

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge  
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JOHNNY CHAPMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001029  
—————

PETITION FOR WRIT OF CERTIORARI  
—————

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S.C. SUPREME COURT

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Whether the PCR court failed to make the statutorily required findings of fact and conclusions of law in violation of section 17-28-80 of the South Carolina Code where Petitioner’s primary PCR claims that he was not competent at the time of trial and that he was denied a direct appeal were not addressed in the order of dismissal ..... 8

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**ISSUE PRESENTED**

Whether the PCR court failed to make the statutorily required findings of fact and conclusions of law in violation of section 17-28-80 of the South Carolina Code where Petitioner's primary PCR claims that he was not competent at the time of trial and that he was denied a direct appeal were not addressed in the order of dismissal?

## STATEMENT OF THE CASE

On November 4, 2018, Petitioner was arrested and charged in relation to the arson of two fruit stands in Spartanburg County. At around 6:43 that morning, 911 received a call about a fire at Mr. Welchel's Fruit Stand. Approximately fifteen minutes later, at 7 am, 911 received an alert about a fire at Abbott's Fruit Stand from a security monitoring company. App. 71, l. 20-App. 72, l. 25. An eyewitness placed Petitioner in the vicinity of the Welchel's fire shortly after it was started. App. 78, l. 4-App. 79, l. 10. A surveillance camera at Abbott's Fruit Stand captured a person, later identified as Petitioner, setting a hay bale in front of the stand on fire before walking away. App. 48, l. 10-App. 52, l. 8. The Spartanburg County grand jury indicted Petitioner for two counts of arson, second degree in July 2019. App. 122-123; App. 125-127.

On March 14, 2019, Petitioner was evaluated by the South Carolina Department of Mental Health (SCDMH). During the evaluation, Petitioner "voiced delusional thoughts and had a disorganized thought process" and admitted to using crystal methamphetamine while in the detention center several months before the evaluation. App. 137. He was found not competent to stand trial but likely to be restored. He was admitted to G. Werber Bryan Psychiatric Hospital Forensic Services on July 25, 2019, to undergo treatment. On August 19, 2019, he was re-evaluated and found competent to stand trial. App. 130-137. During the same evaluation, he was found to be criminally responsible and to have the capacity to conform his actions on November 4, 2018. App. 140-150.

Petitioner has a long history of mental illness. Since 2011, he has been admitted for inpatient treatment on numerous occasions. His diagnoses include depressive disorder, not otherwise specified with psychotic features; polysubstance dependence; amphetamine induced depressive disorder, with use disorder, severe; cannabis use disorder; cluster B traits;

amphetamine induced psychotic disorder, with use disorder, severe; antisocial personality disorder; unspecified psychotic disorder; amphetamine and cannabis use disorder; schizophrenia, paranoid type versus delusional disorder; substance induced mood disorder; and traumatic brain injury. App. 133-134. Petitioner has twice attempted suicide by overdose. App. 132.

On the day of the incident, Petitioner told the arresting officers that he was schizophrenic, that the FBI should be investigating him, and that he had a device in his head. App. 149. After being taken to the detention center, he informed jail staff that he had a history of schizophrenia and bipolar disorder and had been off his medications for eight months. On April 24, 2019, he was observed in the detention center talking to walls and objects. App. 133.

When Petitioner was admitted for restoration services, the staff observed that he was frustrated and angry with being sent to inpatient treatment and that he “displayed poor hygiene, limited insight, and perseverated in his thought process. He was guarded and suspicious of staff.” App. 133. He was treated with risperidone sol-tab and responded well to the antipsychotic medication. Petitioner eventually claimed the antipsychotic medication was not effective, and with input from his treatment team, he was removed from all antipsychotic medications on August 5, 2019. As of August 12, 2019, Petitioner’s diagnoses were unspecified schizophrenia spectrum and other psychotic disorder, and methamphetamine use disorder. App. 133. Seven days later, evaluators with SCDMH determined that his psychosis during the initial evaluation and all other previous symptoms of psychosis were substance related. App. 137; App. 149.

On January 30, 2020, the State, represented by Katherine Sieber, called Petitioner’s case for trial before the Honorable R. Keith Kelly and jury. Petitioner was represented by Brendan M. Delaney. App. 1. After jury selection and opening statements, the State entered the report

from the August 19, 2019, evaluation into the record as proof of Petitioner's competency to stand trial. App. 39, l. 19-App. 40, l. 5. In response, Petitioner stated that he had been offered and rejected two plea deals that morning, one of which was to plead guilty but mentally ill, that he was competent but wanted to go forward with the hearing, that he did not know about court until they woke up him that morning, that Counsel Delany was not going to call witnesses on his behalf which would force him to testify, and about problems he had with his first public defender. App. 40-46.

After the State rested, Petitioner was informed about his right to testify. When asked by Judge Kelly if he intended to testify, Petitioner began another hard to follow soliloquy during which he talked about several irrelevant matters, including insinuating that the lead investigator in the case had set the damaging fires after arresting Petitioner. App. 82-91. When asked again if he wanted to testify, Petitioner responded "[d]oes this right here seem like I got an option?" App. 91, ll. 16-20. The trial court then moved into closing arguments. App. 92, ll. 19-25.

Petitioner was found guilty as indicted. App. 109, l. 24-App.110, l. 16. After the verdict was announced, Counsel Delaney renewed<sup>1</sup> his objection to the case having gone forward based on Petitioner's lack of competence and inability to assist in his own defense and requested a new trial on those same grounds. Judge Kelly reiterated that Petitioner had said he was competent and wanted to proceed with trial. Additionally, SCDMH had found him to be competent. Judge Kelly then ruled that he found Petitioner "not incompetent" and denied Counsel Delaney's requests. App. 112, l. 8-App. 113, l. 15.

In mitigation, Counsel Delaney informed the Judge Kelly that Petitioner had a fourth-grade education but could read and write. He reiterated his belief that Petitioner was not

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<sup>1</sup> Counsel Delaney refers to an objection he made earlier that morning; however, the objection does not appear in the transcript.

competent to stand trial and informed the court of a witness list provided to him by Petitioner which contained over 180 names including Georgia Anderson, Chuck Wright, Albert Einstein, Oprah Winfrey, Gail King, and God. He stated that, at his initial evaluation, SCDMH reported that Petitioner “lacks a factual, rational understanding of the legal system and he cannot assist his attorney in his defense due to his delusional thinking, disorganized thought process, labile mood, and distractibility.” He then informed the court that those were the behaviors Petitioner had exhibited during his trial and stated “from where I sit he [Petitioner] is wholly incompetent and we would ask for the Court’s mercy” in sentencing. App. 114, l. 14-App.116, l. 4. Petitioner spoke for a last time prior to sentencing, again rambling on about a myriad of things including an incident where someone allegedly broke into his home to cut off the ends off towels and vandalize property but which the police refused to issue a report about. App. 116, l. 8-App. 119, l. 3. Judge Kelly ultimately sentenced Petitioner to two five-year sentences of imprisonment to be served consecutively. App. 119, ll. 6-12.

No notice of appeal was ever filed. On August 24, 2020, Petitioner filed a *pro se* application for post-conviction relief. App.151-158. Under the questions regarding a direct appeal from his conviction, Petitioner listed his trial date. Under grounds on which he was basing his PCR application, he wrote “involuntary guilty plea and incafisint [sic] assistance counsile...deniel [sic] of a fair trial. I don’t really know how to fill the rest of this out.” App. 152. Included with his PCR application was a letter to the clerk of court requesting documents to file an “appeal (PCR).” App. 159-160. The State filed a return, partial motion to dismiss, and motion for a more definite statement on December 2, 2020. App. 161-171. No amended PCR application was filed.

An evidentiary hearing was convened on April 19, 2022, before the Honorable G.D. Morgan, Jr. The State was represented by Chelsey Marto. Petitioner was represented by Rodney Richey. App. 172-173. At the start of the hearing, Petitioner informed the PCR court that Counsel Delaney had told Judge Kelly that Petitioner wanted to appeal his conviction after trial, but that Judge Kelly denied the request. App. 178, l. 3-App. 179, l. 10.

Both Petitioner and Counsel Delaney testified at the PCR hearing. Petitioner testified that Counsel Delaney told him his witnesses could not help him and that he should plead guilty with a mental defect for time served. App. 183, l. 10-App. 184, l. 18. However, Petitioner refused to enter a guilty plea because he believed if Counsel Delaney had “been interested in defending me, we would’ve won the case hands down.” App. 184, ll. 21-23. Petitioner confirmed that the witnesses Counsel Delaney had mentioned at trial were the ones he wanted to call. App. 186, l. 21-App. 187, l. 4. Petitioner asserted that Counsel Delaney neither went over the discovery in his case with him nor did he meet with him prior to trial. App. 189, l. 5-App. 190, l. 12; App. 192, ll. 12-22.

Petitioner testified that Counsel Delaney tried to tell Judge Kelly he was incompetent to stand trial, but Petitioner maintained that he had been restored. He wanted to go to trial “because if – when the truth come out in court, they – they already knew that – that they were going to lose. There’s no way – there’s no way for them to win.” App.193, l. 6-App. 195, l. 21. He also testified that his attorney was Rachel Kepley, he did not know where Counsel Delaney came from, and that he did not want him doing anything for him. App. 196, ll. 12-22.

Counsel Delaney testified he met with Petitioner a week or two prior to trial, and they discussed the discovery in the case. App. 203, ll. 4-24. Counsel Delaney was concerned about Petitioner’s mental state at trial and stated he did not believe Petitioner was ever competent to

stand trial. He testified that SCDMH declared him restored, but he did not have any idea what that meant. App. 206, l. 19- Spp. 207, l. 12. Counsel Delaney stated that Petitioner had been restored to competency months before trial. When asked what actions he took after Petitioner had been restored, Counsel Delaney testified:

We proceeded to trial. Again, I don't know any other – and I'd love to be educated on something else I could've done when the Department of Mental Health declares someone to be restored. At that point, I've got to treat them like a competent client – and move forward. I don't know anything else I could do. If – if there is, I would've done it, but I don't think there is, because I've talked about this with other people and there's – there's nothing I can do at that point. He has been cleared for takeoff.

App. 207, l. 17- App. 208, l. 20.

An order of dismissal was filed on July 19, 2022. App. 213-224. The order of dismissal construed Petitioner's claims during the PCR hearing as ineffective assistance of counsel for 1) brevity of time in consultation, 2) failure to pursue an insanity defense, 3) failure to investigate and call Applicant's witnesses for trial, and 4) failure to review discovery. App. 214. Regarding the claim of an insanity defense, the PCR court found that counsel "credibly testified that he did not think he could pursue this avenue for defense once [Petitioner] was found competent. This Court agrees." The PCR court found an insanity defense was not available to Petitioner because he had been found competent, thus no deficiency or prejudice was found. App. 214. The PCR court's order did not address Petitioner's competency at trial, the failure to have a hearing addressing Petitioner's competency, or Counsel Delaney's failure to file an appeal.

## ARGUMENT

Whether the PCR court failed to make the statutorily required findings of fact and conclusions of law in violation of section 17-28-80 of the South Carolina Code where Petitioner's primary PCR claims that he was not competent at the time of trial and that he was denied a direct appeal were not addressed in the order of dismissal.

The failure of the PCR court to make specific findings of fact and conclusions of law regarding a duly raised issue at the PCR hearing is error. See Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019). In Pruitt, the petitioner alleged his counsel was ineffective for failing to object to the trial judge's erroneous jury instruction, failing to object to a portion of the solicitor's argument, and for failing to file for a direct appeal. Pruitt at 255, 423 S.E.2d at 128. These allegations were raised in Petitioner's PCR application, and evidence was presented on the claims at the evidentiary hearing, but the final order of dismissal did not address any of these allegations. This Court vacated the order and remanded the matter to the circuit court to hold a new hearing while also allowing Pruitt to file an amended application if necessary. Id. at 255, 423 S.E.2d at 128 *citing* McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991); S.C.Code Ann. § 17-27-80 (1991). In reaching the conclusion, this Court wrote:

We take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80

and Rule 52(a), SCRPC.

Id. at 255–56, 423 S.E.2d at 128.

In Fishburne, *supra*, this Court again addressed the failure of a PCR court to address all the duly raised ineffective assistance of counsel claims in its order of dismissal. Notably, in Fishburne this Court found that the procedural defect of PCR counsel in failing to file a Rule 59(e) motion did not bar the petitioner from requesting a remand to the PCR court “for the consideration of particular issues in which the PCR court failed to make sufficient findings of fact and conclusions of law.” This Court continued that because a defendant’s right to effective assistance of counsel as guaranteed by the United States Constitution’s Sixth Amendment is “engrained in PCR cases, we cannot continue to permit a party’s procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court’s order does not comply with section 17-27-80.” Id. at 515-16, 832 S.E.2d at 589.

There are numerous other instances where this Court has remanded matters back to the circuit court where a PCR court failed to make adequate findings of fact and conclusions of law, regardless of whether a Rule 59(e) motion was filed. See Simmons v. State, 416 S.C. 584, 591, 788 S.E.2d 220, 224 (2016) (remanding the matter the PCR court for a new hearing where no Rule 59(e) motion was filed, because dismissing the writ of certiorari would be fundamentally contrary to the interests of justice...“[O]ur jurisprudence permits a remand under such extraordinary circumstances.”); Bryson v. State, 328 S.C. 236, 236-237, 493 S.E.2d 500 (1997) (remanding the matter back to the PCR judge to “make specific findings of fact and conclusions of law as to each issue raised by petitioner in his post-conviction relief application and at the hearing thereon”); McCullough v. State, 320 S.C. 270, 272, 464 S.E.2d 340, 341 (1995)

(admonishing all those involved in future PCR matters to be meticulous in preparing and reviewing proposed orders so that the final order sets forth the required findings and reasons for those findings); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991) (remanding the case to the circuit court after finding that the PCR court's conclusions regarding ineffective assistance of counsel were insufficient for appellate review and failed to meet the standards set forth in S.C. Code Ann. § 17-27-80).

Competency is not static. Simply because a person is competent on one date in time does not mean they are competent at all subsequent dates, nor does it mean that they were competent at all prior dates. It is the inherent fluidity of competency that requires that both mental health evaluations and hearings on those competency determinations be held when there is any question about a criminal defendant's competency or criminal responsibility. In Petitioner's case, he was adjudged incompetent. He underwent sixty days of inpatient treatment where he was restored to competency and then waited five-and-a-half months to proceed to trial. At the time of trial, Petitioner had decompensated, as can be seen by his hard to follow ramblings, his insurances to call witnesses such as Oprah Winfrey and God, and his belief that he could win at trial despite videographic evidence of his guilt.

The testimony at the PCR hearing focused on Petitioner's competency both before and at trial. Counsel Delaney even testified he was concerned about Petitioner's competency during the PCR hearing. At no point was an insanity defense testified about. In fact, the word "insanity" appears nowhere in the PCR hearing transcript. While Counsel Delaney may have been ineffective for failing to pursue an insanity defense, that issue was not presented to the PCR court. What was presented was that Counsel Delaney had serious concerns about Petitioner's mental health but did not know what else to do once SCDMH had declared Petitioner competent,

thus he proceeded to trial. The record clearly reflects that the statutorily required hearing on competency following an evaluation was not held nor did Counsel Delaney hire an independent evaluator to opine on Petitioner's competency. See S.C. Code Ann. § 44-12-430 (Upon receiving the report of the designated examiners, the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial); See Also State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981) (a statutory provision is generally regarded as mandatory where the power or duty to which it relates is for the security or protection of private rights. [44-12-430] is designed to protect the accused's right to a fair trial by a due process determination of his competency and fitness to stand trial).

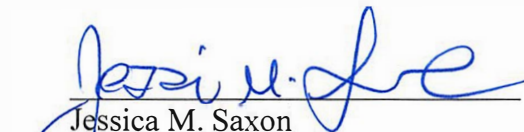
Regarding Petitioner's right to a direct appeal, he informed the PCR court that his request to appeal had been denied by Judge Kelly immediately after trial. The PCR court informed him that was not possible, but Petitioner insisted that he had wanted to appeal, and Judge Kelly denied that request. Thus, there is evidence in the record to support a finding that Petitioner was entitled to a belated appeal, despite PCR Counsel's failure to further question Petitioner or Counsel Delaney about this matter. Again, the PCR court's order wholly failed to address this issue.

Counsel Delaney's failures were further compounded by PCR counsel's failure to file an amended application, failure to hire an expert to evaluate Petitioner, and failure to file a Rule 59(e) motion challenging the sufficiency of the PCR court's order. Petitioner's case has been mishandled at every level and represents one of those "extraordinary circumstances" where the interest of justice requires the matter be remanded for a new hearing and order. His prior adjudication of not competent, along with his long history of mental health problems, and his behavior both at trial and at the PCR hearing evince that Petitioner was likely not competent at

the time of trial, thus his conviction was violative of due process. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (An individual's constitutional right to due process of law prohibits the conviction of an incompetent defendant). Petitioner respectfully requests this Court remand the matter back to the PCR court for a new hearing and for an order containing findings of fact and conclusions of law regarding trial counsel's failure to fully investigate and litigate Petitioner's competency to stand trial and denial of Petitioner's right to a direct appeal.

**CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing on this issue.

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of March, 2023.