STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE ERNEST MORGAN,

APPELLANT

APPELLATE CASE NO. 2025-000834

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in refusing to relieve counsel, where there was an irreparable breakdown in the attorney-client relationship, since Appellant was constructively denied the assistance of counsel, or, in the alternative, since Appellant demonstrated satisfactory cause for removal of counsel?

STATEMENT OF THE CASE

During the March term of 2019, an Anderson County Grand Jury indicted George Morgan, Appellant, for attempted murder and possession of a weapon during the commission of a violent crime. R. *(indictment, all pages). Appellant was also indicted for assaulting an officer while resisting arrest. Tr. 541, ll. 6-7. Appellant was tried before the Honorable R. Scott Sprouse and a jury, from April 14 – 16, 2025. Ivan Toney represented Appellant. Joshua Thomas prosecuted the case. Tr. 1.

Appellant was convicted of attempted murder and possession of a weapon during the commission of a violent crime. He was acquitted of assaulting an officer while resisting arrest. Tr. 540, l. 18 – 541, l. 16. Appellant was sentenced to serve concurrent terms of imprisonment of fifteen years for attempted murder and five years for the weapons offense. Tr. 552, ll. 2-6.

This appeal follows.

STANDARD OF REVIEW

Although a "motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion," *State v. Justus*, 392 S.C. 416, 418–19, 709 S.E.2d 668, 670 (2011) (quoting *State v. Gregory*, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005)), the refusal to grant the motion in this case resulted in the constructive denial of counsel. Therefore, this Court should apply a de novo standard of review, as whether Appellant was constructively denied the right to counsel is a question of law. "[A]ppellate courts review questions of law de novo, with no deference to trial courts." *Smalls v. State*, 422 S.C. 174, 181 n. 2, 810 S.E.2d 836, 840 n. 2 (2018). *See also State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) ("Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo.").

ARGUMENT

The court erred in refusing to relieve counsel, where there was an irreparable breakdown in the attorney-client relationship, since Appellant was constructively denied the assistance of counsel, or, in the alternative, since Appellant demonstrated satisfactory cause for removal of counsel.

Relevant facts

Prior to the jury being sworn, the court heard a motion to relieve counsel. Tr. 33, l. 22 – 39, l. 6; Tr. 84, l. 10 – 87, l. 6. The record before the court showed the attorney-client relationship had irreparably broken down. Counsel told the court he was moving to be relieved, Appellant wanted him relieved, and counsel had previously filed a motion to be relieved as counsel but "then I decided to stay in." Counsel stated he was unable to represent Appellant because he was distracted and felt unsafe. Tr. 34, l. 1 – 35, l. 22. Counsel stated the following.

> [H]e has been making death threats to me while we've been sitting here in the jury room, and I am very nervous around him. **I'm in a pending case right now in Pickens County where I'm the victim of a violent crime. I've taken it very bad, and I just don't trust Mr. Morgan enough to sit next to him.** At the very least, he needs to have handcuffs on him. He wants to fire me. I don't mind being – sitting in the back and being standby counsel or something but I – I don't feel safe around him. It's always been a problem. He told me – ran me off last time. He was very hostile. I went to Dr. Maddox. Dr. Maddox, she's a witness. He doesn't want me. And I wrote to him. I've documented it. You want me to come, I will come . . .
>
> And this man is sitting here berating me on top of the death threats saying many, many nasty comments that are just despicable. And he's making death threats, and **I just don't feel safe next to Mr. Morgan. Mr. Morgan is accused of attacking the police, so I'm not sure that if the police are standing behind him, the threats won't stop. I just don't want to be assaulted from the side or something like that** . . .
>
> **He is distracting me. He is affecting my ability. I mean, I'm just sitting here, and I'm getting distracted . . . I have to watch for myself at this point.**

Tr. 34, l. 9 – 35, l. 22 (emphasis added).

Appellant confirmed he wanted counsel relieved. Appellant denied threatening counsel. Appellant stated counsel only wanted to communicate with him by letter, largely refusing to see him. Appellant stated counsel refused to "do his job," and Appellant wanted to "fire him." Appellant stated he had paid counsel $20,000, but "this man won't do nothing." Tr. 36, l. 22 – 38, l. 1. "He's sitting here telling – saying all of this stuff that I didn't do, sir." Tr. 38, ll. 14-15. Appellant stated that someone at the hospital during his commitment had tried to talk to counsel and "she hung up on him because he wouldn't never talk to her." Tr. 38, ll. 20-24.

The court withheld its ruling until it had heard from expert witnesses regarding Appellant's competency to stand trial. Tr. 38, l. 25 – 39, l. 6. One of the expert witnesses was Dr. Donna Maddox, who evaluated Appellant more than once during the pendency of this case. Dr. Maddox testified that at a previous point, Appellant had been "refusing his blood pressure medicines" due to paranoia towards nurses, and that Appellant "certainly" had "paranoid ideations" towards counsel. App. 68, l. 13 – 69, l. 15. In detailing a previous hearing where Appellant was committed for restoration, Dr. Maddox stated she observed in the holding cell Appellant's anger and agitation towards counsel. "[H]e cursed at you. He reported that you were using cocaine, that you were under the influence of drugs." Tr. 70, l. 6 – 72, l. 5.

As part of the *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981), hearing, the court had before it Court's Exhibit #1, a 2024 competency evaluation by the Department of Mental Health, which is on file with this Court. The evaluators addressed problems between Appellant and counsel in the evaluation. Court's Exhibit #1 at 10 – 11. The evaluation report noted that a social worker reached out to counsel regarding Appellant's concerns about counsel. The report described the social worker's call to counsel.

> **During that phone call, [counsel] reportedly "consistently exhibited an unprofessional and derogatory tone regarding his**

> **client," used "profanities when describing his thoughts about his client," and he "indicated no interest in speaking with [Appellant] due to his frustrations and admitted negative feelings towards him."** Taken together, **it appears [Appellant's] concerns about his attorney are reality based** and are not related to symptoms of a mental illness.

Court's Exhibit #1 at 10 (emphasis added).

After finding Appellant competent to stand trial, the court denied the motion to relieve counsel. Tr. 84, l. 10 – 86, l. 12. The court ruled that while "it's clear that there is tension between the lawyer and client," "a serious charge of this nature is very difficult for someone to attempt to represent themselves." (Appellant did not request to proceed pro se.) The court noted it was 3:30 p.m. and there was time that afternoon for Appellant and counsel to meet and discuss the case. Tr. 84, l. 10 – 86, l. 12. The next morning, Appellant told the court that counsel did not "come see me like you told him," but the court did not explore this further, stating only: "I'm not getting into it with your attorney." Tr. 86, l. 15 – 87, l. 5. Appellant reiterated his concerns later in trial, stating counsel had not spoken to him that subsequent day either. Tr. 394, ll. 4-16.

Discussion

Appellant was constructively denied the assistance of counsel. An accused has the fundamental right to the assistance of counsel. U.S. Const. amend. VI; *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). In unusual circumstances, a defendant may obtain reversal of his conviction based on the inadequacy of counsel even in the absence of a showing that would satisfy *Strickland v. Washington*, 466 U.S. 668 (1984). *United States v. Moussaoui*, 591 F.3d 263, 288–89 (4th Cir. 2010). "[O]n some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *United States v. Cronic*, 466 U.S. 648, 659–60

(1984) (citing *Powell v. Alabama*, 287 U.S. 45 (1932)). When counsel is placed in circumstances in which competent counsel very likely could not render assistance, the presumption-of-prejudice analysis of *Cronic* applies. *Mitchell v. Mason*, 325 F.3d 732, 742 (6th Cir. 2003) (citing *Bell v. Cone*, 535 U.S. 685 (2002)).

An accused's Sixth Amendment right to counsel is violated if the defendant is constructively denied counsel through the inability to communicate with his counsel at key times. *See Riggins v. Nevada*, 504 U.S. 127, 144 (1992) (A defendant's right to the effective assistance of counsel is impaired when he cannot cooperate in an active manner with his lawyer. "The defendant must be able to provide needed information to his lawyer and to participate in the making of decisions on his own behalf."); *Geders v. United States*, 425 U.S. 80, 91 (1976) (order preventing petitioner from consulting his counsel "about anything" during an overnight recess impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment).

Courts "have applied the constructive denial of counsel doctrine to cases where the defendant has an irreconcilable conflict with his counsel, and the trial court refuses to grant a motion for substitution of counsel." *Daniels v. Woodford*, 428 F.3d 1181, 1197 (9th Cir. 2005). "Where a criminal defendant has, with legitimate reason, completely lost trust in his attorney, and the trial court refuses to remove the attorney, the defendant is constructively denied counsel." *Id.* at 1198. "[O]nly when a defendant is 'heard by counsel' can a defendant be heard through counsel." *United States v. Smith*, 640 F.3d 580, 588 (4th Cir. 2011) (quoting *Powell v. Alabama*, 287 U.S. at 68-69)). In determining whether a defendant's Sixth Amendment right to substitution of counsel was violated, "we simply ask whether attorney-client communication had so broken down as to prevent the mounting of an adequate defense." *Id.*, 640 F.3d at 591.

This was a very unusual case. Counsel explained he had been the victim of a violent crime and that case was pending and affecting him. Counsel stated he felt unsafe, even with courtroom deputies present, in part based on the circumstances of Appellant's offenses. Counsel averred he was distracted and his abilities were affected. Records from the Department of Mental Health, as well as expert testimony, confirmed a complete breakdown of the attorney-client relationship, and confirmed the relationship was adversarial on both sides. Counsel stated Appellant was making death threats as they sat in the courtroom. Appellant denied making threats. Dr. Maddox testified she had previously witnessed Appellant's agitation with counsel, which she determined was due to Appellant's mental status and caused him to have paranoid ideations about counsel. Counsel, in talking to a social worker, was "unprofessional" and adversarial with respect to Appellant due to his frustrations with Appellant. The trial court's refusal to grant the motion in this case resulted in the constructive denial of counsel. The likelihood that any lawyer, under these circumstances, could have provided effective assistance is so small that a presumption of prejudice is proper. *United States v. Cronic*, 466 U.S. at 659–60.

This Court should review the error de novo, as stated in the standard of review, due to the nature of the constitutional deprivation. However, if the error were reviewed for abuse of discretion, the court abused its discretion. *See State v. Gregory*, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion). After instructing counsel to meet with Appellant during the overnight break and then hearing the next morning from Appellant that counsel did not, the court declined to ask counsel if that was true. The court instead seemingly abdicated its discretion, stating: "I'm not getting into it with your attorney." *See State v. Hawes*,

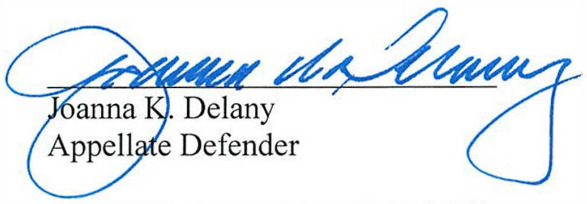
411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (failure to exercise discretion amounts to an abuse of that discretion). The attorney-client relationship had completely broken down and counsel admitted it was affecting his judgment. *See State v. Graddick*, 345 S.C. 383, 386, 548 S.E.2d 210, 211 (2001) (appellant bears the burden to show satisfactory cause for removal of counsel). Appellant certainly met that burden.

This was not a case where there was conflicting evidence before the court which could support either granting or denying the motion. *Cf. State v. Justus*, 392 S.C. 416, 419, 709 S.E.2d 668, 670 (2011) ("given the conflicting evidence before the trial court, and giving deference to its findings of fact, we find no abuse of discretion in the disqualification of [counsel]"); *State v. Childers*, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007) (no abuse of discretion in failing to relieve counsel where defendant based his request on counsel's prior prosecution of him and his perceived lack of counsel's trial preparation; in contrast, counsel told the trial judge he was ready and prepared to go to trial and he had no independent recollection of prosecuting defendant). The jury had not been sworn. Both counsel and Appellant wanted counsel to be relieved. The animosity between Appellant and counsel began as result of Appellant's compromised mental status. Although the court found Appellant met the low bar for competency to stand trial, he still either had paranoid ideations about counsel, or, as stated by the social worker in Court's Exhibit #1, these concerns were "reality based" due to the breakdown in the attorney-client relationship. This was not a case like *State v. Graddick*, 345 S.C. at 386, 548 S.E.2d at 211, where the Court found there was no abuse of discretion in refusing to grant request for new counsel as the defendant "made only the most conclusory arguments why counsel should have been relieved". In this case, it was clear why counsel should have been relieved. The evidence only supported granting the motion.

The court erred in denying the motion to relieve counsel and this Court should reverse. U.S. Const. amend. VI; *United States v. Cronic*, 466 U.S. at 659–60; *Childers*, 373 S.C. at 372, 645 S.E.2d at 235.

CONCLUSION

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



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This 6th day of May, 2026.