

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Pickens County

Honorable Perry H. Gravely, Plea Judge  
Honorable Alex Kinlaw, Jr., PCR Judge

Appellate Case No. 2019-001606

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JOHN DAVID SARTIN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**S.C. SUPREME COURT**

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## **STATEMENT OF ISSUES ON CERTIORARI**

### **Petitioner's Issues Presented**

Did the PCR court correctly grant Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the evidence showed he requested a direct appeal, and where he never knowingly and voluntarily waived his right to a direct appeal, and where the State conceded to allow a belated direct appeal for Petitioner?

Did the PCR court err in denying relief, where plea counsel failed to fully investigate Petitioner's case fully after being notified that he wanted to plead guilty?

### **Respondent's Issues Presented**

- I. Did the PCR court properly find Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence when Petitioner mailed a letter to the plea court, which was forwarded to plea counsel, that showed Petitioner desired to appeal his conviction and sentence?
- II. Did the PCR court properly find Petitioner failed to show plea counsel was constitutionally ineffective for failing to conduct an adequate investigation when Petitioner informed plea counsel of a potential witness on the morning of trial and plea counsel decided not to look into the issue further when Petitioner indicated he wanted to plead guilty and accept a plea deal with terms that he dictated?

## STATEMENT OF THE CASE

Petitioner John David Sartin and Adam Griggs (victim) were housed in the same block of the Pickens County Law Enforcement Center. App. 14. On March 26, 2018, Petitioner and the victim got into a verbal altercation, and Petitioner punched the victim in the face at least one time. App. 14. As a result of the punch, the victim sustained a broken orbital bone and suffered medical issues with his eyes. App. 14-15. During its August of 2018 term, the Pickens County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2018-CP-39-1129). Petitioner was represented by Dorothy A. Manigault, Esquire (plea counsel), and Assistant Solicitor Brandi Batson Hinton of the Thirteenth Circuit Solicitor's Office prosecuted the case. On August 28, 2018, through August 29, 2018, Petitioner appeared before the Honorable Perry H. Gravely (plea court) and pleaded guilty to the lesser-included offense of first-degree assault and battery. In accordance with the negotiations that Petitioner entered into with the State, the plea court sentenced Petitioner to imprisonment for ten years, with the balance suspended to probation for five years upon the service of three years. Petitioner did not appeal his conviction or sentence.

On December 11, 2018, Petitioner filed an application for post-conviction relief, claiming therein that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence, that the plea court did not have the subject matter jurisdiction to sentence him, that his constitutional rights were violated, and that plea counsel had been deliberately indifferent. Respondent filed its return on February 28, 2019, in which it moved for a more definite statement as to some issues raised in the application, moved for the summary dismissal of some claims, and requested that the PCR court convene an evidentiary hearing

regarding the remaining claims. Petitioner filed an amended application on April 4, 2019, claiming that plea counsel was constitutionally ineffective, that plea counsel coerced Petitioner into pleading guilty, and that Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. An evidentiary hearing was convened at the Greenville County Courthouse on April 17, 2019, before the Honorable Alex Kinlaw, Jr. (PCR court). Petitioner was present and was represented by Don A. Thompson, Esquire, and the undersigned was present on Respondent's behalf. On July 19, 2019, the PCR court issued an order in which it found Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence, found Petitioner failed to show he was entitled to post-conviction relief upon any other basis, and dismissed the remaining claims with prejudice. This appeal follows.<sup>1</sup>

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<sup>1</sup> In addition to a petition for a writ of certiorari, Petitioner's counsel has filed a brief pursuant to Rule 243(i)(1), SCACR, White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), and Anders v. California, 386 U.S. 738 (1967). No filing from Respondent in response to the brief is required at this time.

## **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, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, at 180-81, 810 S.E.2d at 839-40 (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)). However, pure questions of law will be reviewed de novo without deference to the lower court. Smalls, at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the PCR 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).

## ARGUMENT

- I. **The PCR court correctly found Petitioner did not knowingly and voluntarily waive his right to a direct appeal because Petitioner’s letter to the plea court, which was forwarded to plea counsel, showed Petitioner desired to appeal his conviction and sentence.**

Petitioner argues the PCR court correctly found Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. Respondent does not dispute the argument and does not contest the PCR court’s finding on this issue.

Petitioner mailed a letter to the plea court after his plea hearing and requested an appeal. App. 98, 113. The plea court forwarded that letter to plea counsel and stated in its own cover letter thereto that Petitioner desired to appeal his conviction and sentence. App. 97, 113. Plea counsel testified at the PCR hearing that she received the two letters within the ten-day appeal window and that she did not, upon her receipt thereof, file a notice of appeal or contact Petitioner to inquire about his desire to appeal. App. 83-86. The PCR court found that plea counsel’s receipt of the two letters triggered a duty on her part either to file the notice of appeal or to inquire further of Petitioner about his wishes. App. 113-14.

A defense attorney “has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think . . . that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Receiving a letter from the plea court and a forwarded letter from Petitioner stating that Petitioner desired to appeal his conviction and sentence should have given plea counsel reason to think that Petitioner was interested in appealing.

Respondent does not contest Petitioner's petition for a writ of certiorari on this ground alone and does not contest the PCR court's finding that Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence.

**II. The PCR court properly found Petitioner failed to show plea counsel was constitutionally ineffective for failing to conduct an adequate investigation because counsel's investigation was reasonable under the circumstances.**

Petitioner argues the PCR court erred in finding plea counsel conducted an adequate investigation when plea counsel stopped investigating when Petitioner indicated that he wanted to plead guilty. Petitioner's argument fails because he failed to show any inadequacy in plea counsel's investigation, was unable to show any impropriety in plea counsel's decision to not track down a last-minute, potential witness when Petitioner indicated he wanted to plead guilty, and when Petitioner has presented no evidence that plea counsel's investigation caused him to suffer prejudice. The PCR court properly denied relief and this Court should deny the petition for a writ of certiorari as to this ground.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691 (1984). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014).

The PCR court found plea counsel was not constitutionally ineffective with regards to her

reviewing discovery with Petitioner and her not tracking down a potential witness. App. 104-06. The PCR court's findings as to the adequacy of plea counsel's investigation are correct because plea counsel's investigation was reasonable under the circumstances. Plea counsel reviewed with Petitioner the items she received in discovery. App. 71-72, 77-78, 88-90. Plea counsel evaluated the evidence and made the determination that the evidence was not exculpatory. App. 89. Plea counsel testified Petitioner gave her the name of someone on the morning of trial, someone whom she believed was Petitioner's former cell mate, but Petitioner did not provide plea counsel with information that led her to believe that the person would have had any exculpatory information. App. 81-82, 90-91. Plea counsel called the jail in order to locate the person, but was informed that the person was no longer there. App. 90. Petitioner informed plea counsel that he wanted a plea deal, and she entered into plea negotiations on his behalf. App. 36-37. Petitioner dictated the terms of a plea deal that he would accept and tasked plea counsel with securing that deal, even to the extent that plea counsel testified that Petitioner "essentially, negotiated this plea deal. I was the one running back and forth to get it verified or confirmed." App. 80.

At that point, plea counsel made no further attempt to contact that potential witness. App. 81-82, 90. That was because, as the PCR court rightly noted, Petitioner's decision to plead guilty constituted a waiver of his right to challenge the State's evidence and to present his own evidence. App. 106. Petitioner argues now that the PCR court should have found plea counsel's investigation deficient because she stopped her investigation when Petitioner notified her that he wanted to plead guilty. Plea counsel did not see any need to search for the supposed witness Petitioner had named because Petitioner "indicated that if [plea counsel] could work something out for him that he was satisfied with, he didn't want a trial. He didn't want to go to trial." App.

82, 90-91. Plea counsel's investigation as adequate and justifiably and reasonably ceased when Petitioner indicated he wanted to plead guilty instead of proceeding to trial. At that point, there was no further need for plea counsel to continue her investigation, particularly when plea counsel secured a plea deal that conformed to Petitioner's express wishes.

A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

The PCR court correctly found Petitioner failed to present evidence that he was prejudiced by any alleged deficiency in plea counsel's investigation. App. 106. Despite Petitioner's testimony that he gave the names of multiple witnesses to plea counsel, he failed to produce any of them for the hearing to show that they existed and that they had any exculpatory

testimony. And despite Petitioner's testimony that plea counsel did not play for him a video recording of his attack on the victim, he failed to present to the PCR court any evidence that the video supported his version of events or that he would have insisted on proceeding to trial had he seen the video. Petitioner has not shown that there was a reasonable likelihood he would have proceeded to trial had plea counsel done some investigation that she did not do.

Petitioner has not met his burden in establishing plea counsel was constitutionally ineffective, and this Court should deny the petition for a writ of certiorari as to this ground.

### **CONCLUSION**

Respondent does not contest the PCR court's finding that Petitioner did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence and does not contest Petitioner's petition for a writ of certiorari as to this ground.

The PCR court did not err in finding Petitioner failed to show plea counsel was constitutionally ineffective for failing to conduct an adequate investigation because Petitioner has not proven any deficiency in plea counsel's performance and has not proven that he would not have pleaded guilty absent some deficiency in counsel's investigation. This Court should therefore deny the petition for a writ of certiorari as to this ground.

Respectfully submitted,

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