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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Greenville County
Perry M. Gravely, Plea Judge
Honorable R. Scott Sprouse, Post-Conviction Relief Judge

Appellate Case No. 2018-000629

JASON ALLEN LARSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUE ON CERTIORARI.....ii

STATEMENT OF THE CASE.....1

STANDARD OF REVIEW.....6

ARGUMENT.....7

To the extent that Petitioner contends his plea was not knowingly, intelligently, and voluntarily entered due to misadvice regarding credit for time served, this issue is not preserved for appellate review because the post-conviction relief court did not rule upon this issue and properly limited the scope of the hearing and its findings to the limited issue as to whether counsel properly advised Petitioner regarding the waiver of post-conviction relief when entering into an advantageous plea agreement with the State pursuant to Sanders. Furthermore, the post-conviction relief court properly found Petitioner made a knowing, intelligent, and voluntary waiver of the right to pursue post-conviction relief with the advice of competent counsel and upheld the waiver provision of the plea agreement pursuant to Sanders.7

CONCLUSION.....14

PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

Did the PCR judge err in refusing to find that plea counsel was ineffective for failing to advise Petitioner, in connection with entering into a plea agreement waiving the right to seek collateral review, that any time served for PWID methamphetamine and possession of a controlled substance prior to the State Grand Jury indictments would not apply to the trafficking methamphetamine charge?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

Is Petitioner's appellate argument that the post-conviction relief court erred in refusing to find plea counsel ineffective for misadvising Petitioner regarding whether he would get credit for time he served on other offenses preserved for appellate review, where the sole issue the post-conviction relief court ruled upon was whether plea counsel properly advised Petitioner regarding the waiver of post-conviction relief when entering into an advantageous plea agreement with the State? Furthermore, did the post-conviction relief court properly find Petitioner made a knowing, intelligent, and voluntary waiver of the right to pursue post-conviction relief with the advice of competent counsel and upheld the waiver provision of the plea agreement pursuant to Sanders?

STATEMENT OF THE CASE

Petitioner Jason Allen Larson is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Clerk of Court for the South Carolina State Grand Jury.¹ On October 22, 2015, the State Grand Jury indicted Petitioner for one count of trafficking methamphetamine (Conspiracy) (four hundred grams or more) (2015-GS-47-08) as part of a multi-count, multi-defendant indictment stemming from an investigation into a methamphetamine trafficking ring. On the same date, the State Grand Jury also indicted Petitioner for possession with intent to distribute methamphetamine and possession of a schedule I-V controlled substance (2015-GS-47-10) along with co-defendant Felicia Kersey stemming from an October 16, 2014, traffic stop in which quantities of methamphetamine and other illegal drugs were recovered. Scott D. Robinson, Esquire (Counsel), represented Petitioner. Assistant Attorney General Joshua Underwood of the South Carolina Attorney General's Office prosecuted the case.

By plea agreement filed on January 25, 2017, Petitioner entered into a written plea agreement with the State of South Carolina, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a recommended sentence range of up to fifteen years imprisonment (effectively, for a sentence of between seven to fifteen years imprisonment) and allowing Petitioner to plead to the lesser included offense of conspiracy to

¹ Petitioner is also serving active terms of imprisonment for unrelated convictions (assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime) arising out of Pickens County. Petitioner pled guilty to those offenses on September 30, 2015, before the Honorable Edward W. Miller, circuit court judge, and did not file an application challenging those convictions. Those convictions and sentences were not challenged in this post-conviction relief action and are not subject to this appeal.

traffic in cocaine (28-100 grams) and the other two indicted offenses as indicted, with all sentences to be served concurrently with each other and with Petitioner's unrelated sentences he was currently serving within the Department of Corrections. As part of this plea agreement, Petitioner **expressly waived** his right to pursue a direct appeal and post-conviction relief action beyond the limited issue as to whether counsel was effective for advising him to enter into the waiver agreement. ("The Defendant, Jason Allen Larson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Jason Allen Larson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Jason Allen Larson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver."). Petitioner initialed each page of this written plea agreement and signed this plea agreement on January 25, 2017.

On January 25, 2017, Petitioner appeared before the Honorable Perry H. Gravely, circuit court judge, and pursuant to the signed plea agreement, pled guilty to one count of the lesser included offense of conspiracy to traffic in cocaine (28-100 grams) (first offense), possession with intent to distribute methamphetamine (first offense), and possession of a schedule I-V controlled substance. At this hearing, Judge Gravely specifically asked Petitioner if he understood the terms of his plea agreement and Petitioner affirmed that he did understand the terms of the plea agreement and had entered into the plea agreement freely and voluntarily. Judge Gravely accepted Petitioner's pleas and deferred sentencing.

On May 18, 2018, Petitioner again appeared before Judge Gravely for a sentencing proceeding, represented by counsel Robinson. At this hearing, Robinson requested Judge Gravely not only run Petitioner's new sentences concurrently with his active sentences for his Pickens County convictions but also asked that the new sentences be backdated to start when his active sentences started, essentially giving Petitioner additional years of credit for time served on his unrelated sentences. Counsel Robinson also argued that Petitioner should be given credit since his arrest from the traffic stop, arguing that Petitioner had no control over when the State Grand Jury decided to indictment and serve him based on the drug conduct that arose out of Pickens County. The State opposed this request, stating Petitioner would be unfairly benefitting from prior crimes if the court were to give him credit for the entirety of his active sentences but did agree Petitioner should receive credit for the time served since entering his pleas in this case. Judge Gravely agreed Petitioner would be unfairly benefitting from his prior crimes and gave Petitioner credit for the time served since his plea was entered (January 25, 2017), but explicitly denied Petitioner's request that he receive credit for the entirety of his sentence on the unrelated convictions or otherwise give Petitioner credit for time served. Judge Gravely sentenced Petitioner to imprisonment for nine years for trafficking in methamphetamine, to eight years for possession with intent to distribute methamphetamine, and to time served for possession of a schedule I-V controlled substance, with the sentences to be served concurrently to each other and to his active sentence. Petitioner did not pursue a direct appeal.

Petitioner filed a timely application for post-conviction relief on December 19, 2018, asserting the following claims for relief:

1. Ineffective assistance of counsel
 - a. Counsel failed to respond to Petitioner and did not visit with him
 - b. Counsel failed to review discovery with Petitioner

- c. Plea agreement breached because Petitioner was not given credit for time served for the entirety of his unrelated sentence, which is also affecting Petitioner's custody status within SCDC.
 - i. "Plea agreement stated sentence would run concurrent with the sentence I am serving time for now. Sentence start date should be back dated to June 2014. This start date of 1/25/17 was a split sentence which was not stipulated in plea agreement. . . . Attorney General elected to pick up distribution and controlled substance charges to aide and assist them to indict me on conspiracy. Therefore, I was not allowed to plea (sic) guilty and I entered SCDC with holds and detainers. Because of them picking up charges, I have had to remain a level two custody status instead of a level one. My co-defendant's are receiving all their jail credits. . . ."

As requested relief, Petitioner stated he was seeking resentencing to give him credit since June 1, 2014, "[s]ince the attorney general took phone records during my jail time for the attempted murder charge and presented to the State Grand Jury as evidence and elected to adopt my distribution and controlled substance charges to couple with the conspiracy indictment." Petitioner also requests to amend his sentence for trafficking to eight years.

In response, Respondent made its return and partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising Petitioner to enter the waiver portion of the plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015).

An evidentiary hearing was convened March 2, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020, and supplemented January 8, 2021.² Petitioner was present at the hearing and

² See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. . . Please use WebEx, the conferencing platform supported by the Judicial Branch.").

represented by Sarah Henry, Esquire. At the start of the hearing, Respondent renewed its motion to dismiss, arguing the hearing should be limited the narrow issue as to whether counsel was ineffective in advising Petitioner to enter into the waiver provision of the plea agreement pursuant to Sanders and that any credit related claims were more properly addressed through internal SCDC grievance procedures. The post-conviction relief court expressly found the only issue that would be litigated in the hearing would be whether counsel ineffective in advising Petitioner to enter into the waiver provision of the plea agreement pursuant to Sanders. Testimony was taken from Petitioner and Counsel Robinson as to this limited issue.

Following the hearing, the post-conviction relief court took the matter under advisement. Thereafter, the court issued a ruling on March 2, 2021 and requested a proposed order. Following the procedure as set forth in Fishburne v. State³, the court issued a writing order with findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80, issued on June 4, 2021 and filed on June 15, 2021. This order only makes findings as to the sole issue before the court—whether counsel ineffective in advising Petitioner to enter into the waiver portion of the plea agreement waiving his right to seek post-conviction relief pursuant to Sanders. In this order, the post-conviction relief court explicitly finds counsel’s credible testimony established counsel properly advised Petitioner of the waiver of post-conviction relief on all ground other than whether counsel was ineffective pursuant to the plea agreement. Petitioner did not file any post-order motions.

³ Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) (recognizing the preparation and finalization of a PCR order is a collaborative process and should involve input and review from both parties to ensure the order appropriately addresses all issues raised and ruled upon by the court).

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, 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

To the extent that Petitioner contends his plea was not knowingly, intelligently, and voluntarily entered due to misadvice regarding credit for time served, this issue is not preserved for appellate review because the post-conviction relief court did not rule upon this issue and properly limited the scope of the hearing and its findings to the limited issue as to whether counsel properly advised Petitioner regarding the waiver of post-conviction relief when entering into an advantageous plea agreement with the State pursuant to Sanders. Furthermore, the post-conviction relief court properly found Petitioner made a knowing, intelligent, and voluntary waiver of the right to pursue post-conviction relief with the advice of competent counsel and upheld the waiver provision of the plea agreement pursuant to Sanders.

On appeal, Petitioner is attempting to raise a substantive ineffectiveness claim regarding counsel's advice regarding sentencing that was not ruled upon by the post-conviction relief court. The sole issue before the post-conviction relief court and addressed in its order was whether counsel was effective in advising Petitioner to enter into the waiver of post-conviction relief portion of the plea agreement pursuant to Sanders. The substance of Petitioner's petition for writ of certiorari addresses counsel's advice regarding whether Petitioner would receive credit from the time of his arrest in Pickens County for the traffic stop that he asserts ultimately led to his State Grand Jury indictments. The post-conviction relief court expressly declined to entertain this issue at the hearing in accordance with Sanders and did not make findings on this substantive issue in its order, and, therefore, that unruled-upon issue is not preserved for this Court's review. Furthermore, the post-conviction relief court properly determined the record reflects that Petitioner knowingly, intelligently, and voluntarily entered into a valid waiver of post-conviction relief pursuant to an advantageous plea agreement with the advice of competent counsel that properly advised him regarding this waiver. This Court should deny certiorari.

As an initial matter, Petitioner's appellate claim that counsel was ineffective in his advice regarding sentencing, and, more specifically, whether he would receive pre-indictment credit for

time served since his arrest for Pickens County drug charges, was not ruled upon by the post-conviction relief court. The sole issue before the post-conviction relief court was whether counsel was effective in advising Petitioner to enter into the plea agreement containing a provision that he would be waiving his right to pursue nearly all post-conviction relief claims. This is the sole issue that was addressed in the post-conviction relief court's order of dismissal. Accordingly, the substantive ineffectiveness claim regarding sentencing advice is not preserved for appellate review and is not properly before this Court.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and **ruled upon** by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004)(emphasis added); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Although our courts have recognized the somewhat relaxed procedures in post-conviction relief cases and will excuse procedural defaults in extraordinary cases, "[i]n most PCR cases, however, [appellate courts] have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases." Mangal v. State, 421 S.C. 85, 97, 805 S.E.2d 568, 574 (2017). See also Fishburne, 427 S.C. 5050, 832 S.E.2d 584 (finding a remand back to the post-conviction relief court was warranted to address issues that

were properly raised but not ruled upon despite applicant's failure to file a post-order motion requesting a ruling on the unaddressed claim). However, our appellate courts have never found an issue preserved or remanded back to the post-conviction relief court where a court expressly declines to allow Petitioner to proceed forward on an issue based on relevant and binding case law.

Here, the record is abundantly clear that the post-conviction relief court did not rule upon any issue beyond whether counsel was effective in advising Petitioner to enter into the plea agreement waiving his right to post-conviction relief. This ruling limiting the scope of the hearing and the ruling was proper in accordance with Sanders. Despite a lack of ruling on this issue, Petitioner nevertheless argues counsel was ineffective regarding sentencing advice. Petitioner attempts to frame this issue within the scope of the Sanders review that the post-conviction relief court did conduct, but he premises his entire argument on the substantive issue that counsel was ineffective regarding sentencing advice and the general advice to enter a guilty plea. This is beyond the scope of the post-conviction relief court hearing and the findings of fact and conclusions of law made in the post-conviction relief court's order of dismissal. Petitioner appears to acknowledge that the issue may not be preserved because although he requests a new trial based on ineffective assistance of counsel for sentencing misadvice that he avers induced his plea, but he then alternatively requests a remand back to the post-conviction relief court for additional testimony and development of substantive post-conviction relief claims. This Court should reject Petitioner's attempts to now exceed the scope of the review and ruling on appeal, as doing so would render Sanders meaningless if applicants were allowed to raise substantive post-conviction relief claims on appeal after the post-conviction relief court previously found the applicant was precluded from doing so under the validly entered plea agreement. Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 110 (2001) (per curium) (recognizing that appellate courts are courts of

review and not first view).

Furthermore, the post-conviction relief court properly found that the record establishes Petitioner knowingly, intelligently, and voluntarily entered into the advantageous plea agreement waiving his right to pursue post-conviction relief claims pursuant to Sanders. Petitioner argues the post-conviction relief court erred in refusing to find plea counsel was ineffective for failing to advise Petitioner “that any time served for PWID methamphetamine and possession of a controlled substance prior to the State Grand Jury indictments would not apply to the trafficking methamphetamine charge.” He asserts this misadvice induced him to enter into the plea agreement waiving his right to post-conviction relief and induced his guilty plea. However, the post-conviction relief court properly found plea counsel correctly advised Petitioner as to what post-conviction relief was, what the waiver entailed, and that Petitioner knowingly, intelligently, and voluntarily waived his right to pursue post-conviction relief in exchange for a favorable negotiated sentence from the State in accordance with Sanders. The post-conviction relief court’s findings are supported by probative evidence and the record and do not constitute an error of law. This Court should deny certiorari.

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, 466 U.S. 668. 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases"

and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Under South Carolina law, a criminal defendant can choose to waive his right to collateral review of his conviction so long as the waiver is knowingly and voluntarily made. Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (holding that a waiver of appellate rights is valid and enforceable as long as it is knowing and voluntary). Plea agreements in general operate under contractual principles, and are upheld when each party receives the benefit of the bargain. State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994).

However, while appellate and collateral waivers are enforceable, a criminal defendant who has waived his appellate and collateral review is still entitled to proceed forward with a post-conviction relief action on the very narrow issue of challenging his attorney’s conduct in advising him to enter into the waiver. Sanders, 412 S.C. at 617, 773 S.E.2d at 583 (“Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective.”).

In the present case, Petitioner chose to waive his post-conviction relief rights (beyond the limited issue of counsel’s advice in entering to the plea agreement) in exchange for an advantageous plea offer that significantly reduced the mandatory-minimum sentence he would receive but for the plea agreement. Both parties received a benefit of the bargain, and this agreement is valid under contractual law. Moreover, Petitioner was afforded an opportunity to present evidence and otherwise argue plea counsel was ineffective for advising him to enter into the waiver portion of this plea agreement in accordance with Sanders.

At the evidentiary hearing, plea counsel testified he met with Petitioner and discussed every aspect of the plea agreement, including his waiver of appellate and collateral challenges to his plea. Counsel testified he advised Petitioner generally about what direct appeal and post-conviction relief actions were, the types of errors that could be challenged through each, and that he would be waiving the right to file a direct appeal or post-conviction relief action by accepting the plea agreement. He testified the review of the plea agreement (including the waiver) was not a rushed or quick process and that Petitioner appeared to understand what a post-conviction relief action was, that the plea agreement would significantly foreclose on his ability to pursue post-conviction relief or otherwise challenge errors of counsel, and that with this understanding, Petitioner knowingly, intelligently, and voluntarily entered the plea agreement. (App. 147-50, 157-60, 161-63).

In contrast, Petitioner testified he did not read the plea agreement and merely initialed and signed where counsel instructed him to initial and sign. He testified counsel never reviewed the post-conviction relief waiver with him and he did not understand the post-conviction relief waiver portion of the plea agreement. (App. 127-28, 136-38, 140-42)

After listening to the testimony of plea counsel and Petitioner, the post-conviction relief court properly determined Petitioner made a knowing, intelligent, and voluntary waiver of his right to post-conviction relief and dismissed the application.⁴ In the written order of dismissal that

⁴ Moreover, although not properly before this Court because the post-conviction relief court properly limited the scope of the hearing pursuant to Sanders, the substantive issue regarding whether counsel promised Petitioner that he would receive credit for the time he served on warrants from the Pickens County drug offenses prior to the adoption of those charges from the State Grand Jury is also refuted by the record. Counsel unequivocally testified he never told Petitioner he would receive credit for any particular period of time and specifically testified he did not promise Petitioner he would receive credit for the time from his arrest on the Pickens County drug charges. Counsel testified he did not represent Applicant at the time of his arrest of those county drug offenses and unequivocally stated he never told him he would receive credit for that period of time

followed, the post-conviction relief court specifically found counsel's testimony was credible and established he advised Petitioner adequately of the waiver of post-conviction relief on all grounds other than whether counsel was ineffective in advising him to enter into the plea agreement. These findings are supported by the record and should be afforded great weight. See Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 435 (2018) (“[W]e afford great deference to a PCR court’s credibility findings.”).

Ultimately, Petitioner knowingly, intelligently, and voluntarily entered into a favorable plea agreement with the State that included a valid waiver of his right to post-conviction relief with the advice of competent counsel. This was not induced by any purported misadvice by counsel or any lack of knowledge as to what post-conviction relief was and the implications of the waiver, but by his own desire to secure a favorable plea offer for the lowest term of imprisonment possible. The post-conviction relief court properly determined Petitioner’s decision to enter into the waiver portion of the plea agreement was knowing, voluntary, and intelligent and these findings are supported by the record. This Court should deny certiorari.

because he was not even certain he was aware of those specific warrants for which he was never representing Petitioner. (App. 152-57, 161). Petitioner’s incredible assertions that his plea was induced specifically because he was promised credit for this period of time from arrest on the Pickens County drug offenses is not supported by the record. However, this issue is not preserved for appellate review.

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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