

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

SHAWNDELL Q. MCCLENTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDANT

APPELLATE CASE NO. 2025-001385

PETITION FOR WRIT OF CERTIORARI

PURSUANT TO AUSTIN V. STATE

AND JOHNSON V. STATE

PETITIONERS RESPONSE.

Shawndell McClenton

LCI F2A 1127

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Bishopville, S,C 29010

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SC Court of Appeals

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ISSUES PRESENTED

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Handling issues of petitioner's competence during trial by failing to
Secure readily accessible records documenting petitioners' medical
History and prescribed medication that impacted his ability to
Comprehend proceedings during morning hours of his trial
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practicing Medicine instead of law...
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Finding after being told it lacked authority.
5. Trial court erred in allowing trial under the influence of
Antipsychotics without findings of medical necessity or

Consideration of less intrusive alternatives, impacting
demeanor and the fairness of proceedings.

STATEMENT

In May of 2012, petitioner Shawndell McClenton was indicated for(2) course of Burglary of a dwelling, first degree, and breaking and entering a motor vehicle. App. 478-483. On April 21-23,2024, McClenton was tried in Charleston County before the Honorable Clifton Newman and a jury. App.1. Benjamin C. Lewis ¹. And Christina Parnall represented McClenton.App.1. Timmy Finch and Greg Voight represented the State. App.1 .

The jury find McClenton guilty on all three charges. App.398, 11. 3-22. Judge Newman sentence McClenton to twenty four years imprisonment on each of the burglary convictions and five year's imprisonment for the breaking and entering a motor vehicle conviction all sentences to run concurrently. App.424. McClenton was afforded 654 days credit for time already served. App.424.

On direct appeal, counsel for petitioner Joshua Raffini raised two issues on appeal Asserting error in denying directed verdict on the first-degree burglary charges and error in submitting an unreliable identification. The Court of Appeals denied relief through an unpublished opinion. See State v. McClenton. No.2014-000978 (S.C. CT .App. june 22,2016).

Petitioner filed for post- conviction relief asserting trial counsel was ineffective. App.487.

A second PCR application was for and, by order, the second application was consolidated with the original filling. An evidentiary hearing was held before Honorable G. Thomas Cooper, Jr.. on December 6, 2018. App. 505. Thurmond Brooker appeared on behalf of Petitioner and Benjamin Limbaugh represented the State. App. 505.

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1. The trial transcript incorrectly notes counsel Andrew Grimes on the first page in error.

The sole issue addressed during the PCR hearing was trial counsel's handling of petitioners' competency during trial. By written order of dismissal dated February 8, 2019, Judge Cooper denied relief. App. 625-638. No appeal was filed from this order.

Petitioner sought relief through an additional PCR action asserting Mr. Brooker was ineffective in failing to appeal the denial of the consolidated application. App. 639. A hearing was held before Honorable Carmen T. Mullen on May 29, 2025. App. 652. Christopher Murphy appeared on behalf of petitioner and Kylee Kanealey represented the State. App. 652.

The state conceded Petitioner was entitled to belated appellate review of the dismissal of his initial application. App. 655, 11-15-23. Judge Mullen issued an order finding Petitioner is entitled to belated review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 658.

This petition for writ certiorari of the February 8, 2019, order of dismissal denying petitioner relief follows

ARGUMENTS

The PRC Court erred in finding trial counsel was effective in handling issues of petitioner's competence during trial by failing to Secure readily accessible records documenting petitioners' medical history and prescribed medication that impacted his ability to Comprehend proceedings during morning hours of his trial Or move for a continuance pending psychiatric evaluation and failed to protect defendant's competency and Medication related rights .

A. Standard of Review.

The conviction of a person who is mentally incompetent to stand trial violated due process. *Bishop v. United States*, 350 U.S 961 (1956). An "accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational factual understanding of the proceedings against him." *Jeter v. State*. 308 S.C 230,232, 417 S.E.2d 594, 596(1992).

Under *Strickland v. Washington*, 466 U.S 668 (1984) a PCR applicant must show deficient performance of trial counsel and resulting prejudice to prevail. However, in issues of competency to stand trial in PCR settings, the petitioner establishes prejudice by showing " there is reasonable probability he would have determine to be incompetent." *Jeter*, 308 S.C at 234, 417 S.E.2d at 596.

Here, the PCR court erred in finding Petitioner failed to establish a " reasonable probability " that, at least during portions of his criminal trial, petitioner would have been incompetent to stand trial and trial counsel was ineffective in failing to properly in ineffective in failing to properly investigate and argue petitioners' competency during trial.

B. How petitioners competence impacted trial.

Trial counsel admitted during trial knowing about petitioner's mental health issues for the "last few months ". before trial. Mr. Lewis : It was something that was kind of sprung on me in the last few months. I didn't know if it was an issue or not. I did not have issues of my own with competency until the medication caused whatever it did cause.

I definitely agree that would be –if we needed to have him actually evaluated we could go through that.

App. 421, ll.18-25.

On March 18, 2014 hearing transcript a month before trial, State prosecutor Timothy Finch made court aware of his competency concerns with Applicant.

Mr. Finch. At this point, candidly, with the Court, I'm concerned perhaps about competency issues with Mr. McClenton at this stage, but I'm not an expert in that field, by any stretch, but he'll be going to trial on two burg seconds, B and E and Grand larceny.

App. Pg,8, ll 1-6 March 18, 2014 transcript.

While Applicants counsel admitted that there was outer lying mental health issues that were certainly causing problems with him representing him .

App pg 8 line19-20.

At the start of trial, trial counsel acknowledged morning behavioral issue with petitioner leading up to trial. App.7, ll.1-12. The key admission by trial counsel during trial was acknowledging competency issues had arisen " recently." However, since trial counsel had made no effort to secure petitioner's medical records from his pre-trial incarceration, the trial court was left with no documentary support that confirmed what petitioner told court regarding his mental health and reaction to the medications.

The Court: All right tell me about your medical or mental history.

The Defendant: It started when I was younger, in foster care. My mom was taken away from us. I was assaulted while I was in foster care, and they removed me and had me to go stay with my brother's father in California, and I used to go to counseling treatment center and stuff like that.

They just put me in the medication that he said, I think it was in January. I had some issues with my body and stuff like that and the doctor had come to see me and prescribed me with the medicine that I'm on now.

THE COURT: Okay tell me, what kind of medicine are you on

THE DEFENDANT: Schizophrenia, bipolar

THE COURT: And what did that do for you, the medicine?

THE DEFENDANT: I guess it stops the voices I hear now and then makes me

sleep a lot. Slows me down, I guess

App,8, ll. 3-23

The impact of petitioner's ability to follow and comprehend the trial proceedings was so profound that the trial court delayed proceedings in order to attempt to speak with medical staff. App.210- 217 l. This resulted in nothing more than a non- medical staff member the Mental Health Coordinator agreeing to relay messages of concern regarding petitioners' medication to medical professionals. App.213, l.17- 215 l. 11. According to the trial court, they had dealt with matters that were not essential (one would assume for competency purposes) during the period of petitioner's problems.

During the day and during the night, but I think we were a little more frantic when we were calling you earlier, and we have done some other things and he seems to be in fairly for shape, but I think if you would make a not in your records that this is so important, the judged called in mid- trial to alert y'all to issues so that if it would have been granted, had it been addressed better the beginning of trial, but we've kind of monitored it as we've seen fit , and I'm convinced that it has not affected his ability to have a fair trial and to be focused.

On the advice of his counsel and the solicitor we decided to let the jury in. They've been waiting for two hours to come into the court, and we've dealt with other issues in which his involvement wasn't essential. So I think that sort of takes care of us for the time being.

App. 214, l. 21-215,l. 11(emphasis added).

Absent supporting documentation and due to trial counsel's assertion that petitioner may be conveniently faking symptoms, the trial court found petitioner competent and continued the trial through conviction and sentencing. This imposed an elevated burden on the defendant to prove incompetency..App.16,l 11-17, l. 13.

The trial court seemingly invited trial counsel to request an evaluation under State v Blair, 275. S. C, 529, 273 S.E.2d 536 (1981), but trial counsel made no such request and proposed no solution to the request

by the trial Court.² At sentencing, the trial court noted this continued concern that petitioner was simply faking his mental health problems and associated reactions to the prescribed medication.

THE COURT: The things I'm trying to figure out about Mr. McClenton, and this medication that he's on and this mental situation is whether he really has a mental problem, whether that is part of attempting to avoid his responsibility for these offenses and to go to the extent of taking psychiatric medication as part of that process

Mr. Lewis: I think that's question is beyond my ability to respond. I don't know. As I've aid repeatedly, what actually is going on in his head.

App.420, ll. 13-22.

C. How the matter was addressed at PCR

Petitioner testified at PCR regarding the significant reaction he has to the prescribed medications leading up to trial. App. 524-531. According to petitioner', the new medication significantly impaired and impacted his ability to function:

I explained to him what I was experienced, and he did bring it the judge that morning. You know, that he let the judge know that I was going through the side effects and what—and what was happening. At that time the judge, you know, asked him week what are you—well, read the trans—it said what are you asking me or what are you trying to bring to the court or before this court; you know, are you asking me for something because usually when someone brings this to the courts attention they are asking for something.

I mean I was seemingly able to communicate here and there, You can know , he would tell me --- you know, he has let me know to sit up or you know, I would nod off, wake me up. You know, and they were stopping the court periodically throughout the whole event, you know, to see what was going on.

²The Court: He doesn't seem sleepy or groggy or something but typically when a lawyer presents a problem they have some solution they propose as well.

Mr. Lewis: I understand that, judge .

THE COURT: Not just throwing it at the judge as a problem.

App.17, ll. 2-7

App. 529, ll. 3-18 .

PCR counsel admitted the records maintained by the Charleston County Detention Center that showed, leading up to trial, petitioners mental health struggles and the medications prescribed to treat his symptoms. This medication was prescribed in March 2014 shortly before trial started. App. 606-624.

While the admitted records contain notations made during trial(and petitioners' reaction to the newly prescribed medications). Certainly the fact that petitioner was recently prescribed antipsychotic medication with known side-effects was both documented and available to trial counsel. Trial counsel acknowledged knowing about side effects from the particular medications during trial.

MR. LEWIS: Judge, I did learn recently that he had been prescribed Zyprexa and Cogentin. Zyprexa is usually for paranoid Schizophrenia, and Cogentin is normally to treat the side effects that are sometimes caused by that.

App. 6, ll. 16- 20

By contrast to how he presented the issue to the trial court(as a new observation that may be either for show or true reaction to the medications)., at PCR trial counsel was adamant that there was no basis for concern regarding petitioners' competence leading up to trial and claimed it was a surprise that petitioner behaved erratically:

Q. So what do you mean at least at that particular period of time when the judge asked you about his medical history and you said you didn't have his medical—his mental health history?

A. I didn't believe there was one, I had never had any reason too question his competency. And so as you can read throughout sort of shows up the date of trial in a different way than he has in the past.

You know, he has made these claims and me being racist and things like that. And actually had sought to have me relieved and then that was denied by Judge McDonald.

But I mean conflicts with clients are pretty normal.

Q. Yeah

A. But the competency things was sort of a surprise to me until we are dealing with trial.
App.552, l. 16-553, l. 5.

Mr. Finch. This is the first I've heard of any grievance information. At this point , candidly, with the Court, I'm concerned perhaps about competency issues with Mr. McClenton at this stage, but I'm not an expert in that field, by any stretch, but he'll be going to trial on two burg seconds, B and E and Grand larceny.

THE COURT: Do you have any reason to believe that he's not competent to stand trial or assist you.

Mr. Lewis: It's not a simple yes or no on that Judge. He has talked about some mental health issues .

But there are some other outer lying mental health issues that are certainly causing problems with my representation of him.

App. March 18, 2024 transcript pg 8.ll. 1-6 , pg 8. ll 9-10 . Pg8 ll, 19-20

While the PCR court ultimately agreed with counsels assertion that he was not in notice prior to trial to investigate or be prepared to address the petitioners' competency, that claim and that holding are directly contradicted by trial counsel's admission during trial that the mental health concerns has been arising over the month before trial(a fact that corresponds to when the Charleston County jail records indicate petitioner was first prescribed medications) and trial counsels admitted knowledge of the purpose and side-effects of the prescribed medications on the first day of trial. App. 6, ll16-20; 421,ll,18-25. Trial counsel admitted he failed to obtain the records from the Charleston County jail but also, despite contrary assertions made during trial, claimed he was not on notice of any need to obtain the records until trial started.

App.552, l.16-553,l,5.

D. How the PCR Court ruled.

The PCR court found there was no basis to question petitioner's competency on the part of trial counsel: "This Court counsel's testimony particularly credible and insightful. Counsel

testified that he had no reason to believe that Applicant had competency issues and that he was actively engaged throughout the trial in strategizing his own defense”. App. 637. In addition, the PCR court found there was no reasonable probability that petitioner have been found incompetent at the time of trial. App.637.

E. How the PCR court erred.

Respectfully, the PCR court’s finding that trial counsel was credible during the PCR hearing that he was unaware of the competency question until after trial started is not supported by the records of trial transcripts and previous court hearing transcripts. Trial counsel was certainly both aware of petitioners’ medication and his erratic behavior at the very start of trial. App 8, ll. 3-23. During trial, trial counsel acknowledged morning behavioral issues with petitioner leading up to trial and not simply at the very start of trial. App 7, ll. 1-12..

Despite the clear statements in the record, the PCR court elected to believe trial counsel’s memory years later that symptoms appeared suddenly and were, in trial counsels opinion, convenient and not a basis to question petitioners’ competence. App. 593, ll.3-7

This case is comparable to Ramirez v. State, 419 S.C 14 795 S.E2d 841 (2017). In Ramirez, plea counsel “ was clearly on notice, not only from the Gedo report, but from his own interactions with Ramirez, that Ramirez suffered from severe mental retardation, was functioning at the level of a four- to- seven year old, and had difficulty in comprehending the legal proceedings”. Id,.419 S.C. at 22-23, 795 S.E.2d at 845-46.

Here the trial counsel was on notice leading up to trial that petitioners’ medications were impacting his cognitive abilities. Records were readily available to trial counsel to support the fact that the prescribed medications were recent, compounding the known side-effects.

Petitioners appearance early during trial proceedings put trial counsel clearly on notice that petitioner had difficulty comprehending the proceedings, to the point the trial court tried to get a mental health professional on the phone in a bit of a frantic during the proceedings. App 214, l.21-215, l. 11.

Despite this clear notice, trial counsel made no request for a competency hearing under *State v. Blair*, 275 S.C.529, 273 S.E 2d 536 (1981). Not even when The prosecuting solicitor voiced his own competency concerns to the court during the March 18, 2014

Grievance hearing. Had trial done so, there is a reasonable probability that petitioner would have been deemed incompetent during key portions of his trial. The conviction of a person who is mentally incompetent to stand trial violated due process.

The competency requirements of *Bishop v. United States*, 350 U.S 961 (1956) and *Jeter v. State*, 308 S.C 230, 417 S.E2d 594 (1992) do not show trials that avoid” important” aspects during periods of incompetency and proceed with the important matters during Windows of competency.

App. Pg7 ll.25 pg 8 ll 1-6 March 18,2014.

2.The PCR Court Erred in Finding Trial Counsel Effective Where Counsel Failed to Investigate Competency, Gave Medical Advice, and Allowed the Trial Court to Substitute Lay Medical Judgments for Required Expert Findings After Being Warned It Was “Asking Someone from the Legal World to Make a Medical Call.” U.S. Const. amends. VI, XIV.

The Constitution forbids legal actors from making medical determinations about competency and psychotropic medication. *Pate v. Robinson*, 383 U.S. 375, 385-86 (1966); *Riggins v. Nevada*, 504 U.S. 127, 135 (1992); *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

This record shows trial counsel and the trial court did exactly that — after being told on the record: “you’re asking someone from the legal world to make a medical call,” App. 212, ll. 13-15. That single error violated Petitioner’s rights under *Strickland*, *Pate*, and *Riggins*.

3. Trial counsel rendered ineffective assistance under Strickland by practicing medicine instead of law.

Counsel's duty is to investigate, not diagnose. Strickland, 466 U.S. at 691; Ramirez v. State, 419 S.C. 14 (2017). The State raised competency concerns a month before trial: "I'm concerned perhaps about competency issues with Mr. McClenton," March 18, 2014 pg Tr. 8, ll. 1-6.

Counsel admitted he knew Petitioner was on Zyprexa for schizophrenia and Cogentin for side effects, App. 6, ll. 16-20, and that mental health issues had been "sprung on me in the last few months," App. 421, ll. 18-20.

Yet counsel obtained no Charleston County jail records, App. 606-624, showing the meds began March 2014, consulted no psychiatrist, and sought no Blair hearing under State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). Instead, counsel admitted giving medical advice: "I said, You're on trial. Don't take your medicine tonight," App. 212, ll. 7-8, while conceding "We don't know how big or bad these symptoms are," App. 212, ll. 17-18.

Telling a schizophrenic client to stop antipsychotics mid-trial is not strategy — it's medical malpractice. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). Counsel made a medical call he was unqualified to make, creating a reasonable probability Petitioner would have been found incompetent had counsel investigated. Jeter, 308 S.C. at 234. U.S. Const. amend. VI.

4.. The trial court committed structural error under Pate by making a medical finding after being told it lacked authority.*.

Due process requires a competency hearing when bona fide doubt exists. Pate, 383 U.S. at 385; Drope v. Missouri, 420 U.S. 162, 181 (1975). The court observed Petitioner "wasn't doing fine," App. 212, l. 3, and was "sort of shaking... nodding," App. 211, ll. 1-3.

The court then made a "frantic" mid-trial call, App. 214, ll. 21-23, but reached only a Mental Health Coordinator who disqualified herself: "I'm not a doctor... cannot make changes to

medication,” App. 211, ll. 20-21, and “I’m not a doctor, so I don’t want to... make too many comments about... medications,” App. 212, ll. 21-24.

She warned the court: “That’s a tough call because you’re asking someone from the legal world to make a medical call,” App. 212, ll. 13-15, and said “maybe he needs a medical assessment... our medical doctor might be” needed, App. 211, ll. 16-17; App. 213, ll. 24-25.

Despite this, the court refused an exam under S.C. Code Ann. § 44-23-410 and rendered its own diagnosis: “I’m convinced that it has not affected his ability to have a fair trial and to be focused,” App. 215, ll. 5-6, estimating Petitioner was “about 95 percent,” App. 213, l. 19.

Pate holds a judge’s “own observation” cannot substitute for an expert hearing. 383 U.S. at 385-86. This is structural error not subject to harmless-error review. McCoy v. State, 401 S.C. 363 (2013). U.S. Const. amend. XIV.

5. Trial court erred in allowing trial under the influence of

Antipsychotics without findings of medical necessity or Consideration

of less intrusive alternatives, impacting demeanor and the fairness of proceedings.

Riggins v. Nevada, 504 U.S. 127, 135 (1992), and Sell v. United States, 539 U.S. 166, 181 (2003), prohibit involuntary antipsychotics at trial absent expert testimony that they are medically appropriate, necessary, and that less intrusive alternatives were considered. No doctor testified here. The only witness said she was unqualified to opine on medication, App. 212, ll. 21-24.

The witness proposed a less intrusive alternative — “Is it possible to wait for the court proceedings until later on in the day?” App. 213, ll. 7-8 — which the court rejected without medical input. The court then speculated Petitioner was “faking,” App. 420, ll. 13-22, the exact demeanor prejudice Riggins identified, 504 U.S. at 137.

When the “legal world” makes a “medical call,” App. 212, ll. 13-15, the resulting conviction violates due process. U.S. Const. amend. XIV.

CONCLUSION

Conclusion: Strickland, Pate, and Riggins all bar the same thing: the legal world making medical calls. Counsel gave medical advice, the court made a medical diagnosis, and both happened after the record warned them not to. The PCR court erred in finding counsel effective. Relief should be granted.

This Court should grant the petition for certiorari and review whether trial counsel was Effective when he allowed petitioner to be tried while suffering significant side-effects of mental health medications that rendered petitioner' incompetent during proceedings of his criminal trial.

Shawndell McClenton #2555le3

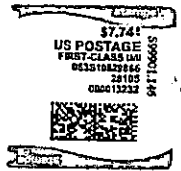
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