

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable S. Bryan Doby, Circuit Court Judge

HAKEEM EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001620

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

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STATEMENT

Petitioner was indicted on May 7, 2021, by a Laurens County grand jury for the murder and armed robbery of Rasham Eugene Walker on January 23, 2020. App. 119 – 124. Petitioner appeared before the Honorable Frank R. Addy, Jr. on August 4, 2021, and entered a guilty plea to voluntary manslaughter and armed robbery. App. 1; 121; 125. Petitioner was represented by Mike Gambrell, and David Stumbo appeared on behalf of the State. App. 1. Judge Addy was informed of petitioner's mental health problems before accepting the plea. App. 5, l. 20 – 6, l. 13. Plea counsel informed Judge Addy of his concerns but claimed he had investigated the matter and believed petitioner was competent.

MR. GAMBRELL: Judge, there were. Initially when I first met with Mr. Evans and we actually talked about, you know, what the Court and the law requires with regard to him being competent enough to stand trial or to enter a plea. We discussed those. He has always been able to discuss his case with me. He has always been able to understand the questions that I have asked him. Always responded in an appropriate manner. So there is, without a doubt, mental health issues with Mr. Evans going all the way back into his childhood. However, I don't believe they would meet the State's standard for a competency hearing. And I certainly don't believe that he would be ruled incompetent.

THE COURT: That is something that you have explored and investigated?

MR. EVANS: Yes, sir.

App. 6, l. 24 – 7, l. 14.

Judge Addy accepted the plea, and sentenced petitioner to twenty-three years' incarceration. App. 121; 125. Petitioner filed a *pro se* appeal, which was ultimately dismissed as untimely. App. 41. Petitioner filed the present application for post-conviction relief alleging

ineffective assistance of counsel and questioning his competence at the time his plea was entered. App. 33 – 39.

Ashley McMahan was appointed to represent petitioner. App. 52. PCR Counsel filed a motion to be relieved as counsel on July 28, 2024. App. 52. A hearing was held before the Honorable J. Derham Cole on August 22, 2024. App. 54. Ms. McMahan appeared on behalf of petitioner and Zachary Jones represented the State. App. 54. As discussed below, Judge Cole denied the motion by giving petitioner a false choice rather than addressing the merits of petitioner's concerns over PCR counsel's preparation. App. 53.

Ms. McMahan continued to represent petitioner through the evidentiary hearing before the Honorable S. Bryan Doby on April 1, 2025. App. 65. Mr. Jones continued on behalf of the State. App. 65. Petitioner renewed his effort to relieve Ms. McMahan and have new counsel appointed, with the PCR court denying the motion on the basis that Judge Cole's earlier ruling prevented any change in counsel, as discussed in detail *supra*. Judge Doby denied relief by written order of dismissal. App. 108.

This petition for certiorari follows.

ARGUMENT

The PCR court erred as a matter of law in feeling bound by the decision of Judge Cole from an earlier proceeding to deny petitioner's request to relieve PCR counsel, who had not prepared for the evidentiary hearing, and appoint new counsel.

“While there is no constitutional obligation to appoint counsel in a PCR matter, in South Carolina, if a PCR application presents questions of law or fact requiring a hearing, and the applicant is indigent, state law provides that counsel must be appointed or a knowing, intelligent waiver of the right to counsel must be obtained.” Richardson v. State, 377 S.C. 103, 105–06, 659 S.E.2d 493, 494–95 (2008). “While an applicant may have the right to reject or discharge court-appointed counsel and proceed *pro se* or retain his own counsel, he does not have the right, without a showing of satisfactory cause to refuse or dismiss the counsel appointed and have other counsel appointed.” Id., 377 S.C. at 06, 659 S.E.2d at 495 (*citing State v. Jones*, 270 S.C. 587, 243 S.E.2d 461 (1978)).

A refusal to relieve counsel of record, who refused to adequately prepare and present applicant's basis for relief in the PCR context, would be an abuse of discretion requiring reversal and remand for new PCR hearing.

A. How the matter was raised at PCR.

At the start of the PCR evidentiary hearing, petitioner revisited the issue surrounding the representation by appointed counsel.

THE APPLICANT: When it comes to my lawyer, I've been trying to fire her. I don't think she have my best interest. She had not did much, and I mean, I don't really understand a PCR, to be honest with you. She had not the time to break that down to me. She even told me that the State don't have the money to get the test done that

I need done for my learning disability and my mental health. She told me that the State can't do -- can't pay for that. So, I mean, you don't even have conversation about my case. We have a conversation about how I don't want her on my case. But I'm here today to ask you, would you please, please, find in your heart to give me another lawyer, please?

App. 70, ll. 6 – 17.

In response, the PCR court referenced a ruling by Judge Cole following a motion to relieve counsel hearing from August 22, 2024. App. 54; 71, ll. 2 – 15. The PCR court abandoned its inherent authority to relieve PCR counsel and appoint new counsel by claiming an inability to alter Judge Cole's prior ruling. "And so, that's already been ruled on by a judge previously. *I can't go behind that judge and now say, I'm going to give you a new lawyer, because Judge Cole has already considered that and given you your options.*" App. 71, ll. 9 – 12 (emphasis added). The PCR court, in responding to petitioner's request for a continuance and appointment of different counsel to prepare, told petitioner:

Well, but, Mr. Evans, that's the order that's been filed in this case. It is the law of the case, meaning that those are the options that you had, and you had had those, and at least knew about those, since August of last year. And here we are in March and we're ready to have the case heard. And so Judge Cole indicated to you what your options were a fair number of months ago. And now I'm not going to grant a continuance under the circumstance.

App. 73, l. 21 – 74, l. 3.

Moreover, in the hearing before Judge Cole, the circuit court denied *an ability to appoint* a different counsel to replace petitioner's lawyer.

THE COURT: Well, that's not going to happen unless you hire somebody. You can hire anybody you want to, but if you want a court appointed lawyer, you don't get to pick and choose. Ms. McMahan has been appointed to represent you, she's your lawyer now. *If you fire her, you won't get another court appointed lawyer. You'll have to hire somebody.* If you can't hire somebody, you'll

have to present this application yourself and I'm confident that you can't do that. So are you going to stay with Mr. McMahan?

MR. EVANS: Looks like I have no choice.

THE COURT: Well, you have a choice. You can hire somebody or represent yourself. Those are the two choices you've got. One of them is not good, and that's representing yourself. The other one is probably not reasonably likely to happen, that's hiring somebody. So the third is keeping with who you got.

MR. EVANS: I don't have no choice.

THE COURT: What are you going to do? Those are your three choices, so pick one.

MR. EVANS: I'm sticking with the one I got.

THE COURT: All right. Stick with Ms. McMahan.

App 59, l. 22 – 60, l. 17 (emphasis added).

B. How the PCR court erred.

A trial court has the inherent authority to relieve appointed counsel and appoint new counsel. *See State v. Jones*, 270 S.C. 587, 589, 243 S.E.2d 461, 462 (1978) ("Our decision in this case should not be interpreted to foreclose a trial judge from, in his discretion, offering to appoint other counsel for a defendant who no longer desires the assistance of his court appointed counsel."). While mere disagreements of trial tactics would not demand such action, ensuring a "fair trial with adequate representation and to maintain the integrity of the judicial process" would justify such discretion. *State v. Cottrell*, 421 S.C. 622, 635, 809 S.E.2d 423, 430 (2017). This inherent authority remains, even if a prior circuit court judge has denied an earlier request to appoint new counsel. *See Hines v. State*, 443 S.C. 32, 43, 902 S.E.2d 377, 382 (2024) ("We agree that Judge Hayes' advice that he would appoint Hines a lawyer conflicted with Judge

Hall's earlier statement. But Hines could have taken Judge Hayes at his word and taken him up on the offer to appoint him counsel; at the very least, he could have sought clarification.").

Moreover, requiring "a trial judge to preside over a trial, exhausting the time of attorneys, jurors, and judicial staff" in the face of counsel's "conduct falling below the accepted standards of the legal profession" dictate removal of unprepared PCR counsel and appointment of new counsel. Cottrell, 421 S.C. at 636, 809 S.E.2d at 431.

Here, the PCR court erred as a matter of law in feeling bound by the decision of Judge Cole from an earlier proceeding to deny petitioner's request to relieve PCR counsel and appoint new counsel. Even if this Court were to consider Judge Cole's original statements as proper exercise of discretion due to a typical disagreement with PCR counsel's strategic decision making (which petitioner concedes would not justify relief of counsel), the fact that months had passed between Judge Cole's original ruling and the PCR hearing would clearly negate any binding nature of that ruling on the PCR court. During the passage of time, PCR counsel could have met with and discussed the petitioner's mental health history; she did not. App. 72, ll. 17 – 20. PCR counsel could have sought funding for an expert witness to evaluate petitioner's mental health problems and review his available records; she did not. App. 70, ll. 6 – 17. Stated plainly, PCR counsel could have justified Judge Cole's original decision by actively preparing petitioner for the PCR hearing and conducting an adequate investigation.

The PCR court erred by refusing to consider the merits of petitioner's request to relieve and appoint new counsel as dictated by this Court's opinions in State v. Jones, 270 S.C. 587, 243 S.E.2d 461 (1978); State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423 (2017) and Hines v. State, 443 S.C. 32, 902 S.E.2d 377 (2024). Had the PCR court considered the merits of petitioner's request to relieve PCR counsel, the PCR court would have discovered that PCR counsel was not

prepared to present any evidence in support of petitioner's assertions surrounding his mental health other than the assertions of petitioner and his plea counsel. That PCR counsel could have obtained additional supporting evidence which was demonstrated by trial counsel's acknowledgement of petitioner's mental health problems.

You know, when I met with Mr. Evans first, I basically just tried to get as much information from him as I can. I learned about his family. He has three kids. *He was in an IEP when he was, you know, in primary school, and then that continued all the way, I believe, through high school. He was receiving Social Security disability, and I think that continued after he turned 18. And, you know, based on my review of the records, it seemed like he was getting some counseling while he was in school. I believe he was diagnosed with bi-polar disorder, depression, anxiety, but once he finished school, the treatments and the counseling pretty much stopped. And that's sort of when he started, you know, having run-ins with the law. And that was about when he was 18.*

App. 94, l. 21 – 95, l. 9 (emphasis added).

When confronted with petitioner's assertions that PCR counsel had failed to properly prepare for the hearing in terms of obtaining evidence supporting his mental health problems, the PCR court should have inquired of PCR counsel to determine whether or not counsel was adequately prepared to present this aspect of petitioner's claims. Failing to conduct a hearing on the merits of removal of appointed counsel by relying upon an earlier decision from a different circuit court judge was an error of law requiring reversal and a remand. In effect, the decision by the PCR court to allow the evidentiary hearing to proceed was a denial of petitioner's right to counsel. *See Nance v. Ozmint*, 367 S.C. 547, 552, 626 S.E.2d 878, 880 (2006) (*Nance II*).

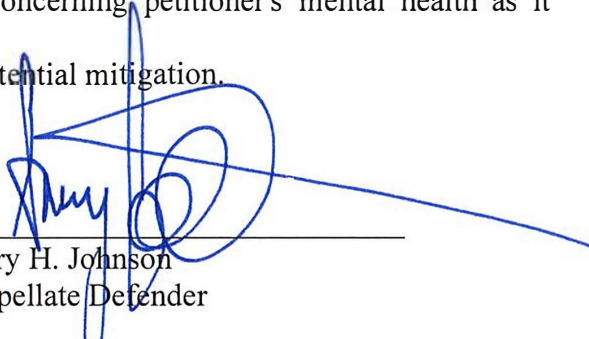
First, prejudice is presumed when the defendant is completely denied counsel “at a critical stage of his trial.” *Cronic*, 466 U.S. at 659, 104 S. Ct. 2039. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer “entirely fails to subject the prosecution's case to meaningful adversarial testing,” thus making “the adversary process itself presumptively unreliable.” *Id.* Third, the Court identified certain

instances “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.” *Id.*

Nance II, 367 S.C. at 552, 626 S.E.2d at 880.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant Certiorari, reverse petitioner's denial of post-conviction relief, and order a new evidentiary hearing with appointed counsel to properly prepare and present evidence concerning petitioner's mental health as it related to his competency to enter a guilty plea and potential mitigation.



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This 22nd day of June, 2026.