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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

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ROBERT L. O'SHIELDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001175

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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## **ISSUE PRESENTED**

Did the PCR court err in finding petitioner failed to show a “reasonable probability” he was incompetent at the time of his plea when he plead guilty but mentally ill, was not evaluated for competency, and had a mental breakdown just before he was brought before the judge to enter his plea?

## STATEMENT

At the time petitioner shot and killed his wife, he was under a delusion centered around a belief that his wife and their adult son were engaged in an incestuous relationship. App. 29 – 31. Petitioner’s delusions and paranoia were exacerbated by a physical injury that left him unable to work and in physical pain with problems pertaining to pain medication. App. 22, ll. 11 – 22; p. 28 - 29. The couple’s thirty-year marriage deteriorated, resulting in a restraining order against petitioner. App. 30. Petitioner’s wife left him and moved into a safe home along with the couple’s young daughter. App. 19, l. 16 – 20, l. 16; p. 30. Petitioner could not sleep and lost significant weight. App. 30. Petitioner consumed painkillers, abused alcohol, and used other drugs as his mental and physical health deteriorated. App. 32.

A custody dispute limited petitioner’s access to his daughter. App. 31. On the day of the shooting, petitioner drove to where his wife and young daughter were living to watch his daughter get on the bus for school. App. 23, ll. 12 - 20. When he missed seeing his daughter, petitioner exited his vehicle and shot his wife. App. 20, ll. 7 - 13. Trial counsel hired Dr. Selman Watson to perform an evaluation of petitioner’s mental state at the time of the offense. App. 27. Petitioner described the shooting to Dr. Watson as if petitioner walked into “brightness” and it occurred “like a dream.” App. 31.

Following the crime, petitioner’s mental health was a legal issue. Attorney Doug Brannon (hereinafter trial counsel) was hired to represent appellant, and he explained at the PCR hearing that all the family wanted was to keep petitioner off death row.<sup>1</sup> App. 120, ll. 1 - 6. Trial counsel believed Dr. Watson would have opined that petitioner was competent during Dr.

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<sup>1</sup> Just which aggravating factors were present to make this crime eligible for the death penalty was not explored during the PCR hearing, other than trial counsel’s claim there were “multiple aggravating factors.” App. 116, l. 12 – 117, l. 10. During the plea transcript, the solicitor did not mention the death penalty at any point.

Watson's last evaluation on October 2, 2014, but was incompetent at the time of the crime. App. 130, ll. 12 – 24. Dr. Watson's written diagnosis was that petitioner suffered from major depressive disorder with mood-congruent psychotic features along with alcohol disorder and that while he was "criminally responsible" petitioner lacked the capacity to conform his behavior accordingly. App. 27, p. 38.

Petitioner was charged with violating an order of protection, possessing a firearm during commission of a violent crime, and murder. App. 39 – 44. On the day he was expected to begin his trial, petitioner had a mental breakdown and "was yelling about demons" and "passed out cold" before being revived and told he was to appear in court. App. 93, ll. 12 - 24. Petitioner then pled guilty but mentally ill to the crimes as charged in the indictments before the Honorable J. Derham Cole.<sup>2</sup> App. 1. Petitioner does not recall his plea colloquy with Judge Cole. App. 102, ll. 5 - 11. Petitioner's sister recalled petitioner's unusual affect during the plea, describing him as not in his "right frame of mind." App. 110, l. 5 – 111, l. 12. Judge Cole sentenced petitioner to 30 years for the murder, 5 years for the possession, and 30 days for the protective order violation on September 8, 2015. App. 45 – 47.

Petitioner filed for PCR on September 8, 2016. App. 48 – 53. An amended PCR application was filed on June 23, 2020. App. 58 – 74. An evidentiary hearing was held on June 19, 2023, before the Honorable Frank R. Addy, Jr., with Susan Ross appearing on behalf of petitioner and Lora McDaniel appearing on behalf of the state. App. 79. Judge Addy denied relief by written order on July 21, 2023. App. 141.

This petition for certiorari follows.

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<sup>2</sup>At the plea, the state was represented by Barry Joe Barnette.

## ARGUMENT

The PCR court erred in finding petitioner failed to show a “reasonable probability” he was incompetent at the time of his plea when he pled guilty but mentally ill, was not evaluated for competency, and had a mental breakdown just before he was brought before the judge to enter his plea.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). “Thus, when challenging a guilty plea, a PCR applicant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty.” Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023) (internal citations omitted). However, the United States Supreme Court has “repeatedly and consistently recognized that ‘the criminal trial of an incompetent defendant violates due process.’” Cooper v. Oklahoma, 517 U.S. 348, 354 (1996) (citing Medina v. California, 505 U.S. 437, 453 (1992)). Therefore,

[w]hen 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.’

Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 844–45 (2017) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). In the present case, petitioner had the burden at the PCR hearing to show a “reasonable probability” he was incompetent at the time of his plea.

**A. Petitioner's mental health leading up to his guilty plea.**

Petitioner's guilty but mentally ill plea to the murder of his wife occurred on September 8, 2015. App. 1. Petitioner's mental health evaluation occurred almost a year earlier, with his last visit with Dr. Selman Watson being on October 2, 2014. App. 28. After this last visit, Dr. Watson diagnosed petitioner as suffering from a major depressive disorder with mood-congruent psychotic feature arising from the killing of his wife. App. 37-38. Dr. Watson opined that petitioner's actions arose out of "anger and without the benefit of clear, rational thinking." App. 37. At times during sessions, Dr. Watson noted petitioner became "overwrought emotionally" and at other times "endorsed all the vegetative signs of depression and his affect remained confined to a narrow range." App. 32-33. Dr. Watson also noted the importance of treatment: "Without medication or treatment, such an illness can linger for years and even grow worse over time." App. 37. Dr. Watson noted concerns over petitioner's suicidal thoughts. App. 33. Dr. Watson's report and wording was limited to forming an opinion on petitioner's mental state at the time of offense. App. 27.

Importantly, during his guilty plea, petitioner discussed the lack of treatment for his mental illness with Judge Cole:

THE COURT: All right. Have you ever been treated for any type of mental illness or emotional disturbance?

DEFENDANT O'SHIELDS: I was supposed to in the past, but I got a back injury and I had back surgery. I was supposed to be seeing a psychiatrist, but the insurance company never would approve it.

App. 21, ll. 1 – 6.

Despite Dr. Watson's report about petitioners shift in affect and delusional thinking, his warning that petitioner's mental illness could worsen over time, and petitioner's statements about

not receiving mental health treatment at the guilty plea, no competency hearing took place on September 8, 2015. Both the solicitor and trial counsel simply waived any concern about the need for a formal hearing under S.C. Code Ann. § 17-24-20 (1988) which would have explored competency in greater detail. App. 16, ll. 20 – 23. No hearing was held under State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) nor was one ordered under S.C. Code Ann. § 44-23-410 (2011) despite petitioner's mental illness being central to the outcome of the charges.

**B. How petitioner's competency was raised at the PCR hearing.**

Both petitioner and his sister, Debbie Gilliland, provided direct testimony centered on the events preceding the guilty plea that raised serious doubts about petitioner's competency to plea on September 8, 2015. Petitioner testified that he had a mental breakdown while in the holding area awaiting his appearance before Judge Cole, and his questionable mental state was confirmed by Gilliland who was present when the plea was entered.

Petitioner described his plea:

Q. Do you feel like, that you were insane at the time and you should've been found not guilty by reason of insanity, or do you feel that you were incompetent during the plea? What would be the changed outcome of a psychiatric evaluation?

A. I was definitely I wasn't -- I was definitely sick at the time. No doubt about it. I mean, they said I was psychotic. I was delusional. I couldn't conform myself to the requirements of law. I had a mild neuro-cognitive which covers a lot of area. I'm not qualified to really speak on that behalf. I know, you know, what I know as far as I was not me at the time of all of this. So many things I don't recall.

...

Q. You responded to questions . . . accurately in there? How do you explain that if you were not competent at the time?

A. Well, apparently, you know, Doug [Brannon] was telling me, told me what to do, I guess. I have no idea. Like I said, I don't recall until I got the transcript and read them.

Q. There was no Blair hearing immediately before the plea or anything?

A. Well, there should've been a competent hearing before the plea because they knew that -- they said before I came into court I was - - before they brought me into court *I was yelling about demons, passed out cold over in the other room over here. And they brought me, brought me to, and brought me in front of the judge to plea.* Now to me, if you're an attorney, you know there's a problem. Pushed me through the motions to get a conviction. And that was it.

Any attorney that's supposed to look out for your interest, I don't believe they would do that. That's where they know I should've had a competent hearing because I found out -- well, my family found out, my sister actually, Debbie, Candace told her it could've been like 15 months later that, oh, well, he should've never been in court that day because what I just told you. They said I was yelling about demons, passed out cold. And they brought me in front of the judge to plea. Now that don't sound like somebody competent to me.

App. 92, l. 15 – 94, l. 6 (emphasis added).

Gilliland confirmed petitioner's questionable mental state at the time the plea was entered:

Q. Were you there during that guilty plea?

A. Yes, I was.

Q. What did you observe?

A. I observed that my brother was not in his right frame of mind. And like, we had said something had happened to him right before they had brought him in. Because we were in the courtroom like this, me and my mom. And we were all waiting for them to bring him in.

Apparently, from what we understand, he had blacked out and everything because Doug Brannon knows because himself, Charlie Hodges, everybody went running out. And they were out with him for like 15, 20 minutes before the case had even started.

And when they did bring him in, you could see he wasn't in his right frame of mind. Every time he did go -- the judge did ask him a question, he looked at them like, it wasn't --

Q. Them meaning his attorneys?

A. His attorneys, yes, yes. He looked at them. It was like every question that he was asked by the judge he would look at them. Because, honestly, we really thought that my brother was going to go to trial. Because me and my mom were sitting across the street in Doug Brannon's and Charlie Hodges' office. They said they would be over to get us in half an hour.

Me and my mom sat over there for four-and-a-half hours, waiting for them to come and get us. When we came, they had already talked to my brother and apparently made him, you know, accept the deal that was offered to him.

App. 110, l. 9 - 111, l. 12.

In contrast to this direct evidence of significant mental impairment at the time of the plea, the only other witness to testify at the PCR hearing, trial counsel Brannon, indicated he knew nothing about petitioner's breakdown. App. 125, l. 23 -- 126, l. 8. While Brannon claimed he had spoken to Dr. Watson the day before the guilty plea for 30 minutes, and that Watson did not raise the issue of petitioner's competency, it had been months since Watson's evaluation, and Watson was not present during the episode described by petitioner and Gilliland. App. 124, l. 10 -- 125, l. 11.

### **C. How the PCR Court ruled.**

The PCR court found there was no "reasonable probability" that petitioner was incompetent during the plea hearing, specifically noting the transcript of the plea hearing and the lack of hesitancy or other red flags. App. 158. The PCR court also referenced a report from Dr. Donna Maddox. Dr. Maddox evaluated petitioner in connection with his PCR application in October of 2020, five years after his plea. App. 75. While Dr. Maddox's report noted there was

no evidence petitioner was incompetent at the time of his plea on September 8, 2015, the opinion was based solely upon a reading of the transcript of his plea. App. 77.

**D. Why the PCR court erred.**

The PCR court's finding that there was no "reasonable probability" that petitioner was incompetent at the time of his guilty plea is not supported by the record. The PCR court claimed Dr. Watson's report, completed several months before the plea hearing, found petitioner was competent. App. 150. Strangely, the PCR court references March 13, 2015, as the date of the evaluation. App. 150. In reality, Dr. Watson's dates of evaluation were June 20, 2014, June 25, 2014, and October 2, 2014. App. 23. Dr. Watson's written report was dated March 13, 2015. App. 27. This report was limited solely to the issue of petitioner's mental state at the time of the offense, not his competency to stand trial or enter a plea. App. 27. Dr. Watson's report makes no finding as to competency to plead, particularly competency to plead almost a year after last seeing petitioner and six months after his written report. Dr. Watson was tasked with evaluating petitioner's mental state at the time of the crime (April 30, 2014), not to provide an opinion on competency to enter a plea or stand trial in September of 2015. App. 27, 44.

This distinction, ignored by the PCR court, was affirmed by trial counsel during the PCR hearing:

Q. I'm just looking through Dr. Watson's psychological evaluation. It's saying he saw him, just for this report, it lists a couple times in June and then finally one other time in October 2014.

...

The plea wasn't until a year later, September. Had Dr. Watson physically met with Mr. O'Shields the day prior to the plea? Like you said, you spoke to him.

A. You'd have to ask him that. I don't recall that.

Q. So you can't say whether Dr. Watson would have an opinion on his competency during the guilty plea?

*A. I can tell you the day before -- the day before we were to start trial or enter the plea, Selman Watson's testimony would've been he was incompetent at the time he committed the crime but he was competent at the time of the evaluation. That's what he would've said.*

Q. The evaluation was nearly a year prior to his plea?

A. That would've been his testimony.

App. 130, ll. 5 – 24 (emphasis added).

The PCR court's reliance on Dr. Watson's "evaluation" from March 13, 2015, that petitioner was "competent" during his guilty plea on September 8, 2015, lack support in the record. In addition, the PCR's court's reference to Dr. Maddox's report suffers from similar flaws. Dr. Maddox's evaluation of petitioner was dated October 5, 2020. App. 75. Dr. Maddox diagnosed petitioner as delusional and lacking capacity to conform his conduct to the requirements of the law in accordance with Dr. Watson's earlier evaluations. App. 78. In referencing competency to plead, Dr. Maddox only reviewed the plea transcript itself. App. 77. Based upon a reading of the transcript five years after the guilty plea, Dr. Maddox did opine that "there was no evidence that he was not competent" at the time since a "[r]eview of his guilty plea indicated he answered all questions during his plea." App. 78. The PCR court erred in placing any value on this opinion as petitioner did not contest that he verbally responded to the questions asked during his plea in an appropriate manner. App. 101, l. 20 – 102, l. 11.

In contrast, petitioner presented evidence that he had significant mental illness which prevented him from conforming his actions to the law during the commission of the crime. App. 27. This condition would worsen over time without proper treatment and care. App. 37. Petitioner did not receive mental health care or treatment before his guilty plea. App. 21, ll. 3 –

7. While petitioner did respond to Judge Cole’s questions during the guilty plea regarding his competency, he also testified about a mental breakdown before his appearance and that he could not remember anything about the appearance before Judge Cole other than from his reading of the transcript of the plea hearing. App. 101, l. 20 – 102, l. 11. Petitioner’s sister confirmed petitioner’s strange behavior during the plea hearing. App. 110, l. 17 – 111, l. 12. Rather than conduct a competency hearing for a person with a known mental illness, trial counsel and the trial judge waived any concern over this issue. App. 16, ll. 6 – 23.

In Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004), this Court reviewed a PCR denial when trial counsel failed to request a Blair hearing on competency. At the PCR hearing, the competency issue was supported by testimony of Matthews’ mother and his evaluation by a psychiatrist before the PCR hearing. This Court held “that trial counsel's failure to request a Blair hearing prejudiced petitioner under the Jeter<sup>3</sup> standard because there was, at minimum, a ‘reasonable probability’ that petitioner was incompetent at the time of his guilty plea.” Matthews, 358 S.C. at 460, 596 S.E.2d at 51. Following Matthews, which involved a medical opinion prior to the PCR hearing on competence, this Court reviewed the issue again Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017). This Court noted that Ramirez’ plea counsel was on notice of his severe mental retardation, an issue supported by expert opinions obtained by trial counsel before the guilty plea. “[W]hen competency to enter a plea is at issue, a PCR applicant need only show there was a reasonable probability he was incompetent at the time of his plea.” Ramirez, 419 S.C. at 23, 795 S.E.2d at 846.

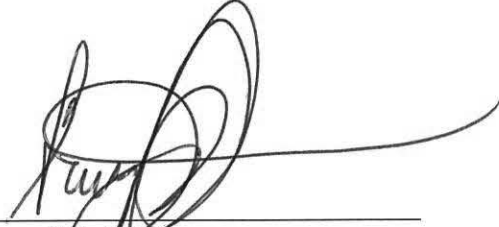
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<sup>3</sup> Petitioner “must still show there is a reasonable probability he would have been determined to be incompetent.” Jeter v. State, 308 S.C. 230, 234, 417 S.E.2d 594, 596 (1992).

In the present case, both petitioner and his sister identified a significant mental health problem on the day of his guilty plea. The existence of petitioner's mental illness was supported by Dr. Watson's report. When plea counsel negotiated a guilty but mentally ill plea, he was on notice that competency was a legal issue. Failure to conduct a competency evaluation following months of mental illness that had gone untreated should satisfy this Court that counsel was ineffective. Based upon the evidence presented during the PCR hearing, and his documented mental illness known to trial counsel at the time of his plea, petitioner has established a reasonable probability that he lacked competence during his guilty plea. The PCR court's contrary ruling lacks support in the record and was based on a misreading of Dr. Watson's evaluation and improper reliance on the conclusory opinion of Dr. Maddox.

**CONCLUSION**

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on these issues.

A handwritten signature in black ink, appearing to read 'Gary H. Johnson', written over a horizontal line.

Gary H. Johnson  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of December, 2023.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

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ROBERT L. O'SHIELDS,

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PETITION TO BE RELIEVED AS COUNSEL

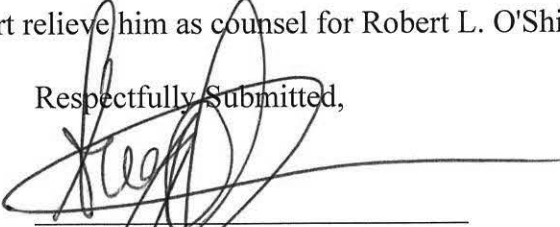
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Counsel for Robert L. O'Shields states:

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 Frank R. Addy, which was held on June 19, 2023, 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 Robert L. O'Shields.

Respectfully Submitted,



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Gary H. Johnson  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of December, 2023.

**CERTIFICATE OF COUNSEL**

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 7th day of December, 2023.

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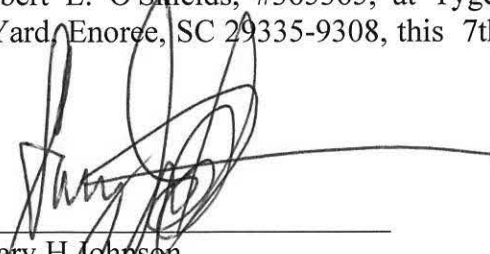
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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Johnson Petition for Writ of Certiorari and Appendix in the above-referenced case have been served upon Suzanne Shaw, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Robert L. O'Shields, #365365, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 7th day of December, 2023.



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