

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Timonthy Young# 227364)

C/A No#. 2011-199913 JUN 29 2012

Petitioner,)

S.C. SUPREME COURT

)

)

Petitioner's Response to Counsel's

)

Johnson Petition

v.)

State of South Carolina)

Respondent,)

Statement of the Case

On August 29th, 2007, Officers from the Spartanburg City Police Department responded to a break-in at the law firm of Scott, Taylor, White, and wingo located in Spartanburg. Employees had arrived at around 7:50am the morning of the break-in and discovered a smashed window. Investigating officers located blood in three different locations inside the business from a cut received by the burglar. The burglar never entered the building, and owner's of the Law firm reported nothing missing as a result of the break-in. The owners also declined to be reimbursed for the damaged window. Swabs were collected from all three locations where blood was found, and was entered into CODIS at SLED. There was a CODIS hit from a DNA file of the petitioner. As a result of this information, and acting solely on this information, on August 13th, the petitioner was arrested by officers from the Spartanburg County Police Department. The had not had an opportunity to collect a blood sample from the petitioner, and the petitioner had actually been scheduled for a Smurkberg hearing the morning of his trial in order to obtain

Buccal Swabs. Due to the fact that the petitioner had been brought to court and was pleading guilty to charge against him, Mr. Ellis, the Solicitor for the State, stated to Judge Hayes that they had not been able to get a controlled sample to compare the swabs (guilty plea transcript pg.18 lines 3-19). Due to the fact that the petitioner was pleading guilty to the charge Solicitor Ellis did not deem it necessary to pursue the issue of confirming the blood sample found at the scene of the crime. Therefore the process of confirming the blood sample was never completed. Throughout the plea proceeding the petitioner's answer to most of the questions asked when questioned by the court, was (yes sir). At the time of the petitioner's plea he was incarcerated with the department of corrections, and transported from Kirkland Correctional Institution (mental facility) in order to answer to the charge against him. In order to go before the Judge on the morning of his plea, Mr. Young was given a needle Containing (HALDOL), which is a drug that allay's anger, suspicion, doubt, or fear. This medication calms or quiets a person and lessens nervousness. Due to the fact that the petitioner was sedated during his plea, the medication that he was given by prison officials at Kirkland C.I. was affecting his speech as indicated by Judge Hayes (see plea transcript pg.15 lines 17-21). Judge Hayes also asked petitioner if he had consumed any substance within the last (24) hours that would adversely affect his ability to understand the ples proceedings (plea transcript pg.15 lines 24-25 and pg.16 lines 1 and 2). Mr. Cheek, counsel for the petitioner during the time of plea informed the court that the petitioner was on medication, but did not give the court any details as to what kind of medication or its affect (plea transcript pg.23 lines 17-19). Further, Mr. Cheeks stated to the court during the petitioner's plea (that the petitioner had to do some time, that the petitioner

had to go to the Department of corrections, that there was no question the petitioner has a problem, and that the petitioner acknowledged that there is no defense for what he did). After the petitioner discussed with Judge Hayes that he would like to be placed in a Mental health program within the Department of Corrections, Judge Hayes made a finding that there was a substantial factual basis for the petitioner's plea of guilt, and stated that he found the petitioner's plea to be made freely, voluntarily, and intelligently (plea transcript pg.26 lines 17-21). Judge Hayes later imposed a sentence of (12) years on petitioner for the crime of Burglary Second degree.

On July 08,2010 the petitioner filed an application for post-conviction relief alleging the following grounds :

1. Ineffective assistance of counsel, in that;

A.Pled guilty and was sentenced while under the influence of Class III narcotic (Haldol); and

B.Counsel was aware of prior plea agreement with solicitor and probation officer to drop charge to Burglary 3rd degree and run concurrent with probation violation.

On February 15, 2011, the Respondents requested a hearing be held in the case. A hearing was convened on April 7,2011, at the Spartanburg County General Sessions court before Judge J.Derham Cole. Atty.Kenneth P.Shabel represented petitioner during the PCR hearing. On September 8, 2011, Judge Cole issued an order of dismissal in the case. The petitioner appealed.

The petitioner was represented on appeal by Atty.Wanda H.Carter, who filed a Johnson brief in the case with the South Carolina Supreme Court. She argued in her brief that the PCR Judge erred in denying petitioner's allegation that trial counsel was ineffective in failing to present a mental illness defense in the case.

ARGUMENT

At every level of prosecution, the petitioner has a constitutional right guaranteed under the 6th amendment to effective assistance of counsel. The 6th amendment does not require that counsel do what is impossible or unethical; if there is no bona fide defense to a charge, counsel cannot create one and may disserve the the interest of his client by attempting a useless charade. Not only does the law requires the petitioner to be competent in order to answer to the charges against him, but the constitution also requires that trial counsel be competent as well in representing a defendent.

The sixth amendment provides and guarantees; that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Though the petitioner has a history of mental illness and had been sedated with Haldol prior to his plea agreement, Judge Hayes made a finding on the record that the petitioner's plea was made freely and voluntarily. There is no record of there being held a competency hearing or any statements on the record that the petitioner had spoken to or been evaluated by someone trained in mental health to establish competency. Although trial counsel was well aware that the petitioner was on medication at the time of his plea, he allowed his client to accept a plea without any recommendations or negotiations. Trial counsel's failure to request competency hearing to determine defendents fitness to stand trial for armed robbery, carjacking, and accessory after the fact to murder constituted ineffective assistance; defendent clearly established by a preponderance of the evidence that that he was incompetent

at the time he pleaded guilty to such offenses. Matthews v.State, (S.C.2004) 358 S.C. 456, 596 S.E.2d 49, rehearing denied.

The petitioner, after having an altercation with his spouse left the residence due to the fact that he had become angry as a result of the argument. Out of anger while walking past the place of business for which is accused of burglarizing, the record reflects that the petitioner smashed his hand through a window of the law firm owned by Scott, Taylor, White, and Wingo. The firm elected not to be present for the plea hearing or seek reimbursement for damage done to the window. It is well documented and confirmed on the record that the petitioner has a long history of mental health. The petitioner is also illiterate and had no idea during his plea hearing that he was pleading guilty to 12yrs. When asked by the court during his plea hearing whether or not he had taken any drugs the petitioner answered no, when its also confirmed on the record that the petitioner was on medication during the time of plea (plea transcript pg.15 lines 24-25 and pg.16 lines 1 and 2). During the plea the court reconized that there was a problem with the petitioner's speech (pg.15 lines 17-21) which is one of the affects of the medication Haldol that the petitioner had been shot with prior to his hearing. The court made no reference as to a competency hearing and neither did counsel dissuade petitioner from pleading guilty, having full knowledge that his client was on medication. For the petitioner to be competent to participate in the criminal justice process and to be criminally responsible are two dinstinct issues. A defendent may be competent to stand trial but be found not criminally responsible for his acts. U.S.v. Kauffman, 109 f.3d 186 (1997)(3rd cir.) Agan v. Singletary, 12 f.3d 1012(1994), Loyd v. Smith, 889 f.2d 1416(1990), Thomas v.Lockhart, 738 f.2d 304(1984), McCoy v.Wainwright, 804 f.2d 1196 (1986), Bouchillon v. Collins, 907 f.2d 589(1990), U.S. v.Burrows, 872 f.2d 915(1989) 9th cir., Johnson v. Dugger, 911 f.2d 440(1990) 11th cir., Hall v.

Washington, 106 f.3d 742(1997) 7th cir. Where mental health issues are involved a competency hearing is necessary or at the least an evaluation presented to the court from a trained professional psychiatrist. Neither the Judge or counsel for the petitioner were trained professionals in this area and did not qualify to establish competency in this particular case. If a psychiatric expert concludes that the accused did not know what he was doing when the crime was committed or that he did not understand that it was wrong to do so, the prosecutor may be willing to accept a plea to a lesser offense or an outright dismissal. Furthermore, the psychiatrist performing the examination may frequently suggest alternatives, such as civil commitment or probation on the condition that the accused seek outpatient psychiatric treatment. After the psychiatric examination, both parties can forecast pretty well the course of a trial, whereas in the absence of psychiatric opinion the bargaining process must be conducted with a major variable unknown. It can be presumed that the petitioner waived the opportunity to request a competency hearing, which was the duty of counsel to do so in this particular case. Due to the fact that this was not done the petitioner waived his constitutional rights and accepted a plea of 12yrs. after consulting with counsel and reaching the conclusion that there was no defense for the crime committed. Petitioner's counsel closely placed himself in an adversarial position with his client by actually saying that the petitioner had to do some time and that the petitioner had to go to the Department of corrections (plea transcript pg.24 lines 1-3). The court did not even take the liberty to make such a comment. As a result of the sentencing the petitioner was escorted of the courtroom, and that portion of the proceeding is left out of the transcript completely. Once the petitioner came to the knowledge that he had been given 12yrs. his behavior caused him to be removed from the court. If the petitioner's plea was

knowingly, freely, and intelligently made, why would the petitioner conduct himself disruptly before the court. Petitioner's counsel failed to challenge the testing of the blood and that the testing procedures were never completed. Counsel allowed his client to accept a plea of 12yrs. knowing that he was under the influence of a class III psychotropic narcotic(Haldol), and counsel failed to pursue a competency hearing before taking his client to trial after admitting to the court that his client has a history of mental illness.

Counsel did not provide the petitioner with the skilled guiding hand that the cōnstitution guarantees. In the present case there was a serious brekdown in the adverserial process during the hearing, nearly amounting to the petiti- oner having no counsel. Governments hire lawyers to prosecute and defendent who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions, and laws have laid great emphasis on procedural and substantive safeguards designed to ass- ure fair trials before impartial tribunals in which every defendent stands eq- ual before the law (Gideon v.Wainwright, 372 U.S. 335, 344, 83 S.CT.792, 796, 9 L.Ed.2d 799 (1963).

Time has not eroded the force of justice in this country as our consti- tution points the way and serves as a beaken. The right to be heard would be in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated laymen has small and sometime no skill in the science of law. If charged with a crime, he is incapable, gen- erally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent

evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.

The petitioner contends and asserts that there are violations that took place during his criminal proceedings that rise to a constitutional level and that requires his case to be reversed and remanded.

Wherefore, the petitioner prays that the relief requested be granted and that a gross miscarriage of justice be corrected.

June 27, 2012

Fairfax, South Carolina 29827

Respectfully Submitted,

S/ Timothy Young
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pro se
Allendale Corr. Inst.