State. (App. 85.) Counsel credibly testified, based on his discussions with Petitioner, he believed Petitioner was criminally responsible for the incident. (App. 84-85.) Counsel credibly testified Petitioner understood the evidence against him and his role in the incident. (App. 87-88.) Counsel credibly testified Petitioner admitted his guilt to him by his actions and "trying to explain. . . what happened in the room that night, what the argument was about. He thought [Brown] was going to shoot him." (App. 84.) Counsel's credible testimony establishes Petitioner was clear on what occurred on the night of the incident and attempted to provide Counsel with an affirmative defense, which, interestingly, is not related to his current claim that he is not criminally responsible for his actions.

Petitioner also appropriately answered the plea court's questions during a thorough colloquy prior to his guilty plea being accepted by the plea court. Although Petitioner points to Counsel having a discussion off the record with Petitioner after the plea court asked whether Petitioner suffered from any physical, emotional, or nervous condition that would keep him from understanding the proceedings, Counsel credibly testified he conferred with Petitioner at that time because he wanted to ensure Petitioner was clear on what the judge was asking. (App. 89.) After Counsel ensured Petitioner knew what was being asked of him, Petitioner still responded, "No, sir," indicating he did not suffer from any conditions that would prevent him from understanding the guilty plea proceeding. (App. 5.) Petitioner continued through the lengthy colloquy without hesitation and provided appropriate answers to each of the plea court's question.

In Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, Jeter claimed his trial counsel was ineffective for failing to request a mental evaluation to see if he was competent to stand trial or if he could pursue an insanity defense. However, this Court found Jeter's trial counsel was not deficient because his trial counsel "relied on his own perceptions, particularly since counsel was familiar with the petitioner from previous representation." Id at 233, 417 S.E.2d at 596. Further, Jeter's family never raised concerns about Jeter's competency to his trial counsel. Id.

Here, Counsel also relied on his own perceptions of Petitioner's mental capacity, which he developed over the two years he represented Petitioner in this matter. As in Jeter, Counsel credibly testified in his conversations with Petitioner, Petitioner understood the evidence against him, was "very clear that he did not want to go to trial," and "was clear-minded . . . in our discussions as to how he wanted to be defended." (App. 83, 87, 92.)

Additionally, Petitioner's sister met with Counsel several times during his representation of Petitioner and she did not question Petitioner's criminal responsibility. (App. 90.) Counsel cannot be deficient for failing to pursue a mental evaluation he did not know Petitioner needed. Counsel did not know Petitioner was on medication at the jail as Petitioner failed to tell him, and Petitioner's sister did not raise the issue of Petitioner's mental health with Counsel during his representation. See Thomas v. Gilmore, 144 F.3d 513, 515 (7th Cir. 1998) ("It is reasonable for a lawyer to place a certain reliance on his client.") (citing Strickland, 466 U.S. at 691, 699.) Either Petitioner, or his family, could have raised this concern with Counsel or informed him of the medications he was placed on while in custody, but Petitioner failed to do so. See Strickland, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and **on information**

supplied by the defendant."(emphasis added)). Petitioner's mother spoke during the plea proceeding and expressed her empathy to the victims and their families. In her remarks, Petitioner's mother explained she did not know the "cause of it" and did not mention any mental health issues Petitioner may have been struggling with at the time. (App. 27.) Petitioner also address the plea court during the proceeding and stated he was "really sorry" for "everything that has happened." (App. 26.) During Petitioner's comments, he never expressed to the plea court that he was struggling with mental health issues, instead he apologized for the incident taking responsibly for his actions.

Finally, Petitioner supports his allegation by pointing to the following testimony by Counsel:

> I guess if I had any regret just listening to him today and knowing about his, like schizophrenia and stuff - - if I had any regret, I probably - - I should have got him evaluated, even if he had been evaluated before. Get him evaluated again, but as you can see, some of it was very clear in telling me what he want done and what he don't want. I don't want a trial. I want you to get the best deal for me that you can. And that's pretty much what our conversations are about.

(App. 85.) However, Counsel's comments are based on hindsight and not on how he evaluated Petitioner at the time of his representation. In making a fair assessment of attorney performance, a court must make "every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Counsel repeatedly testified during the evidentiary hearing that Petitioner understood their discussions, was "very clear" he did not want to go to trial, wrote him letters indicating he did not want to proceed to trial, and understood the evidence against him. Further, Counsel's testimony that Petitioner asked him if he could "beat this charge" and Petitioner's ability to explain his role in the incident support Counsel's

evaluation that, at that time, Petitioner did not need a mental health evaluation as he was clear he wanted to plead guilty and was just interested in getting "the best deal we can." (App. 85.)

Petitioner has failed to show how Counsel was deficient for failing to have Petitioner evaluated for criminal responsibility prior to the guilty plea proceeding as Counsel relied on his own perceptions of Petitioner that he developed over his two year representation and did not see a reason to have Petitioner evaluated. In support of his evaluation of Petitioner, Counsel testified Petitioner understood the charges against him, was "very clear" that he did not want to proceed to trial, and even wrote letters to Counsel regarding his desire to plead guilty. The post-conviction relief court properly denied Petitioner relief and this Court should deny certiorari.

(b) The post-conviction relief court properly found Petitioner failed to show any resulting prejudice from Counsel's failure to have him evaluated for criminal responsibility where Petitioner failed to establish he was not criminally responsible for the crime.

Petitioner argues he was prejudiced by Counsel's failure to have him evaluated for criminal responsibility because Petitioner believes, had Counsel had him evaluated, he would not have pled guilty and would have insisted on proceeding to a jury trial.

However, Petitioner utterly failed to present any evidence during the evidentiary hearing that supports his claim that he is not criminally responsible for his charges or that he was unable to conform his conduct to the requirements of the law. As a mental evaluation was never introduced to the post-conviction relief court, Petitioner wholly failed to meet his requisite burden of proof as to this allegation. See Rule 71.1(e), SCRCP (Petitioner has the burden of proving the allegations in his or her application); Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (an applicant has the burden of proving both deficiency and prejudice). Petitioner claims he would have proceeded to trial had Counsel evaluated his mental health in order to pursue affirmative defenses to his charges. However, "[t]o show prejudice for failing to pursue [the

insanity] defense, the petitioner must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-234, 417 S.E.2d 594, 596 (1992) (internal citations omitted). In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). Here, Petitioner has failed to produce any expert testimony or medical report indicating Petitioner lacks criminal responsibility for his charges or was unable to conform his conduct within the bounds of the law. As such, Petitioner has failed to establish prejudice regarding this allegation.

Notwithstanding Petitioner's failure to present evidence supporting his claim that he is not criminally responsible for his charges, it is not likely Petitioner would have proceeded to trial as Counsel credibly testified he "had many discussions" with Petitioner regarding going to trial or pleading guilty and Petitioner was "very clear that he did not want to go to trial." (App. 83.) Counsel also credibly testified that Petitioner sent him letters where he clearly stated he did not want to go to trial. (App. 83.) Counsel testified Petitioner understood the evidence against him and, "[t]here's no doubt that [Petitioner] was clear on what happened." (App. 88.)

Further, during the plea colloquy, the Petitioner and plea judge had the following exchange:

> **Court:** All right. You also have a right to have a jury trial, and I would instruct the jury that they could not hold the fact that you don't testify against you and that they –if you decided not to testify, and that you are presumed innocent until that jury finds you guilt. And that jury is sitting right back there ready to come out and hear about three or four days of testimony. And if that was the case the State's always gonna have the burden to prove you guilty beyond a reasonable doubt. And you could raise defenses. You could bring up an accident or something like that; but when you plead guilty, the State no longer has to prove that burden. Do you understand that?
> **Petitioner:** Yes, sir.

> **Court:** And you don't get to ask any questions about the evidence or present evidence on your own behalf. Do you understand that?
> Petitioner: Yes, sir.
> **Court:** All right. So you wish to waive your right to have a jury trial and proceed with my passing sentence on you?
> **Petitioner:** Yes, sir.

(App. 17-18.) The plea court clearly explained to Petitioner his right to a jury trial during the plea colloquy, and Petitioner waived that right, which is consistent with Counsel's testimony that Petitioner maintained throughout his representation that he did not want to pursue a jury trial on his charges.

Petitioner has also failed to establish prejudice as he has failed to show Counsel's alleged deficiency prejudiced the outcome of his proceedings. Matthew v. State, 358 S.C. 456, 458-459, 596 S.E.2d 49, 50-51 (2004). In Jeter, this Court held:

> Under this second prong of Strickland, the petitioner need only demonstrate a 'reasonable probability' that he was either insane at the time of the shooting or incompetent at the time of the plea. For an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong. S.C. Code Ann. 17-24-10 (Supp. 1991). To show prejudice for failing to pursue this defense, the petitioner must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed.

Jeter, 308 S.C. at 233, 417 S.E.2d at 596. Here, Petitioner has failed to produce any evidence that he was unable to distinguish moral or legal right from wrong or did not have the capacity to conform his behavior to the requirements of the law. In fact, the evidence presented by the State during the guilty plea indicates Petitioner was fully aware that what he did was wrong as Petitioner fled the scene through a bedroom window after the violent incident and went to his friend's house. (App. 11-13.) Petitioner later fled the friend's house and went to his sister's house where he was later apprehended by law enforcement. (App. 13.) "[I]t has long been the

rule in South Carolina that . . . evidence of attempted flight are probative of the accused's consciousness of guilt." State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (2011). At the time of his arrest, Petitioner invoked his rights and did not make a statement to law enforcement. (App. 13.) Petitioner's decision to flee the scene shows he was cognizant that what he did was wrong and Petitioner's decision to invoke his rights after being arrested shows he was aware of the gravity of the situation leading to his arrest. Petitioner's actions support Counsel's assessment that Petitioner understood the charges against him and was "clear" on what happened and his role in the incident. (App. 88.)

Ultimately, Petitioner has failed to establish any resulting prejudice from Counsel's alleged deficiency. During the evidentiary hearing, Petitioner failed to provide any evidence he was unable to conform his conduct to the requirements of the law or could not distinguish moral or legal right from wrong, which is necessary in order to establish any resulting prejudice. Further, the plea court conducted a thorough colloquy with Petitioner where he appropriately answered the plea court's questions, testified he understood his constitutional rights, and wanted to enter a guilty plea rather than proceed to a jury trial. As such, Petitioner has failed to meet his burden as set forth in Strickland to show any resulting prejudice. As such, the post-conviction relief court properly denied Petitioner relief as to this claim and this Court should deny certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied. Should this Court grant the petition for writ of certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

JANELL H. GREGORY
Assistant Attorney General
SC Bar No. 103176

By: _____
ATTORNEYS FOR PETITIONER

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

January 21, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY
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W. Jeffrey Young, Plea Judge

Appellate Case No. 2018-002041

CHARLES GARY SINGLETARY,

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v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

I, Kaitlyn Slice, 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:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served. This 21st day of January, 2020.

KAITLYN S. SLICE
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

January 21, 2019

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

Re: **Charles Gary Singletary v. State of South Carolina**
Appellate Case No. 2018-002041
Lower Court Case No. 2017-CP-43-571

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,

Janell H. Gregory
Assistant Attorney General
SC Bar No. 103176

JHG/ks
Enclosures

cc: Kathrine H. Hudgins, Esquire (2 copies)