STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Dorchester County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2021-UP-290 (S.C. Ct. App. filed August 4, 2021)

RANDAL WILLIAM BENTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001098

SUPPLEMENTAL APPENDIX

SUSAN B. HACKETT
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

ALAN WILSON
Attorney General

YASMEEN E. KLEIN
Assistant Attorney General
Rembert Dennis Building, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Randal William Benton, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002021

Appeal From Dorchester County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2021-UP-290
Submitted June 1, 2021 – Filed August 4, 2021

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney General Benjamin Hunter Limbaugh, both of Columbia, for Respondent.

PER CURIAM: This court granted certiorari to review a circuit court order denying Randal Benton's petition for post-conviction relief (PCR). Benton was tried and convicted of murder for killing his estranged wife during an argument.

The PCR claim relates to an unsuccessful attempt to enter an *Alford*[1] plea the week before trial. The plea judge refused to accept the plea after questioning Benton about the case. Benton's answers gave the judge the impression Benton was not sure whether the State had evidence sufficient to prove his guilt and that he had not been over all of the evidence with his lawyer.

Benton claims trial counsel was ineffective in failing to argue with the plea judge that Benton was indeed familiar with the evidence against him and that counsel was also ineffective in withholding certain evidence from Benton. Benton did not say at the PCR hearing what evidence he had not reviewed at the time of the failed plea, but his trial counsel testified the only material he had not shared with Benton before the plea hearing were photos of Benton's wife and her wounds. Trial counsel also said he would have told Benton he was withholding those photos when he sent Benton the case's discovery materials.

The key cases from the U.S. Supreme Court establish that the standard for this sort of claim to be successful is a reasonable probability that the result of the plea process would have been different but for counsel's deficient performance. *Lafler v. Cooper*, 566 U.S. 156, 163 (2012); *Missouri v. Frye*, 566 U.S. 134, 147-48 (2012). An applicant must show there is a reasonable likelihood the plea would have been entered without the prosecution cancelling it or the trial court refusing to accept it. *Frye*, 566 U.S. at 147-49. Precedent recognizes judges retain broad discretion to accept or reject pleas. *State v. Paris*, 354 S.C. 1, 3, 578 S.E.2d 751, 752 (Ct. App. 2003) (discussing the court's discretion to reject pleas).

The PCR court found the testimony of Benton's trial counsel "credible and persuasive." The court also found Benton's refusal to state that he agreed with the State's recitation of facts combined with the plea judge's disfavor for the plea weighed against a finding that trial counsel was deficient.

The evidence supports these findings, and we will uphold the PCR court's factual findings as long as there is any evidence of probative value supporting them. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). Benton appeared to have no problems communicating with the plea judge until it came time for him to admit there was strong evidence against him. Benton said he believed he would be found guilty but would not readily agree that the state could produce sufficient evidence to prove its version of the facts. Also at the PCR hearing, trial counsel said the plea judge did not want to take the plea from the start and that counsel believed he would

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[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

have tried to rehabilitate the plea in chambers, though he did not specifically recall doing so. These facts point away from there being a reasonable chance the plea judge would have accepted the plea. As noted above, judges have broad discretion to accept or reject pleas. *See Paris*, 354 S.C. at 3, 578 S.E.2d at 752.

Importantly, the burden of showing prejudice—in this case, the burden of showing a reasonable chance the judge would have accepted the plea—is Benton's to carry. *Lafler*, 566 U.S. at 163 (citing *Frye*, 566 U.S. at 148). Benton did not offer any evidence on this point. Indeed, the evidence from Benton's trial counsel tends to show the judge was reluctant to take the *Alford* plea and that it was not a shock when the plea was rejected.

Fairness requires acknowledging the PCR court misstated one piece of evidence. The PCR court wrote that Benton's trial counsel believed Benton likely did not agree during the plea hearing with the State's reference to a broken picture frame. Trial counsel never said anything about that in the PCR hearing.

Even so, the PCR court's key factual findings foreclose a finding of prejudice. As already outlined, the record supports the view that Benton was evasive in responding to the plea judge and that the judge already did not favor the plea.

AFFIRMED.[2]

LOCKEMY, C.J., and HUFF and HEWITT, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

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Certiorari to Dorchester County

Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2021-UP-290

PETITION FOR REHEARING

On August 4, 2021, this Court affirmed the post-conviction relief (PCR) court's denial of relief to Petitioner. Benton v. State, 2021-UP-290 (S.C. Ct. App. filed Aug. 4, 2021). Pursuant to Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter based upon several points misapprehended and/or overlooked by this Court in rendering its decision.

According to this Court, Petitioner's answers to the plea judge during the colloquy "gave the judge the impression [Petitioner] was not sure whether the state had evidence sufficient to prove his guilt and that he had not been over all of the evidence with his lawyer." Petitioner

respectfully disagrees with this Court's reading of the record pertaining to these two factual findings.

First, concerning whether Petitioner was sure the state had evidence sufficient to prove his guilt, during the plea colloquy, Petitioner's response of "I don't know" was perfectly acceptable, especially in light of the judge's request that he not answer questions if he did not fully understand. The judge had cautioned Petitioner that she had many questions to ask and that if Petitioner did not understand a question, he should not answer it, but should seek clarification. App. 5, ll. 11-21; App. 5, ll. 23-24. The judge acknowledged there were "many ways to explain any one thing" and indicated she was "happy to try, perhaps, a different way" if Petitioner did not understand a question. App. 5, ll. 21-23. Such an admonition is proper in all guilty pleas, but it was especially suitable where Petitioner indicated he had only an eighth-grade education. App. 6, ll. 15-16.

The state provided a lengthy factual recitation to support the charge and guilty plea. App. 20, l. 9 – App. 21, l. 8. At the conclusion of the recitation, the judge asked Petitioner if those were the facts that Petitioner believed the state could produce to establish his guilt beyond a reasonable doubt. App. 26, ll. 13-16. Petitioner responded that he did not know. App. 26, l. 17. Inquiring further, the judge asked if those were the facts for which Petitioner believed he would be found guilty. App. 26, ll. 18-19. Petitioner responded unequivocally, "Yes, ma'am." App. 26, l. 20. Contrary to this Court's determination that Petitioner's "answers gave the judge the impression [Petitioner] was not sure whether the state had evidence sufficient to prove his guilt," the record disputes such a finding. According to the record, Petitioner told the judge he did not know the answer to the first question she posed. This was exactly what the judge told Petitioner

to do. When the judge re-phrased the question in a way that he could understand, Petitioner responded affirmatively and without any equivocation.

Regarding the second point about whether Petitioner's answers to the plea judge gave the impression that he had not gone over all of the evidence with his lawyer, Petitioner's answer to the judge was *accurate*. The judge asked Petitioner if he had been over the evidence the state had available. App. 26, ll. 21-25. Petitioner responded that he had. App. 27, l. 1. When the judge asked if he had been over the evidence with his lawyer, Petitioner again responded that he had. App. 27, ll. 2-4. Next, the judge wanted to know if Petitioner had "been over *every bit* of that evidence." App. 27, ll. 5-6 (emphasis added). Petitioner responded, "No ma'am, I wouldn't say every bit of it." App. 27, l. 7. It was at this point, the judge indicated that she would not accept the plea: "If he doesn't know the evidence and he can't tell me if he believes that that's the evidence that the state has and he's been over it and he thinks there's evidence he hadn't been over I can't take the plea." App. 27, ll. 11-15. During the PCR hearing, trial counsel explained that he did *not* review the autopsy photographs with Petitioner prior to the guilty plea. App. 554, ll.18-23. Thus, Petitioner had not reviewed "every bit" of the evidence – exactly as he told the plea judge.

According to this Court, the PCR court found Petitioner's "refusal to state that he agreed with the state's recitation of facts combined with the plea judge's disfavor for the plea weighed against a finding that trial counsel was deficient." Despite acknowledging the PCR court "misstated one piece of evidence," this Court still held the evidence in the record supported the PCR court's findings of fact. Petitioner respectfully disagrees and requests rehearing.

In its order, the PCR court found Petitioner "was unable to admit certain facts set forth by the solicitor were accurate." App. 593. The PCR court found that "[i]n the plea attempt,

[Petitioner] did not agree with certain facts laid out by the state and that those facts would be sufficient for a jury to find him guilty." App. 594. Specifically, the PCR judge found trial counsel believed Petitioner "likely did not agree with the state's reference to a broken photo frame of his wife." App. 593. The PCR judge found this inability "compounded with the fact that it seem[ed] Judge Goodstein was not in favor of an Alford plea where the facts set forth clearly show[ed] there was sufficient evidence for the jury to convict [Petitioner]." App. 593. Therefore, according to the PCR court, "[t]he court was correct in not accepting [Petitioner]'s plea." App. 594.

This Court recognized the record did not support the PCR court's factual finding that trial counsel said Petitioner did not agree with the state's reference to a broken picture frame during the state's recitation of the facts during the attempted guilty plea. Nevertheless, this Court held the "PCR court's key factual findings foreclose[d] a finding of prejudice" because the record supported the view that Petitioner "was evasive in responding to the plea judge and that the judge already did not favor the plea." However, as shown, the record did *not* support the view that Petitioner was *evasive* in responding to the plea judge. In fact, Petitioner was *honest* with the plea judge when he stated he had not been over "every bit" of the evidence with his lawyer. As trial counsel testified during the PCR hearing, he had not reviewed the autopsy photographs with Petitioner. Therefore, Petitioner was the opposite of evasive; he was entirely forthcoming.

Petitioner agrees with this Court that he was required to show a reasonable likelihood the plea would have been entered without the prosecution cancelling it or the trial court refusing to accept. See Lafler v. Cooper, 566 U.S. 156, 163 (2012); Missouri v. Frye, 566 U.S. 133, 147-149 (2012); see also Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Bell v. State, 410 S.C. 436,

765 S.E.2d 4 (Ct. App. 2014). However, Petitioner disagrees with this Court's conclusion that he failed to do so.

Counsel could have explained that pursuant to controlling Supreme Court precedent, the state was not required to disclose "every bit" of its evidence prior to a guilty plea. United States v. Ruiz, 536 U.S. 622, 629 (2002) (holding the Constitution does not require the disclosure of impeachment information prior to a guilty plea). As such, Petitioner could not say *under oath* that he had reviewed "every bit" of evidence the state had against him. Further, Counsel could have explained to Judge Goodstein that under the Rules of Professional Conduct he had withheld the autopsy photographs from Petitioner. See Rule 1.4 cmt. 7, RPC, Rule 407, SCACR. Thus, Petitioner's statements to the judge that he was generally familiar with the evidence against him and that he had not reviewed "every bit" of the state's evidence against him were true and permissible under the law.

Had trial counsel performed reasonably in his representation of Petitioner by either showing the photographs to Petitioner or explaining to the judge that Petitioner's answer reflected that he had not viewed the autopsy photographs, then there is a reasonable probability that the outcome of the proceeding would have been different because the judge would likely have accepted the guilty plea. As this Court acknowledged, no facts in the record supported the PCR court's factual finding that trial counsel believed Petitioner "likely did not agree with the state's reference to a broken photo frame of his wife." Further, as explained, there was *no* evidence that Petitioner was evasive during the attempted guilty plea. Finally, although trial counsel expressed during the PCR hearing that the plea judge was less than enthusiastic about the plea, the record showed the judge expressed exactly why she refused to accept it, which concerned only her belief that Petitioner was not familiar with the evidence in the case.

Petitioner admits a judge is not required to accept a guilty plea, but here, the evidence indicated the judge was willing to accept the guilty plea, even if reluctantly. It was only when she believed Petitioner was without the benefit of knowing "every bit" of the state's evidence that she declined to accept the guilty plea.

At the conclusion of his trial, Petitioner received a life sentence. This sentence was in stark contrast to the negotiated term of forty years, to which Petitioner had contracted with the state. The attempted guilty plea hearing transcript manifested Petitioner's desire and intent to enter a guilty plea. The PCR hearing transcript also supported Petitioner's desire and intent to enter a guilty plea. During the trial, Petitioner did not deny shooting the deceased. Rather, his defense was that he shot the deceased in the sudden heat of passion based on sufficient legal provocation. See App. 360, l. 24 – App. 361, l. 2 (Petitioner's testimony); App. 423, ll. 4-18 (closing argument admitting guilt to voluntary manslaughter). Had trial counsel performed reasonably, then Petitioner would have received the benefit of the negotiated plea agreement – a sentence of forty years.

On one final note, this Court asserted that Petitioner claimed "trial counsel was ineffective in failing to *argue with* the plea judge that [Petitioner] was indeed familiar with the evidence against him." (emphasis added). Petitioner respectfully disagrees as he did not – and would not – claim that trial counsel should have argued with the plea judge. Rather, Petitioner claimed trial counsel should have informed the judge that Petitioner had not reviewed "every bit" of the evidence and trial counsel could have remedied the problem by showing him the photographs. Although the matter may appear as simply a concern about semantics, Petitioner would never suggest his lawyer should *argue with* a judge.

Petitioner respectfully requests this Court rehear this matter for the significant points overlooked and/or misapprehended by this Court in affirming the PCR court's denial of relief.

Respectfully Submitted,

s/*Susan B. Hackett*
SUSAN B. HACKETT
Appellate Defender

This 19th day of August, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the petition for rehearing in the above-entitled case has been served upon Yasmeen Klein, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is yasmeenklein@scag.gov; and Randal William Benton, #349652, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 19th day of August, 2021.

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

Randal William Benton, Petitioner,

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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

Thomas C. Young J.

J.

Columbia, South Carolina

cc:
Susan Barber Hackett, Esquire
Benjamin Hunter Limbaugh, Esquire
Yasmeen Ebbini Klein, Esquire
Randal William Benton, 349652
The Honorable Benjamin H. Culbertson

FILED
Aug 31 2021