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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

GERALD AKEEM GADSDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000153

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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ISSUE PRESENTED

Whether the court erred where it did not order that Appellant be evaluated for competency despite hearing that Appellant suffered from schizophrenia and bipolar disorder and was not receiving his medications, and that he had a history of incompetency, but the court accepted his plea anyway and ordered the Department of Corrections to provide Appellant with his "mental health medicine," since a competency evaluation is mandatory if the judge believes the defendant may be unfit to stand trial, and since this failure resulted in Appellant's entry of a plea that was not knowingly, intelligently, and voluntarily tendered?

STATEMENT

On September 13, 2016, an Anderson County Grand Jury indicted Gerald A. Gadsden, Appellant, for murder and possession of a weapon during the commission of a violent crime. App. 144 – 145. On January 8, 2020, Appellant appeared before the Honorable J. Cordell Maddox, Jr. for a plea hearing. Appellant was represented by Gordon Senerius. Catherine Huey and Stan Overby prosecuted the case. App. 1. Appellant pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the lesser offense of voluntary manslaughter with a recommendation of twenty years, to be served concurrently with a life sentence he was serving for a Greenville County case. App. 2, ll. 12-19; App. 11, ll. 5-8. The court accepted the plea and sentenced Appellant to twenty years, to be served concurrently. During sentencing, the court specified on the record and in writing on the sentence sheet that, "The defendant shall receive all mental health medicine while incarcerated." App. 16, ll. 1-15; App 146.

Appellant asked counsel to file an appeal. App. 74, ll. 21-23. Counsel filed a defective notice of appeal on January 21, 2020. App. 18 – 21. On January 28, 2020, the Court of Appeals sent counsel a letter asking him to provide a written explanation of an issue that could be reviewed on appeal. App. 22 – 23. On February 10, 2020, counsel filed an amended notice of appeal stating he was unaware of any issues for appeal. App. 24 – 27. On March 18, 2020; June 3, 2020; and on September 2, 2020, the Court of Appeals sent counsel letters directing him to 1) within ten days forward his guilty plea explanation to Appellant; 2) advise Appellant he had twenty days to inform the court of any basis for appeal; 3) copy the Court on his letter to Appellant. App. 28 – 33. Counsel failed to do so, and the appeal was dismissed. App. 34. The remittitur was issued November 9, 2020. App. 35.

On December 10, 2020, Appellant filed an application for post-conviction relief (PCR). App. 36 – 42. The State made its return on July 26, 2021. App. 46 – 59. On February 21, 2023, Appellant filed a supplemental PCR application. App. 43 – 45. On March 2, 2023, a hearing was held on the matter before the Honorable Perry H. Gravely. Don Thompson represented Appellant and Taylor Smith represented the State. App. 60. The State conceded Appellant was entitled to belated appellate review. App. 103, ll. 3-18. On December 15, 2023, the court issued an order granting belated appellate review pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), but denying all other allegations. App. 125 – 143.

This brief of appellant pursuant to *White v. State* follows.[1]

[1] Contemporaneously, Appellant is filing a petition for writ of certiorari.

STANDARD OF REVIEW

"The ordering of a competency examination is within the discretion of the trial judge." *State v. Colden*, 372 S.C. 428, 435, 641 S.E.2d 912, 916–17 (Ct. App. 2007) (citing *State v. Drayton*, 270 S.C. 582, 584, 243 S.E.2d 458, 459 (1978); *State v. Singleton*, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (Ct. App. 1996)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Colden*, 372 S.C. at 435, 641 S.E.2d at 917 (citing *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)).

ARGUMENT

The court erred where it did not order that Appellant be evaluated for competency despite hearing that Appellant suffered from schizophrenia and bipolar disorder and was not receiving his medications, and that he had a history of incompetency, but the court accepted his plea anyway and ordered the Department of Corrections to provide Appellant with his "mental health medicine," since a competency evaluation is mandatory if the judge believes the defendant may be unfit to stand trial, and since this failure resulted in Appellant's entry of a plea that was not knowingly, intelligently, and voluntarily tendered.

Relevant facts

Appellant's plea hearing was unorthodox. The solicitor stated Appellant was pleading guilty to voluntary manslaughter with a recommendation of twenty years' imprisonment, to be served concurrently with a life without parole sentence from Greenville County. App. 2, ll. 12-19. The colloquy began and the court heard Appellant had been diagnosed with schizophrenia and bipolar disorder. The court heard that Appellant was not taking medication for his conditions. The court asked defense counsel if he thought Appellant was competent and defense counsel stated that he did. Defense counsel stated that Appellant had been found not competent in connection with the Greenville County case, but his competency had been restored. App. 3, l. 7 – 4, l. 3.

Appellant told the plea judge he was not satisfied with counsel because, "I was not in my right mind at the time when the incident occurred . . . I was just released from MUSC mental institution less than, like, 72 hours before the incident happened." App. 6, ll. 1-7. A recess was taken, and Appellant waived a conflict with the judge, based on the judge's wife working on Appellant's Greenville case. App. 6, l. 9 – 8, l. 17. The court asked Appellant if he was guilty of

voluntary manslaughter and Appellant stated he was *not*, but that he was guilty of involuntary manslaughter. App. 9, ll. 14-17.

Another recess was taken. The judge suggested the plea hearing proceed pursuant to *North Carolina v. Alford*. The judge and the solicitor discussed on the record, in front of Appellant, whether Appellant could plead guilty to involuntary manslaughter. Another recess was taken for the solicitors to discuss involuntary manslaughter. App. 9, l. 21 – 11, l. 17. Court reconvened, and the judge stated, "what we have decided to do is have him plead under North Carolina versus Alford; is that correct?" Counsel answered that it was, and counsel stated that Appellant understood what that meant. Appellant agreed with the judge that he would most likely be found guilty at trial. (After the court broke for the solicitors to discuss involuntary versus voluntary manslaughter, and then reconvened, no one ever stated on the record that Appellant was pleading to voluntary manslaughter, rather than involuntary manslaughter.) App. 11, l. 18 – 12, l. 15.

Appellant's prior finding of incompetency on the Greenville case was discussed. The court asked counsel if he believed Appellant "may have lapsed back into incompetency," and counsel stated, "I do not." The court then asked Appellant what medications he was taking. App. 14, ll. 1-24. Appellant stated, "At this point in time I was taken off my medicine. But my doctor was supposed to put me back on my medicine this month, my mental health consult actually last month, but for me to be placed back on my medicine." App. 14, l. 25 – 15, l. 4.

Appellant told the court he took Depakote and Haldol, but was not receiving them currently. Counsel confirmed that Appellant had been taking Depakote and he listed a number of other medications. The court stated it would order as part of the sentence that Appellant "shall receive all mental health medicine while you're incarcerated." The court accepted the plea,

stating that Appellant "apparently seems to understand what's going on, and we have had several long discussions about this case." The court sentenced Appellant to twenty years' imprisonment, to be served concurrently with his life sentence. App. 15, l. 5 – 16, l. 17.

Discussion

"The Fourteenth Amendment denies the States the power to 'deprive any person of life, liberty, or property, without due process of law.'" *Duncan v. Louisiana*, 391 U.S. 145, 147 (1968); U.S. CONST. amend. XIV. "Due process prohibits the conviction of a person who is mentally incompetent." *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992); *see State v. Colden*, 372 S.C. 428, 440, 641 S.E.2d 912, 919 (Ct. App. 2007) (same). "[A] person whose mental condition is such that he lacks the capacity to understand the nature and objects of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171 (1975). This right cannot be waived by a guilty plea. *Jeter v. State*, 308 S.C. at 232, 417 S.E.2d at 595–96 (citing *Pate v. Robinson*, 383 U.S. 375 (1966)).

"The conviction of an accused person who is legally incompetent violates due process, and state procedures must be adequate to protect this right." *State v. Bellardino*, 429 S.C. 563, 567–68, 841 S.E.2d 621, 623 (2020) (citing *Pate v. Robinson*, 383 U.S. at 378). A state court's failure to invoke statutory procedures that exist to protect an accused's "right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." *Drope v. Missouri*, 420 U.S. at 172. "In order to protect the legal process and preserve the integrity of the trial, a trial judge has the authority to order a psychiatric evaluation of the defendant when his or her competency may be in question." *State v. Locklair*, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000). S.C. Code Ann. § 44-23-410 provides:

> Whenever a judge of the circuit court or family court **has reason to believe** that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:
>
> (1) order examination of the person by two examiners designated by the Department of Mental Health . . .

(emphasis added). "By statute [S.C. Code Ann. § 44-23-410], the question of whether a defendant is fit to stand trial depends upon whether the defendant, because of a lack of mental capacity, cannot 'understand the proceedings' or 'assist in his or her own defense.'" *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) (cleaned up). "Thus if the judge believes the person may be unfit to stand trial, a competency evaluation is mandatory." *Colden*, 372 S.C. at 441, 641 S.E.2d at 919. "[A] competency determination is required by due process when the trial court suspects the defendant lacks competence[.]" *State v. Bellardino*, 429 S.C. at 568, 841 S.E.2d at 624. Factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial was warranted are: (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation. *State v. Colden*, 372 S.C. at 441, 641 S.E.2d at 920 (citing *State v. Burgess, supra*).

In *Burgess*, the Court of Appeals addressed the trial judge's denial of a competency evaluation where Burgess's counsel stated her I.Q. was between 56 and 66, and counsel referenced her alcoholism. "The trial judge examined Burgess under oath to determine if she understood the pending charges, the purpose of the proceedings, and the roles of the individuals involved." *State v. Burgess*, 356 S.C. at 574, 590 S.E.2d at 43. The Court found no abuse of discretion where Burgess had not previously been adjudicated incompetent to stand trial; the trial judge observed that her demeanor appeared to be 'very appropriate'; and the record showed she

understood the proceedings, the roles of the various participants, and the charges leveled against her." *Id.*, 356 S.C. at 575–76, 590 S.E.2d at 44. In *Colden*, the Court of Appeals addressed the trial judge's denial of a competency evaluation where Colden's attorneys stated he was not always responsive to their questions and had a tendency to ramble on about things unrelated to their discussions. The Court of Appeals concluded there was no abuse of discretion since "[t]here was no evidence of irrational behavior before or during the trial, nor prior medical opinion concerning competency as to require an evaluation under the *Burgess* factors." *Colden*, 372 S.C. at 442, 641 S.E.2d at 920.

In *State v. Singleton*, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996), the defense requested a continuance at a probation revocation hearing. Singleton was receiving mental health treatment, he had audio and visual hallucinations, and his mother stated she believed his odd and violent behavior stemmed from a childhood poisoning incident. The court denied the motion and revoked probation, yet the judge stated: "I urge treatment for Singleton's mental condition while he's incarcerated and for drugs, and that he go through the Alcohol Treatment Unit before he is released." *State v. Singleton*, 322 S.C. at 482, 472 S.E.2d at 641 (cleaned up). The Court of Appeals addressed whether the trial court abused its discretion and deprived Singleton of due process when it revoked his probation without first ordering that he undergo a mental evaluation pursuant to S.C. Code Ann. § 44-23-410. The Court of Appeals concluded that

> Singleton's counsel's report to the court that he suffers from symptoms suggestive of schizophrenia and was under psychiatric care at the time of the hearing, along with his mother's testimony regarding the seriousness and duration of his mental problems and **the statement of the trial judge at the conclusion of the hearing indicating he believes Singleton needs additional treatment for his mental condition reflect that the trial judge had reason to believe that a competency examination was necessary**.

State v. Singleton, 322 S.C. at 483, 472 S.E.2d at 642 (emphasis added). The Court of Appeals found an abuse of discretion despite counsel's failure to cite to the statute. "We are cognizant of Singleton's failure to expressly cite § 44-23-410 as a basis for his motion to hold the probation revocation hearing in abeyance pending a mental evaluation; however, given the language of the statute providing that such an examination should be ordered 'whenever a Circuit Court . . . has reason to believe' a defendant may lack the mental capacity necessary to stand trial, we do not believe the absence of such a motion relieves the trial court of the duty to order such an examination on its own motion." *State v. Singleton*, 322 S.C. at 483 n. 3, 472 S.E.2d at 642 n. 3. *See also State v. Buchanan*, 302 S.C. 83, 85–86, 394 S.E.2d 1, 2 (Ct. App. 1990) (defendant's conduct, the statement of the psychiatrist that his interview with the defendant was not long enough to make a decision about competency to stand trial, the statements of the trial judge and the judge's two orders reflect that the trial judge had reason to believe that a competency examination was necessary).

Unlike in *Burgess* and *Colden*, Appellant had previously been found not competent to stand trial. The record did not show Appellant understood the charges against him, the role of the participants, or the proceedings. Similar to *Singleton*, the judge recognized Appellant needed mental health treatment: the court ordered that Appellant "shall receive all mental health medicine while incarcerated." When the reasoning of those cases is applied to the facts in this case, the result is that Appellant should prevail in this appeal. *Burgess*, 356 S.C. at 575–76, 590 S.E.2d at 44; *Colden*, 372 S.C. at 442, 641 S.E.2d at 920; *State v. Singleton*, 322 S.C. at 483, 472 S.E.2d at 642.

This was far from a standard plea colloquy. Many of the typical questions regarding the defendant's background and his waiver of rights were not asked. Proceedings were stopped and

restarted several times. What began as a guilty plea turned into an *Alford* plea when the judge *sua sponte* suggested Appellant plead pursuant to *Alford* after Appellant denied he was guilty. Although the court recessed for the solicitors to discuss whether Appellant could plead guilty to involuntary manslaughter instead of voluntary manslaughter, no one thereafter stated which charge Appellant was pleading to pursuant to *Alford*. The judge heard Appellant suffered from schizophrenia and bipolar disorder. The judge heard Appellant was released from a mental hospital several days before committing the crime. The court heard both Appellant and defense counsel state that Appellant had previously been prescribed medications used to treat severe mental illness, including Depakote. The court heard Appellant was supposed to be receiving these medications to treat his mental illness, but had been taken off of them, and had not yet been put back on them. The court heard that in connection with his Greenville County charges, Appellant had been found not competent to stand trial but had subsequently been restored to competency. App. 2, l. 4 – 16, l. 16. The judge found these discussions compelling because he ordered that Appellant receive his mental health medications as part of sentencing. The judge's ruling shows he had reason to believe a competency evaluation was necessary. App. 16, ll. 1-15; App 146.

The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). The record of a guilty plea must be sufficient to show the defendant "has a full understanding of what the plea connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). *See McCarthy v. United States*, 394 U.S. 459, 466 (1969) ("because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts"). Appellant's guilty plea was not a

"voluntary and intelligent choice among the alternative courses of action," due to his mental illness and likely lack of competency. The plea hearing was confusing in light of Appellant's mental illnesses, given its unorthodox nature. *Hill v. Lockhart*, 474 U.S. at 56. The court's failure to order the evaluation was an abuse of discretion which deprived Appellant of due process of law. S.C. Code Ann. § 44-23-410; *State v. Singleton*, 322 S.C. at 483, 472 S.E.2d at 642; *Drope v. Missouri*, 420 U.S. at 171; U.S. CONST. amend. XIV.

In issuing the writ of habeas corpus in *Pate v. Robinson*, 383 U.S. at 386-87, the United States Supreme Court discussed the "difficulty of retrospectively determining an accused's competence to stand trial," and found Robinson was entitled to be discharged or tried anew. In *Drope v. Missouri*, 420 U.S. at 183, the Supreme Court found an accused entitled to a new trial "[g]iven the inherent difficulties of such a nunc pro tunc determination . . ." about whether Drope had been competent to stand trial several years before. The plea in this case took place in 2020. Due to the difficulty in ascertaining whether Appellant was competent at a date long past, this case should be remanded for a new trial. *Drope v. Missouri*, 420 U.S. at 183.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

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This 8th day of July, 2024.