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The Supreme Court of South Carolina

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August 15, 2023

Mr. Mitchell Cheatham, 375694
Turbeville Correctional Institution
1578 Clarence Coker Hwy
Turbeville, SC 29162

Re: Mitchell Cheatham v. State
Appellate Case No. 2023-000119

Dear Petitioner:

Your counsel has submitted a petition for writ of certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* response to the petition filed by your counsel. In this response, you may *raise and argue* any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a *pro se* response, the response must be either typewritten or legibly hand printed and must have at least an inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

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Pro Se response to petition filed by counsel S.C. SUPREME COURT

Appellate case no 2023-000119

Mitchell Cheatham v State

To whom it may concern,

My attorneys assertion that this appeal is without merit, was made without speaking to myself; therefore, is not informed. I am relying on my fiancé's, Mrs. Owens' guidance to write this appeal. I humbly request that I am given the right to counsel involving this case, as my mental health and autism spectrum diagnosis' greatly impair my ability to communicate and to function in an organized/timely manner. I believe I should have had trained counsel, officers and medical professionals from the beginning. I not only was a teenager at the time, but was also living in a home where abuse, narcotics, and lack of physical and mental healthcare was the norm. I was removed from my parents as a small child by the state of North Carolina, but was returned as a teenager. I was not made to go to school, so my education level at the time of arrest was only to the level of 8th grade. I had never been allowed to have a drivers license either. At the time of my arrest, she was on the verge of losing our home and she struggled greatly with providing my siblings and myself with basic necessities growing up. I wish that social services had made sure I was attending school, and living in a safe and stable environment as a minor. I love my step-children very much, I wish nothing more than to be standing at their graduation in 10 years time, I have been a vital part of their life and my adult step sons' for years. I have spent the last decade of incarnation, without any violence as it is not who I am. I am also now living in a level 2 prison with no air conditioning, and I have recently not been receiving proper mental healthcare or living in an environment for someone with ASD, which has greatly taken a toll on my ability to focus on my appeal. I have been incarcerated for 9 years, and have not had any violence on my record. I was diagnosed with ASD as a child. The following are the facts and arguments for the three parts of my appeal; explanation of my failure to file a timely PCR application, ineffective assistance of counsel and involuntary plea agreement.

Failure to file timely PCR application:

Ferguson v state (2009) provides that the statute of limitation may be tolled if the application was untimely due to mental incompetence. During the time

in question, I was regularly receiving mental health services from SCDC for various mental health conditions. My medications were changed several times, leaving me in a frequent state of withdrawal and up and down emotions, by mind-altering medications. I did not file my PCR application until, my fiancé Mrs. Owens and her ex-husband whom is a retired disabled military veteran became aware of my case. They both have advocated for my mental health care for years. Placing numerous phone calls to the medical staff where I am housed, and discussing mine and similar cases on a social media platform. Since then, they have made countless calls to the staff and medical team to advocate for my being in the proper environment and on the proper medications. I did not file the PCR until I was on the proper dose/ medication and was reassessed independently (SCDC has refused to note my autism in their records and properly house accordingly) for ASD and other co-morbid mental health conditions by Dr. Maddox

Dr. Maddox testified at the PCR hearing, that I suffer attenuated psychosis. While she did indicate that my episodes of paranoia and hallucinations are temporary, I strongly believe that the court assumed this meant my mental state returns to "normal" in-between these episodes. This underestimates the effect of constantly cycling between "normal" and "paranoid" states has on your brain. It's like living in a constant state of confusion, compiled with the ASD which means, I never return to "normal." My psychosis and PTSD is greatly triggered by stress and my environment. I was conditioned as a young child, to seek immediate safety at all costs, I watched family members, to include my mother be attacked many times. I learned sitting quietly made it easier for all of us, even with my mother sitting there with a broken nose, crying and blood pouring down her face. I always had to act as if everything was okay, it would be worse if I did not. Violence has always scared me, and I never learned proper coping skills. This has led to frequent breaks with reality that that has me question what was real in my moments of seeming clarity. I am an honest man, who has a problem with remembering traumatic events. When I repeat a scenario, it could possibly be an incorrect memory. So, when I state that I am telling the truth, all scenarios felt real individually and I feel as I am telling the truth but the fact is, it may only be a truth in my mind. Dr. Maddox was also asked if she believed I was competent at the time of the plea. She was not there, and anyone asked to guess my mental competency with a situation so serious, should be questioned as to their qualifications. Guessing a diagnosis, or outcome to a situation isn't practiced when you see a Dr and we would be in a bigger crisis in America if we didn't take mental health more serious than this. We do know I had ASD and bipolar disorder at the time of the plea and should not be considered as my

original attorney was made aware of my ASD and any new diagnosis, yet did not bring them up or have me assessed.

Having a Dr, solicitor or judge read through transcripts and guess my competence would be grossly unjust and unethical. My psychosis is triggered by stress, this is by far the most stressful event of my life. We do know the science behind the disorders, and we know if they were active at the time then they definitely played a role in my plea as you are born with some of these disorders. Dr. Maddox who is a professional of 30 years, whom the judge qualified as an expert which to the state did not contest her qualifications, has testified more than 800 times in defense of us on the spectrum. She stated I am easily coerced, and compliant to an extent that I only see options as available, if they are explicitly given to me by the people I trust. She also testified on "Theory of mind" which explains that I cannot understand certain concepts or their implications; therefore, I rely on others to make my decisions.

I was told to confess, not fight my case, and not appeal by my attorney and family.

There were several breaks in my interview with the police, where they turned off the recording. I was under the influence of alcohol and marijuana at the time of interrogation which was provided to me underage by an adult and was told if I didn't repeat what they were saying. I would lose contact with my family. I have not used any illegal substances or alcohol since my incarceration, and will continue to be sober. My fiancée and I have a home, and the stability of my family, and making sure the children are raised properly is my main goal in life.

Please note, that echolalia (repeating others words or sentences) is a common symptom of ASD. I was not independent, I had never had a drivers license or lived on my own. I was extremely codependent and did not know what I would do if they took my family from me. The courts state that I was mentally competent at the time of arrest, I was a teenager, without informed family or counsel with Autism Spectrum disorders and untreated mental health disorders. While today, my mother has changed her life, she also has regrets that she believed the officers. She feels she was manipulated into giving them a cell phone and other items by Tommy Bentons family and the police. Tommys family, should never had the ability to contact my family, given the gravity of events. She also repeated to me the officers' version of events and told me to agree that it happened that way. Even Douglas, the other co-defendant who received a significantly lesser sentence. has stated I

was not involved in the violence

Mose v state (2017) The courts ruled, the deadline may be tolled when "circumstances preventing timely filing are beyond control and unavoidable. I am not sure how I was considered competent when I couldn't discern reality from fiction, it's an overwhelming and isolating feeling when you're remembering events in several ways independently. I did not know which memory was in fact, the reality of events and I still struggle to this day whether I repeated the events that the courts/police wanted to hear in order to prosecute my co-defendant Tommy Benton. I realized at the PCR hearing, after discussing the events with my fiancé (who was extremely ill with covid, and couldn't be there) I just cannot without certainty, state a timeline of events prior, during or after the event that led me to be incarcerated. I can tell you, I was and am still terrified of Tommy, I was told this was not the first time he'd taken a life. Mrs. Owens and Mr. Owens had to make a formal complaint due to being threatened by an "unknown inmate" yet the director specifically asked Mrs. Owens if she knew Tommy. They contacted SCDC to file a complaint as someone was sending threatening messages to Mrs. Owens. The other co-defendant Douglas who was sentenced to 20 years (but is eligible to be released much sooner) has maintained that Tommy was the master mind, aggressor and the person that committed the crime I was given a plea for. and that is why he is serving several life sentences and I was given a release date.

Dr. Maddox also testified about how I am easily coerced. It is true that I am compliant to an extent that I only see the plans as available if they are explicitly given to me by the people I trust. She also testified about Autism and the Theory of Mind which explains that I don't understand certain concepts or their implications so I rely on others to make decisions involving social questions. I was told to confess, not to fight, and not to appeal. It took a lot of time to see that this view of the situation was an opinion and not an objective fact. Due to my disorder, my mind is concrete. I see facts and I take them very literally. I never considered defending myself or appealing. This was based on other people's thoughts and not what was objectively true or right for me. I do not change my mind depending on who I'm talking to; I learn new things and I add them to mental inventory. Sometimes late. I would also like to point out that in the state's initial response to my PCR application (2020) filed with the court. the state said the following: "Respondent does not contest applicant's assertion regarding the statute of limitations"

Ineffective assistance of council:

I believe it is evident that mental evaluation was clearly necessary and would have changed the outcome and my decisions in this case

Per *Jeter v. State* (1992) I "need only show a reasonable Probability that [I] was incompetent at the time of the plea." Dr. Maddox testified about my psychosis while under stress. I think it's clear that dealing with this case would be extremely stressful. The fact that I would likely be stressed seems enough to show a reasonable probability that I would be having a psychotic break from reality at this time.

Ms. Crawford testified that a previous attorney on my case had requested an evaluation but that she canceled it because I "seemed competent". That may be true (though she confirmed that she has no understanding of my illnesses) but it ignores the intermittent nature of my psychosis, which my previous attorney clearly considered troubling, and Autistic "Masking" where adults on the spectrum mimic "normal" behaviors. even without understanding their implications. She stated that she knew of my illnesses and felt the need to check on me regularly. I think that's very telling of her perception of my mental state. It was very inappropriate to cancel the evaluation in the face of my several disorders and my clear distress, which most people notice within moments of meeting me.

Not receiving the evaluation was clearly prejudicial to my case and my decision to accept the plea. There is every indication that it would have revealed the psychosis and the possibility of my incompetence at that time. (Which is something I wouldn't know, being incompetent at the time) I also would have certainly received the treatment I needed to assist me in making correct and intelligent decisions, which I'm now able to do after being evaluated and treated.

Involuntary Plea Agreement..

Brady v US (1970) States that to be voluntary a plea must be "free of threats and other coercion that would distort the defendants choice."

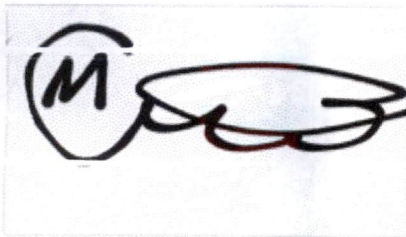
Miss Crawford testified that she reviewed the colloquy with me before entering the courtroom. It is a very common practice explain the desired answers. I now realize this is coercive with people on the spectrum even if not intentionally. Autistic people repeat what they are told

to repeat. This is called echolalia. I was told what to say and I did. However, some of answers showed my lack of understanding. I answered "No. sir" when asked if I was suffering from mental or emotional problems. Ms. Crawford testified that both she and the solicitor knew about my mental and emotional problems. It was a clear misunderstanding in my mind that the other people in the city room would have seen. My answering no to having any drugs in my system (when I was taking several prescription medications, which my attorney knew about) should have been an indication that I did not understand the questions. Dr. Maddox also said that autism was evident in the pcr transcripts.

My plea was not entered freely, knowingly, or intelligently. Much is said about the "fundamental fairness of a case." I don't believe anyone would see this as fair. The system is (very understandably) designed for neuro-typicals, not neuro-divergent people. But it is important to realize that the number of people on the spectrum is increasing rapidly and the Americans with Disabilities Act provides that agencies adjust their practices to make them more appropriate for disabled people. I understand that it has taken a lot of time to understand and comprehend my case. But I'm putting in the effort. I'm making my own decisions and I just ask for a fair chance to fight my case.

The institution I am housed in, does not have staff that are trained in ASD, and my sensory processing disorder. specifically to the extremely loud environment is not conducive to my being competent. Dr, Maddox and my family have repeatedly asked SCDC to provide appropriate housing and surroundings, I do not have access to legal services, as this institution is on lockdown.

Mitchell Cheatham 09/26/2023

A handwritten signature in black ink, consisting of a stylized 'M' inside a circle followed by a series of loops and a long horizontal stroke.