STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Mar 22 2021

S.C. SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

JUSTIN J. LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000998

PETITION FOR WRIT OF CERTIORARI

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the post-conviction relief court erred when it summarily dismissed Petitioner's post-conviction relief application where the court found that because Petitioner proceeded *pro se* at his trial he was barred from raising ineffective assistance of counsel claims regarding defense counsel's pretrial conduct?

STATEMENT

During the June 2017 term, the Florence County Grand Jury indicted Petitioner for distribution of heroin. App. 366 – 67.

On September 4 – 5, 2018, Petitioner proceeded to a bench trial before the Honorable Thomas A. Russo. App. 1. Petitioner represented himself, with Wallace H. Jordan acting as standby counsel. Id. Todd S. Tucker represented the state. Id.

Petitioner was convicted as indicted. App. 274, l. 2 – 276, l. 13. Petitioner was sentenced to fifteen years' imprisonment for distribution of narcotics, second offense. App. 284, l. 19 – 285, l. 1. Petitioner moved for reconsideration of his sentence and a reconsideration hearing was held on October 3, 2018. App. 332, l. 2 – 333, l. 19. Judge Russo reconsidered Petitioner's sentence to twelve years' imprisonment. Id.

On February 21, 2019, Petitioner filed an application for post-conviction relief (PCR). App. 288 – 310. On September 18, 2019, the state filed its return and motion to dismiss. App. 311 – 320.

On October 20, 2019, Petitioner's PCR counsel filed an amended application for post-conviction relief where he alleged, inter alia, that Jordan provided ineffective assistance due to his conduct pretrial where he failed: to investigate into the criminal charges against Petitioner; to file pretrial suppression motions, to investigate into potential favorable witnesses, to obtain the chemical analysis report on the alleged drugs in this case, and to timely request a preliminary hearing. App. 321 – 323.

The state filed an amended return and motion to dismiss on December 13, 2019 arguing that because Petitioner represented himself at trial, he should not be able to raise ineffective assistance of counsel claims, even as to pretrial ineffective assistance. App. 324 – 329.

On December 16, 2019, Petitioner's PCR hearing was held before the Honorable D. Craig Brown. App. 330. Overture Walker represented Petitioner. Id. Lindsey McCallister represented the state. Id.

Before evidence could be presented or testimony given, the state moved for summary dismissal of Petitioner's PCR case. App. 332, l. 3 – 333, l. 15. The PCR court decided to allow defense counsel and the state to file memoranda of law to support their position by January 15, 2020 and adjourned the hearing. App. 341 – 42.

On January 13, 2020, defense counsel filed a memorandum in opposition of respondent's motion to dismiss. App. 344 – 346. On February 14, 2020, the state filed its memorandum in support of the motion to dismiss. App. 347 – 355.

On June 11, 2020, the PCR court filed an order of dismissal denying Petitioner relief. App. 356 – 365. The PCR court determined Petitioner could not raise allegations of ineffective assistance of counsel, even for pretrial errors, because Petitioner represented himself at trial and "assumed responsibility for those tasks when he elected to represent himself." App. 353 – 54. Furthermore, the PCR court stated that if Petitioner needed more time to correct his prior counsel's errors "he should have requested a continuance" at trial. Id.

This petition follows.

ARGUMENT

The post-conviction relief court erred when it summarily dismissed Petitioner's post-conviction relief application where the court found that because Petitioner proceeded *pro se* at his trial he was barred from raising ineffective assistance of counsel claims regarding defense counsel's pretrial conduct.

Relevant Facts

On February 3, 2017, Petitioner allegedly sold heroin to confidential informant David Daniels. App. 66, l. 17 – 72, l. 19. Investigators Jason Pate and Rollins Rhodes put a video recording device on Daniels and had him conduct a "controlled buy" of heroin. Id.

Prior to trial, Petitioner moved to relieve Wallace H. Jordan as his defense counsel and to procure different representation. App. 5, l. 1 – 8, l. 10. Defense counsel Jordan told the trial court he was prepared to proceed to trial. App. 11, l. 10 – 12, l. 4. However, Petitioner informed the court of the many disputes he and Jordan had regarding the handling of his case. App. 5, l. 23 – 8, l. 10; App. 9, l. 4 – 10, l. 11. Petitioner specifically stated that because of Jordan's ineffective assistance he was left unaware about "anything that [was] going on with [his] case." App. 9, l. 4 – 10, l. 11.

Petitioner explained to the trial court that earlier in the week before trial he went to Jordan's office and relieved him as defense attorney. App. 13, l. 19 – 16, l. 10. At that time, defense counsel Jordan told Petitioner he needed to appear before a judge to formally move for Jordan to be relieved as his defense counsel. App. 17, l. 23 – 18, l. 4. Petitioner went to the court the next day to appear at a hearing to relieve Jordan as defense counsel, but Jordan never appeared for the hearing. Id.

Defense counsel Jordan and another public defender who was present at Petitioner's trial, Floyd[1], disagreed with Petitioner's account. App. 17, l. 7 – 18, l. 4. Floyd was also present for the conversation between Petitioner and Jordan where Petitioner told Jordan he was "fired." App. 18, l. 21 – 20, l. 9. However, Floyd then stated that Petitioner came back to Jordan's office the next day and had a second conversation where he told Jordan, "that he was not fired." Id.

Petitioner disputed Floyd's recollection of the second conversation with Jordan. Id. Petitioner explained that he meant Jordan was not "fired" *yet*, only because Petitioner could not officially relieve Jordan as defense counsel until he went in front of a court and moved to relieve him. Id.; App. 28, l. 21 – 29, l. 23 App. 44, ll. 1 – 15. This was evinced by the fact that Petitioner went to the court after their conversation to have Jordan relieved as counsel, but Jordan never appeared at the hearing to be relieved. App. 18, l. 21 – 20, l. 9; App. 28, l. 21 – 29, l. 23. Accordingly, Petitioner maintained his desire to relieve Jordan as defense counsel, but never had the opportunity to relieve him until the day of trial. App. 18, l. 21 – 20, l. 9; App. 28, l. 21 – 29, l. 23

Petitioner reiterated his desire to hire a new attorney. App. 24, ll. 13 – 21. However, the court denied Petitioner's request and informed Petitioner, repeatedly, that the case would not be continued. App. 16, ll. 1 – 10; App. 43, ll. 6 – 44, l. 14. This left Petitioner with either Jordan remaining as defense counsel or proceeding *pro se* as his only options. App. 28, l. 21 – 29, l. 23;

---

[1] Mr. Floyd's first name was never used during the PCR hearing. He was referred to only as "Mr. Floyd."

App. 33, l. Forced into that no-win situation, Petitioner opted to proceed *pro se*. App. 50, ll. 4 – 5; App. 52, ll. 21 – 22.

In the state's memoranda to support dismissal of Petitioner's PCR application, the state alleged that when Petitioner told the court "I wasn't trying to continue a case. I was trying to be properly represented," it showed Petitioner did not want a continuance to properly prepare his defense. App. 42, l. 21 – 43, l. 14; App. 353 – 354. However, that was a misinterpretation of what Petitioner said. Both Petitioner and the court were referring to Petitioner's attempt to relieve Jordan earlier in the week. That was evinced by the court's comment that "if we had this conversation last Thursday--- I would --- I would [still] not continue the case." Id. Accordingly, Petitioner's comment that "[he] wasn't trying to continue a case. [He] was trying to be properly represented," should not be construed as an assertion by Petitioner that he did not need any additional time to prepare for trial. Rather it explained that on the Thursday before trial Petitioner wanted to relieve defense counsel and not to request a continuance at that point.

During Petitioner's trial, Investigators Pate and Rhodes testified that before they sent confidential informant Daniels to conduct the "controlled buy" they searched his person and his car for the presence of other drugs and found none. App. 67, l. 17 – 68, l. 5; App. 139, l. 4 – 142, l. 19. Rhodes testified they put a video recording device in Daniels' car to record the alleged incident. Id.

Rhodes stated he gave Daniels seventy-five dollars to buy the drugs and five dollars to buy gas. App. 204, ll. 4 – 8. Rhodes asserted that when Daniels returned to them, he no longer possessed the money given to him, but had a small bag of drugs instead. App. 144, l. 18 – 145, l. 8.

The confidential informant Daniels testified that he bought drugs from Petitioner during the "controlled buy." App. 89, ll. 1 – 25. However, on cross-examination Petitioner questioned him about the video that the state purported showed Daniels buying drugs from Petitioner. App. 116, l. 24 – 119, l. 14.

The video showed that on the way to pick up Petitioner, Daniels stopped at a gas station allegedly to get gas for his car. Id. However, when Daniels stopped at the gas station, he left the video recording device sitting in the car and went inside the store for a time. Id. Accordingly, there was a period where Daniels was off camera and had the opportunity to pick up drugs from a third party inside the gas station. During cross-examination, Daniels denied buying or obtaining drugs from a third party. Id.

However, Daniels was forced to admit the video never actually showed a transfer of drugs or money between he and Petitioner. App. 116, l. 1 – 117, l. 4. The video only depicted Daniels driving with some money in his hand on his way to pick Petitioner up. Id. Then it showed Petitioner getting into the car. Id. A few moments later it showed Daniels dropping Petitioner off and no longer having the money in his hand. Id. Accordingly, the actual transaction was not depicted in the video. Moreover, Daniels was also forced to admit he used heroin the night before the alleged "controlled buy." App. 225, ll. 8 – 10.

Michael Hansen, the state's expert in chemical analysis, testified at Petitioner's trial as well. App. 186, l. 5; App. 188, ll. 13 – 21. Hansen stated that he tested the substance sent to him regarding Petitioner's case. App. 188, l. 22 – 191, l. 19. Hansen testified that the substance he tested came back positive for .09 grams of heroin. App. 191, l. 25 – 193, l. 12. Petitioner was unable to cross-examine the state's expert on the methodology of his testing or on the chain of custody as pretrial counsel did not obtain the chemical analysis report prior to trial.

Petitioner testified in his own defense at his trial. App. 232, l. 14. Petitioner did not dispute getting into the car with Daniels on the day of the alleged incident. App. 240, ll. 15 – 18. However, Petitioner explained he did not sell drugs to Daniels during the alleged "controlled buy." App. 234, l. 5 – 237, l. 18.

Petitioner simply called Daniels for a ride because he had been arguing with his girlfriend and needed someone to pick him up from his home. Id. When Daniels arrived to give Petitioner a ride, Petitioner told Daniels that he had pills, not to sell to Daniels, but to give to him as payment for the ride. App. 90, ll. 20 – 24; App. 237, l. 17 – 238, l. 16; App. 244, l. 15 – 246, l. 19; App. 253, ll. 1 – 12.

At the outset of Petitioner's PCR hearing, the state moved to dismiss Petitioner's PCR hearing because he proceeded *pro se* at trial and, according to the state, that precluded him from raising ineffective assistance of counsel claims even to actions made pretrial when he was represented by counsel. App. 332, l. 2 – 333, l. 15. The state cited the Ninth Circuit case Cook v. Ryan, 688 F.3d 538 (2012) for the proposition that *pro se* litigants cannot allege pretrial ineffective assistance of counsel claims. Id.

PCR counsel Walker argued that Petitioner had cognizable claims of pretrial ineffective assistance of counsel such that summary dismissal was improper. App. 333, l. 23 – 335, l. 18. Walker explained Petitioner was represented by Jordan until the day of trial and that Petitioner raised allegations of pretrial ineffective assistance that needed to be addressed, such as failure to investigate and failure to file pretrial suppression motions regarding the admissibility of the drug evidence. Id. Walker also explained that at trial Petitioner wanted to have a different attorney represent him, but the court would not allow him time to procure one. Id.

Petitioner spoke at his PCR hearing about instances of pretrial ineffective assistance of counsel. App. 341, ll. 8 – 12. In the limited time he was permitted to speak, Petitioner explained that defense counsel's failure to conduct a proper investigation left him unable to contest the admittance of evidence in his trial. Id.

Such pretrial failures were more fully explained in Petitioner's PCR application and amended application. App. 297 – 302; App. 321 – 323. The allegations were: the failure to procure the chemical analysis report to use in a suppression motion pretrial; the failure to investigate the criminal charges against Petitioner; the failure to communicate with material witnesses whose testimony would have been favorable to Petitioner; and the failure of diligent representation in that Jordan neglected to appear before the court to be relieved by Petitioner prior to trial. App. 297 – 302; App. 321 – 323.

The PCR court ordered both parties to submit memoranda to the court explaining their positions on summary dismissal. App. 341, l. 25 – 342, l. 3. In an order filed on June 11, 2020, the PCR court found for the state and dismissed Petitioner's PCR application. App. 356 – 365.

The PCR court determined that because Petitioner proceeded *pro se* at trial he was barred from raising ineffective assistance of counsel claims in his PCR application. App. 363 – 365. The court also found that Petitioner's "only argument" was that the video did not sufficiently show the transaction in order to support his conviction; however, that finding failed to recognize Petitioner's other cognizable ineffective assistance of counsel claims that needed to be heard at his PCR hearing. App. 364.

Discussion

Defense counsel's failure to conduct a reasonable investigation constituted ineffective assistance of counsel that prejudiced Petitioner's ability to represent himself at trial. App. 335, ll.

5 – 10. The Sixth Amendment's guarantee of effective assistance of counsel applies to pretrial conduct because once the adversary judicial process has been initiated, the Sixth Amendment guarantees a defendant the right to have counsel present at all "critical" stages of the criminal proceedings. Montejo v. Louisiana, 129 S. Ct. 2079, 2085 (2009) (citing United States v. Wade, 87 S.Ct. 1926 (1967); and Powell v. Alabama, 53 S.Ct. 55 (1932)).

To establish ineffective assistance of counsel, the Petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). "First, a defendant must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted).

"The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief." Id. at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, where ineffective assistance of counsel is alleged as a ground for PCR relief, the applicant must prove that "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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 692).

The United States Supreme Court has held that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; See Wiggins v. Smith, 539 U.S. 510, 527 (2003) (noting "[i]n assessing the reasonableness of an attorney's investigation, . . . a court must not

only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further"). This Court has also held that trial counsel has a duty "to discover all reasonably available mitigation evidence and reasonable available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); See Lounds v. State, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008) (finding "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case") (internal quotations omitted); see also Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (holding defense counsels' "failure to discuss the gunshot residue analysis with the state's expert witness during pretrial investigation was unreasonable, and thus, was deficient.").

The United States Supreme Court held in Faretta v. California, 95 S.Ct. 2525 (1975) that a *pro se* defendant cannot raise ineffective assistance of counsel claims regarding the quality of his own defense. Faretta, at 2541 n. 46. However, in Faretta the Court did not prohibit a *pro se* litigant from raising ineffective assistance of counsel claims regarding a defense counsel's conduct prior to the defendant relieving defense counsel and proceeding *pro se*.

As far as undersigned counsel is aware, the determination of whether a *pro se* litigant can raise ineffective assistance of counsel claims against pretrial counsel is a matter of first impression in South Carolina.

In its memorandum supporting its motion to dismiss, the state cited the Ninth Circuit Court of Appeals' decision in Cook v. Ryan, 688 F.3d 598 (2012) for the proposition that a *pro se* litigant is foreclosed from raising ineffective assistance of counsel claims of pretrial conduct by defense counsel. Cook, at 601; App. 362 – 63. However, the Ninth Circuit's decision did not

create an absolute bar on *pro se* litigants from raising ineffective assistance of counsel claims regarding a defense counsel pretrial conduct. The holding in that case showed the bar on pro se litigations from raising ineffective assistance of counsel claims is only proper where the *pro se* litigant *had the opportunity to correct defense counsel's errors before trial.* Cook, at 609.

An examination of the decision in Cook illustrates the limited situation where a *pro se* litigant is foreclosed from raising ineffective assistance of counsel claims. Cook's claim of ineffective assistance of pretrial counsel regarded his attorney's failure to develop mitigation evidence for sentencing purposes. Cook, at 601. The mitigation evidence that Cook wanted his counsel to develop regarded Cook's prior mental health issues and "troubled childhood". Id.

The Ninth Circuit determined that pretrial counsel did not provide ineffective assistance of counsel because Cook could have corrected his pretrial counsel's alleged errors. Id. Cook already knew "much, if not all," of the information he faulted his counsel for failing to develop. Cook, at 609 n. 11. "Even if [Cook] was not completely aware of [his] mental impairments... he was plainly aware of his [own] troubled childhood and adolescence. Yet Cook apparently never told his pretrial or PCR counsel about that mitigation information." Id. Accordingly, Cook failed to "set forth a *substantial* claim that his pretrial counsel preformed deficiently." Id. at 612. (emphasis added)

The Ninth Circuit Court of Appeals specifically emphasized that the justifications for its decision were grounded in the facts of Cook's case. The Ninth Circuit stated, "A unique feature of this case, and one that informs much of our analysis, *is that Cook's pretrial counsel ceased to represent Cook after seven months*, at which point Cook decided to represent himself." Id. (emphasis added) Furthermore, during the limited period of defense counsel's representation, Cook's pretrial procured two mental evaluations and a hearing on Cook's competence to stand

trial. Id. Lastly, and perhaps most importantly, "in Cook's waiver of counsel hearing, Cook stated that his lawyer "*has worked hard for my defense; [he] cares about the outcome of my trial.*" Id. (emphasis added)

Petitioner's case is distinguishable from Cook in many respects. First, Cook relieved his counsel in April of 1988, but his trial did not begin until late June of 1988. Cook, at 609; State v. Cook, 170 Ariz. 40, 50, 821 P.2d 731, 741 (1991). Therefore, the argument that Cook had the opportunity to correct his pretrial counsel's mistakes was much more forceful in Cook's case than it was here because Cook had at over two months to address his counsel's pretrial failures. Whereas here, Petitioner was represented by Jordan until moments before his trial. App. 50, ll. 4 – 5; App. 52, ll. 21 – 22. Accordingly, Petitioner did not have the opportunity to correct his defense counsel's pretrial errors.

The state argued that Petitioner could have obtained the opportunity to correct defense counsel's pretrial errors had he moved for a continuance to conduct a proper investigation into his own case. App. 328; App. 353 – 354. That argument was undercut by the exchange between the trial court and Petitioner regarding his request to hire a new attorney. App. 42, l. 21 – 44, l. 14.

After relieving defense counsel Jordan, Petitioner requested that the trial court allow him to hire a new attorney, but the trial court *repeatedly* told Petitioner that the case would not be continued. App. 16, ll. 1 – 10; App. 42, l. 21 – 44, l. 14. The court further opined that it would have denied Petitioner's motion for a continuance even if it was made a week earlier when Petitioner initially tried to relieve Jordan, but Jordan failed to appear in court. App. 42, l. 21 – 44, l. 14. Therefore, after Petitioner proceeded *pro se* he did not ask for a continuance to conduct a proper investigation because he knew it would have been denied. State v. Passmore, 363 S.C.

568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("[O]ur courts have developed the doctrine of futility, which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused.") (citing State v. Pace, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding "[a]s to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile.")). The trial court was clear: this case would not be continued. Id.

Another distinguishment between Cook and the present case was that the historical information Cook wanted his attorney to develop was already known to Cook and he simply chose not to disclose it to his attorney. Cook, at 609 n. 11. Accordingly, Cook had every opportunity to correct the "pretrial failures," even while he was still being represented.

Here, Petitioner did not already possess the information he wanted defense counsel to develop and was forced to rely on defense counsel's investigation to reveal it. App. 9, l. 4 – 10, l. 11. Among other deficiencies, Petitioner was left not knowing the results of the drug analysis report to challenge the admission of the drug evidence due to gaps in the chain of custody or the methodology used to test the drugs. Accordingly, Petitioner was not afforded the opportunity to correct defense counsel's pretrial errors, such that Petitioner's ineffective assistance of counsel claim should not have been summarily dismissed. Cook, at 609.

The final important distinction from Cook to the present case was Cook's comments to the court during the waiver of counsel hearing. Id. Cook told the court that his attorney "worked hard for my defense; [he] cares about the outcome of my trial." Id. In the present case Petitioner maintained his desire to relieve Jordan as defense counsel throughout the proceedings. App. 13, l. 19 – 16, l. 10; App. 17, l. 23 – 18, l. 4; App. 18, l. 21 – 20, l. 9. He consistently complained of

pretrial errors and never asserted that defense counsel provided effective assistance of counsel. App. 28, l. 21 – 29, l. 23; App. 341, ll. 8 – 12.

It is also important to note that the Ninth Circuit's decision in Cook did not create a per se bar on all *pro se* litigants from making claims of pretrial ineffective assistance of counsel. Cook, at 612. The Ninth Circuit held that due to the "unique" facts of Cook's case, he did not raise a "substantial" claim of ineffective assistance of counsel. Id.

Consequently, the Ninth Circuit's decision in Cook would still allow for *pro se* litigants to raise claims of ineffective assistance of pretrial counsel if the allegation was "substantial." Id. Based on the holding in Cook, a "substantial" claim of ineffective assistance of pretrial counsel would arise where the *pro se* litigant did not have the opportunity to correct the errors of pretrial counsel. Accordingly, the Ninth Circuit's decision in Cook should not control the disposition of the present case because Petitioner presented substantial claims of pretrial ineffective assistance of counsel and did not have the opportunity to correct defense counsel's pretrial errors.

This case presents meaningful reasons to grant certiorari. As far as undersigned counsel is aware the question as to whether a *pro se* litigant is barred from raising ineffective assistance of counsel claims on pretrial errors by defense counsel is a novel question of law in South Carolina. Moreover, the issue here directly involves substantial constitutional issues regarding whether the Sixth Amendment guarantee of effective assistance of counsel applies to defense counsel's pretrial conduct in a case where the defendant subsequently proceeds *pro se*.

In this case, defense counsel's failure to conduct a reasonable investigation left Petitioner's unable to properly defend himself at trial. App. 10, ll. 6 – 11. Since Petitioner was represented by counsel until moments before his trial began, and the trial court was clear it

would not continue the case, he did not have the opportunity to correct defense counsel's pretrial errors before trial such that the bar from Cook was inapplicable.

Moreover, dissimilar to Cook, Petitioner did not already possess the information he needed trial counsel to procure to properly prepare his defense. Petitioner relied on defense counsel's investigation to develop the information he sought, and defense counsel's deficient investigation left him unable to defend himself such that Petitioner's claims of ineffective assistance of pretrial counsel were "substantial." Cook, at 612.

Accordingly, summary dismissal was improper because Petitioner raised cognizable, substantial claims of ineffective assistance of pretrial counsel that needed to be heard at his PCR hearing and summary dismissal denied Petitioner his "one bite of the apple." Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999).

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.

Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of March, 2021.