

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jan 17 2023**

S.C. SUPREME COURT

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Certiorari to Richland County

Honorable Grace Gilchrist Knie, Circuit Court Judge

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PEREZ A. BROOKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000590

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

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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT ..... 4

CONCLUSION ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

## **ISSUE PRESENTED**

Whether the PCR court erred in denying relief, where Petitioner was found to be not competent during PCR litigation, where a traumatic brain injury suffered while Petitioner was serving in Iraq caused a major neurological disorder that likely existed at the time of his plea, yet where plea counsel failed to request a competency evaluation?

## STATEMENT

On January 20, 2016, a Richland County grand jury indicted Petitioner on the charge of reckless homicide. App. 508. He had previously—in June 2014—been indicted for felony DUI resulting in death. App. 505. Represented by Reginald Lloyd, Petitioner proceeded to trial before the Honorable R. Knox McMahan and a jury in January 2017. Joshua Golson, Joseph Leventis, and John Steadman appeared on behalf of the state.

The trial turned into a plea on January 25, 2017. App. 285. According to counsel, Petitioner pled no contest. App. 286 ll. 14 – 20. The solicitor indicated the plea was offered without condition or negotiation. App. 292 ll. 20 – 23. The facts as alleged by the state were that Petitioner was driving above the speed limit and crashed into the victim’s car. App. 297 l. 8 – App. 301 l. 6.

The trial-turned-plea judge found a substantial factual basis existed for the plea and concluded it was freely, voluntarily, knowingly, and intelligently made. App. 301 l. 20 – App. 302 l. 1. The plea was therefore accepted. Id.

On May 25, 2017, Petitioner and counsel appeared before Judge McMahan for sentencing. Petitioner was sentenced to twenty years’ incarceration on the DUI resulting in death and ten years on the reckless homicide, concurrent. App. 367 ll. 4 – 11.

In February 2018, Petitioner filed an application for post-conviction relief. App. 370. It contained allegations of ineffective assistance of counsel. App. 372. The state made its return later that year. App. 376. The state filed an amended return and motion for more definite statement in August 2018. App. 384. A supplemental PCR application was filed in October 2018. App. 382 – 383. A second amended return and motion for more definite statement was filed in 2019. App. 390.

An evidentiary hearing was held before the Honorable Grace Knie on March 31, 2022. App. 397. Joshua Edwards appeared on behalf of the state, and Ola Johnson represented Petitioner. Dr. Alicia Hall and trial-turned-plea counsel testified. Judge Knie took the matter under advisement. App. 478 ll. 3 – 7.

An Order of Dismissal was filed on April 13, 2022. This petition follows.

## ARGUMENT

**The PCR court erred in denying relief, where Petitioner was found to be not competent during PCR litigation, where a traumatic brain injury suffered while Petitioner was serving in Iraq caused a major neurological disorder that likely existed at the time of his plea, yet where plea counsel failed to request a competency evaluation.**

### Relevant facts

While serving in the military, deployed to Iraq, Petitioner suffered a traumatic brain injury and was medically discharged in 2005. He was also diagnosed with post-traumatic stress disorder. App. 413 ll. 20 – 25. According to the Veterans Administration, he was one hundred percent disabled. App. 414 ll. 1 – 6.

Dr. Alicia Hall, employed with the South Carolina Department of Disabilities and Special Needs, was qualified as an expert in forensic psychology at the PCR evidentiary hearing. App. 411 ll. 6 – 9. She testified that Petitioner had great difficulty in understanding the potential outcomes of his PCR and appeal. App. 418 ll. 7 – 18. She testified that Petitioner was unable to “learn any new information, retain that information, use information to make [rational] decisions about his case, and therefore, he wouldn’t be able to assist his attorney in his defense should he get a new trial.” App. 420 l. 17 – App. 421 l. 9. He was therefore found not competent to stand trial. App. 421 l. 10 – App. 422 l. 9.

When asked if he was incompetent at the time of his trial-turned-plea, Dr. Hall plainly stated “[i]t’s something that definitely should have been investigated.” App. 423 ll. 8 – 12. Notably, she testified “[n]othing in ... Mr. Brooks’ history post-conviction contributed to his current functioning. **These are all things that were present prior to his conviction.**” App. 423 ll. 13 – 18 (emphasis added).

Dr. Hall's report was made an exhibit at the PCR hearing. On cross-examination, she testified that "[g]iven the nature of his injuries, we would expect to see that [his ability to pay attention and concentrate] would be stable across time." App. 428 ll. 6 – 10. When asked if she could opine as to his competency in 2017, Dr. Hall was understandably unable to do so:

No, as I said, the preponderance of evidence would suggest that he should have been evaluated at that time, and it's possible that he would have been found incompetent.

App. 432 ll. 4 – 7.

Dr. Hall testified that Petitioner "would have [had] significant cognitive deficits in 2017."

App. 433 ll. 6 – 7.

Counsel was retained to represent Petitioner. App. 425 l. 18 – App. 426 l. 14. He testified that he had no concerns regarding competency. App. 437 l. 15 – App. 438 l. 8; App. 446 ll. 14 – 20.<sup>1</sup> According to the Order of Dismissal, the PCR court found counsel's testimony to be credible. App. 497.

### Discussion

When alleging ineffective assistance of counsel, a PCR applicant must satisfy the two-prong Strickland test. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). First, the applicant must establish plea counsel's performance was deficient. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). Second, generally the applicant must demonstrate plea counsel's "deficient performance prejudiced the [applicant] to the extent that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 694, 104 S.Ct. 2052).

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<sup>1</sup> A similar admission was made prior to Petitioner's conviction. App. 296 ll. 1 – 23.

When a PCR applicant raises issues of competency in the context of a plea proceeding, the two-prong Strickland analysis still applies; however, because of the nature of the claim, proof of deficiency of counsel is intertwined with prejudice.

Specifically, when establishing Strickland prejudice in the context of plea counsel's failure to request a mental competency evaluation, "the [applicant] need only show a 'reasonable probability' that he was ... incompetent at the time of the plea." Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992); see also Matthews v. State, 358 S.C. 456, 458–60, 596 S.E.2d 49, 50–51 (2004) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs).

Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Jeter, 308 S.C. at 232, 417 S.E.2d at 595. To prevail in a PCR action, the petitioner must prove by a preponderance of the evidence he was incompetent when he entered his guilty plea. Matthews, 358 S.C. at 458–59, 596 S.E.2d at 51; see also Rule 71.1(e), SCRPC. Any evidence of probative value to support the PCR court's factual findings is sufficient to uphold those findings on appeal. Jeter, 308 S.C. at 232, 417 S.E.2d at 596. "The test of competency to enter a plea is the same as required to stand trial." *Id.* "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Id.

The Order of Dismissal in the matter at bar contains a brief conclusion on this issue: "This Court finds Applicant has failed to show deficiency in or prejudice from trial counsel's decision not to request a competency hearing." App. 498. This was error. Counsel should have been aware, based on the medical records, that he should have requested a competency

evaluation. Petitioner sustained a traumatic brain injury and was fully disabled. In Matthews v. State, supra, this Court took into account the petitioner's mother's testimony as well as the testimony of a psychiatrist who evaluated the petition five times prior to the PCR hearing. 358 S.C. 456, 459-60, 596 S.E.2d 49, 51. There is no indication whether trial counsel testified regarding his or her opinions of the petitioner's competency. Nonetheless, this Court concluded the petitioner's trial counsel was deficient for failing to request a Blair hearing so that the court could examine petitioner's fitness to stand trial. Id.

Similarly, relying on Dr. Hall's testimony, a reasonable probability existed that Petitioner was incompetent at the time of his plea. Counsel should have requested a hearing, despite his lay opinion that Petitioner was competent.

**CONCLUSION**

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



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Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of January, 2023.

STATE OF SOUTH CAROLINA

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Certiorari to Richland County

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\_\_\_\_\_

Counsel for Perez Antwan Brooks states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner’s post-conviction relief hearing before Judge Grace Gilchrist Knie, which was held on March 31, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Perez Antwan Brooks.

Respectfully Submitted,



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Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of January, 2023.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his 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."



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ATTORNEY FOR PETITIONER

This 17th day of January, 2023.