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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

CARY GLENN RYALS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2018-000570

BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ISSUE PRESENTED

Did the PCR court err in not finding trial counsel ineffective for not objecting to Petitioner Ryals proceeding to trial dressed in improper prison attire and for not requesting a continuance in order for counsel to provide proper street clothes for Ryals?

STATEMENT

On May 12, 2015, petitioner was indicted in Berkeley County on the charge of being a habitual traffic offender. App. 211. On June 1, 2015, petitioner was tried before the Honorable Kristi Lea Harrington and a jury. App. 1. Mason West and Kamila Szymczynska represented the State. App. 1. Frampton Durban represented petitioner. App. 1. The jury convicted petitioner. App. 102, l. 9 – 17. Judge Harrington sentenced petitioner to five years' imprisonment. App. 111, l. 9 – 17. The court also revoked petitioner's probation in full, which resulted in ten years' imprisonment. App. 111, l. 9 – 17. Petitioner's appeal was not perfected. App. 207-08.

On January 28, 2016, petitioner filed a PCR application. App. 113. On December 4, 2017, a hearing was held before the Honorable Michael G. Nettles. App. 134. Julie Coleman represented the State. App. 134. Rodney Davis represented petitioner. App. 134. On March 9, 2018, Judge Nettles granted in part and denied in part petitioner's PCR. App. 195. Judge Nettles denied petitioner's claims for relief, but granted him a belated appeal. App. 195.

On September 24, 2018, petitioner filed a petition for certiorari raising three issues and an Anders[1] brief pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). LaNelle Cantey DuRant represented petitioner at that time, and current counsel assumed petitioner's representation after Ms. DuRant's retirement. On February 1, 2019, the State filed a letter in lieu of a formal return. On February 13, 2019, the Supreme Court transferred petitioner's case to this Court. On January 27, 2021, this Court dismissed the White v. State appeal. On the same day, this Court issued an Order granting certiorari on one issue in the petition. This brief of petitioner follows.

[1] Anders v. California, 386 U.S. 738 (1967).

STANDARD OF REVIEW

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014))." Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

The PCR court erred in not finding trial counsel ineffective for not objecting to Petitioner Ryals proceeding to trial dressed in improper prison attire and for not requesting a continuance in order for counsel to provide proper street clothes for Ryals.

Before petitioner Cary Ryals ("Ryals") took the stand to testify at trial, Judge Harrington authorized courtroom security to remove his "leg irons in front of the jury." App. 60, l. 23 – 25. The court asked Ryals, "Do I need to have any cause for concern?" App. 60, l. 23 – 25. Ryals replied, "I will comply with everything, ma'am. I wish I was dressed better than I am presently." App. 61, l. 1 – 2. Earlier in the trial when a police officer was asked to identify Ryals' clothing from the stand, he said Ryals was wearing a "[w]hite shirt with green stripes." App. 30, l. 19 – 31, l. 1.

The PCR judge found that Ryals' trial counsel, Frampton Durban, Jr., "may have been deficient" for allowing the trial to proceed while Ryals "was wearing his prison clothing and was not provided with civilian attire to wear for trial."[2] App. 204. Ryals testified at the PCR hearing that he was brought to court in the same type of jail clothes he wore to his PCR hearing, "but they were green." App. 153, l. 10 – 19. The clothes Ryals wore at trial said "Hill Finklea Detention Center on the back of them." App. 153, l. 16 – 19. Trial counsel did not bring Ryals any clothing to wear for the second day of trial. App. 154, l. 17 – 23. Ryals testified at PCR that he had handcuffs and shackles on at trial. App. 169, l. 8 – 14.

The PCR judge, the Honorable Michael G. Nettles interrupted the proceedings to ask the attorney general:

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[2] Mr. Durban's law license was suspended almost a year after petitioner's trial, on June 24, 2016. In the Matter of Durban, 417 S.C. 39, 789 S.E.2d 574 (2016). On August 8, 2018, Mr. Durban was given a three-year definite suspension, retroactive to his interim suspension. In the Matter of Durban, 424 S.C. 230, 818 S.E.2d 1 (2018). The attorney general stated she was unable to find or subpoena Mr. Durban for petitioner's PCR hearing. App. 137, l. 6 – 23.

> Ms. Coleman, do you know how many—I practiced law for 20 years and been on the bench for 12. **I have never as a lawyer or judge allowed someone to be tried in prison garb.** Is there a law that says or is there a case that addresses this issue?

App. 169, l. 25 – 170, l. 5 (emphasis added). The attorney general replied, "Not that I know of, Your Honor," and began making her argument. App. 170, l. 6 – 8. Judge Nettles interrupted and asked, "Have you ever done that? Have you ever seen that?" App. 170, l. 9 – 10. The attorney general replied negatively, but then argued that the evidence against Ryals was overwhelming and no prejudice existed. App. 170, l. 11 – 15.

Judge Nettles replied, "Based on what they presented it is not overwhelming." App. 170, l. 16 – 17. At the end of the hearing, Judge Nettles said "this is a right convoluted matter" and asked for proposed orders. App. 177, l. 11 – 178, l. 3. The PCR court eventually issued a written Order finding no prejudice on this ground and overwhelming evidence of Ryals' guilt. App. 204-07.

Judge Nettles rightly cited his thirty-two years of experience in preventing defendants from being tried wearing prison garb because it has been forty-five years since the United States Supreme Court effectively banned the practice. Estelle v. Williams, 425 U.S. 501 (1976). In Williams, the Court decided that compelling a defendant to stand trial in jail clothing violates due process and impairs the presumption of innocence. Id. at 503-06. The Court recognized "that the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." Id. at 504-05.

The United States Supreme Court cited Williams in its 2005 decision reversing a death sentence because the defendant's shackles were visible to the jury. Deck v. Missouri, 544 U.S. 622, 628 (2005). The trial judge overruled the defense's objection to visible shackles during the

penalty phase of Deck's capital trial. Id. at 625. The judge reasoned, in part, that Deck had already been convicted. Id.

The Court cited the impairment of the presumption of innocence as an important consideration weighing against visible shackles during the guilt phases of criminal trials, but realized that after conviction, the importance of this consideration was reduced. Id. at 632. The Court held that the shackles imperiled "related concerns," including adversely affecting "the jury's perception of the character of the defendant." Id. at 632-33.

The state argued that Deck failed to show prejudice. Id. at 634-35. The Court held that shackling was "inherently prejudicial." Id. (internal citations omitted). "Thus, where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." Id. at 635. The state must prove beyond a reasonable doubt that the shackling error did not contribute to the verdict. Id.

In support of not requiring a defendant to show actual prejudice in shackling cases, the Deck Court quoted Riggins v. Nevada, 504 U.S. 127, 137 (1992). Riggins involved a defendant forced to take antipsychotic drugs during his trial. Riggins, 504 U.S. at 131-33. The Deck Court's quote from Riggins showed both decisions' reasoning on whether a defendant must show prejudice: "like 'the consequences of compelling a defendant to wear prison clothing' or of forcing him to stand trial while medicated—those effects 'cannot be shown from a trial transcript.'" Deck at 635, quoting Riggins, 504 U.S. at 137. While the Deck Court's citation to Chapman v. California, 386 U.S. 18 (1967) shows that harmless error can apply to errors regarding prison garb or shackling, no requirement of proving actual prejudice exists. Deck at 635. Absent some improper communication from jurors during the trial, it is hard to imagine how a defendant could prove actual prejudice from a trial record.

The South Carolina Supreme Court dealt with a defendant wearing jail clothing in the context of a PCR in Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). Trial counsel in Humbert allowed "the trial to proceed while [Humbert] was dressed in prison clothing." Humbert at 337, 548 S.E.2d at 865. The Court upheld the PCR judgment finding trial counsel performed deficiently. Id. The Humbert Court said that Strickland v. Washington, 466 U.S. 668 (1984) applied and a PCR applicant "must establish prejudice." Id. The Court found no prejudice. Id.

The requirement that a PCR applicant show prejudice seems inconsistent with the Williams line of cases from the United States Supreme Court. The Williams cases dispensed with the requirement that a defendant show actual prejudice. Here, if trial counsel had timely objected, Ryals would not have to show actual prejudice on appeal and would only need overcome any harmless error argument made by the State. Therefore, placing the burden on Ryals to show prejudice in a PCR proceeding saddles him with a procedural burden he would not have to overcome but for trial counsel's error.

The PCR court cited Humbert to support its holding that Ryals "can show no prejudice" and that the defendant in Humbert did not meet "his burden of proving prejudice." App. 204. The PCR court also held, in a separate section, that the State presented overwhelming evidence of Ryals' guilt. App. 206-07.

The PCR court erred on both of these points. In Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the Supreme Court performed a rigorous analysis of both Strickland prejudice and the usage of "overwhelming evidence of guilt" in PCR cases. The Smalls Court separated these two concepts. Smalls at 187-96, 810 S.E.2d at 843-47. Smalls directs that a PCR court must first examine "the specific impact counsel's error had on the outcome of the trial." Id. at 188, 810 S.E.2d at 843. For Ryals, that command from Smalls is difficult for the reasons the

United States Supreme Court held a defendant need not prove actual prejudice in the Williams line of cases. Unlike in Smalls, Ryals cannot point to a specific piece of evidence or a particular point in the trial where something different would have happened but for trial counsel's error.

The error in Ryals' case affected the entirety of the trial. It affected the jury's perception of him. It also undermined the presumption of innocence to which every defendant is entitled under the Due Process clause. Because of these hard-to-pinpoint prejudices, in Ryals' case, the finding of overwhelming evidence of guilt by the PCR court should not be given great deference.

Smalls teaches that courts should not routinely rely on "overwhelming evidence" to deny PCR relief. Smalls at 189-91, 810 S.E.2d at 843-44. The Court stated, "Ordinarily, the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." Id. The Court further stated, "In rare cases, using 'overwhelming evidence' as a categorical bar to preclude a finding of prejudice is not error." Id. at 190, 810 S.E.2d at 844.

Ryals' case is not the "rare case" where "overwhelming evidence" should categorically bar a finding of prejudice. The PCR court erred in applying an "overwhelming evidence" standard automatically without consideration of the commands of Smalls and the difficulty of proving prejudice in a jail clothing case. The Humbert opinion uses the word "prejudice," but its analysis is one of the overall strength of the State's case—the same as analyzing "overwhelming evidence of guilt." Humbert at 338-39, 548 S.E.2d at 865-66. The PCR court did the same. App. 204-07. Smalls, together with the lack of a requirement of proving specific prejudice by the defendant, cautions against a routine application of this doctrine.

Ryals was convicted of violating the Habitual Traffic Offender Act ("the HTO Act"). App. 102, l. 9 – 17. See S.C. Code Ann. § 56-1-1010 et seq. The HTO Act defines someone as a habitual traffic offender if they have three or more enumerated convictions within three years. S.C. Code Ann. § 56-1-1020(a). One of the enumerated convictions is driving with a suspended

license. S.C. Code Ann. § 56-1-1020(a)(4). The State used three DUS convictions as proof that Ryals was a habitual traffic offender. App. 48, l. 5 – 12.

The HTO Act states that when a person is convicted of an enumerated offense, the DMV must examine its records to determine whether the person is a habitual offender. S.C. Code Ann. § 56-1-1030(A). If the person meets the definition, the DMV must revoke or suspend the person's license. Id. The DMV must give the person notice of the decision declaring the person a habitual offender and the notice must inform the person of their right to ask for a contested case hearing. S.C. Code Ann. § 56-1-1030(B). If a person drives after being declared a habitual offender, they can be convicted under the HTO Act. S.C. Code Ann. § 56-1-1100. See also State v. Moyd, 321 S.C. 256, 468 S.E.2d 7 (Ct. App. 1996) (analyzing the elements of the HTO Act for a double jeopardy challenge).

At Ryals' trial, the State called Marie Weaving ("Weaving") from the DMV to testify about Ryals' driving record and the notices sent by DMV. App. 44, l. 17 – 45, l. 13. Weaving testified that DMV sent Ryals a notice on May 20, 2009, informing him that he was a habitual offender. App. 47, l. 7 – 48, l. 12. Ryals "had accumulated three major suspensions." App. 48, l. 5 – 8. The dates of those suspensions were December 27, 2007; July 12, 2008; and December 7, 2007. App. 48, l. 9 – 12. The dates of the convictions were January 15, 2008; August 27, 2008; and May 5, 2009. App. 50, l. 20 – 51, l. 2.

Weaving testified that the notice was sent certified mail and was signed for on May 26, 2009. App. 50, l. 1 – 14. Ryals' suspension as a habitual traffic offender lasted until June 19, 2014. App. 48, l. 18 – 20. During this period, on March 1, 2014, Ryals was arrested after being pulled over for failing to signal and drifting in his lane. App. 29, l. 10 – 34, l. 23.

Ryals testified at trial he had no idea that his license had been suspended. App. 63, l. 5 – 18. He never received the notice DMV claimed it mailed him. App. 64, l. 7 – 15. Ryals said the

signature on the certified mail receipt did not match his signature. App. 64, l. 7 – 15. Had he received notice, he "would have definitely appealed to the Highway Department." App. 64, l. 12 – 15. Ryals also was charged with driving under suspension in 2010, but the charge was dismissed. App. 63, l. 8 – 12. This led Ryals to believe his license was not suspended. App. 63, l. 5 – 18. Ryals contested his driving record at the PCR hearing and faulted trial counsel for not fully investigating the bases for the convictions used by the State at his trial. App. 157, l. 6 – 41, l. 11.

The PCR court's Order found the evidence of Ryals' guilt to be overwhelming based on Weaving's testimony and that Ryals was pulled over while his license was suspended. App. 207. The court's rote recitation of the trial evidence and dismissal of Ryals' testimony both at trial and at the PCR hearing was error. The effect of seeing Ryals in jail clothes negated the presumption of innocence and compounded the inherent difficulties in defending oneself from a charge under the HTO Act. The jury must hear evidence of prior convictions under the HTO Act to satisfy the elements of the State's case. To also see Ryals in jail clothes meant the jury could disregard Ryals' testimony as that of a deadbeat who, in the solicitor's words in closing, "deliberately disrespected that law" and had "shown a pattern of disrespect." App. 91, l. 1 – 5. Hearing evidence of prior convictions cannot prevent Ryals from showing prejudice under the reasoning of the Deck capital sentencing case.

In a case from Arkansas, the court reversed a murder conviction based on ineffective assistance of counsel for allowing a defendant to appear in jail clothes. Flores v. State, 85 S.W.3d 896 (Ark. 2002). The defendant was convicted of murdering his wife. Id. When the police arrived at Flores' home to respond to a domestic disturbance call, they found him with blood on his clothing. Id. at 899. They found Flores' wife in the bedroom, motionless, with blood-soaked tissues on the floor and the phone cord cut. Id. Before she died from her wounds,

Flores' wife told a physician that Flores had beaten her. Id. Flores testified and admitted to hitting his wife after finding her with another man. Id. at 900. Flores also ridiculously told the jury "that the victim might have caused the injuries herself." Id. The Arkansas Supreme Court reversed, finding Flores met the prejudice prong for ineffective assistance of counsel. Id. at 903-04. The court reasoned that that the jury possibly could have convicted Flores of a lesser degree of murder. Id.

The Supreme Court of Virginia reversed a defendant's burglary convictions because his trial lawyer failed to object to him being tried in jail clothing. Jackson v. Washington, 619 S.E.2d 92, 97 (Va. 2005). The prosecution contended the evidence against the defendant was overwhelming. Id. The court disagreed and found the defendant showed Strickland prejudice. Id. The court held the defendant's credibility was a crucial issue. Id. "Reason and common human experience dictate, at a minimum, that the accused's appearance in jail clothes is such a badge of guilt that it would render an accused's assertion of innocence less than fully credible to the jury." Id.

Both the Flores and Jackson reversals share a common element with Ryals' case: all three defendants testified and their credibility was at issue. This Court should find that, when balanced against the negative effect on the presumption of innocence and Ryals' credibility, the evidence of guilt was not overwhelming. Ryals has shown the prejudice necessary to demonstrate a constitutional deprivation of his right to counsel. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse petitioner's conviction and grant him a new trial. As this conviction was the basis for the revocation of petitioner's probation, that decision must also be reversed.

s/David Alexander
David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of April, 2021.