

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County
The Honorable G. Thomas Cooper, Trial Judge
The Honorable Jocelyn J. Newman, Post-Conviction Relief Judge

Appellate Case No. 2020-001270

CHRISTOPHER BROADNAX,

Petitioner

v.

STATE OF SOUTH CAROLINA,

Respondent

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S STATEMENT OF ISSUE

Did the post-conviction relief judge properly deny relief for the allegation that trial counsel was ineffective for failing to object to Petitioner remaining in leg shackles when trial counsel did in fact object to Petitioner remaining in leg shackles, and even if trial counsel had failed to object, Petitioner did not suffer any prejudice from trial counsel's failure because the jury never saw Petitioner's leg shackles?

STATEMENT OF THE CASE

Petitioner, Christopher Broadnax, is presently confined in the South Carolina Department of Corrections following his conviction at trial in Richland County. On May 24, 2009, Petitioner entered a Church's Fried Chicken store and held four employees at gunpoint while he stole money from the cash register. (App. 181-84, 405-07). Church's employee, Arthur Haynes followed Petitioner outside of the store and witnessed an old Dodge pickup truck leaving the premises. (App. 185). Haynes assumed Petitioner was inside the vehicle and told his co-workers to call 911 and tell dispatchers to look for an old Dodge pickup truck. (App. 186). Officer Michael Ridgeway of the Columbia Police Department received a call from dispatch advising him to be on the lookout for a gray Dodge pickup truck. (App. 437-43). Ridgeway observed a similar looking pickup truck traveling away from the Church's store. (App. 439). A traffic stop was initiated and Ridgeway located Petitioner crouching in the passenger's side floorboard. (App. 444-45). Officers located a handgun and a plastic bag of money in the passenger side floorboard. (App. 496-97).

Law enforcement asked Haynes to accompany them to identify the suspect they stopped in the Dodge pickup. Haynes identified Petitioner based on his distinctive lazy eye as well as the clothing he was wearing. (App. 188-89). Another Church's employee, Donald Kirby, also identified Petitioner at trial as the robber. (App. 354-55). Charles Green was charged as a co-defendant and testified against Petitioner at trial. Green testified he agreed to give Petitioner a ride to Church's, but he did not know what Petitioner planned to do. (App. 476-84). Green testified Petitioner had a plastic bag in his hand when he went inside the Church's. (App. 479). When Petitioner returned, he told Green "let's go." (App. 480, lines 8-10). Green observed that

Petitioner initially sat in the passenger seat, but then he crouched in the floorboard when a police car approached Green's car and activated his blue lights. (App. 481).

During its November 2009 term, the Richland County Grand Jury indicted Petitioner for one count of armed robbery and three counts of kidnapping. (2011-GS-40-4539, 4540, 4541, 4542). He was represented on these charges by James May, Esquire and Charles Cochran, Esquire. Assistant Solicitors Kathryn Luck Campbell and Nicole Simpson of the Fifth Circuit Solicitor's Office prosecuted the case.

On June 16, 2010, Petitioner was convicted of all indicted counts by a jury in the Richland County Court of General Sessions before the Honorable G. Thomas Cooper. Cooper sentenced Petitioner to a term of life without the possibility of parole pursuant to S.C. Code § 17-25-45. (App. 840).

Petitioner filed a notice of appeal challenging his convictions and sentences on June 23, 2010. Petitioner was represented in his appeal by LaNelle Cantey Durant, Esquire. On January 9, 2013, the Court of Appeals reversed Petitioner's convictions in a published opinion. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013) (App. 881-90). The State filed a petition for writ of certiorari to the South Carolina Supreme Court on March 25, 2013. (App. 891-922). Certiorari was granted on June 12, 2014. The Supreme Court reversed in part and affirmed in part the decision of the Court of Appeals in a published opinion on July 8, 2015. State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015) (App. 991-1004). The Supreme Court granted Petitioner's petition for rehearing and remanded Petitioner's case to the Court of Appeals for consideration of issues not reached in the Court of Appeals' opinion. (App. 1005). On June 8, 2016, the Court of Appeals affirmed Petitioner's convictions in an unpublished opinion on the

remaining grounds he raised in his initial brief to the Court of Appeals. Op. No. 2016-UP-258 (S.C. Court App. filed June 8, 2016) (App. 1006-07).

On January 5, 2017, Petitioner filed a *pro se* application for post-conviction relief alleging approximately eight grounds of relief. (2017-CP-40-45)(App. 1008-22). Petitioner alleged that trial counsel was ineffective for: (1) failure to investigate, (2) failure to argue various ways search and arrest warrants were not properly obtained, (3) failure to object to an in-court identification. Petitioner filed an amended application on January 24, 2017. (App. 1020). The State served its return to the application and requested an evidentiary hearing on the application on July 13, 2017. (App. 1023-28). Through counsel, Petitioner filed another amended application for relief on March 15, 2018. (App. 1037-38).

An evidentiary hearing was convened on December 4, 2018, before the Honorable Jocelyn Newman. Petitioner was present alongside counsel Jonathan Waller, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office. Petitioner testified on his own behalf and presented testimony from both of his trial attorneys, May and Cochran, as well as appellate counsel, Durant. At the conclusion of the evidentiary hearing, Judge Newman took the Petitioner's claim under advisement. (App. 1102-03).

On August 26, 2020, Judge Newman issued a written order denying the application in full. (App. 1108-37). Judge Seals denied the motion on July 23, 2020. (App. 425-26). Petitioner filed his notice of appeal to this Court on September 18, 2020. On appeal, Petitioner only challenges the PCR judge's decision to deny relief for the allegation that trial counsel failed to object to Petitioner wearing leg shackles.

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, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 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)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. 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 judge properly denied relief for the allegation that trial counsel was ineffective for failing to object to Petitioner remaining in leg shackles when trial counsel did in fact object to Petitioner remaining in leg shackles, and even if trial counsel had failed to object, Petitioner did not suffer any prejudice from trial counsel's failure because the jury never saw Petitioner's leg shackles.

Petitioner claims the post-conviction relief court erred by refusing to find trial counsel ineffective for failing to object to Petitioner wearing leg shackles. Specifically, Petitioner argues the trial judge failed to find a special need existed to keep Petitioner in leg shackles. Petitioner's argument fails for two reasons. First, the premise of Petitioner's argument is flawed, because trial counsel moved to have Petitioner's leg shackles removed before his trial began. (App. 34-35). It is inaccurate for Petitioner to suggest trial counsel did not object to Petitioner remaining in chains when he explicitly did so. Therefore, trial counsel was not deficient in his representation. Second, even if trial counsel failed to object to Petitioner remaining in leg shackles, there is no evidence that Petitioner suffered any prejudice from trial counsel's failure to object. The only evidence in the record to indicate the jury ever saw Petitioner's leg shackles comes from Petitioner's self-serving testimony. (App. 1078-79). In fact, all other evidence in the record indicates the jury never saw Petitioner wearing leg shackles. The trial judge ruled that Petitioner could have his leg shackles removed so he could walk to the witness stand in front of the jury if he decided to testify and the trial judge later reiterated that ruling when Petitioner testified. (App. 34-35, 669). Furthermore, trial counsel testified he could not recall the jury ever seeing Petitioner in leg shackles and noted it was his common practice to move for a defendant's leg shackles to be removed. (App. 1051-52). Finally, even if the jury had seen Petitioner's leg shackles, it is unlikely the sight of Petitioner's leg shackles had any effect on the outcome of his trial considering the overwhelming evidence that was presented at trial.

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “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). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief

applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

The United States Constitution “forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, *unless* that use is ‘justified by an essential state interest’—such as the interest in courtroom security—specific to the defendant on trial.” Deck v. Missouri, 544 U.S. 622, 624 (2005) (quoting Holbrook v. Flynn, 475 U.S. 560, 568-569 (1986)) (emphasis in original). “Whether a defendant is restrained during trial is within the trial judge’s discretion.” State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). “The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes.” Id.

Here, Petitioner complains that trial counsel was deficient in failing to object to Petitioner remaining in leg shackles during his trial. However, the premise that Petitioner’s argument is based on is flawed because Petitioner did in fact move to have Petitioner’s leg shackles removed before his trial began. (App. 34-35). Therefore, even if we construe Petitioner’s argument to be that trial counsel should have taken exception to the trial judge’s ruling or asked for a more specific ruling, trial counsel nonetheless asked the trial judge to have Petitioner’s leg shackles removed. Therefore, trial counsel was not deficient in his representation of Petitioner.

Even if we assume trial counsel failed to ask for Petitioner's leg shackles to be removed, Petitioner cannot prove he was prejudiced by this failure. The only evidence presented to show the jury ever saw Petitioner's leg shackles was Petitioner's own self-serving testimony. Even in his self-serving testimony, Petitioner never explicitly claimed the jury saw his leg shackles. In fact, Petitioner merely claimed the jury was sitting behind him during jury selection. (App. 1078-79). Based on this, Petitioner assumes the jurors who eventually served on his trial jury may have seen him and baselessly assumes the sight of his leg shackles "likely had a 'significant effect on the jury's feelings' about him." (Petition for Certiorari 13).

In actuality, all other evidence in the record indicates the jury never saw Petitioner's shackles. The trial judge initially ruled that Petitioner could have his leg shackles removed so he could walk to the witness stand in front of the jury if he chose to testify. (App. 34-35). The trial judge subsequently reiterated that ruling when he instructed security to remove Petitioner's shackles before he testified. (App. 669). Furthermore, trial counsel testified he could not recall the jury ever seeing Petitioner in leg shackles and noted he usually moved to have a defendant's leg shackles removed pursuant to Deck v. Missouri. (App. 1051-52). Even if the jury had seen Petitioner's leg shackles, it is unlikely the sight of the shackles had any effect on the outcome of Petitioner's trial. Petitioner was identified by two of the victims of the robbery based on his distinctive physical features and clothing, his co-defendant testified against him at trial, and he was located hiding in a vehicle that matched the description of one leaving the scene of the robbery with a gun and a bag of money. (App. 188-89, 354-55, 444-45, 496-97). As this Court noted in Petitioner's direct appeal, the evidence against Petitioner was overwhelming. Broadnax 414 S.C. at 479, 779 S.E.2d at 794. (App. 1000). This Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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