

IN THE SUPREME COURT

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certiorari to Spartanburg County, S.C. SUPREME COURT
Honorable Frank R. Addy, Circuit Court

ROBERT L O'SHIELDS

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

Pro se Responce to
the JOHNSON PETITION

The Petitioner move before this court pro se and hereby contends that the state did not comport with fairness, the procedure lacks equality that is required by the fourteenth Amendment. see Anders v. California May 8, 1967 386 U.S. 738 87 S.Ct. 1396 18 L.Ed. 2d 493. The Petitioner is defined as the person who may institute post conviction relief as a exclusiveness of remedy. see S.C. code ann §17-27-20(A).

The Petitioner is entitled to a full and fair opportunity to present claims in one PCR application see Mangal v. State (S.C. 2017) 2017 WL 3045812 also see Love v. State (S.C. 2019) 428 S.C. 231 848 S.E. 2d 196. The Supreme Court had provided remedy when it came to discrimination against a indigent defendant on his first appeal, see Anders v. California May 8, 1967 386 U.S.

I

S.C. Code Ann. §17-27-80

As stated in part of S.C. Code Ann §17-27-80..

"[I]f the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceeding]"

The Supreme Court of South Carolina provided that upon ruling on a PCR application, "[t]he [PCR] court shall make specific finding of fact, and state expressly its conclusion of law, relating to each issue presented." S.C. Code Ann. §17-27-80 (2014). likewise the court also provided that the South Carolina Rules of Civil Procedure apply to PCR matters. See *id.*: Rule 71.1(a), SCRPC. see Fishburne v. State 427 S.C. 505 832 S.E.2d 584
Rule 71.1(d) SCRPC.

As stated in part of Rule 71.1(d) SCRPC...

"[I]f, after the State has filed its return, the application present question of law or fact which will require a hearing, the shall promptly appoint counsel to assist the applicant if he is indigent]"

The state had made its Return on the 19th day May 2017. see App.p. 54-57. The court of common had appointed Susan C. Ross. Esq to represent the Applicant within Case No.: 2016-CP-42-3358.

II..

The Petitioner did raised within PCR several issue with respect to a forensic psychological evaluation. Also the Petitioner had raise an issue that the petitioner trial counsel failed to develop all available relevant, and all admissible or mitigating evidence in preparation for the Petitioner's defense. see App.p.144

The trial court did accept a Plea from the Petitioner of guilt but mentally ill. see App.p 22. Ln.5-7. The Plea transcript provides that the Trial court had accepted the Petitioners Plea pursuant to S.C. code Ann §17-24-20. See App.p.6. Ln.17-19

The Petitioner had foregone a Clinical Interview and two other clinical Interviews on three dates prior to the Petitioners plea hearing that which had convened approximately a year and a half after the Petitioner had been evaluated see App.p.28 However. E. Selman Watson, Ph.D had conducted the psychological evaluation of the Petitioner. see App.p. 27.

The Petitioner had filed a Amended Application for Post-conviction on the 29th day of June 2020. see App.p. 58 - App.p. 63. The Petitioner alleged that "at the time of the offense he lacked the capacity to distinguish right from wrong or to recognize his act as being wrong ✓

ISSUES RAISED WITHIN PCR
HEARING PER APPLICANT CASE
NO.: 2016-CP-42-3358

As provided by the Appendix record. Appellate case No.:
2023-001175. The Petitioner had testified before the PCR
court that a licensed clinical psychologist whom had
evaluated the Petitioner see App.p. 27-38. The psychologist
had informed the Petitioner that the Petitioner had received
an excessive amount of years due to the Petitioner's mind
frame at the time. see App.p. 92. Ln. 1-5. As raised by
the Petitioner's Post conviction court Appointed counsel
by questioner to the Petitioner within the June 19 2023
evidentiary hearing before the Honorable Frank R. Addy
JR. see App.p. 92. Ln. 11-18

Q. As far as affecting the outcome of a case, what would
a psychiatrist's evaluation -- how would that have
affected the outcome of a case you believe?

A. As far as what? The plea?

Q. Do you feel like that you were insane at the time
and you should've been found not guilty by reason
insanity.

The South Carolina Supreme Court determined that Due
process prohibits the conviction of an incompetent defendant
and such right can not be waived by a guilty plea. see Matthews
v. state 358 S.C. 456 596 S.E. 2d 49.

The post conviction counsel did raised that a possibility
that a verdict of not guilty by reason of insanity

could have rendered to the Petitioner, if the Petitioner had forgone trial. The Petitioner trial counsel did not expand a investigation. Based on the Appendix record provides evidence that an investigation into mitigating evidence should have comprised efforts to discover all reasonably available mitigating evidence. The South Carolina Supreme Court provided that a criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available evidence tending to rebut any aggravating evidence introduced by the state see Nance v. Ozmint 367 S.C. 547 557 n. 8 626 S.E. 2d 878. 883 n. 8 (2006) (quoting Wiggins 539 U.S. at 524-25. 123 S.Ct. 2527)

The Psychological Evaluation of The Petitioner

The Petitioner had provided prima facie evidence within the PCR hearing that the Petitioner had been deprived of a fair process regarding a Plea or a trial. The appendix Appellate Case No. 2023-001175, provides that the Petitioner was evaluated by a E. Selman Watson Ph.D. prior to the Petitioner's plea hearing. see App. p. 27-38. However the trial court. Hon. J. Derham Cole had accepted a Plea of guilt but mentally ill. see ADD. D 22. Ln 5-7. Void of testimony from the psychologist, Mr. E. Selman Watson Ph.D., whom evaluated the Petitioner as required per Rule 701. SCRE. Moreover, Mr. Watson Ph.D had concluded upon a diagnostic impression that the Petitioner did suffer from Major depressive disorder,

Single Episode with Mood-Congruent Psychotic Features

296.24 see App.p. 38

Testimonies from the psychologist was required pursuant to Rule 702, SCRE thus to base preponderance of the evidence. The U.S. supreme court held that a want of a defense of criminal intent by reason of insanity is to be supported by credible evidence. see U.S. v. Smith 507 F.2d 710

The South Carolina supreme court held that the actual preparation and finalization of a PCR order is often collaborative effort also the court recognized the prevailing party often prepares a proposed order for the PCR court see Hall v. Catoe 360 S.C. 353, 365.601 S.E.2d 335 341 (2004). The order must include finding of facts and conclusions of law as to all issues raised by the Petitioner see Fishburne v. State 427 S.C. 505 832 S.E.2d 584

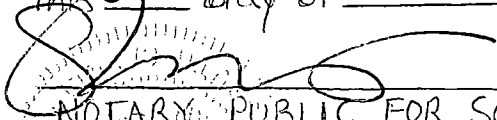
The Petitioner's Post conviction counsel failed to prepare a proposed order on the Petitioner's behalf a conclusion of law had not been rendered on the petitioners behalf.

wherefore the Petitioner request that this court to remand to the PCR court for the issuance of a supplemental order setting forth findings of facts

and conclusions of law on the PCR ground that was not addressed in the original order


sworn to and subscribed before me

This 2nd day of Feb 2024



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION ENDS 4/14/24


Robert L. O'Shields