

**RECEIVED**

**Aug 03 2022**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

\_\_\_\_\_  
RONNIE M. DRAKE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000125

\_\_\_\_\_  
JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Jessica M. Saxon  
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

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT OF THE CASE.....2

ARGUMENT

The PCR court erred in finding Petitioner’s guilty plea was knowingly and voluntarily entered where counsel failed to obtain Petitioner’s mental health treatment records from various sources after Petitioner specifically requested counsel obtain the records to show that he was not faking mental health problems but had suffered from mental health problems since the early 2000’s. ....6

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL .....11

## **ISSUE PRESENTED**

Whether the PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where counsel failed to obtain Petitioner's mental health treatment records from various sources after Petitioner specifically requested counsel obtain the records to show that he was not faking mental health problems but had suffered from mental health problems since the early 2000's?

## STATEMENT OF THE CASE

In October 2015, Petitioner was indicted by a Florence County grand jury for one count of possession with intent to distribute cocaine base and one count of trafficking cocaine ten to twenty-eight grams. App. 142-143. The charges arose from an incident on May 3, 2015, at a Cruisers convenience store. Police had received a complaint of an individual with marijuana driving a tan Chevy Impala at the corner of East Palmetto and Church Street in Florence County. Agent Brown, a member of the narcotics unit, responded to the area and noted a black male, later identified as Petitioner, standing beside a tan Chevy sedan in the Cruisers' parking lot. App. 8, l. 20-App. 9, l. 4.

Petitioner entered the car and was leaving the parking lot when Agent Brown pulled behind the Chevy. Agent Brown approached the driver's side window and requested that Petitioner identify himself. Petitioner began to roll up the driver's side window which prompted Agent Brown to open the driver's door. In the door handle, Agent Brown observed a plastic baggy containing a white, powdered substance. App. 9, l. 5-App. 10, l. 3. Petitioner stepped out of the car, grabbed the plastic baggy, and fled the scene. After a short chase, Petitioner was apprehended by Agent Brown. App. 10, l. 3-App. 11, l. 6. During a search of his person, Agent Brown located 27.62 grams of cocaine and 9.13 grams of crack cocaine. After being mirandized, Petitioner made statements that he had purchased the cocaine for a female. App. 11, l. 5-App. 12, l. 17; App; 76, ll. 5-12.

On December 5, 2016, Petitioner appeared before the Honorable D. Craig Brown to enter a guilty plea. The State was represented by John Jepertinger. Petitioner was represented by

Ralph Wilson. App. 1. Petitioner pled to trafficking cocaine 10-28 grams, second offense,<sup>1</sup> for a negotiated twelve-year sentence. The state dismissed the possession with intent to distribute charge. App. 4, ll. 6-12; App. 21, ll. 4-7.

Petitioner appealed his conviction and sentence. The appeal was subsequently dismissed for failure to provide an explanation as required by Rule 203(d)(1)(B)(iv), SCACR. Petitioner filed an application for post-conviction relief on June 12, 2017. App. 23-29. The State filed a return and motion for a more definite statement dated November 9, 2017. App. 30-37. An evidentiary hearing was convened before the Honorable George M. McFaddin, Jr., on September 1, 2021. The State was represented by Michael Davidson. Petitioner was represented by Jonathan Waller. App. 38.

Petitioner testified that he asked Counsel Wilson to obtain his mental health records from various places, along with his records from school, the Department of Social Services, and the Social Security Administration. App. 47, ll. 5-11. Petitioner wanted the records regarding his mental health treatment because he had been taking mental health medication since the early 2000's. He further testified that the evaluator thought he was faking having mental health problems and wanted the records to show that he was not faking. Petitioner testified he was on various medications for depression, PTSD, and bipolar disorder which he started while previously incarcerated. App. 47, l. 11-App. 49, l. 1; App. 50, ll. 5-25. At the time the incident occurred, Petitioner had been without his mental health medications for three days. App. 52, l. 22-App. 53, l. 16.

Petitioner testified that he knew he could have a jury trial and had requested a trial be held in his case. App. 46, l. 24-App. 47, l. 4. However, Counsel Wilson told Petitioner he

---

<sup>1</sup> Based on Petitioner's prior record, the offenses would have been prosecuted as third or subsequent offenses had he proceeded to trial. App. 4, ll. 8-11; App. 12, ll. 20-25.

should plead guilty, even though Petitioner denied that the drugs were his and repeatedly stated that he did not want to enter a plea. App. 55, l. 1-22. Petitioner testified that his mother made the decision for him to plead guilty, and he pled to avoid causing her more stress. App. 57, ll. 16-18; App. 58, ll. 3-9. According to Petitioner, Counsel Wilson tricked his mother into convincing him to plead guilty. App. 64, l. 10-App. 65, l. 1. Petitioner stated if Counsel Wilson had done what he asked him to do then he would have gone to trial. App. 58, ll. 21-14.

Counsel Wilson testified that he was honest with Petitioner from the beginning that he did not have a good case and that his best course of action was to take a plea deal. App. 77, ll. 7-10. Counsel Wilson had to beg and plead with the solicitor to get the twelve-year plea offer for Petitioner. Initially, the State would only offer twenty years, then fifteen years, and finally agreed to twelve years. The solicitor made it clear that the twelve-year offer was the last plea offer that Petitioner would get, and if he did not take it then they would proceed to trial on the charges. App. 78, l. 20-App. 79, l. 5. Counsel Wilson testified that Petitioner was reluctant to plead guilty because he did not want to go back to prison however, he understood that if he did not plead, he would be going to trial and facing a substantially higher sentence. App. 79, ll. 10-25.

Counsel Wilson testified that he spoke with Petitioner and Petitioner's mother about his mental health history. He found nothing in his conversations with Petitioner or his mother to suggest that Petitioner suffered from any major mental illness. App. 80, l. 13-App. 81, l. 5. He did not recall if Petitioner asked him to get various records but admitted that even if Petitioner had made the request, he would not have gotten the records. App. 81, ll. 6-11. This was because the doctors performing the competency evaluation "went back and they tried to find all of his medical records from the past." App. 81, ll. 11-15.

Petitioner underwent a competency evaluation through the Department of Mental Health (DMH) prior to entering the guilty plea. App. 90-105. Prior to the PCR hearing, Petitioner underwent a criminal responsibility evaluation through DMH. App. 106-124. Both evaluations found that Petitioner was attempting to feign psychiatric symptoms. App. 119-121. Both reports noted that, even though he appeared to be feigning symptoms, it did not indicate that he was free from psychological and/or psychiatric problems. App. 103; App, 121. Additionally, the reports only referenced Petitioner's medical records from DMH, the Department of Corrections, and the Florence County Detention Center. App. 101-102; App. 117-119.

An order of dismissal was filed on January 14, 2022. App. 125-141. The court found the testimony of Petitioner "to not be credibility in its entirety" and afforded his testimony zero probative weight. Conversely, the court found Counsel Wilson's testimony to be highly credible and afforded it substantial probative weight. App. 127. The PCR court found Petitioner did not request Counsel Wilson get the records from his past mental health treatment. Further, the court stated that even if Petitioner had made the request, the records would not have been helpful, as the doctors performing the evaluation would have attempted to locate the records based on Petitioner's own reported treatment history. The PCR court ruled Petitioner could not show prejudice because he was evaluated prior to the PCR hearing and the report concluded that Petitioner was faking his mental health symptoms. App. 136.

## ARGUMENT

The PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where counsel failed to obtain Petitioner's mental health treatment records from various sources after Petitioner specifically requested counsel obtain the records to show that he was not faking mental health problems but had suffered from mental health problems since the early 2000's.

An individual's constitutional right to due process of law prohibits the conviction of an incompetent defendant. U.S.C.A. Const. Amend. 14. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) *citing* Bishop v. United States, 350 U.S. 961 (1956). This right cannot be waived by guilty plea. Pate v. Robinson, 383 U.S. 375 (1966). The test of competency to enter a plea is the same as required to stand trial. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 91976).

Competency requires that the defendant must have the ability to consult with his attorney with a reasonable degree of rational understanding and have an understanding of the proceedings against him. Jeter at 232, 417 S.E.2d at 595. The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings. Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 7011 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)) (emphasis in original).

It is well established that counsel has a duty to undertake reasonable investigations. Strickland v. Washington, 466 U.S. 668, 691 (1984). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); "[A]t a minimum, counsel has the duty to...make an **independent** investigation of the facts and circumstances of

the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original). The duty to conduct a reasonable investigation extends into all aspects of a case including the defendant’s mental competency. See Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007); Bouchillon v. Collins, 907 F.2d 589, 597 (5th Cir.1990) (stating counsel has a duty to investigate his client's mental status when he has reason to believe an investigation is warranted “because, where such a condition exists, the defendant's attorney is the sole hope that it will be brought to the attention of the court”).

Admittedly, Petitioner was evaluated for competency to stand trial prior to entering his guilty plea. However, the evaluation was incomplete, as counsel failed to obtain and provide the necessary records required by DMH. The order for a competency evaluation explicitly states that it is the duty of counsel requesting the evaluation to obtain a defendant’s records in advance and to include the records with the order when the order is sent to DMH. Among the records that counsel has a duty to provide are a defendant’s school psychological records, special education records, general school records, and mental health records. App. 90. Further, certain documents, including a defendant’s school psychological records, must be attached to the order for evaluation when it is submitted to DMH. App. 97.

Counsel Wilson could not recall if Petitioner had asked to obtain his prior records. Notably, he testified that even if Petitioner had requested that he get the records, he probably would not have gotten them because there would be “no point in it.” This was because Counsel Wilson testified that the doctors would go back and obtain the records for the evaluation. App. 81, ll. 9-19. The belief that DMH would independently obtain the records is directly refuted by the competency order form which places the duty upon counsel to obtain the necessary records.

Counsel Wilson did not obtain the necessary records required by DMH and requested by Petitioner. This was deficient performance.

“The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). Generally, to prevail on PCR in the context of a guilty plea, a PCR applicant must show that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Strickland v. Washington, 466 U.S. 668 (1984); Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). “In Jeter, this Court proclaimed that in proving Strickland prejudice within the context of counsel’s failure to fully investigate the petitioner’s mental capacity, ‘the [petitioner] need only show a *reasonable probability* that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’” Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) *citing* Jeter 308 S.C. at 233, 417 S.E.2d at 596 (emphasis added).

Petitioner was found to be competent to stand trial. He was also found to be feigning any psychiatric symptoms. However, Petitioner steadfastly maintained that he had suffered from diagnosed mental health problems since the early 2000’s. The doctors also stated that the fact they believed Petitioner was malingering did not mean he did not suffer from mental health problems. Had Counsel Wilson done his job properly and obtained the requisite records, the doctor’s evaluation would have been informed by years of prior diagnoses and treatment. This was vital information that the doctors did not have while evaluating Petitioner which likely would have impacted their determination of competency. The missing records that Counsel Wilson failed to obtain prejudiced Petitioner because the doctors were not able to fully and

accurately evaluate his competency. Thus, his guilty plea was neither knowing nor voluntary as he maintained that he was suffering from psychiatric symptoms which were not accounted for during his evaluation.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully request that this Court grant the writ of certiorari to allow full briefing on this issue.

          s/Jessica M. Saxon            
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3<sup>rd</sup> day of August, 2022.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

Aug 03 2022

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

\_\_\_\_\_  
RONNIE M. DRAKE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Ronnie Mickell Drake states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on September 1, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Ronnie Mickell Drake.

Respectfully Submitted,

\_\_\_\_\_  
s/Jessica M. Saxon  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3<sup>rd</sup> day of August, 2022.

RECEIVED

Aug 03 2022

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson 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.”

s/Jessica M. Saxon

Jessica M. Saxon  
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

This 27th day of July, 2022.