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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition of Writ of Certiorari to Charleston County
Court of Common Pleas
The Honorable Robert Hood, Post-Conviction Relief Judge
The Honorable Deadra J. Jefferson, Plea Judge

S.C. SUPREME COURT

Appellate Case No. 2020-000188

ANTHONY A. JONES, II, #370783,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ISSUE PRESENTED

Whether the automatic waiver provision of S.C. Code Ann. § 63-19-20 is unconstitutional?

RESPONDENT'S ISSUES PRESENTED

Did the post-conviction relief court properly dismissed Petitioner's application where section 63-19-20 is constitutional?

STATEMENT OF THE CASE

Anthony Allan Jones II is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court and Dorchester County Clerk of Court. During its October 2015 term, the Charleston County Grand Jury indicted Petitioner for armed robbery. The Dorchester County Grand Jury indicted Petitioner for first-degree burglary during its October 2015 term of court, as well. David Aylor, Esquire, represented Petitioner on both charges.

On December 12, 2016, Petitioner appeared in the Charleston County Court of General Sessions before the Honorable Deadra Jefferson, and pleaded guilty as indicted to both offenses. Pursuant to negotiations with First Circuit Solicitor's Office, Judge Jefferson sentenced Petitioner to fifteen years' imprisonment for first-degree burglary and ten years' imprisonment for armed robbery. App 26. Judge Jefferson ordered both of these sentences to be served concurrently. App. 26. Petitioner did not file a notice of appeal.

Petitioner simultaneously filed identical applications for post-conviction relief in Charleston County and Dorchester County on June 19, 2017. App. 31-34. Both applications were filed the same day by the same counsel of record, Elizabeth Franklin-Best, Esquire, challenging the same convictions, and making identical allegations. In its return, Respondent moved to merge the actions, with the Dorchester application (2017-CP-18-0657) being merged into the Charleston application (2017-CP-10-1880). App. 36-41. By order dated June 22, 2017, Chief Administrative Judge for the First Judicial Circuit Diane Goodstein ordered the cases be merged. App. 43-45.

An evidentiary hearing was held in Charleston County on November 18, 2019, before the Honorable Robert E. Hood. Petitioner was represented by Elizabeth Franklin-Best, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh. App. 46-82. Judge Hood dismissed the Petitioner's case by written order filed on January 31, 2020. Petitioner

alleged counsel was deficient for failing to investigate the circumstances of Petitioner's youth to mitigate Petitioner's sentence, nor did he engage in any other meaningful plea negotiations on Petitioner's behalf in violation of his right to the effective assistance of counsel. Petitioner also alleged the automatic waiver provision of the S.C. Code Ann. § 63-19-20 is unconstitutional. The lower court dismissed the first allegation on the record as counsel submitted a sentencing memorandum and Petitioner received the mandatory minimum sentence. On the second allegation, the lower court dismissed the allegation based on the allegation not being a cognizable PCR claim and section 63-19-20 being constitutional. App. 85-93. Petitioner filed his Notice of Appeal on February 5, 2020.

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. Smalls, 422 S.C. at 179, 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); 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. Id. 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 post-conviction relief court properly dismissed Petitioner's application where section 63-19-20 is constitutional

Petitioner contends the automatic waiver provision of section 63-19-20 of the South Carolina Code of Laws is unconstitutional because it does not allow discretion in sentencing for a defendant who was a juvenile at the time of the crime, allegedly in violation of Petitioner's right to due process. However, the sentencing framework within section 63-19-20 has been held to be constitutional. Therefore, the PCR court correctly denied relief, and this Court should deny certiorari.

Petitioner argues section 63-19-20 is unconstitutional because it restricts a judge's ability to consider the factors put forth in Miller before a juvenile offender is automatically waived from Family Court to General Sessions, where the offender is treated as an adult and the sentences are more severe.¹ Petitioner relies on the holdings in Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010), Miller v. Alabama, 132 S.Ct. 2455 (2012); and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) to support his argument. However, Petitioner's reliance on these cases is misplaced, as these cases apply only in the context of the death penalty or a sentence of life without parole. Petitioner was not sentenced to life without the possibility of parole, and thus

¹Petitioner has raised this claim as a standalone constitutional issue, which differs from the traditional practice of raising constitutional claims in PCR through the Sixth Amendment framework of effective assistance of counsel. This was particularly true prior to this Court's ruling in Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (2019).

Petitioner has never offered any explanation for why he did not raise this issue as a claim of ineffective assistance of counsel, even when the PCR court issued its order dismissing the claim for failure to do so. Petitioner's PWC still fails to address this, despite that ruling now being the law of the case. However, as is stated in section 17-27-20(a)(1), Petitioner is explicitly permitted to raise standalone constitutional violations in a post-conviction relief action. This Court had not yet ruled in Fortune at the time of the lower court proceeding in this matter, and thus the parties and the lower court did not have the benefit of this Court's guidance on the issue. Therefore, this Return addresses Petitioner's claim as a standalone constitutional challenge.

would not fit within the scope of the cited cases. The holding by this Court in Byars is the ultimate result of the holdings in the other cases cited by Petitioner. This Court in Byars vacated all life without parole sentences imposed on juvenile offenders due to a lack in consideration for the constitutionally relevant factors relating to youth and found the defendants were entitled to new sentencing hearings where the courts “fully explore[d] the impact of the defendant’s juvenility on the sentence rendered.” Id. at 545, 765 S.E.2d at 578.

However, even Byars itself does not prevent a court from imposing a sentence of life without parole on a juvenile offender so long as there is first appropriate consideration of the factors enumerated in that decision. Further, this Court held the following as to “de facto” life sentences for juvenile offenders:

Neither *Graham* nor the Eighth Amendment, as interpreted by the Supreme Court, currently prohibits the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile non-homicide offender. We therefore decline to provide Slocumb relief from his 130-year sentence stemming from his multiple and violent crimes.

State v. Slocumb, 426 S.C. 297, 314–15, 827 S.E.2d 148, 157 (2019). Here, Petitioner received a sentence of fifteen years’ imprisonment for his first-degree burglary conviction and a concurrent ten years’ imprisonment for the armed robbery conviction. Petitioner was not sentenced to life imprisonment with or without the possibility of parole, and he was not given a “de facto” life sentence. In fact, Petitioner was eighteen when his sentence was imposed, and he is scheduled to be released on April 12, 2029 at the age of thirty-two. Petitioner’s case is thus readily distinguishable from those he cites in support of his argument.

Also, Petitioner argues that section 63-19-20 is unconstitutional as it restricts a judge’s decision-making ability by requiring a mandatory minimum. However, this Court has held a

similar sentencing framework to be constitutional in the context of juvenile homicide defendants.

In State v. Smith, this Court held the following:

Smith argues the statute is unconstitutional because it places juvenile and adult homicide offenders on equal footing for sentencing purposes, and the Eighth Amendment, as interpreted by the United States Supreme Court (the Supreme Court) in Miller v. Alabama, forbids such a result. In accordance with the overwhelming majority of states that have addressed similar arguments, we hold the mandatory minimum sentence imposed by section 16-3-20(A) is constitutional as applied to juveniles and affirm Smith's convictions and sentences.

428 S.C. 417, 418, 836 S.E.2d 348 (2019). Petitioner was sentenced to the mandatory minimum sentence of fifteen years in this case under a similar sentencing provision, which is also constitutional. Therefore, the PCR court therefore correctly denied relief, and this Court should likewise deny certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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