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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
COURT OF COMMON PLEAS

The Honorable Ralph K. Anderson, Jr., Trial Judge
The Honorable William H. Seals, Jr., Post-Conviction Relief Judge

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Appellate Case No. 2019 – 00001341

TARRANCE L. JORDAN, # 340469,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

Whether the PCR court erred in denying relief, where trial counsel filed a Motion to Reconsider Petitioner's sentence but failed to object following sentencing, whether the Court of Appeals held the issue was unpreserved, and where Petitioner received a sentence of thirty years compared to sentences of ten years and fifteen years for his co-defendants who pleaded guilty?.

Respondent's Counterstatement of Issue on Certiorari

Whether the PCR court properly found counsel was not constitutionally ineffective for his failure to object following Petitioner's sentence where Counsel did not believe there was any reason to object because the trial judge sentenced Petitioner to substantially less time than he was facing within the statutory limits, and there was no indication that the trial judge took Petitioner's decision to go to trial into consideration when imposing the sentence?

STATEMENT OF THE CASE

In December 2008, Petitioner was charged with fourteen counts in three indictments stemming from three separate burglaries by the Florence County Grand Jury. The first indictment charged Petitioner with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1919). The second indictment charged Petitioner with three counts of armed robbery and one count each of kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1920). The third indictment charged Petitioner with armed robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime (2008-GS-21-1921).

On April 19, 2010, Petitioner proceeded to a jury trial before the Honorable Ralph K. Anderson, Jr. Patrick J. McLaughlin, Esquire, represented Petitioner at trial. On April 22, 2010, the jury found Petitioner guilty as indicted. Judge Anderson sentenced Petitioner to concurrent terms of thirty years for each armed robbery conviction, thirty years for each kidnapping conviction, thirty years for each first degree burglary conviction, and five years for each possession of a weapon during the commission of a violent crime conviction. Petitioner filed a motion to reconsider his sentence on April 29, 2010. Judge Anderson denied Petitioner's motion without argument on April 30, 2010.

Petitioner filed a timely notice of appeal and LaNelle C. Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The court of appeals affirmed Petitioner's convictions on October 3, 2012. *State v. Jordan*, Op. No. 2012-UP-537 (S.C. Ct. App. filed October 3, 2012). The circuit court received the remittitur on October 19, 2012.

Petitioner filed an application for post-conviction relief (PCR) on July 24, 2013. In his

application, Petitioner alleged ineffective assistance of counsel because Counsel did not attack the prosecutor's case fully and violations of Petitioner's Sixth Amendment rights. On August 8, 2016, an evidentiary hearing into the matter was held before the Honorable William H. Seals, Jr.. Petitioner was present at the hearing and represented by Tristan Shaffer, Esquire. Jessica Kinard, of the South Carolina Attorney General's Office, represented Respondent.

Petitioner testified on his own behalf at the evidentiary hearing. Petitioner's trial counsel, Patrick J. McLaughlin, Esquire (Counsel) also testified. On July 11, 2019, Judge Seals issued an Order of Dismissal denying Petitioner relief and finding Petitioner failed to meet his burden of establishing any constitutional deprivations or other grounds entitling him to relief and dismissed the application with prejudice.

Summary of PCR Testimony

Counsel

Counsel testified he practiced law for over ten years and about half of his work came through criminal, but had steadily declined to a quarter of his work. Counsel testified he was originally appointed to represent Petitioner on July 16, 2009. Counsel testified Petitioner was accused of waiting for people to check into hotel rooms, pushing them inside, holding them at gunpoint, asking them to disrobe, forcing them in the bathtub, and then stealing their personal belongings.

Counsel testified he was aware the Solicitor's Office wanted to take Petitioner to trial, which was scheduled for August 2009. However, Counsel had not met with Petitioner and therefore, Counsel was not ready for trial. Counsel testified he informed the Solicitor's Office of this and the trial was delayed. Counsel testified there would not have been any plea negotiations during these communications with the Solicitor's Office before meeting with Petitioner.

Counsel testified he tried to get in touch with Petitioner initially but got no response. Counsel further explained Petitioner was arrested on a warrant and held in Darlington County. Counsel testified he met with Petitioner in Darlington County on August 12, 2009. Thereafter, Counsel testified the Solicitor's Office told him Petitioner would receive the same plea offer as his co-defendants. Counsel filed a motion to reveal the plea deals that Petitioner's co-defendants received.

In November 2009, Counsel sent Petitioner a letter memorializing their meetings. In December 2009, Counsel received notification Petitioner had two weeks to decide whether he wanted to accept an offer of fifteen years, the same offer Petitioner's co-defendants received. Counsel testified he went over the plea offer with Petitioner and Petitioner understood everything. Counsel testified he went over collateral consequences with Petitioner such as parole and classification. Counsel testified he went over the elements with Petitioner to prepare their defense for trial. Counsel testified he went over where the other side's case would be weak and their burden of proof for each element with Petitioner. Counsel testified Petitioner understood his constitutional rights after they had a discussion about it.

Counsel testified it was his custom to notify clients that a plea offer is their decision, and he would not force them to go to trial. Furthermore, Counsel testified he customarily notifies clients if they want to go to trial he will do the best job. Counsel testified he customarily tells clients they must decide between a plea and trial because of the maximum exposure risk. Counsel testified he customarily explains maximum exposure risk for charges upfront so client know what is potentially hanging over their head. Counsel testified he certainly would have had this customary conversation with Petitioner. Ultimately, Counsel testified Petitioner informed him he did not want to take the plea offer. Thereafter, Counsel recalled rejecting the plea offer.

Counsel testified Petitioner had a minor criminal record, made good grades in school, and wanted to join the military. Counsel testified Petitioner's record looked a lot better than his co-defendants. Counsel testified he met with Petitioner several times throughout the duration of this case. Counsel testified they met personally at least four times. Furthermore, Counsel met with Petitioner's mother and brother personally at least once. Counsel testified he felt prepared for trial, and Petitioner understood everything as the case progressed.

In preparation for trial, Counsel testified he focused on a major issue he had with the original identification. Counsel testified his belief in preparation was the identification appeared to be very suggestive based upon doing it through a rollup. Counsel further testified he focused a lot of energy on this issue, wrote a brief on it, and did an oral argument for suppression. Counsel testified his attempt to suppress identification was unsuccessful.

In witness preparation, Counsel testified he interviewed Susan Abraham, Petitioner's former teacher. Counsel further testified he spoke to Representative Williams from Darlington because Petitioner's mother had a previous relationship with him. Counsel testified he did not speak with the victims prior to trial; however, Counsel testified one of the victims were bringing a civil suit, so he spoke to their lawyer, Ed Love. Furthermore, Counsel testified he used the civil suit in Petitioner's defense to raise credibility concerns about the victim in front of the jury.

Counsel recalled spotting a major issue with Petitioner's case. Specifically, Counsel testified law enforcement picked up Petitioner and his co-defendants the same night of the crime in the same car described as leaving the scene and identified by one of the victims. Counsel testified he believed this would be tough to deal with in front of a jury. Counsel testified that Petitioner's co-defendants testified at Petitioner's trial with their representation present.

In regards to Petitioner's sentencing, Counsel testified no legal errors stood out to him which would necessitate an objection. Counsel testified he did not believe the sentence was disproportionate when it was announced; however, Counsel testified he had no knowledge of case law at the time regarding disproportionate sentences between co-defendants. Furthermore, Counsel testified he did not believe the sentence punished Petitioner for going to trial. Additionally, Counsel testified he had no knowledge of the victim's feelings before Petitioner was sentenced.

After sentencing, Counsel testified the victim wrote him a letter after sentencing to express Petitioner received a raw deal. Counsel testified the victim expressed that he felt bad that co-defendant got less time because Petitioner was too hard headed to accept a plea offer. Based on the victim's concern, Counsel testified he asked the victim to fill out an affidavit on this matter. Thereafter, Counsel testified he presented the victim's statement to the court in a motion to reconsider Petitioner's sentence. Counsel testified he understood the difficulty in getting this statement reconsidered. However, Counsel testified he wanted to do everything he could for preservation on appeal.

Petitioner

Petitioner testified Counsel's main trial strategy was to attack the co-defendant's statements and the identification issue. Petitioner further testified the identification issue was raised on appeal.

Additionally, Petitioner testified he was employed at Zaxby's and in the National Guard prior to being arrested. Petitioner testified he had already been through basic training prior to arrest. Petitioner testified to completing basic training before graduating high school.

STATEMENT OF THE FACTS

Petitioner organized a crime spree of armed robberies at three separate hotels from July 2, 2008 through July 4, 2008. Petitioner's accomplices were Johnny Johnson, Shakeem Williams, and Louis Williams.

Summary of Facts Adduced at Trial

Holiday Inn Robbery

Johnny Johnson testified at trial. Johnson testified he knew Petitioner for seven years. Johnson stated that Petitioner called him to "go hit a lick."[1] Johnson drove his distinctive red Toyota Camry that had a dent in the hood and missing driver-side window to pick up Petitioner, and brothers Shakeem and Louis Williams. (Tr. 270-4)

Johnson explained he drove the group from their native Darlington to Road 52 in Florence, where they stopped at the Holiday Inn. Louis and Johnson stayed in the car, while Shakeem and Petitioner exited. Johnson testified Shakeem and Petitioner planned to either rob someone or break into a hotel room. (Tr. 324-26).

Dr. Meyer testified at trial. Dr. Meyer stated he and his son arrived at the Holiday Inn around 12:35 a.m. on July 2, 2018. Dr. Meyer testified went into the hotel office for about ten minutes to book a room. Then he and his son carried their bags to the room. Dr. Meyer recalled noticing two men in the parking lot while he walked to the room. Dr. Meyer stated when he and his son got into the room, they had trouble finding the light switch. Once they turned the light on, the two men from the parking lot rushed into the room and knocked Dr. Meyer down. The two men ordered Dr. Meyer to stand up and ordered his son was ordered to kneel on the ground. The

[1] A "lick" is a robbery or larceny.

larger of the two men had a gun and took the Dr. Meyer's cell phone. The two men demanded Dr. Meyer give them his wallet. Dr. Meyer complied and offered his car to the men. The men asked Dr. Meyer what was in the car and Dr. Meyer told them there were gifts, but mostly University of Florida gear and baby-gifts. The smaller man paced back and forth, which made Dr. Meyer nervous, especially since he did not know whether that man was also armed. The men ordered Dr. Meyer and his son into the bathroom. His son asked the two men if they were going to kill them. The two men left without answering. A few minutes later, Dr. Meyer came out of the bathroom and called the front desk to report the robbery. (Tr. 73–75, 79–83).

Johnson stated that Shakeem and Petitioner returned after about five to ten minutes and told Johnson to pull off. Johnson testified they stopped at the Hudson gas station in Darlington and used one of the stolen credit cards for gas. Johnson's payment was the tank of gas. They called it a night and Johnson dropped everyone off. (Tr. 274–77).

Dr. Meyer made an in court identification of Petitioner as the man pacing back and forth. He saw Petitioner in the parking lot and he saw Petitioner during the whole extended confrontation. Dr. Meyer described the lighting as adequate. Shakeem and Petitioner took about $400 in cash, credit cards, and a Best Buy card. (Tr. 84–87).

Johnson testified on the next day, July 3, 2008, the four co-defendants met up again at Petitioner's behest. Johnson testified he picked up Petitioner and they went to Syracuse until about 9:00 p.m., when the two then left to get Shakeem and Louis. They went to Florence, on 52 again, and Petitioner told Johnson to go to America's Best Value on TV Road. Again, Petitioner and Shakeem left while Louis and Johnson sat in the car. Five minutes later, Petitioner and Shakeem returned, but told Johnson to wait. Petitioner and Shakeem left again for about five to ten minutes, then came running back. (Tr. 278–80).

America's Best Value Robbery

Johnson testified about Petitioner's description of what occurred at America's Best Value as follows: "They robbed a man, put him in the bathroom, and took his clothes, searched the room for what they wanted, and left." (Tr. 281).

Richard Ward testified at trial. (Tr. 111–14). Ward stated he stayed at America's Best Value on TV Road on the night of July 3, 2008. He testified he stayed there for about two weeks while his house was being fixed. He was with his Uncle Gilbert and Louis Oberfrank. Ward testified he and Oberfrank walked to the hotel bar and saw two guys suspiciously walking up and down the aisles. Later, Ward and Oberfrank returned to their room. Immediately upon shutting the door, there was a knock. When Oberfrank opened the door, two men pushed their way into the room. The bigger man of the two pulled out a gun and ordered Oberfrank and Ward to get undressed and go into the bathroom. The smaller, skinny guy asked where their money was, and threatened that if they did not give him the money, he was going to kill them or shoot them. The men found five-hundred dollars in Uncle Gilbert's wallet. Ward testified the skinny guy went crazy because he thought they had more money. Ward stated the skinny guy kept running back and forth, searching the room, looking at them, plundering through the suitcases and moving the beds. Then, after about five to ten minutes, the robbers said do not come out the door or the robbers would kill them. Ward thought he heard them go out the door.

Ward waited a few minutes, put on his pants, and ran out the room in time to see an older red car with front-end damage, "kind of a foreign car," drive away. They called the police; they were missing a bunch of items: "money, credit cards, cell phones." (Tr. 114-5)

Ward restated that the first time he saw the two men was on the walkway. He then identified Petitioner as one of the defendants. (Tr. 117). He stated the lighting in the room was

great. The defendants were there for about ten minutes with ample time for Ward to observe both of them. (Tr. 123, 144). Ward gave a description to law enforcement. The big guy was wearing regular jeans and a white T-shirt with some writing on it, while the skinny guy was wearing baggy pants and a white T-shirt. Ward identified the clothes the big guy was wearing and the T-shirt and jeans the skinny guy, Petitioner, was wearing. (Tr. 119-21). Ward identified his cell phone that was stolen. (Tr. 121–22). Ward also identified a picture of the red car. (Tr. 123).

Deputy Jay McLaurin responded to America's Best Value and interviewed the three victims. He stated the victims were able to describe the robbers to him: one was about 6'3" and 250 pounds, wearing a white T-shirt with black writing on the front and blue jeans; and the other was about 5'8" and 180 pounds, wearing a white T-shirt and jeans. The victims told Deputy McLaurin the robbers were in a red vehicle with front-end damage. A city officer called and said there was a car fitting this description at IHOP. (Tr. 158–159, 161).

Super 8 Motel Robbery

Johnson also testified about the third robbery. Johnson stated that after the America's Best Value robbery, the group went to two different gas stations. Johnson stated that after leaving the second gas station, he was instructed to drive to the Super 8 Motel. Once they arrived at the motel, just as before, Petitioner and Shakeem left the car and came back five or ten minutes later. Johnson saw the two return with a cell phone and camera, and he saw Shakeem put the gun in the trunk of the car. After they left the motel, they stopped at a gas station in Darlington and Shakeem used a credit card to fill the gas tank. After filling the tank, they went to IHOP. (Tr. 281–85).

A city police officer spotted Johnson's car in the IHOP parking lot. The four were arrested after a failed attempt to escape. At trial, Johnson identified the cell phone and camera stolen from

the Super 8 Motel. Officer Brandon Hale was the police officer who discovered the defendants at IHOP. His testimony corroborated the events described by Johnson. (Tr. 235–38).

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, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is any probative evidence in the record to support them. *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, 422 S.C. 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)). 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. *Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40. 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).

ARGUMENT

The PCR court properly found Counsel was not constitutionally ineffective for his failure to object following Petitioner's sentence where Counsel did not believe there was any reason to object because the trial judge sentenced Petitioner to substantially less time than he was facing within the statutory limits and there was no indication that the trial judge took Petitioner's decision to go to trial into consideration when imposing the sentence.

On appeal, Petitioner argues Counsel was deficient for failing to object to the trial judge's sentence and failing to preserve any argument for appeal. Specifically, Petitioner argues had the objection been preserved for appeal, an appellate court would have held that the trial judge abused his discretion because Petitioner's sentence was greater than his co-defendants who pleaded guilty. However, Counsel's failure to object was reasonable under the circumstances because Petitioner was sentenced within statutory limits. Furthermore, even had Counsel objected and preserved the issue for appeal, the Court of Appeals would have found the trial court did not abuse its discretion when sentencing Petitioner because Petitioner was sentenced within the statutory limits and there was no indication that the sentencing judge took Petitioner's decision to go to trial into consideration when imposing the sentence. There is ample probative evidence to support the PCR court's ruling. Accordingly, this Court should deny certiorari.

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; *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 trial cannot be relied upon as having produced a just result." *Butler*, 286 S.C. at 442, 334 S.E.2d 441 (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. *Id.*

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 688). 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 (citing *Strickland*, 466 U.S. at 694).

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 696. 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; if it is

easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Judges have discretion in sentencing within the statutory limits. *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974). Generally, a sentencing judge has great discretion in the kind of evidence she may use to assist her in determining the punishment to be imposed. *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967). Indeed, she is obligated to consider information material to punishment and may "exercise a wide discretion in the sources and types of evidence used to assist [her] in determining the kind and extent of punishment to be imposed within limits fixed by law." *State v. Sullivan*, 267 S.C. 610, 618, 230 S.E.2d 621, 625 (1976). *See also Wasman v. United States*, 468 U.S. 559 (1984) ("The sentencing court . . . must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant . . . ."). Moreover, while the rules of evidence do not apply in sentencing proceedings, the Constitution "require[s] the evidence to be relevant, reliable and trustworthy." *State v. Gulledge*, 326 S.C. 220, 229, 487 S.E.2d. 590, 594 (1997) ("A court may consider any relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided the information has sufficient indicia of reliability to support its probable accuracy."). A sentence is not excessive if within statutory limitations (which do not violate the prohibition against cruel and unusual punishment) and not the result of partiality, prejudice, or corrupt motive. *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979); *Wood v. State*, 257 S.C. 179, 184 S.E.2d 702 (1971).

Here, Petitioner argues Counsel should have objected to his sentence and his failure to do so rendered the issue unpreserved for appellate review. At the conclusion of trial, the jury found Petitioner guilty on fourteen counts. Judge Anderson sentenced Petitioner to concurrent sentences on fourteen counts totaling thirty years. Pursuant to South Carolina law, a conviction of first–

degree burglary alone carries fifteen years to life. Petitioner was convicted of three counts of first–degree burglary, totaling forty-five years to three life sentences had the judge chosen to run them consecutively. However, Judge Anderson chose to sentence Petitioner to just thirty years for all fourteen convictions, including the three first–degree burglary convictions. Therefore, the PCR court properly found Counsel's failure to object to the thirty year sentence imposed by the trial judge reasonable because Petitioner was sentenced within statutory limits.

Petitioner also argues had Counsel objected during sentencing, and had the Court of Appeals been presented the preserved issue, that the Court of Appeals would have found the trial court abused its discretion because Petitioner's co-defendants pleaded guilty and received a lighter sentence and the trial judge sentenced him more harshly that his co-defendants. However, the PCR court's factual finding that "Judge Anderson never took [Petitioner]'s decision to go to trial in consideration when imposing the sentence" directly contradicts Petitioner's argument on appeal. On the merits, it is unlikely the Court of Appeals would disagree with the PCR court's ruling and Petitioner's conviction would have been affirmed.

In criminal cases, the appellate court reviews only errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). Judges have discretion in sentencing within the statutory limits. *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

Where a sentence is within the maximum prescribed by law, absent any showing that the sentence resulted from partiality, prejudice, oppression or corrupt motive, the court is without authority to alter the sentence. *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Disparate

sentences between co-defendants is not a per se violation or an abuse of discretion. *State v. Dozier*, 263 S.C. 267, 210 S.E.2d 225 (1974). The relevant sentencing information available to the judge after a plea will usually be considerably less than that available after a trial. *Alabama v. Smith,* 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). In the course of the proof at trial, the judge may gather a fuller appreciation of the nature and extent of the crimes charged. *Id.* The defendant's conduct during trial may give the judge insights into his moral character and suitability for rehabilitation. *Id.* "An abuse of discretion occurs when the conclusions of the [circuit] court either lack evidentiary support or are controlled by an error of law." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Here, the trial court did not abuse its discretion in sentencing Petitioner within the statutory limits. The trial court's sentence is not controlled by an error of law and the sentence is supported by ample evidentiary support. Petitioner was initially offered the same plea deal that his co-defendants were: fifteen years. However, Petitioner rejected the plea offer and chose to go to trial. Petitioner's claim relies on the premise that Counsel can be ineffective where they fail to object when a judge considers the fact that a defendant exercised the right to a jury trial. *Davis v. State*, 336 S.C. 329, 332, 520 S.E.2d 801, 802 (1999) (Finding counsel ineffective where the judge considered the co-defendant's pled guilty on the record during a motion for sentence reduction hearing). However, during the PCR hearing, Counsel credibly testified he did not think there was any legal basis for an objection at the time. Counsel credibly testified feeling there was never indication Petitioner was punished for going to trial. Counsel testified Petitioner knew of the maximum exposure he faced, life on a burglary–first degree charge alone. Counsel credibly testified he filed a motion for reconsideration with the affidavit from the victim attached. However, the court denied this motion without holding oral arguments. Counsel credibly testified

knowing the difficulty in getting sentence reconsideration based upon the affidavit. Furthermore, Counsel credibly testified a reconsideration motion was mainly a source to put the affidavit on the record for preservation. Lastly, the sentencing portion of the trial transcript fails to show that Judge Anderson took Petitioner's decision to go to trial in consideration when imposing the sentence. (Tr. 498-502). The sentence imposed was a lawful, reasonable sentence based on the extremely serious nature of the charges and the role Petitioner played in carrying out the crime. Accordingly, the trial court did not abuse its discretion and certiorari should be denied.

In conclusion, the PCR court made a factual finding that Counsel was not ineffective for any alleged failure to object to the sentence imposed upon Petitioner. There is ample evidence of probative value to support the PCR court's findings, and this Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant Certiorari, the State requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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