

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 31 2020

S.C. SUPREME COURT

Appeal from Charleston County
Honorable Roger M. Young, Circuit Court Judge
Honorable Michael G. Nettles, Post-Conviction Relief Judge
Appellate Case No. 2020-001662

DEONTE BROWN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO DISMISS

The State through its undersigned counsel, would respectfully show unto the Court as follows:

In February 2013, the Charleston County Grand Jury indicted Petitioner for one count of murder, one count of attempted murder, and one count of possession of a weapon during the commission of a violent crime (2013-GS-10-535, 2013-GS-10-536, 2013-GS-10-537). From September 15-19, 2014 a jury trial was held in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., presiding. Petitioner was represented by James Smiley, Esq. At the conclusion of trial, the jury convicted Petitioner of all counts. Following the verdict, the trial judge sentenced Petitioner to a term of thirty years' imprisonment for attempted murder, five years' imprisonment for possession of a weapon during the commission of a violent crime, and fifty years' imprisonment for murder. All sentences ran concurrently with each other

resulting in an aggregate sentence of fifty years' imprisonment for Petitioner. Petitioner did not file an appeal.

On July 15, 2015, Petitioner filed a *pro se* application for post-conviction relief (2015-CP-10-3935), alleging the following grounds for relief:

1. Ineffective Assistance of Counsel:
 - a. "He never did investigate my case to the best of his ability;"
 - b. "My attorney never had a pre-trial hearing for my case;"
 - c. "My lawyer did not file for the notice of appeal;"
2. "Actual Conflict of Interest:"
 - a. ". . . Detective Lawrence who was investigating the case was in a sexual relationship with my co-defendant(sic) mother who was a possible suspect under investigation of this crime;"

On July 25, 2017, Petitioner amended his application to allege ineffective assistance of counsel regarding:

- a. Failure to adequately question Det. Christina Smith's testimony that she was able to ID client behind the muzzle flash.
- b. Video enhancement by SLED.
- c. Sequence of shooting.
- d. Failure to adequately present the possibility of two shooters.
- e. Failure to adequately present the issue of two people present with red shirts.
- f. Failure to adequately question regarding Gun Powder Residue test.
- g. Failure to properly investigate:
 - i. Defendant said the shooter was Derrick Brown. Derrick Brown was not arrested or charged. Derrick Brown's Mother was in a relationship with Detective Charles Lawrence.
 - ii. Witness Chavis Heyward originally said that he did not see anything. Two years later he testifies and identifies people on the video.
 - iii. The waitress at the restaurant gave a statement that she did not see anything. However, at trial she remembers seeing a gun come out of a red sleeve.
- h. Failure to talk to witnesses before trial. No analysis of the videos and no Private Investigator.
- i. Failure to have a suppression hearing regarding the videos.
- j. Failure to bring up the information regarding Detective Charles Lawrence and his relationship with Derrick Brown's Mother.

- k. The Applicant did not testify based on bad advice from Defense Counsel.
- l. Defense Counsel had no theory of Defense.
- m. There was a ten (10) year plea offer, which was not properly explained to the Applicant.
- n. Defense Counsel did not get closing argument because he put in a picture of shattered window as evidence.
- o. Defense attorney did not file an Appeal, after he told Applicant that he would.

Respondent served its return to the application and requested an evidentiary hearing on the application on February 18, 2016. An evidentiary hearing was convened on August 7, 2017, before the Honorable Michael G. Nettles. Petitioner was present alongside counsel Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office. Petitioner presented testimony from himself and from his mother. Respondent called trial counsel, James Smiley.

On September 11, 2017, Judge Nettles issued a written order denying the application in full, but granting Petitioner's request for a belated appeal pursuant to White v. State. This order was filed with the Charleston County Clerk of Court on September 26, 2017. Petitioner filed his notice of appeal to this Court on November 1, 2017. On November 30, 2018, Petitioner filed a petition for a writ of certiorari and a brief in support of petition for writ of certiorari pursuant to White v. State. In his petition, Petitioner challenged the post-conviction relief judge's denial of relief for the allegation that trial counsel failed to: (1) interview Chavis Heyward and prepare for his testimony, (2) object to Dario Teran's statement being read into the record, (3) show the prejudice and bias of Detective Lawrence, (4) object to SLED video enhancement, and (5) adequately advise Petitioner regarding testifying on his own behalf. In his White v. State brief, Petitioner argued (1) The trial court erred in allowing the testimony of Detective Barfield regarding statements made Chris Heyward under Rule 613(b) SCRE, and (2) The trial court

erred in allowing the State to present frames from a video to the jury in closing argument that were not introduced into evidence. On April 1, 2019, the State filed a return to Petitioner's petition for writ of certiorari and a brief of respondent pursuant to White v. State. On April 19, 2019, this Court transferred Petitioner's appeal to the South Carolina Court of Appeals pursuant to Rule 243(l) SCACR.

On October 7, 2020, the Court of Appeals granted certiorari regarding the questions raised in Petitioner's White v. State brief and issued an unpublished opinion affirming Petitioner's convictions on the direct appeal issues. Brown v. State, Op. No. 2020-UP-284 (S.C. Ct. App. filed October 7, 2020). However, the Court of Appeals denied certiorari on Petitioner's remaining post-conviction relief claims. The Court of Appeals wrote:

Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief (PCR). Because there is sufficient evidence to support the PCR judge's finding that Petitioner did not knowingly and intelligently waive his right to a direct appeal, we grant certiorari as to this question and proceed with a review of the direct appeal issue pursuant to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986). We deny certiorari on Petitioner's remaining questions.

Brown v. State, Op. No. 2020-UP-284 (S.C. Ct. App. filed October 7, 2020). The Court of Appeals concluded the trial court did not err in allowing the testimony of Investigator Barfield regarding statements made by Chavis Heyward. Furthermore, the Court also held the trial court did not err in allowing the State to present still frames from a surveillance video in closing argument. On October 16, 2020, Petitioner filed a petition for rehearing with the Court of Appeals. On November 24, 2020, the Court of Appeals denied the Petition for Rehearing.

On December 22, 2020, Petitioner again filed a petition for a writ of certiorari with this Court. However, Petitioner does not seek certiorari on the direct appeal issues addressed by the Court of Appeals in its opinion. Rather, Petitioner is attempting to re-litigate three post-conviction relief claims which the Court of Appeals declined to address on certiorari. In his latest

petition, Petitioner argues Counsel was ineffective for (1) failing to object to Dario Teran's statement being read into the record by the solicitor, (2) failing to show the prejudice and bias of Detective Lawrence, and (3) failing to adequately advise Petitioner regarding testifying on his own behalf. The aforementioned claims were raised by Petitioner in his original petition for a writ of certiorari. In its discretion, the Court of Appeals denied certiorari on the questions Petitioner is now attempting to present to this Court. Therefore, Petitioner's current petition before this Court should be denied and Petitioner's case should be dismissed. See Haggins v. State, 377 S.C. 135, 659 S.E.2d 170 (2008) ("A decision by the Court of Appeals to grant or deny a writ of PCR certiorari is a matter committed to that court's discretion."); See also Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009) ("Accordingly, we take this opportunity to extend our decisions in Haggins and Missouri to cases in which the Court of Appeals has issued an order denying a writ of certiorari in a PCR matter...").

WHEREFORE, Respondent prays that this Court will deny Petitioner's petition for a writ of certiorari and dismiss Petitioner's case.

Respectfully submitted,

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