

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
L. Casey Manning, PCR Judge

Appellate Case No. 2018-001333

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S.C. SUPREME COURT

COREY EDMOND,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUE

Did the post-conviction relief court err in not granting relief on the basis that Counsel was ineffective in not requesting a hearing pursuant to *Blair*¹ when she knew that Edmond had severe mental health concerns and had earlier been found incompetent?

RESPONDENT'S STATEMENT OF ISSUE

Did the PCR court correctly find Counsel was not constitutionally ineffective for not requesting a *Blair* hearing immediately before Edmond's guilty plea because: Counsel previously had Edmond evaluated several times, and he was found competent at his last evaluation on November 14, 2004; Counsel had no concerns regarding Edmond's competency the day of his guilty plea; Edmond informed the plea court he was taking his medications as prescribed; and the evaluating doctor testified at the PCR hearing he had no indication or reason to believe any changes affecting Edmond's competency occurred between the November 2004 evaluation and Edmond's April 2005 guilty plea?

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

STATEMENT OF THE CASE

In December 2003, Corey Edmond was indicted for armed robbery and armed carjacking with bodily injury. App. 36; 38. Edmond was represented by Deputy Public Defenders April Sampson (Counsel) and Lanelle Durant. Assistant Solicitors Vanessa Cooper and Aaron S. Jophlin prosecuted the case.

Edmond's charges stem from an incident that occurred around 10:30 a.m. on September 3, 2003. App. 14. That morning, eighty-two year old Blakely Scott, Jr. went to a gas station off Two-Notch Road to buy a newspaper. He went into the store, bought a paper, and returned to his car. While in the gas station parking lot, Edmond asked Scott for a ride down Two-Notch to Edmond's sister's beauty salon. Scott agreed to give the man a ride. App. 14-15.

Once at the beauty salon, Edmond exited Scott's car and asked his sister to use the phone. She gave him thirty-five cents to use the payphone. Edmond then got back into Scott's car and directed Scott to take him to Howell Street. App. 15.

While en route, Edmond told Scott he was armed with a gun and "he kept reaching into his shirt as if he was reaching for a gun." App. 16. Edmond asked Scott for his wallet and took \$15 from Scott's wallet. At the corner of Howell Street and Slighs Avenue, Edmond opened the driver's side door and pushed Scott out of the car and into the street. App. 16.

Monica Donason, who lived nearby, witnessed the car slow down, or almost stop, and saw Scott get ejected into the street. Donason then saw the car speed away from the scene. Donason then went to Scott's aid. Scott told her he had just been carjacked and robbed. App. 16. Scott asked Donason to call his wife and tell her what happened. App. 17.

Donason called Scott's wife, who then called her son, Reverend Blakely Scott, III. Reverend Scott then went to the scene. At the scene, Scott told his son, "I went to the store to get

a newspaper and I gave a man a ride trying to help him out. The next I knew he told me he had a gun, kept reaching into his shirt, and he pushed me out of my car and took my money.” App. 17. Scott was taken to the hospital for his injuries. Scott told the emergency responders and his doctor what happened. App. 18. The fall fractured Scott’s left-hip. As a result, Scott’s health deteriorated drastically, and he died eight months later. App. 18–19.

Edmond pleaded guilty to both charges as indicted before Judge James W. Johnson, Jr., on April 11, 2005. Edmond pleaded guilty without formal recommendations or negotiations—straight up. Judge Johnson accepted Edmond’s guilty plea and sentenced him to serve concurrent terms of twenty-five years imprisonment. App. 1–38. Edmond did not appeal.

Edmond, through counsel, commenced the underlying PCR action, and amended his application, on January 18, 2006. App. 43–51. The State submitted its return on June 13, 2007. App. 52–55. Edmond subsequently filed a second amendment on July 7, 2014. App. 57–58. Thereafter, an evidentiary hearing convened before Judge L. Casey Manning on August 4, 2016. Edmond was represented by Robert W. Mills (PCR Counsel). Assistant Attorney General J. Croom Hunter represented the State. App. 60–120. After the hearing, Counsel submitted an affidavit on September 23, 2014. App. 123–24. Judge Manning denied relief and dismissed the action with prejudice on August 8, 2016. App. 125–33. On August 19, 2016, Edmond timely moved to alter the judgement pursuant to Rule 59(e), SCRCF. App. 135–43. The State submitted its return to the 59(e) motion on May 22, 2018. App. 145–47. Judge Manning denied the motion on June 23, 2018. App. 149. Applicant appealed the denial of relief. App. 150–51.

STANDARD OF REVIEW

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Appellate courts give great deference to a PCR court's credibility findings because appellate courts lack the opportunity to directly observe the witnesses. *Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, appellate courts give no deference to the PCR court's conclusions of law and reviews those conclusions de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

"In assessing prejudice under *Strickland*, the question *is not* whether a court can be certain counsel's performance had no effect on the outcome" *Harrington v. Richter*, 562 U.S. 86, 111 (2011) (emphasis added). "Instead, *Strickland* asks whether it is 'reasonably likely' the result would have been different." *Id.* (quoting *Strickland*, 466 U.S. at 696). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. In the context of a guilty plea, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

ARGUMENT

The PCR court correctly found Counsel was not constitutionally ineffective for not requesting a *Blair* hearing immediately before Edmond's guilty plea because: Counsel previously had Edmond evaluated several times, and he was found competent at his last evaluation on November 14, 2004; Counsel had no concerns regarding Edmond's competency the day of his guilty plea; Edmond informed the plea court he was taking his medications as prescribed; and the evaluating doctor testified at the PCR hearing he had no indication or reason to believe any changes affecting Edmond's competency occurred between the November 2004 evaluation and Edmond's April 2005 guilty plea.

Edmond argues the PCR court erred in denying relief because Counsel was ineffective for not requesting a *Blair* hearing when she knew Edmond had severe mental health concerns and had earlier been found incompetent. Pet. 11. Counsel was not deficient because Counsel had Edmond evaluated several times before his guilty plea, and Edmond was found competent to stand trial on November 14, 2004; Counsel had no concerns regarding Edmond's competency the day of the guilty plea; and Edmond informed the plea court he was taking his medications as prescribed, and he told the plea court the prescribed medications would not hinder, but help, his understanding of what was happening. Further, Edmond did not satisfy his burden of showing prejudice because the evaluating doctor stated he had no indication or reason to believe Edmond became incompetent from the last evaluation in November 2004 to his April 2005 guilty plea; and Edmond was evaluated prior to the PCR hearing and was found competent. The PCR court found Counsel was not constitutionally ineffective based on its credibility findings of the witnesses presented at the PCR hearing.

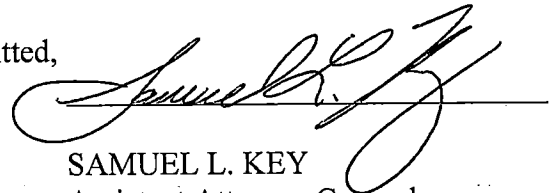
Here, the PCR court found Edmond did not meet his burden of proof as to deficiency or prejudice because the only evidence presented by Edmond that he was not competent to enter his guilty plea was his own self-serving testimony that he was not truthful with the plea court when he told the plea court he was taking his medications. App. 132. The PCR court found credible:

Counsel's testimony she had no suspicion Edmond was incompetent the day of his guilty plea; and the evaluating doctor's testimony he had no reason to believe Edmond was incompetent at the time of the guilty plea. However, the PCR court found not credible Applicant's testimony he lied to the plea court about taking his medications, and the PCR court found Applicant was not truthful at the PCR hearing. App. 132. The PCR court simply did not believe Applicant's testimony he lied to the plea court that he was not taking his medications at the time of his guilty plea; therefore, certiorari should be denied based on this Court's standard of review of credibility findings. *See Foye*, 335 S.C. at 589, 518 S.E.2d at 267 (explaining appellate court's give great deference to a PCR court's credibility findings because appellate court's lack the opportunity to directly observe the witnesses).

CONCLUSION

Based on the foregoing argument, Counsel was not constitutionally ineffective. Counsel was not deficient because she previously had Edmond evaluated several times, and he was found competent at his last evaluation on November 14, 2004; Counsel had no concerns regarding Edmond's competency the day of his guilty plea; Edmond informed the plea court he was taking his medications as prescribed; and the evaluating doctor testified at the PCR hearing he had no indication or reason to believe any changes affecting Edmond's competency occurred between the November 2004 evaluation and Edmond's April 2005 guilty plea. Further, Edmond was not prejudiced, and the PCR court found his testimony he lied to the plea court about taking his medications not credible. As such, the State requests certiorari be denied.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

February 10, 2020

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CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas
The Honorable G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2018-001333

Corey Edmond,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by placing one copy in the United States Mail, addressed to:

Mr. Tommy Arthur Thomas
PO Box 88
Irmo, SC 29063

This 10th day of February, 2020.



Erik Marcusson
Legal Assistant for Respondent