

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Pickens County

William Jeffrey Young, Circuit Court Judge

**RECEIVED**

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**S.C. Supreme Court**

DEWAYNE C. HAGINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001532

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

# INDEX

INDEX .....	1
ISSUE PRESENTED .....	2
STATEMENT .....	3
ARGUMENT .....	4
CONCLUSION .....	11
PETITION TO BE RELIEVED AS COUNSEL.....	12

## ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to fully investigate Petitioner's competency to stand trial and seek a second mental health evaluation despite plea counsel's awareness of Petitioner's extensive mental health problems and where there was evidence Petitioner was incompetent at the time of his guilty plea?

## STATEMENT

A Pickens County Grand Jury indicted Petitioner at its September 14, 2010 term for first degree burglary and “eavesdropping or peeping tom.” App. 112-115. Petitioner pled guilty but mentally ill to both charges on May 17, 2011 before the Honorable Letitia Verdin. App. 1. Assistant Solicitor Baker Cleveland appeared on behalf of the prosecution and Scott D. Robinson represented Petitioner. App. 1. Petitioner was sentenced by Judge Verdin to twenty years for first degree burglary and three years concurrent for peeping tom. App. 23, ll. 8-12.

By order dated October 11, 2011, the Court of Appeals dismissed Petitioner’s appeal based on his failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

On December 22, 2011, Petitioner filed an Application for Post-Conviction Relief (PCR) and accompanying Memorandum of Law in Support of Post-Conviction Relief Application raising this issue. App. 36-54. The state filed a return to this application dated May 31, 2012. App. 55-58. The matter proceeded to an evidentiary hearing on February 11, 2013 before the Honorable W. Jeffrey Young. App. 59-104. Assistant Attorney General Karen C. Ratigan represented the state and Raymond T. Wooten represented Petitioner. App. 59. By order dated March 14, 2013, Judge Young denied Petitioner relief. App. 105-111.

This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to fully investigate Petitioner's competency to stand trial and seek a second mental health evaluation despite plea counsel's awareness of Petitioner's extensive mental health problems and where there was evidence Petitioner was incompetent at the time of his guilty plea.

### **Guilty Plea**

On May 17, 2011, Petitioner pled guilty but mentally ill to first degree burglary and peeping tom. At the time of his guilty plea, Petitioner was twenty-five years old and had been incarcerated for over seventeen months. App. 7, l. 23; App. 14, ll. 13-14.

Before his guilty plea hearing, Petitioner was evaluated by the South Carolina Department of Mental Health (SCDMH) on September 7, 2010 pursuant to a court order. Although he was found competent to stand trial, the SCDMH diagnosed Petitioner with exhibitionism, voyeurism, paraphilia, and anxiety disorder. App. 27. Petitioner suffered from intense sexual fantasies which led to uncontrollable desires to expose himself in public, "peep" on women, and masturbate in public. App. 28-29.

During the guilty plea proceeding, the state did not take a position on whether Petitioner should be permitted to plead guilty but mentally ill. App. 4, l. 24 – 5, l. 3. The state likewise did not dispute that Petitioner suffered from exhibitionism, voyeurism, and an anxiety disorder. App. 6, ll. 16-24. Petitioner's plea counsel stated that Petitioner "needs help" and that "we believe he fits very well into the guilty but mentally ill [category], because he needs to get help at a state hospital that would permit them to figure out and find out how to fix this problem that he has." App. 6, ll. 4-15. Based on the mental health evaluation performed by the SCDMH, the trial

judge found Petitioner had the mental capacity to distinguish right from wrong and recognized what he did was wrong. However, because of his “mental disease or defect,” the court found Petitioner was unable to conform his conduct to the law. App. 6, l. 25 – 7, l. 4.

After some initial questioning, the following colloquy took place on the record:

THE COURT: All right. Are you under the influence of drugs or alcohol today?

PETITIONER: No, ma’am.

THE COURT: Do you take any medications for your mental illness?

PETITIONER: I did like while I was actually like on the street, but I haven’t since I’ve been incarcerated.

THE COURT: Okay. Let me ask you this. Without your medications, do you feel clearheaded here today?

PETITIONER: Yeah, I mean like I understand what’s going on; like I told him.

THE COURT: You feel like you understand everything that’s going on?

PETITIONER: Yes, ma’am.

THE COURT: I’ll note for the record, you seem clearheaded to me and you’re answering my questions very well.

App. 8, ll.7-23.

Petitioner stated that he was satisfied with plea counsel and that counsel had done everything Petitioner had asked. App. 10, l. 19 – 11, l. 3. After a routine plea colloquy, the guilty plea judge accepted Petitioner’s plea as being freely, voluntarily, and intelligently made with the advice of counsel. App. 8, l. 24 – 11, l. 11. While not specifically stated on the record, apparently the judge also determined there was a substantial factual basis for the plea. App. 11, l. 10 – 15, l.

9.

During sentencing, Petitioner acknowledged what he did was wrong, apologized to the victim of both the burglary and peeping tom, and explained that he has a problem and needs help with his problem. App. 19, l. 22 – 21, l. 16. At the conclusion of the proceeding, the judge sentenced Petitioner to twenty years imprisonment for first degree burglary and three years concurrent on the peeping tom charge. App. 23, ll. 8-12.

### **PCR Hearing**

At the PCR hearing, Petitioner explained that Steven Alexander was initially appointed to represent him shortly after his arrest in December 2009. Petitioner met with Mr. Alexander on four separate occasions. Petitioner informed Mr. Alexander of his mental health problems including his previous diagnoses of exhibitionism, voyeurism, and anxiety dating back to 2004. App. 64, l. 1 – 65, l. 12. While Mr. Alexander was representing him, Petitioner underwent a mental health evaluation to determine whether he was competent to stand trial. The report from the evaluation indicated that he was competent to stand trial but that he suffered from exhibitionism, voyeurism, and, as far as Petitioner could remember, depression. App. 66, ll. 15-25.

Around late October or early November 2010, Petitioner had Mr. Alexander relieved as counsel because “it didn’t necessarily seem like . . . he really took it serious.” Petitioner, with funds provided by his mother, retained plea counsel, Scott D. Robinson, to represent him instead. App. 67, l. 14 – 68, l. 23; App. 78, ll. 4-16.

Petitioner stated that he met with plea counsel approximately four or five times. He also informed plea counsel of his mental health problems. Unfortunately, plea counsel never sought a second opinion regarding Petitioner’s mental health status and competency to stand trial despite Petitioner’s insistence that he was not competent to stand trial. App. 68, l. 24 – 69, l. 25.

Petitioner testified that plea counsel's explanation for not seeking a second evaluation was that he "had a different way [he] wanted to handle the case." App. 69, ll. 13-25. If plea counsel had decided to get a second mental health evaluation, Petitioner stated his family had the money and would have paid for it. App. 70, ll. 1-7. Petitioner felt that it was plea counsel's "duty, his responsibility to get a mental evaluation" and if he had the result may have been different. App. 79, l. 11 – 80, l. 4.

During his PCR hearing, Petitioner testified that he was currently taking a prescription medication called Celexa. He explained that prior to his arrest in December 2009 he was taking medication to help treat his mental illnesses. However, once he was arrested he did not have access to a doctor that could prescribe him the proper medication. Therefore, during his discussions with plea counsel and at the time of his guilty plea he was not taking any medication. App. 65, l. 13 – 66, l. 5; App. 76, ll. 6-13. Petitioner explained that the medication helps to "suppress the urges" and "calm him down." App. 66, ll. 6-14.

Plea counsel testified that he was aware Petitioner had undergone a mental health evaluation pursuant to a court order before he was retained. He received a copy of the results of that evaluation when he received the discovery materials from Mr. Alexander. There were no "red flags" in the report that led plea counsel to believe that a second evaluation was needed. Plea counsel explained that Petitioner is a "very articulate guy" and appeared to understand everything plea counsel told him during their conversations. Nothing in his conversations with Petitioner led plea counsel to believe that a second evaluation was needed. App. 81, l. 17 – 84, l. 1.

Plea counsel explained that "if [Petitioner's family] had come to me and said we want a second evaluation, I would've gone out and got one if they insisted on that but there was no

reason to get another evaluation . . .” Plea counsel did not think a second evaluation was necessary nor did he believe that “shopping around to find out if someone is going to say something for you” was proper. App. 90, l. 19 – 91, l. 19.

### **Order of Dismissal**

The PCR court held Petitioner failed to meet his burden of proving plea counsel was ineffective for not obtaining a second evaluation. The court found plea counsel’s testimony, specifically that Petitioner understood their conversations, that there were no red flags during his representation regarding Petitioner’s competency, and that Petitioner did not need second evaluation, credible. App. 107-108. The court also noted that Petitioner failed to present a second competency evaluation or other expert testimony and that the court “cannot speculate about whether a second evaluation would have had any impact” on Petitioner’s case. App. 109.

The PCR court concluded Petitioner failed to establish “any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings” and that “counsel was not deficient in any manner” nor was Petitioner prejudiced by counsel’s representation. The court thus denied Petitioner’s application and dismissed it with prejudice. App. 110-111.

### **Discussion**

Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to obtain a second evaluation to determine whether Petitioner was competent to stand trial despite being aware of Petitioner’s extensive mental health problems dating back to 2004 and where there was evidence Petitioner was incompetent at the time of his guilty plea.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S. Ct.

2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687. The two-part test adopted in Strickland also “applies to challenges to guilty pleas based on ineffective assistance of counsel.” Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). However, “[p]lea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements.” Stalk v. State, 383 S.C. 559, 561, 681 S.E.2d 592, 593 (2009).

In order to find that Petitioner's plea counsel was ineffective for failing to fully investigate Petitioner's mental capacity, Petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of Petitioner's proceedings. Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 50–51 (2004). To show “prejudice within the context of counsel's failure to fully investigate the petitioner's mental capacity, ‘the [Petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’” Matthews, 358 S.C. at 459, 596 S.E.2d at 50 (alterations by court) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Jeter, 308 S.C. at 232, 417 S.E.2d at 595. “The test of competency to enter a plea is the same as required to stand trial.” Matthews, 358 S.C. at 458-459, 596 S.E. 2d at 51. “The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” Id.

In this case, plea counsel should have fully investigated whether Petitioner was

competent to plead guilty because plea counsel was aware that Petitioner suffered from “longstanding” mental health problems, including voyeurism and anxiety. App. 89, ll. 12-22; Cf. Lee v. State, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (2011) (finding “[p]lea counsel could not be deficient if she had no indication of [Petitioner’s] mental status”).

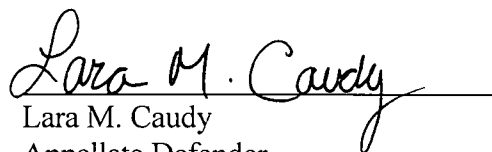
Petitioner testified that he told plea counsel prior to his guilty plea that he did not think he was competent to stand trial due to his mental illness. App. 69, ll. 18-19. Despite Petitioner’s concerns and discussions with plea counsel about his lack of competency, plea counsel never sought a second mental health evaluation to ensure Petitioner was competent to stand trial. Based on the testimony at both the plea hearing and the PCR hearing regarding Petitioner’s diagnoses and extensive mental health problems, Petitioner established by a preponderance of the evidence that he was incompetent at the time he entered his guilty plea. Consequently, Petitioner’s plea counsel was deficient for failing to have Petitioner undergo a second competency evaluation. Matthews, 358 S.C. at 460, 596 S.E.2d at 51.

As to prejudice, plea counsel failed to fully explore and investigate Petitioner’s incompetence because he claimed Petitioner was “articulate” and appeared to understand the conversations they had about Petitioner’s case. App. 83, l. 19 – 84, l. 1. However, Petitioner testified that he was not competent to stand trial at the time of his guilty plea and it was undisputed that he suffered from mental illness. App. 69, ll. 18-19. Plea counsel’s failure to have Petitioner undergo a second competency evaluation prejudiced Petitioner because there was a reasonable probability that Petitioner was incompetent at the time of his guilty plea.” See Matthews, 358 S.C. at 460, 596 S.E.2d at 51. Therefore, the PCR court erred in finding that plea counsel provided effective assistance of counsel.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of November, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO PICKENS COUNTY  
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

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DEWAYNE C. HAGINS,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001532

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PETITION TO BE RELIEVED AS COUNSEL

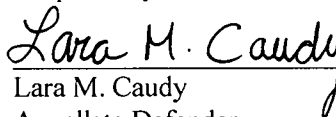
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Counsel for Dewayne C. Hagins states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 11, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Dewayne C. Hagins.

Respectfully submitted,



Lara M. Caudy  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st day of November, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Pickens County  
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DEWAYNE C. HAGINS,

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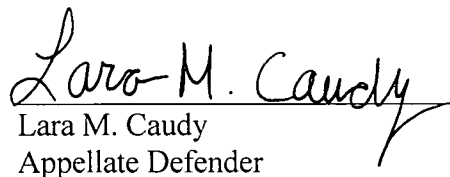
RESPONDENT

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CERTIFICATE OF SERVICE

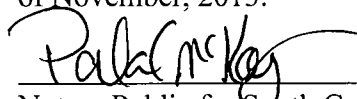
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Dewayne C. Hagins, #298528, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 1st day of November, 2013.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day  
of November, 2013.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.