STATE OF SOUTH CAROLINA
In the Court of Appeals

ON PETITION FOR WRIT OF CERTIORARI TO BERKELEY COUNTY
The Honorable Kristi L. Harrington, Trial Judge
The Honorable Michael G. Nettles, PCR Judge

Appellate Case No. 2018-000570

CARY GLENN RYALS, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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The post-conviction relief judge properly found trial counsel was not ineffective for allowing Petitioner to stand trial in prison garb because the overwhelming evidence of Petitioner's guilt eliminated the potential that his conviction was a result of unfair prejudice.

STATEMENT OF THE CASE

On May 12, 2015, the Berkeley County Grand Jury indicted Petitioner for the charge of habitual traffic offender. On June 1, 2015, Petitioner proceeded to a jury trial before the Honorable Kristi Leah Harrington. Assistant Solicitors Mason West and Kamila Szymczynska represented the State; Frampton Durban represented Petitioner. The jury found Petitioner guilty as charged and the trial judge sentenced Petitioner to five years' incarceration. The court also revoked Petitioner's probation for ABHAN, which resulted in ten years' incarceration. Petitioner's appeal was not perfected.

On January 28, 2016, Petitioner filed an application for post-conviction relief (PCR). On December 4, 2017, a hearing was held before the Honorable Michael G. Nettles. Assistant Attorney General Julie Coleman represented the State; Rodney Davis represented Petitioner. On March 9, 2018, the PCR judge granted in part and denied in part petitioner's application; Judge Nettles denied Petitioner's claims for relief but granted him a belated direct appeal.

On September 24, 2018, Petitioner filed a petition for writ of certiorari raising three issues, along with an Anders[1] brief pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). 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 but granted certiorari on one issue in the petition. On April 14, 2021, Petitioner filed his merits brief on that issue. This Brief of Respondent follows.

Trial

On March 1, 2014, Officer Jon Ellwood of the Hanahan Police Department began following a black corvette after observing the driver failed to properly signal a turn and that he

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

was driving much slower than the posted speed limit. As he was behind the vehicle, Officer Ellwood noticed it began drifting into the opposing lane. Believing the driver was impaired, Officer Ellwood initiated a traffic stop. (App.p.29, line 3–App.p.30, line 16)

Petitioner was the driver of the vehicle, but a passenger was also present. During the course of the stop, Officer Ellwood asked Petitioner to provide his driver's license, vehicle insurance, and registration. The passenger of the vehicle claimed he was the owner of the vehicle, and provided the registration and insurance. Petitioner was not able to produce his own driver's license and instead handed the officer the passenger's. By that point, Officer Kornahrens had arrived at the scene, so Officer Ellwood asked Petitioner to step out of the vehicle to allow Officer Kornahrens to determine whether Petitioner was impaired. During the traffic stop, Officer Ellwood discovered Petitioner's driver's license was suspended. Officer Ellwood arrested Petitioner at the scene for driving with a suspended license. When he arrived at the police station with Petitioner, he decided to charge Petitioner as a habitual traffic offender due to Petitioner's history of traffic violations and driving suspensions. (App.p.30, line 17–App.p.34, line 25; App.p.41, line 12–App.p.43, line 8)

Marie Wearing, a supervisor of traffic records with the South Carolina Department of Motor Vehicles, testified about Petitioner's driving record. She noted Petitioner had an extensive history of driving infractions. On May 20, 2009, the DMV sent Petitioner notice he was a habitual offender due to his accumulation of three major suspensions. The notice explained his license was suspended between June 19, 2009 and June 19, 2014. Petitioner never appealed the suspension. (App.p.44, line 17–App.p.52, line 1)

Petitioner decided to testify in his own defense, despite being warned that he could be impeached with a "litany" of prior convictions, including a conviction for obtaining money or

goods under false pretenses and several counts of writing a fraudulent check. Additionally, the State emphasized it may impeach Petitioner with his previous driving offenses. The trial judge ordered Petitioner's leg irons be removed, and Petitioner took the stand. Before the jury returned, Petitioner stated that he wished he were "dressed better" than he was. (App.p.55, line 20–App.p.61, line 9)

Petitioner did not dispute he was driving on March 1, 2014, but claimed the corvette was blue, not black. He claimed he was not aware his driver's license had been suspended because he had been pulled over for driving under suspension in 2010, but the charge had been dismissed. Asserting he was not a person "that steals or does anything like that," he claimed he had not signed the signature cards for the certified mail sent to him about his suspended license and that if he had known he was driving under suspension, he would have appealed the decision. (App.p.61, line 10–App.p.66, line 17)

On cross-examination, the State challenged Petitioner's claim that he did not engage in dishonest or illegal behavior. It impeached him with his convictions for: writing fraudulent checks on seven difference occasions, obtaining money or property under false pretenses, and ABHAN. When the State asked Petitioner about his May 5, 2009 conviction for driving under suspension, Petitioner did not recall the event. Petitioner admitted that he had renewed his state identification card, as opposed to his driver's license, multiple times during the suspension period he claimed he needed multiple IDs for work in case he left one somewhere. He admitted that "[s]ometimes [the suspensions] pop[] up," such as when he was pulled over in Savannah, Georgia, but he did not think much of them and did not feel the need to contact the DMV. Also, he did not dispute that the letters sent from the DMV were sent to his actual mailing address.

Eventually, Petitioner conceded some of the suspensions did occur, but during those periods he had other people drive him around. (App.p.66, line 22–App.p.79, line 11)

After deliberating, the jury found Petitioner guilty as charged. After considering Petitioner's driving history and his past and pending criminal charges, the trial judge sentenced him to five years' incarceration and revoked his probation for an ABHAN conviction from January of 2013, for which he was originally sentenced to ten years' incarceration suspended to five years of probation. (App.p.102, line 1–App.p.111, line 22)

PCR Hearing

On January 28, 2016, Petitioner filed an application for post-conviction relief (PCR) alleging he was being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
    a. "Failure to investigate my past record"
    b. "Failure to challenge the jurisdiction of the sentence"
    c. "Failure to object to the improper attire"

(App.pp.113–18). The State filed its Return on June 14, 2016. (App.pp.128–33). An amended return was filed on July 26, 2017. (App.pp.125–26)

On December 4, 2017, an evidentiary hearing was held. At Petitioner's PCR hearing, the State summarized the history of his conviction and PCR process. It was unable to locate trial counsel, who was suspended from the practice of law in June of 2019. Further, the solicitor who represented the State was unable to attend due to him representing the State in a separate criminal trial that day. (App.p.136, line 1–App.p.138, line 10; App.pp.187–88)

At the hearing, Petitioner testified he was brought to trial in his "jail clothes" and never given an option to change out of them on either the first or second day of trial. During cross-examination, he admitted that he did not bring the issue to trial counsel's attention; he claimed "[t]here was nothing [he] could really say at the time" because the trial was underway. Petitioner

conceded he was driving the date in question and that the notices of his suspensions were all sent to his mailing address. (App.p.153, lines 10–23; App.p.168, line 12–App.p.169, line 24)

The PCR judge expressed surprise that Petitioner was tried in his prison garb, and while the State admitted it was strange Petitioner was not given a change of clothes, the State asseverated Petitioner's outfit ultimately did not impugn the overwhelming evidence of his guilt. Upon further questioning, Petitioner conceded he did have at least some valid driving suspensions. Petitioner also failed to allege that trial counsel had any evidence that his prior suspensions were invalid; he was unaware of the convictions prior to trial and did not have documentation at trial disputing them. At the conclusion of the hearing, the PCR judge requested the parties submit proposed orders. (App.p.169, line 25–App.p.174, line 11; App.p.182, line 19–App.p.185, line 16)

On March 9, 2018, the PCR judge issued an order of dismissal and grant of appeal pursuant to White v. State. The PCR judge, applying Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) to Petitioner's case, found trial counsel "may have been deficient" in failing to object to the trial proceeding until Petitioner was given civilian attire. However, the PCR judge found this error harmless given the strength of the State's case against Petitioner, which included: (1) justification for the valid traffic stop; (2) Petitioner's concession he was driving the motor vehicle in question; and (3) certification by the DMV of Petitioner's various driving suspensions and his status as a habitual traffic offender. Thus, the trial found Petitioner failed to prove he was prejudiced by the alleged deficiency. (App.pp.195–200; pp.204–08)

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts "give[] great deference to the PCR court's findings of fact and conclusions of law", Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the applicant shouldering the burden of proof. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court's findings will be upheld if there is "any evidence of probative value sufficient to support them." Id. Reversal of the lower court's findings occurs when there is no probative evidence to support the initial finding. Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a *de novo* review when evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40; Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Where the application alleges ineffective assistance of counsel as a ground for 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." Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler, 286 S.C. at 442. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 669; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the applicant must prove that counsel's performance was deficient. Cherry, 300 S.C. at 117. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms. "Id. (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the

range of competence required in criminal cases. Butler, 286 S.C. at 442. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118. 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." Id. at 117–18 (emphasis added). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693.

ARGUMENT

The post-conviction relief judge properly found trial counsel was not ineffective for allowing Petitioner to stand trial in prison garb because the overwhelming evidence of Petitioner's guilt eliminated the potential that his conviction was a result of unfair prejudice.

Petitioner argues the PCR judge erred in finding trial counsel was not ineffective for allowing him to wear prison garb during his trial. Notably, Petitioner believes, pursuant to Estelle v. Williams, 425 U.S. 501 (1976), and its progeny, he was not required to show he was prejudiced by wearing prison garb to the PCR court because he would not have been required to show such prejudice on direct appeal. (Br. of Petitioner, p.7). He also claims that because he cannot "point to a specific piece of evidence or a particular point in trial" where he was prejudiced by his attire, "the finding of overwhelming evidence of guilt by the PCR court should not be given great deference. (Br. of Petitioner, p.8). The State disagrees with these allegations of error. As explained infra, Petitioner's arguments run contrary to established State and federal law: it was Petitioner's burden to prove prejudice during his PCR hearing. Further, the PCR judge correctly observed there was overwhelming evidence of Petitioner's guilt because the State provided incontrovertible evidence of Petitioner's guilt of the charged offense.

Williams and its Progeny

In Williams, the United States Supreme Court (USSC) considered whether requiring a defendant to stand trial in prison garb was inherently unfair and a violation of his constitutional rights. Id. at 503. The USSC observed that it was typically "repugnant to the concept of equal justice embodied in the Fourteenth Amendment" to impose this restriction on a defendant over his objection. Id. at 504–06. However, it observed a per se rule invalidating all convictions where a defendant appeared at trial in identifiable prison clothes was improper because: (1) the harmless error doctrine is applicable in many situations, such as when the jury is aware that a

defendant is incarcerated for reasons independent of his clothing; and (2) in some situations, a defendant may elect to stand trial in prison garb as trial strategy to, for example, elicit sympathy from the jury. Id. at 506–09. Finding the defendant failed to object to wearing prison garb or that he was in any way deterred from doing so, the USSC reinstated the conviction because nothing in the record "warrant[ed] a conclusion that [defendant] was compelled to stand trial in jail garb." Id. at 509–13.

In Deck v. Missouri, 544 U.S. 622 (2005), the USSC held routine use of visible restraints violates due process and such restraints may be used only if "justified by an essential state interest" such as security. Deck, 544 U.S. at 624 (quoting Holbrook v. Flynn, 475 U.S. 560, 568–69 (1986)). Relying on precedent concerning the guilt phase of trials, the Court concluded "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial judge's determination, in the exercise of his discretion, that they are justified by a state interest specific to a particular trial" including "potential security problems and the risk of escape at trial." Id. at 629. Due to the prejudicial effect of visible shackles, "due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case." Id. at 632. Even if exceptional circumstances warrant the use of visible restraints, the trial judge must make on-the-record findings as to the circumstances that compel their use. Id. at 633 (emphasizing that the determination "should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial").

Deck emphasized its holding was limited to the use of **visible** shackles: "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 634; see also Cole v. Roper, 623 F.3d 1183, 1193 (8th Cir. 2010) (finding

defendant's restraints did not violate due process because the defendant was not subject to visible restraints). While Deck does not require a defendant to show actual prejudice to establish a due process violation, the conviction is still subject to harmless error analysis. Id. at 635. Further, Deck makes no reference to Strickland and its requirement that a PCR applicant carries the burden of proving prejudice.

In Humbert, the Supreme Court of South Carolina considered whether the PCR court erred in finding the defendant was not prejudiced by his attorney's failure to request a continuance or at least a pause in the proceedings so that civilian clothing could be obtained for him for his trial. 345 S.C. at 336, 548 S.E.2d at 864–65. Humbert, who was charged with robbery, ultimately proceeded to trial wearing a prison jumpsuit, shackles, and a Florence County Detention Center wrist band which held his mug shot. Defense counsel died prior to Humbert's PCR hearing, so that court was unable to determine any potential motivation or strategy for allowing defendant to proceed in his prison garb. Ultimately, the PCR court found counsel's actions "may have been deficient" but concluded Humbert had failed to demonstrate he was prejudiced. Id.

Viewing the case through the lens of Strickland, the Supreme Court affirmed the PCR court, finding the record supported his findings on deficiency and prejudice. In finding a lack of prejudice, the court specifically found its conclusion was supported by the overwhelming evidence of Humbert's guilt, including: (1) the store clerk who identified Humbert as the robbery shortly after the crime and again at trial; (2) the clerk's description of the robber's clothing matched the outfit worn by Humbert 1.5 hours after the crime; (3) additional clothing matching the clerk's description were found in Humbert's vehicle; (4) Humbert's vehicle matched the description of the getaway vehicle; (5) the clerk testified food and postage stamps had been taken

from the cash register, and both types of stamps were found in the backseat of the patrol car after Humbert was removed from it. Id. at 337–38, 548 S.E.2d at 865–66.

Petitioner argues the requirement that a PCR applicant shows prejudice "seems inconsistent with the Williams line of cases . . . ." (Br. of Petitioner, p.7). Notably, neither Williams nor Decks involved the PCR standard of review; in fact, Williams occurred several years before Strickland established the deficiency and prejudice prongs used in modern PCR cases. Both Williams and Deck involved direct appeals. In PCR matters, the defendant has the burden of proving trial counsel's performance was deficient and said deficiency prejudiced the defense. Strickland, 466 U.S. at 687. In Humbert, the Supreme Court of South Carolina correctly applied the Strickland standard to the appellate review of a PCR court's denial of relief to a defendant who wore prison garb at trial. See Humbert, 345 S.C. at 337–38, 548 S.E.2d at 865.

The State is not alone in its interpretations of Deck and Humbert. In Marquard v. Secretary for the Department of Corrections, 429 F.3d 1278, 1313 (11th Cir. 2005), the Eleventh Circuit observed Deck applies to a direct appeal setting in which a showing of routine shackling without a specific needs inquiry shifts the burden to the State to show the resultant due process violation was harmless beyond a reasonable doubt. The court also noted Deck did not alter the burden of a claimant to prove prejudice for an ineffective assistance claim. Id. In deciding Marquard's ineffective assistance claim regarding his shackles being visible during the penalty phase of his trial, the Eleventh Circuit determined, "After Deck, Marquard still has the burden in his IAC-shackling claim to establish a reasonable probability that, but for his trial counsel's failure to object to shackling, the result of his sentencing would have been different." Id.

The State contends that Petitioner is attempting to use a non-PCR standard of review because he knows that he is unable to satisfy his burden of proving prejudice. For example, when analyzing the Supreme Court's opinion in Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), Petitioner is forced to admit he "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." (BOP, p.8) Instead, he makes the blanket assertion that wearing prison garb "affected the entirety of [his] trial" and this Court should find the PCR court should not have relied upon overwhelming evidence of guilt to deny PCR relief. Id. Notably, the Smalls court recognized overwhelming evidence of guilt is appropriate in some situations, such as when "the evidence [] include[s] something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the Strickland standard of 'a reasonable probability the factfinder would have had a reasonable doubt' cannot possibly be met." Id. at 191, 810 S.E.2d at 845 (internal alteration marks omitted) (quoting Strickland, 466 U.S. at 695); see, e.g., Franklin v. Catoe, 346 S.C. 563, 574, 552 S.E.2d 718, 724 (2001) (finding there was overwhelming evidence where the evidence included the applicant's DNA on the victim's body, the victim's blood on the applicant's pants, and the applicant's bloody palm print on the murder weapon). The Smalls court explained "overwhelming evidence" exists when the strength of the State's evidence, viewed in light of trial counsel's errors, was such that there "is no reasonable possibility [counsel's errors] contributed in any way to [the applicant's] convictions." Smalls, 422 S.C. at 191, 810 S.E.2d at 845 (quoting Franklin, 346 S.C. at 574–75, 552 S.E.2d at 725).

As observed by the PCR court, Petitioner's case is such a case in which the overwhelming evidence of his guilt eclipses any potential prejudice he suffered from wearing his

prison garb at trial. Petitioner was convicted of violating the Habitual Traffic Offender Act, S.C. Code Ann. § 56-1-1010 et seq. A person is guilty under the act if he has three or more enumerated convictions within three years and one of those convictions involves driving a motor vehicle while his license is suspended. S.C. Code Ann. § 56-1-1020(a)(4). The DMV must then examine its records and determine whether the person is a habitual offender. If the person does, the DMV must revoke or suspend the license with notice to the person and the opportunity for that person to appeal the decision. S.C. Code § 56-1-1030. If a person is caught driving after being declared a habitual traffic offender, they are guilty of a criminal offense. S.C. Code Ann. § 56-1-1100.

At trial, the State provided the testimony of Wearing, a supervisor of traffic records with the South Carolina Department of Motor Vehicles, who testified about Petitioner's prolific history of traffic offenses, including the three upon which his conviction was based. The records of these offenses were also introduced as exhibits during the trial. The records also showed Petitioner was given the requisite notice of these offenses and his status as a habitual traffic offender through certified mail to his listed mailing address, with signed receipts confirming their delivery. Petitioner did not dispute that the listed mailing address was his own. Further, he readily admitted during his testimony that he was operating the motor vehicle in question which led to his arrest.

The only evidence conflicting with the State's evidence was Petitioner's self-serving and incredible testimony. Notably, the jury was made aware that Petitioner's testimony was untrustworthy given his long criminal history of crimes involving dishonesty; Petitioner possessed **eight** prior convictions for crimes of dishonesty involving writing fraudulent checks and obtaining money or property under false pretenses. Petitioner's only response to the State's

case was to claim that someone, for no apparent reason, forged his signature on the certified mail sent to his home. Petitioner was forced to admit that the suspension of his license had come up on several occasions, but could not provide any logical reason why he failed to follow up on the matter despite the frequency of such occurrences. He also failed to give a plausible explanation for continually renewing and using a state identification card if he believed his driver's license was active and valid.

As demonstrated above, the PCR court properly found overwhelming evidence of Petitioner's guilt eliminated the possibility he was prejudiced at trial. Petitioner's self-serving, unbelievable testimony failed to challenge the State's evidence that he was a habitual traffic offender who was caught driving a vehicle on the day of his arrest.

Accordingly, the record supports the PCR judge finding Petitioner was not prejudiced by trial counsel's alleged deficiency.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the PCR court's finding that Petitioner has failed to prove that trial counsel was constitutionally ineffective.

Respectfully submitted,

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