

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 27th day of November, 2019.*

PRESENT: All the Justices

Paul Jonas Crum, Jr., No. 1690588,	Petitioner,
against	Record No. 171622
Harold W. Clarke, Director of D.O.C.,	Respondent.

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed on December 6, 2017,<sup>1</sup> the rule to show cause, the respondent's motion to dismiss, petitioner's reply, the findings of fact submitted by the Circuit Court of Dickenson County, petitioner's objections to the findings of fact, petitioner's opening brief, the respondent's brief, and the argument of counsel, the Court is of the opinion that the motion should be denied and that the petitioner is entitled to relief.

Petitioner was convicted in the Circuit Court of Dickenson County, pursuant to pleas of no contest, of felony obstruction of justice, in violation of Code § 18.2-460(C), and felony eluding, in violation of Code § 46.2-817. There was no written plea agreement, although an oral agreement had been reached by the prosecutor and petitioner wherein petitioner would waive his preliminary hearing, the felony obstruction and felony eluding charges would be certified to the grand jury, petitioner would plead no contest to both charges, and counsel would argue as to sentencing. In return, the prosecutor would move to enter a *nolle prosequi* of a related attempted capital murder charge. Indeed, the general district court entered a *nolle prosequi* of the attempted capital murder charge on the prosecutor's motion the day the agreement was reached. The circuit court was never made aware of the oral agreement.

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<sup>1</sup> Although petitioner filed his petition on December 6, 2017, the case was not ripe until August 2018.

Petitioner was sentenced to ten years' imprisonment for felony obstruction and five years' imprisonment with five years suspended for felony eluding. Petitioner's appeal to the Court of Appeals of Virginia was unsuccessful. He did not appeal to this Court.<sup>2</sup> Petitioner now challenges the legality of his confinement pursuant to these convictions.

In December 2017, petitioner filed his petition for a writ of habeas corpus in this Court, asserting that he was denied the effective assistance of counsel in several respects. On December 3, 2018, this Court entered an order directing the circuit court to conduct an evidentiary hearing to make a determination on multiple factual issues related to two of petitioner's ineffective assistance of counsel claims. The circuit court conducted the evidentiary hearing and has submitted a written report of its findings of fact. In reviewing those findings, we defer to and are bound by them unless they are plainly wrong or without evidentiary support. *Lovitt v. Warden*, 266 Va. 216, 229 (2003); *Hedrick v. Warden*, 264 Va. 486, 496 (2002).

Petitioner contends that he was denied the effective assistance of counsel because (1) counsel advised petitioner to plead no contest to felony obstruction without conducting a reasonable investigation of that charge, which would have shown that petitioner's conduct did not meet the elements of the offense, and (2) counsel coerced petitioner into pleading no contest to felony obstruction and felony eluding based on the prosecutor's threat to reinstate the attempted capital murder charge, when there was no probable cause or evidence to support an attempted capital murder charge.

After conducting its own evaluation of the facts, the respondent now agrees that the performance of petitioner's counsel was constitutionally deficient because he advised petitioner to plead no contest to felony obstruction of justice when petitioner's actions did not violate Code § 18.2-460(C), and that petitioner was prejudiced as a result. Accordingly, the respondent affirmatively joins in petitioner's request for relief concerning that conviction. The Court recognizes that this concession does not relieve this Court of its judicial obligation to review the pleadings and the record before us. The Court, however, after consideration of the record, pleadings, and exhibits in this case, agrees with the respondent's concession that, as to the

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<sup>2</sup> Petitioner did file a motion for delayed appeal to this Court in which he argued that his appellate attorney failed to perfect an appeal to this Court of the Court of Appeals' judgment. However, petitioner did not file the requisite affidavit from his appellate attorney with the motion. See Code § 19.2-321.2(A). The Court denied his motion on August 15, 2019.

petitioner's conviction for felony obstruction of justice, petitioner has met his burden to prove both the "performance" and the "prejudice" prongs of the two-part test enunciated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Furthermore, under the particular facts of this case, the Court finds petitioner's felony eluding charge was inexorably joined with the felony obstruction charge in the oral agreement between petitioner and the Commonwealth and, therefore, cannot be severed. *See Smith v. Brown*, 291 Va. 260, 268 n.7 (2016) (acknowledging that when convictions are linked in a "single consolidated plea agreement," the "reciprocal benefits and the burdens of a plea bargain involving multiple charges cannot be selectively picked apart"). Thus, we must vacate both the felony obstruction and felony eluding convictions.

Accordingly, petitioner is entitled to relief on the writ, petitioner's convictions for felony obstruction and felony eluding are vacated, and petitioner is awarded a new trial on these charges, if the Commonwealth be so advised. Petitioner's remaining claims are dismissed as moot. The Clerk of this Court shall certify copies of this order to the petitioner, to the respondent, to the Clerk of the Circuit Court of Dickenson County, and to the Attorney General of Virginia, which certification shall have the same force and effect as if a writ of habeas corpus were formally issued and served.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:

  
Deputy Clerk