

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Calhoun County

Honorable Paul M. Burch, Circuit Court Judge

CHARLES WINSTON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001487

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

1.

Whether this PCR case should be remanded to the PCR court under Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) for a ruling on whether trial counsel “failed to subject [the] prosecution’s case to meaningful adversarial testing” as alleged by petitioner in his *pro se* application (but not addressed in the Order of Dismissal) and whether the presumed prejudice from United States v. Cronin, 466 U.S. 648 (1984) should apply where trial counsel waived petitioner’s right to a jury trial when he was not present, stipulated to a damning medical evaluation finding petitioner was malingering, waived a Jackson v. Denno hearing on an incriminating statement by petitioner, stipulated to the facts in the indictment, and stipulated that petitioner was competent over the opinion of his own expert witness, which undermined any shred of a strategy trial counsel may have had?

2.

In the alternative, did the PCR court err in finding that trial counsel was not ineffective when he waived petitioner’s right to a jury trial in petitioner’s absence and no colloquy was conducted by the trial judge?

3.

In the alternative, did the PCR court err in finding that trial counsel was not ineffective in stipulating to petitioner’s competency to stand trial when this stipulation destroyed the credibility of his expert witness and any chance of a GBMI or NGRI verdict?

STATEMENT

On October 24, 2014, petitioner was indicted in Calhoun County for attempted murder. App. 235. On May 9, 2016, petitioner was tried before the Honorable Maite Murphy. App. 1. Theodore N. Lupton represented the State. App. 1. Martin Rast Banks represented petitioner. App. 1. Judge Murphy found petitioner guilty of attempted murder and sentenced petitioner to thirty years' imprisonment. App. 122-23.

After the unsuccessful conclusion of petitioner's direct appeal, he filed a PCR application on April 17, 2019. App. 132. On February 6, 2024, a hearing was held before the Honorable Paul M. Burch. App. 163. Arthur Aiken represented petitioner. App. 164. Bryan T. Hall represented the State. App. 164. On March 27, 2024, Judge Burch denied petitioner's application. App. 218-233. No Rule 59(e), SCRPC motion was filed. This petition follows.

ARGUMENT

1.

This PCR case should be remanded to the PCR court under *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019) for a ruling on whether trial counsel “failed to subject [the] prosecution’s case to meaningful adversarial testing” as alleged by petitioner in his *pro se* application (but not addressed in the Order of Dismissal) and whether the presumed prejudice from *United States v. Cronin*, 466 U.S. 648 (1984) should apply where trial counsel waived petitioner’s right to a jury trial when he was not present, stipulated to a damning medical evaluation finding petitioner was malingering, waived a *Jackson v. Denno* hearing on an incriminating statement by petitioner, stipulated to the facts in the indictment, and stipulated that petitioner was competent over the opinion of his own expert witness, which undermined any shred of a strategy trial counsel may have had.

“[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659 (1984). In his *pro se* PCR application, the mentally ill petitioner Charles Winston wrote as ground number two:

Trial counsel ineffective due to strategies and tactics that failed to subject prosecution’s case to meaningful adversarial testing.” App. 137. Petitioner’s application stated the *Cronin* standard.

The PCR court’s Order purported to list all of the allegations contained in petitioner’s original application and in an amendment filed by PCR counsel. App. 219-20. It omitted the ground listed above. App. 219-20. It did not address this ground in the Order’s specific rulings. App. 224-233.

The Bench Trial

Petitioner was not present when his case was called for trial on a Monday. App. 6. Without petitioner there, trial counsel waived his right to a jury trial, stipulated that petitioner was competent to stand trial, and stipulated to an evaluation performed at MUSC for its use during the trial. App. 4. The only other business conducted that day was trial counsel asked for a change of venue after he had already waived his right to a jury trial, which Judge Murphy promptly denied. App. 5-7.

Court resumed on Wednesday and petitioner was in the courtroom. App. 7. The solicitor put Monday's stipulations and waivers on the record "in the defendant's presence. App. 7-8. The solicitor told the court trial counsel had agreed to admission of the State's exhibits, including a recording of petitioner's statement. App. 8. Trial counsel agreed when asked by Judge Murphy if that was his understanding. App. 8. The following colloquy between the lawyers then occurred:

MR. BANKS: Did he say that I stipulated to the facts contained in the indictment?

THE COURT: He has not stated that.

ASST. SOL. LUPTON: We've agreed to stipulate to the facts in the indictment.

THE COURT: And just for the record, the facts of the indictment are that in that the defendant Charles Lamont Winston, Jr. did in Calhoun County on or about September 30, 2014 did with the intent to kill, attempt to kill, Courtney Glover with malice aforethought by cutting the throat and face area of the victim. This offense being violation of 16-3-29 of the South Carolina Code of Laws as amended. Mr. Banks, is that your understanding of the facts contained in the indictment that you're stipulating to?

MR. BANKS: The facts; yes, Your Honor.

THE COURT: All right. Thank you. Anything further, solicitor?

App. 8-9. Without either side making an opening statement, the solicitor called the victim as his first witness.

The victim, Courtney Glover, had known petitioner most of her life. App. 10. Petitioner seemed normal in the months leading up to the incident. App. 12. On the night in question, petitioner texted Glover that he “needed someone to talk to.” App. 12-13. Glover went to his house. App. 13. She asked him what was wrong. App. 13. He told her she would not understand and that he had a lot on his mind. App. 13.

Glover told petitioner she was going to head home. App. 13. Petitioner went to the bathroom and returned to walk Glover to her car. App. 13. It was their usual practice for petitioner to walk Glover to her car. App. 13. As Glover walked to her car outside of the house, petitioner jumped on her from behind. App. 13-15. He cut her neck and pushed her to the pavement, still attempting to cut her. App. 15. He cut her face. App. 15.

Glover managed to get petitioner off of her and got into her car, where the struggle continued. App. 15. Glover finally started the car and “raced down the road.” App. 16. Petitioner held on to her car door the entire ride—seven houses away. App. 16. When she pulled into her yard, petitioner tried to stab her one more time, then ran. App. 16.

On cross-examination, trial counsel first apologized to Glover. App. 19. Glover knew petitioner had sought mental health treatment and took him to one of his visits. App. 20-21. She said on the night of the incident, petitioner was not angry at her. App. 21. They did not argue. App. 22. She testified she knew of no motive for petitioner to attack her. App. 23.

The State’s next witness was a police officer, and the solicitor discussed the recording of petitioner’s interview with the police that had already been admitted with the consent of trial counsel. App. 23-29. On cross-examination, trial counsel asked whether petitioner mentioned hearing voices during the interview and the officer said he did. App. 30. Trial counsel then asked the police officer if he thought petitioner was making the voices up. App. 30. The officer

replied, “You’re asking my opinion?” App. 30. Trial counsel responded, “Yeah.” The officer then gave a lengthy answer about why he thought petitioner was making it up and that his opinion was that petitioner never heard voices. App. 30-31.

After the solicitor finished his re-direct, Judge Murphy asked whether Miranda warnings were covered by the pre-trial stipulation and the solicitor responded the warnings could be heard on the recording. App. 32-33. Judge Murphy then asked whether a Jackson v. Denno hearing needed to be held. App. 33. Trial counsel responded, “You know, that never even came up in our discussions. Let me consult with my client.” App. 33. After a pause for consultation, trial counsel waived any right to a Denno hearing. App. 33. The judge then conducted a colloquy with petitioner and he indicated that the police did not threaten him. App. 34-35.

The State then rested. App. 35. Even though trial counsel had stipulated to the facts in the indictment, when court resumed, he said, “Your Honor, I will go ahead and make the defunctary (ph) motion for a directed verdict.” App. 36. Judge Murphy denied the motion, relying on the prior stipulation. App. 36.

Trial counsel called Dr. Amanda Salas and the State agreed to her qualification as an expert in forensic psychiatry. App. 37. Dr. Salas indicated trial counsel contacted her for a competency evaluation. App. 37. Trial counsel then asked Dr. Salas questions about petitioner’s mental health history and his state of mind during the incident.

Dr. Salas said petitioner suffers from a very rare mental illness called delusional disorder. App. 38-39. The sufferer has a delusional belief system in one area of thinking. App. 39. While the person has bizarre and irrational thoughts, unlike schizophrenics, they can function normally as long as the delusion does not touch other areas of their life. App. 39.

Petitioner's delusional belief system centered on Glover, the sheriff, and one other person. App. 40. He believed they inserted objects into his body to torture him and control his mind. App. 40-45. Even after an MRI showed no such devices in his body, the delusion persisted. App. 40-45. Dr. Salas said that during the crime, petitioner "was functioning under hallucinations of instruction to harm [Glover]." App. 45.

Near the end of direct-examination, trial counsel asked whether petitioner could tell the difference between legal right and wrong. App. 61. Dr. Salas said he could. App. 61. She then described his delusion as a moral issue and that he felt justified in confronting someone who was torturing him. App. 62-63. Dr. Salas said petitioner's delusions "impaired his ability to discriminate a moral right from wrong, but also the inability to conform." App. 64. After stating that he did not "often do this," trial counsel asked Dr. Salas thought her report should be admitted into evidence. App. 65. She said it could be beneficial. App. 65. Trial counsel then did not admit her report. App. 65.

On cross-examination, Dr. Salas confirmed that her report was only about competency and did not include any specific diagnosis. App. 77. The solicitor confirmed that Dr. Salas did not think petitioner was competent. App. 77. The solicitor then asked, "But you're aware that he stipulated that he's competent?" and she responded, "I am aware." App. 77-78.

Trial counsel rested after Dr. Salas's testimony concluded. App. 100. Judge Murphy then placed petitioner under oath and conducted a colloquy with him about his right to testify. App. 100-02. Petitioner declined to testify. App. 102.

Trial counsel's closing argument began by reciting how well he knew petitioner and that petitioner worked for him at his office. App. 103. The solicitor's objection that these facts were not in evidence was overruled by Judge Murphy because it was a bench trial. App. 103. Trial

counsel then told the judge about a prior crime of petitioner's that he said, "made no sense." App. 104. He then said:

We had the victim today say that he didn't have a motive to harm her, and I don't think we ever heard one. He doesn't deny the fact that he did harm her. The fact that we stipulated to the contents of the indictment we stipulated to the pictures; we stipulated—this was sort of an extended, if you will, **it's sort of an extended guilty plea**. And the only question is where does he fall in this spectrum that is before you today? Not by reason of insanity, guilty but mentally ill, flat guilty if that's what you so decide. **We did it as part to spare the victim**. We were very short on the facts and I was very short on cross. **We did it to spare the Court**; we did it to spare the family. We did these things—like I said, it's almost as an extended guilty plea.

App. 104 (emphasis added). He asked the court for a verdict of not guilty by reason of insanity.

App. 107. The solicitor adroitly responded, "Your Honor, in this case, the defendant stipulated that he did attempt to kill the victim and that he did so with malice aforethought. I think that that's enough right there for you to find him guilty." App. 107.

Judge Murphy found petitioner guilty. App. 123. The court cited the defense's stipulation to the facts of the indictment. App. 119. Judge Murphy then said, "The defendant's stipulation as to the competency of the defendant to stand trial discredits his own expert witness." App. 119. She cited the stipulated report of MUSC that found petitioner was malingering. App. 120. Using these stipulations and the evidence, she rejected both an NGRI and GBMI verdict, found petitioner guilty of attempted murder, and sentenced him to thirty years' imprisonment. App. 120-23. Trial counsel said, "I've got to admit, I'm a little bit in shock with your finding today." App. 129.

The PCR Hearing and the PCR Court's Order of Dismissal

Petitioner testified at the PCR hearing that he "steadfastly" maintained he wanted a jury trial, but did not want to be tried by a jury in Calhoun County because of Glover's connections. App. 168-71. He knew nothing about a Denno hearing—a fact corroborated by trial counsel's

remarkable statement during the trial that it had never come up. App. 175. Petitioner agreed his trial was “organized” before he was even at the courthouse and that he was tried “partially in absentia.” App. 175.

The Attorney General called trial counsel as its first witness and asked whether petitioner had any defense. App. 186. Trial counsel explained that petitioner had to “hang his hat” on the expert’s testimony and that petitioner “was teetering between going to be locked up maybe for life on the mental illness side of things.” App. 186. Trial counsel explained his so-called strategy: “And what I was trying to do is mitigate an indefinite sentence forever to something that had a number attached to it that might mitigate the time spent and mitigate the complications that surround somebody in his condition.” App. 186. The lawyers met in chambers, told Judge Murphy about the offers that petitioner refused to accept, “kind of explained our predicament and—and tried to leverage the bench—” App. 190. Trial counsel apparently thought that if they conducted a bench trial Judge Murphy would give petitioner a sentence something in line with the offers made by the solicitor. App. 190-91.

Trial counsel admitted on cross-examination not thinking through the effect that stipulating petitioner was competent would have on undermining his expert’s credibility. App. 197. He admitted no colloquy occurred about petitioner’s right to a jury trial. App. 198-99.

The Order of Dismissal did not address the ground from petitioner’s allegation that referenced the Cronic standard. The Order found trial counsel credible that he advised petitioner of his right to a jury trial and that petitioner voluntarily waived it because of his concerns about a Calhoun County jury. App. 226. On the competency evaluation, it found counsel credible in his opinion that petitioner was competent and that by admitting he was competent, it left the door open for petitioner to testify. App. 228. The Order did not address waiving the Denno hearing

or stipulating to the damning MUSC report finding petitioner was a malingerer. The Order did not address trial counsel stipulating to the facts contained in the indictment.

Discussion

This sad case screams out for a Fishburne remand for analysis under Cronic. Trial counsel not only failed to challenge the State's evidence, he stipulated his entire case in agreement with the solicitor. He described petitioner's trial as an extended guilty plea. He undermined his only witness, who was hired to prepare an opinion on competency and was drafted into giving an opinion on mental health verdicts. He waived his client's right to a jury trial when his client was not present.

This Court applied the Cronic standard in Nance v. Frederick, 358 S.C. 480, 596 S.E.2d 62 (2004) *vacated in light of Florida v. Nixon*, 540 U.S. 1217 (2004).¹ In Nance, defense counsel had severe health problems, including alcoholism. His co-counsel had only been practicing law for eighteen months. The lawyer disowned his client in the guilt phase, telling the jury he did not ask for the case and was "simply appointed." He presented only three ineffectual witnesses. The sentencing phase presentation lasted seven minutes. He pursued a GBMI verdict, but failed to get his expert qualified. In his closing, he told the jury the defendant was a sick man who did sick things. The Nance Court declined to employ a prejudice analysis because "defense counsel completely failed to test the prosecution's case." Nance at 490, 596 S.E.2d at 67.

Defense counsel in Nance did not stipulate to the allegations of the indictment. They did not waive their client's right to a jury trial when he was not present. They did undermine their own expert witness. Apologizing to the jury is similar to conducting "an extended guilty plea."

¹ This Court maintained its reasoning in Nance after the remand from the United States Supreme Court and refused to apply a prejudice test. Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006).

Dr. Salas's testimony at trial demonstrates that important mental health concerns existed even though trial counsel only retained her to evaluate competency.

In McCoy v. Louisiana, 584 U.S. 414 (2018) the United States Supreme Court reversed a capital case because the trial lawyer admitted his client was guilty as part of a strategy to avoid a death sentence. The Court reversed because the attorney did so over his client's wishes. The attorney in McCoy was competent and had a reasonable strategy and the Court still reversed. Here, trial counsel told the judge he stipulated to the facts contained in the indictment to spare the victim, the family, and the Court. He did not mention his client or his client's wishes.

Fishburne allows remands to the PCR court even when the applicant does not file a Rule 59(e) motion. Fishburne at 516-17, 832 S.E.2d at 589-90. The availability of a remand under Fishburne is because of the primacy of the Sixth Amendment right to counsel. In this case where trial counsel's multiple failures were not analyzed as a whole and no determination was made whether the adversarial process completely broke down, a Fishburne remand is required. This Court should remand under Fishburne to allow this complete failure of the adversarial process to be adequately presented and ruled upon. This Court could also grant certiorari on this issue to determine, after further briefing, whether relief or a remand should be had on this record.

2.

In the alternative, the PCR court erred in finding that trial counsel was not ineffective when he waived petitioner's right to a jury trial in petitioner's absence and no colloquy was conducted by the trial judge.

If this Court does not see the need for a Fishburne remand, then it should grant certiorari on whether trial counsel was ineffective in waiving petitioner's right to a jury trial in his absence. The facts related to this issue are spelled out in Issue One.

The PCR court denied relief based on counsel's testimony that he explained the right to a jury trial to petitioner and counsel's belief that his waiver was knowing and voluntary. But counsel's testimony showed that petitioner's supposed waiver was based on his delusional belief about the victim's conspiratorial hold on a potential Calhoun County jury. A waiver based on a delusion is not knowing and voluntary.

Counsel also knew that his own expert said petitioner was not competent to stand trial and potentially could not make a rational decision on whether to proceed with a jury trial, but disregarded his expert's opinion in favor of his own. Furthermore, the PCR court failed to address counsel's own admission that the bench trial was to spare the victim, the family, and the court and not to address petitioner's delusional concerns.

The PCR court improperly distinguished the case that compels reversal: Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012). Moore reversed an armed robbery conviction because of an insufficient record made by the trial court on whether the defendant's waiver (by counsel) of a jury trial was knowing and voluntary. Like the PCR court here, the Moore PCR court relied on counsel's statements at the PCR hearing that he had discussed the right to a jury trial with petitioner and that it was ultimately petitioner's decision to elect a bench trial. This Court found that rationale lacking because no sufficient colloquy about the waiver was present in the record. And, importantly, the defendant in Moore was present when his attorney waived his right to a jury trial.

No colloquy exists in this case. Like in Moore, the solicitor placed the stipulations on the record and defense counsel agreed. When court reconvened in the defendant's presence, the solicitor again restated that it would be a bench trial. The trial judge asked no questions of petitioner or of defense counsel about the waiver. No sufficient record exists to find this waiver

was knowing and voluntary. Petitioner adamantly testified at the PCR hearing that he wanted a jury trial. Trial counsel's statements about sparing the victim and an "extended guilty plea," coupled with his nonsensical strategy of avoiding a mental health "indeterminate" verdict show this waiver was not knowing and voluntary. This Court should grant certiorari on this issue and reverse.

3.

In the alternative, the PCR court erred in finding that trial counsel was not ineffective in stipulating to petitioner's competency to stand trial when this stipulation destroyed the credibility of his expert witness and any chance of a GBMI or NGRI verdict.

Even though trial counsel asked for an NGRI verdict and put up an expert on GBMI, he said at the PCR hearing that his real strategy was to get petitioner a determinate sentence of years and avoid having him committed for perhaps the rest of his life. The PCR court held that trial counsel had a credible strategy of stipulating that his client was competent so that his client could testify.

This conclusion is erroneous. Trial counsel admitted at the PCR hearing that he had not thought through the effect of stipulating that petitioner was competent. Judge Murphy told him the effect in her verdict—that he had destroyed the credibility of his expert and only witness. Petitioner did not testify.

Dr. Salas testified that petitioner could distinguish right from wrong, but lacked the capacity to conform because of his delusions. App. 64. The defendant bears the burden of proving his mental illness. S.C. Code Ann. § 17-24-20(B). A GBMI verdict is still a guilty verdict, but would have entitled petitioner to treatment in the Department of Corrections. Dr. Salas testified that with treatment, petitioner's delusions could be controlled. App. 88-89. Trial

counsel's deficient performance in undermining Dr. Salas deprived petitioner of his chance at this verdict. This Court should grant certiorari and reverse on this issue.

CONCLUSION

For the foregoing reasons, this Court should remand this case for further findings of fact and conclusions of law. Alternatively, this Court should grant certiorari, order further briefing, and reverse petitioner's conviction.

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 12th day of May, 2025.