STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Aug 01 2022

S.C. SUPREME COURT

Certiorari to York County

Honorable R. Lawton McIntosh, Circuit Court Judge

WILLIAM COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001179

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I. Whether the PCR court erred in denying relief, where Petitioner was not provided counsel when charged with two offenses that resulted in period of incarceration, where Petitioner was tried *in absentia* without counsel, and where the PCR court erred in finding a knowing and voluntary waiver of the right to counsel?

II. Whether the PCR court erred in finding Petitioner waived his right to be tried in-person, where the trial court never determined he voluntarily waived that vital constitutional right?

STATEMENT

On March 7, 2017, Petitioner was issued a citation in Rock Hill, South Carolina for shoplifting, $2,000 or less. App. 1. According to the citation, a Uniform Traffic Ticket, Petitioner's trial date was April 3, 2017. Id. He did not appear and was found guilty via bench trial.[1] Id. He was fined $2,125.00 and sentenced to thirty days in jail. Id.

Petitioner was also cited for driving under suspension on March 24, 2017. App. 2. According to that Uniform Traffic Ticket, his trial date was May 31, 2017. He did not appear and was found guilty via bench trial. Id. He was fined $2,100.00 and sentenced to ninety days' jailtime. Id. Petitioner was unrepresented for both offenses.

Petitioner filed a request for withdrawal of warrants on or about April 18, 2017. App. 3. That same day, he filed a motion to reopen his case due to the fact that he was incarcerated at the Charleston County Detention Center on the day of his trial. App. 4. In response to the motion to reopen his case, Petitioner was sent a notice to appear on April 24, 2017, for a hearing on June 1, 2017. App. 5. Petitioner's motions were denied. App. 6, 9. Additional hearings were scheduled; Petitioner did not appear, according to the City of Rock Hill Municipal Court records.

Petitioner filed an application for post-conviction relief on November 2, 2017. App. 14. The state made its Return and Partial Motion to Dismiss on or about June 29, 2018. App. 24. An evidentiary hearing was held on June 29, 2021, before the Honorable R. Lawton McIntosh. Matt Burgess initially represented Petitioner, and Michael Neubauer appeared on behalf of the state. Burgess was relieved at the outset of the hearing, at Petitioner's request. App 39 ll. 19 – 21. Petitioner testified in narrative form at the PCR hearing.

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[1] Counsel for Respondent has represented that the entirety of the audio recordings from the municipal proceedings in Rock Hill were inadvertently deleted. Upon information and belief, they were not before the PCR court, so the undersigned did not pursue a reconstruction motion.

At the conclusion of the hearing, Judge McIntosh took the matter under advisement. App. 78 l. 25 – App. 79 l. 2. An Order of Dismissal was filed on September 20, 2021. App. 85. The PCR court found Petitioner failed to meet his burden. The Order of Dismissal analyzed two issues: denial of the right to counsel and trial in absentia. Petitioner filed his own Notice of Appeal with this Court, and the undersigned assumed representation.

This Petition for Writ of Certiorari follows.

ARGUMENT

The PCR court erred in denying relief, where Petitioner was not provided counsel when charged with two offenses that resulted in period of incarceration, where Petitioner was tried *in absentia* without counsel, and where the PCR court erred in finding a knowing and voluntary waiver of the right to counsel.

Relevant facts

Petitioner testified during his case-in-chief at the PCR evidentiary hearing. App. 55. He was convicted of shoplifting and driving under suspension ("DUS") without an attorney. App. 56 ll. 3 – 5. This testimony was uncontroverted. He testified:

> Without representation even though I wanted representation and probably needed representation. I didn't even have a trial. I was charged, given court dates. I was showing up for those court dates and on one of the court dates when I showed up for court I was like 15 minutes late and I told them I was going to be late because I had to bring my child to court with me. When I walked into the courtroom officers came up to the lobby of the court and arrested me and said you've been sentenced already. You've been sentenced to time. You're going to jail. Somebody has got to come get this baby. And I called my aunt to come get my child. And they hauled me off to jail. No trial. No attorney. Sentenced to time.

App. 56 ll. 9 – 23.

On cross-examination, counsel for the state inquired whether Petitioner hired an attorney prior to trial. App. 62 ll. 23 – 24. Petitioner indicated he was never given an opportunity *and* that he could not afford to hire private counsel; he would have needed representation from the public defender's office. App. 62 l. 25 – App. 63 l. 1. When counsel pressed the issue, Petitioner outright stated that he was never provided information about hiring a public defender. App. 63 ll. 2 – 19. He could not afford independent counsel and was never appointed a public defender. App. 66 ll. 19 – 22. Petitioner nonetheless detailed his attempts at attending his trials and hearings. App. 71 l. 24 – App. 72 l. 15.

During closing remarks at the evidentiary hearing, Petitioner rightfully opined that he was "unlawfully tried in [his] absence without an attorney and sentenced to time and [he doesn't] know even if a trial went on in [his] absence." App. 74 ll. 8 – 12. He contended that his rights were violated. App. 74 ll. 18 – 22.

The state's response relied largely on speculation and conjecture. Particularly with regards to the alleged waiver, counsel for Respondent opined "Applicant's age, education background and mental are such that he *could have voluntarily made a waiver of counsel.*" App. 77 ll. 7 – 9 (emphasis added). Notably, that assertion does not suggest that Petitioner *actually* waived his right to counsel, only that he *could have.*[2] The state's position fails to account for the realities facing indigent citizens in South Carolina.

The Order of Dismissal is inherently unreliable: it mistakenly suggested that the PCR judge "has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, the application for post-conviction relief, the amended application for post-conviction relief, and the legal arguments made by the attorneys." App. 89. Petitioner did not plead guilty. Additionally, there was no guilty plea transcript in Petitioner's case, nor was there an amended PCR application.

The PCR judge then analyzed ten factors from State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992). App. 90. In accordance with those factors, the PCR court determined Petitioner "voluntarily waived his right to counsel." App. 90. The court further found Petitioner "voluntarily waived his right to legal counsel through his conduct." App. 91. Seemingly

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[2] Later, however, the state would contend Petitioner—an indigent individual—failed to hire counsel or apply for a public defender and therefore voluntarily waived his right to counsel. App. 77 l. 25 – App. 78 l. 5.

employing a burden-shifting paradigm, the PCR court also concluded Petitioner "failed to present any evidence that he attempted to obtain representation for these charges." App. 91.

Discussion

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." State v. Thompson, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003) (citing United States v. Chronic, 466 U.S. 648, 654, 104 S.Ct. 2039, 2044, 80 L.Ed.2d 657, 664 (1984)).

On September 15, 2017, Chief Justice Beatty issued a memorandum to the magistrates and municipal judges of this state.[3] Petitioner referenced this document at this PCR evidentiary hearing. App. 63 l. 17 – App. 64 l. 1. The Memorandum speaks for itself:

> It has continually come to my attention that defendants, who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment. This is a clear violation of the Sixth Amendment right to counsel and numerous opinions of the Supreme Court of the United States. All defendants facing criminal charges in your courts that carry the possibility of imprisonment must be informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial. Absent a waiver of counsel, or the appointment of counsel for an indigent, summary court judges shall not impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant's ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also apply to those defendants who fail to appear at trial and are tried in their absence.

Id. (footnotes omitted).

Chief Justice Beatty's Memorandum cited to numerous United States Supreme Court cases. Argersinger v. Hamlin, 407 U.S. 25 (1972); Scott v. Illinois, 440 U.S. 367 (1979); Alabama v. Shelton, 535 U.S. 654 (2002); and Faretta v. California, 422 U.S. 806 (1975). The words of the

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[3] Sentencing Unrepresented Defendants to Imprisonment, https://www.sccourts.org/summaryCourtBenchBook/MemosHTML/2017-09.htm (last accessed August 1, 2022).

Chief Justice, coupled with the abundance of case law in this area of the law, demonstrate the unconstitutionality of Rock Hill's practices and serve to validate Petitioner's claims. The PCR court erred in denying relief, and no evidence exists in the record to affirm.

In Gideon v. Wainwright, 372 U.S. 335, 344-345, 83 S.Ct. 792 (1963), the Supreme Court held that the Sixth Amendment's guarantee of the right to state-appointed counsel applied to the states through the Fourteenth Amendment. The Supreme Court clarified the scope of the right to state-appointed counsel in Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006 (1972), holding that an indigent defendant must be offered counsel in any misdemeanor case "that actually leads to imprisonment." The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is *per se* reversible error. State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996) (citing Chapman v. California, 386 U.S. 18, 23 n. 8, 87 S.Ct. 824, 828 n. 8, 17 L.Ed.2d 705 (1967)).

In Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158 (1979) the Court confirmed Argersinger's limitation on the mandate for States to provide appointed representation in misdemeanor cases. The governing statute in Scott authorized a jail sentence of up to one year. Id., at 368, 99 S.Ct. 1158. Nevertheless, the court held that the defendant had no right to state-appointed counsel because the sole sentence actually imposed on him was a $50 fine. Id., at 373, 99 S.Ct. 1158.

Finally, in Alabama v. Shelton, 535 U.S. 654 (2002), the Supreme Court held that there can be no activation of a suspended sentence upon the violation of probation if no attorney was present during the offense for which he could be imprisoned. Shelton was convicted of third-degree assault following a bench trial where he represented himself. Id. at 658, 122 S.Ct. at 1767. Third degree assault is a misdemeanor carrying up to a year imprisonment and a $2,000 fine. Id. Shelton was sentenced to thirty-days imprisonment suspended on the service of two years of probation.

Shelton exercised his right under Alabama law to a new jury trial. He again appeared without counsel and was convicted. "The court repeatedly warned Shelton about the problems self-representation entailed, but at no time offered him assistance of counsel at state expense." Id. at 658, 122 S.Ct. at 1768 (emphasis added). Ultimately, the Supreme Court concluded that that the Sixth and Fourteenth amendments prohibited a prior un-counseled conviction that resulted in a sentence of imprisonment from being used to enhance punishment of a subsequent conviction. Id.

At the time Alabama v. Shelton was decided, South Carolina was one of only sixteen states that did not provide counsel to indigent defendants in Shelton's circumstances. Id. at 669, 122 S.Ct. at 1774. Under our case law at the time, an indigent defendant in South Carolina only had the right to appointed representation if he was sentenced to a term of actual imprisonment. Talley v. State, 371 S.C. 535, 543, 640 S.E.2d 878, 881-82 (2007).

A defendant in a criminal case "has the right to the assistance of counsel." State v. Justus, 392 S.C. 416, 419, 709 S.E.2d 668, 670 (2011) (citing U.S. CONST. amend. VI; Gideon v. Wainwright, 372 U.S. 335, 340-41, 83 S.Ct. 792, 794, 9 L.Ed.2d 799, 802-03 (1963)). The defendant may waive his right to counsel, but he must do so knowingly and intelligently. Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562, 581 (1975). For a knowing and intelligent waiver to occur, the defendant must be "(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation." Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing Faretta, 422 U.S. at 835, 95 S.Ct. at 2541, 45 L.Ed.2d at 581-82).

By definition, "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Sanford v. S.C. State Ethics Comm'n, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (citing Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009)), opinion clarified on

other grounds, 386 S.C. 274, 688 S.E.2d 120 (2009). "Waiver requires a party to have known of a right and known that right was being abandoned." 385 S.C. at 496-97, 685 S.E.2d at 607. Any waiver, therefore, including a waiver of counsel "by conduct," must be knowing and intelligent. For a waiver to be "knowing and intelligent," the defendant "should be made aware of the dangers and disadvantages of self-representation." Faretta, 422 U.S. at 835, 95 S.Ct. at 2541, 45 L.Ed.2d at 581-82; Prince, 301 S.C. at 423-24, 392 S.E.2d at 463. The burden is on the state to demonstrate the validity of a defendant's waiver of his right to counsel. Brewer v. Williams, 430 U.S. 387, 404, 97 S.Ct. 1232, 51 L.Ed.2d 424, 439-40 (1977); see United States v. Cash, 47 F.3d 1083, 1088 (11th Cir. 1995) ("On direct appeal, the government bears the burden of proving the validity of the waiver.").

The Faretta and Prince requirement applies to any waiver, whether the waiver is alleged to be by "affirmative, verbal request" or "by conduct." United States v. Goldberg, 67 F.3d 1092, 1100-01 (requiring Faretta warnings for a valid waiver by conduct); State v. Jones, 772 N.W.2d 496, 505 (Minn. 2009) ("The same colloquy required for affirmative waivers must also be given before a defendant can be said to have waived his right to counsel by conduct." (citing Goldberg, 67 F.3d at 1100)).

In Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002), this Court held the Faretta and Prince requirement of warning the defendant of the dangers of self-representation applies to waiver by conduct. The PCR court found the petitioner's conduct amounted to a waiver of his right to counsel. 351 S.C. at 410, 570 S.E.2d at 185. This Court explained the petitioner knew he might lose his right to counsel if he failed to obtain counsel prior to his guilty plea. 351 S.C. at 410-11, 570 S.E.2d at 185-86. This Court nonetheless reversed, however,

finding, "Petitioner was not adequately apprised of the dangers of self-representation." 351 S.C. at 412, 570 S.E.2d at 186.

A similar result was reached in a recent opinion from this Court which offers favorable authority to Petitioner's argument and shows that the PCR court erred. Robert Osbey was charged with three drug offenses and pled guilty without counsel. Osbey v. State, 425 S.C. 615, 617-18, 825 S.E.2d 48, 49 (2019). The plea court found that Osbey waived his right to counsel by his conduct:

> I find ... that you have knowingly waived your right to counsel by your conduct, having known and been advised that you could have an appointed lawyer but you needed to contact the public defender's office so that they could accept your application. And in a year's time... you failed to do that. So, you have waived your right to counsel.

Id. at 618, 825 S.E.2d at 49-50

Osbey filed a PCR application alleging that he did not knowingly and voluntarily waive his right to counsel. Id. at 618, 825 S.E.2d at 50. The PCR court found that a valid waiver had occurred. Id. A footnote in the opinion pointed out: "The key to waiver by conduct is misconduct occurring *after an express warning has been given* to the defendant about the defendant's behavior and the consequences of proceeding without counsel." 425 S.C. 615, 620, 825 S.E.2d 48, 51, n. 1 (citing Com. v. Means, 454 Mass. 81, 907 N.E.2d 646, 658 (2009) (emphasis in Osbey)). The Petitioner in the matter *sub judice* never received an express warning.

Because the plea court did not mention to Osbey the dangers of self-representation, the Court examined the record to determine if a factual basis existed for the waiver. Id. at 620, 825 S.E.2d at 51. Osbey had two prior convictions for drug offenses and violated probation and parole once each. Id. at 620-21, 825 S.E.2d at 51. This Court found "this is an insufficient basis

on which to find Osbey **actually understood the dangers of self-representation.**" (emphasis added).

This Court relied on Prince v. State which found no valid waiver because the record "[did] not demonstrate petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed *pro se*." 301 S.C. 422, 392 S.E.2d 462 (1990). This Court held that the PCR judge erred in finding a valid waiver of counsel. Id.

The concurrence and first footnote in Osbey raised valid concerns that exist in both criminal cases in general as well as Petitioner's case. Petitioner was never warned about the dangers of self-representation. Justice James' concurrence in Osbey discusses the practical considerations, particularly the timing, of Faretta warnings in cases such as this one.

The Supreme Court of North Dakota has held that presuming that an individual waived the right to counsel when the record did not affirmatively indicate such was error. State v. Orr, 375 N.W.2d 171, 174 (1985). "Such a presumption is impermissible because waiver has particularly far-reaching effects in the context of guilty pleas." Id. In State v. Friedrich, the Court of Appeals of Minnesota held that using an uncounseled plea to enhance a charge was not permitted. 436 N.W.2d 475 (1989).

In Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990), the South Carolina Supreme Court held that an appellate court will consider, in accordance with constitutional standards, the entire record including facts presented at the PCR hearing. The facts presented at the PCR hearing are inadequate such that this court should not affirm the PCR court's finding.

In Wroten, the defendant pleaded guilty to distributing crack cocaine and received a fifteen year sentence. 301 S.C. at 294, 391 S.E.2d at 576. Wroten filed a PCR application alleging that his plea was invalid because he had not knowingly and intelligently waived his right

to counsel. Id. After his application was denied, he argued on appeal that the PCR judge erred in finding a valid waiver of counsel because the trial judge did not warn him of the dangers of self-representation as required by Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Id. See also State v. Bateman, 296 S.C. 367, 373 S.E.2d 470 (1988). As noted in the Wroten opinion:

> Faretta requires that a defendant "be made aware" of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with open eyes. While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.

Id. at 294, 391 S.E.2d at 576. (internal citations omitted). The Court held that "[t]he extent of inquiries made by the trial judge at the time of the plea is not conclusive." Wroten at 294, 391 S.E.2d at 576 (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

Six years later, the South Carolina Court of Appeals reversed an appellant's convictions where the trial court erroneously concluded a waiver had occurred. State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct. App 1996). Boykin was indicted on two armed robbery counts. Id. at 554, 478 S.E.2d at 689. During a jail visit, Boykin cursed at his court-appointed attorney. Id. at 554, 478 S.E.2d at 689-90. The trial judge granted counsel's motion to be relieved and ordered standby counsel in an extremely limited capacity. Id. at 555, 478 S.E.2d at 690. The trial judge concluded Boykin waived his right to an attorney. Id. The Court of Appeals concluded the trial court erred:

> In the present case, the record shows Boykin was not warned of the consequences of his actions, nor the dangers inherent in self-representation. Because waiver implies the intentional relinquishment of a known right, Boykin could not have waived his right to counsel, either expressly or by his conduct.

Id. at 558, 478 S.E.2d at 692.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Sanford v. S.C. State Ethics Comm'n, 385 S.C. 483, 496, 685 S.E.2d 600 (citing Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 407)), opinion clarified on other grounds, 386 S.C. 274, 688 S.E.2d 120 (2009).

Petitioner's case is analogous to both Wroten and Osbey. As noted by the concurring opinion in Osbey, there is typically no clear way to verify whether Faretta warnings have ever been given to an unrepresented defendant. Because a record is unavailable from Petitioner's municipal court bench trials and subsequent hearings, there does not exist enough evidence to uphold the PCR court's decision. The PCR court's findings are unsupported by the evidence. There is no indication Petitioner was provided Faretta warnings; rather, the Rock Hill standard practice appears to have been to try unrepresented defendants in their absence. The record before the PCR court was insufficient to find a waiver; thus, the PCR court erred.

The year before Petitioner's citations in 2017, the American Civil Liberties Union published a study entitled Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts.[4] This study examined topics including "Ineffective or Absent Advisement of Rights" and contained instances of similar shortcomings. Petitioner's experiences largely mirrored those encountered by others in South Carolina. His constitutional deprivations are no less significant, however, and mandate reversal.

[4] https://www.aclu.org/sites/default/files/field_document/summaryinjustice2016_nacdl_aclu.pdf (last accessed July 29, 2022)

II. The PCR court erred in finding Petitioner waived his right to be tried in-person, where the trial court never determined he voluntarily waived that vital constitutional right.

In the Order of Dismissal, the PCR court relied on City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006) for the notion that the *trial court* must determine a defendant voluntarily waived his right to be present at trial. App. 91 – 92 (emphasis added). The PCR court adopted a curious approach, concluding Petitioner "has failed to produce any evidence to suggest that he was not provided with notice of his scheduled court dates." App. 93. It is unclear what this evidence would look like. The PCR court similarly concluded Petitioner "has failed to demonstrate he was not aware that he may be tried in his absence by way of a bench trial." Id. In sum, the PCR court found Petitioner "voluntarily waived his right to be present at his trial." Id. This was error.

In State v. Wrapp, the South Carolina Court of Appeals concluded the circuit court erred in trying Wrapp *in absentia* without making specific findings that Wrapp (1) received notice of his right to be present, and necessarily, of the term of court for which he needed to be present, and (2) was warned he would be tried *in absentia* if he failed to attend. 421 S.C. 531, 536, 808 S.E.2d 821, 823 (Ct. App. 2017).

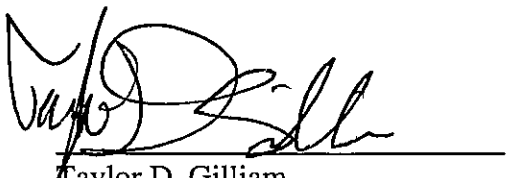
It is unclear what evidence the PCR court relied upon in order to conclude Petitioner waived his right to appear and was made aware that he would be tried *in absentia* if he failed to attend. The Uniform Traffic Tickets listed a trial date, gave the location, and set forth: "You are summoned to appear before the trial court." That is nowhere near tantamount to notice that a defendant would be tried in his absence of he failed to attend. In Wrapp, the state contended the bond paperwork provided sufficient notice that Wrapp received notice of his right to be present.

421 S.C. at 536, 808 S.E.2d 821, 823. Here, there was no bond paperwork; all that exists in the record are the tickets. They are insufficient to show Petitioner received notice that he would be tried in his absence.

As mentioned above, the PCR court relied on the holding from City of Aiken v. Koontz for the notion that "before a defendant may be tried *in absentia*, **the trial court** must determine a defendant voluntarily waived his right to be present at trial." 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006); App. 91 (emphasis added). For reasons unknown, the PCR court failed to connect that requirement—that the *trial court* make said determination—with its conclusion that Petitioner waived his right to be present at trial. No evidence was presented that the trial judge concluded, in either the shoplifting or driving under suspension case, that Petitioner either voluntarily waived his presence or was warned he would be tried in his absence if he failed to attend. The PCR court found "Applicant additional failed to demonstrate he was not aware that he may be tried in his absence." This burden-shifting conclusion is impossible to reconcile with South Carolina law. Petitioner's testimony never established that he was warned that the trial would proceed in his absence. Given the opportunity to cross-examine Petitioner on this subject, counsel for Respondent demurred. The record does not establish that Petitioner waived his right to appear or that he was notified that he would be tried in his absence if he failed to attend. There are no records from the trial court making either of those findings. As a result, there is no evidence on which the PCR court could have relied to justify its conclusions. The error-filled Order of Dismissal cannot stand.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant certiorari to allow further briefing.



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of August, 2022.

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 1st day of August, 2022.