

In the Supreme Court of the United States

ANTHONY TYRONE WILLIAMSON, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA COURT OF APPEALS**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether the South Carolina Court of Appeals erred in affirming Petitioner's convictions where the trial court allowed the State to call Petitioner's case to trial in Petitioner's absence and without any representation by counsel when there was no evidence that Petitioner ever understood that he had a Sixth Amendment right to counsel and chose to waive that right?

- II. Whether the South Carolina Court of Appeals erred in affirming Petitioner's convictions where the trial court allowed the State to call Petitioner's cases to trial in Petitioner's absence when the State failed to show that it had meaningfully informed Petitioner of the actual trial dates thus depriving Petitioner of his fundamental right to be present at his own trial?

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PETITION FOR WRIT OF CERTIORARI

Counsel for Anthony Tyrone Williamson petitions the Court to issue a writ of certiorari to review the judgment of the South Carolina Court of Appeals affirming his convictions for (1) trafficking cocaine base, second offense; (2) possession of cocaine base with the intent to distribute within proximity of a school or park; and (3) trafficking cocaine base, third offense. Petitioner seeks review where the State of South Carolina has deprived him of his Sixth Amendment right to counsel and of his fundamental right to be present at his own trial.

OPINION BELOW

The opinion of the South Carolina Court of Appeals affirming Petitioner's convictions is reported as State v. Anthony Tyrone Williamson, 2012-UP-089 (filed February 22, 2012). App. A2-A3.

JURISDICTION

The judgment of the South Carolina Court of Appeals was entered on February 22, 2012. App. A2-A3. The petition for rehearing was denied on May 4, 2012. App. A4. Petitioner filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on August 1, 2012 which was denied by Order of the South Carolina Supreme Court on October 18, 2013. App. A1. This Court's jurisdiction is invoked pursuant 28 U.S.C. § 1257(a), Petitioner having asserted below and asserting herein deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense."

This case also involves the Fourteenth Amendment to the Constitution of the United States which provides in pertinent part, "[N]or shall any state deprive any person of life, liberty, . . . without due process of law"

STATEMENT OF THE CASE

Factual Background

Petitioner was indicted on January 10, 2008 for trafficking cocaine base; possession of cocaine base with the intent to distribute ("PWID") within the proximity of a school or park; and two counts of possession of cocaine base. R. 237. On April 13, 2009, the State called Petitioner's case to trial before the Honorable Ralph King Anderson, Jr. and a jury on one count of trafficking cocaine and one count of PWID within proximity of a school or park. R. 1-74. Neither Petitioner nor any counsel representing Petitioner were present, and the trial court noted that it would have to "ascertain whether [Petitioner's] case can proceed." R. 13. The trial court recognized it would need to analyze whether the defendant voluntarily waived his right to be present and whether the defendant was warned that a trial would proceed in his absence if he failed to attend. R. 16. The State then called an employee of the county clerk of court's office to testify. R. 14.

According to her testimony, Petitioner received a bond on September 14, 2007. As a condition of the bond, Petitioner was to appear for General Sessions Court beginning October 15, 2007. R. 15. If no disposition was made during that term, Petitioner was ordered to “appear and remain throughout each succeeding term of court until final disposition is made of its case, unless otherwise ordered by the court.” R. 15-16; 235.

When asked whether Petitioner was given or provided a copy of this bond, the clerk responded, “I believe he was.” R. 16. The clerk further claimed Petitioner was advised of the conditions of his bond because Petitioner had signed the bond on September 14, 2007. R. 16. Based on the clerk’s testimony, the trial court concluded that Petitioner was given notice to appear for court and was made aware of the fact he could be tried in his absence. The trial court ruled that “the State may proceed with a trial in absentia” even though the State chose to call the case to trial 544 days after Petitioner was initially noticed on September 14, 2007 to appear in court.¹ Petitioner never received any additional notice that his trial was going to be held on April 13, 2009. There being no attorney present, no objection was interposed at this time. Accordingly, Petitioner was tried *in absentia* and without counsel and ultimately convicted by the jury on both charges. R. 71. The trial court sealed Petitioner’s sentences. R. 73.

Nine days later, on April 22, 2009, Petitioner was again tried *in absentia* before the Honorable Michael G. Nettles on separate charges of trafficking cocaine base

¹ At the time of Petitioner’s trial in South Carolina, the prosecuting attorneys controlled the docket. S.C. CODE ANN. § 1-7-330.

even though Petitioner received no notice of the trial date except for the general notice on a bond form he signed on October 9, 2008. R. 91-93. However, unlike Petitioner's first trial, this trial court appointed a public defender to represent Petitioner even though this public defender had no knowledge of Petitioner's case. R. 97-98. The court-appointed public defender had only approximately two hours to prepare for trial. R. 97-110. At the conclusion of the second trial, the jury found Petitioner guilty as charged. R. 212. The trial court sealed Petitioner's sentences. R. 213-215.

On October 29, 2009, Petitioner appeared before Judge Anderson for the opening of the sealed sentences from Petitioner's first and second trials. R. 218-233. On the April 13, 2009 convictions, the trial court sentenced Petitioner to fifteen years imprisonment for trafficking cocaine base, second offense, and ten years imprisonment for PWID within proximity of a school or park. R. 222. The trial court sentenced Petitioner to twenty-five years imprisonment on the April 22, 2009 trafficking cocaine, third offense, conviction. R. 222-223. The sentences were to run concurrently for a total of twenty-five years imprisonment. R. 222; 231.

The State Appellate Decision

The Appellate Division of the Office of Indigent Defense took over Petitioner's appeal after the public defender filed notices of intent to appeal all sentences imposed upon Petitioner. The April 13 and 22, 2009 convictions and October 29, 2009 sentences were consolidated for appeal. On appeal, Petitioner argued to the South Carolina Court of Appeals that the trial court violated Petitioner's Sixth Amendment right to have counsel at all "critical" stages of the proceeding by trying the Petitioner

in absentia and without counsel where the trial court never inquired as to whether Petitioner knowingly and voluntarily waived his right to counsel. Petitioner cited this Court's precedents in Iowa v. Tovar, 541 U.S. 77 (2004); Argersinger v. Hamlin, 407 U.S. 25 (1972); Montejo v. Louisiana, 129 S.Ct. 2079 (2009); Patterson v. Illinois, 487 U.S. 285, 298 (1988); Moran v. Burbine, 475 U.S. 412 (1986); Faretta v. California, 422 U.S. 806 (1975); United States v. Wade, 388 U.S. 218 (1967); Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942); Johnson v. Zerbst, 304 U.S. 458 (1938); and Powell v. Alabama, 287 U.S. 45 (1932).

Petitioner additionally argued the State violated the Due Process Clause of the Fourteenth Amendment where it called Petitioner's two cases to trial without meaningfully informing Petitioner that a trial would occur on those particular dates and would proceed in his absence if he failed to appear. Petitioner argued that the State's reliance on "the boilerplate language of a bond form that insisted that [Petitioner] remain tethered to the courthouse until it decided to exercise its power and call his case to trial" failed to offer Petitioner meaningful notice that his case would be tried and was a fundamental denial of due process. With respect to this argument, Petitioner cited this Court's precedents in Peralta v. Heights, 485 U.S. 80 (1988); Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover Bank & Tire Co., 339 U.S. 306 (1950); Milliken v. Meyer, 311 U.S. 457 (1940); and Grannis v. Ordean, 234 U.S. 385 (1914).

The South Carolina Court of Appeals decided the case without oral argument and affirmed Petitioner's convictions in an unpublished opinion. App. A2-A3. The

Court of Appeals held Petitioner's issues concerning his right to counsel and his being tried in absentia were not preserved for appeal and therefore refused to consider whether Petitioner's constitutional rights had been violated despite the fact that the trial judges in both Petitioner's first and second trials considered and ruled upon the very constitutional issues Petitioner raised in his appeal.

Petitioner petitioned the South Carolina Supreme Court to review the decision of the Court of Appeals on August 1, 2012 which the court denied by order filed October 18, 2013. App. A1.

REASONS FOR GRANTING THE PETITION

This case presents a compelling need for this Court's review. The South Carolina appellate courts, in affirming Petitioner's convictions, have sanctioned the deprivation of Petitioner's Sixth Amendment right to counsel and his right to be present at his own trial. This Court should grant the petition to prevent criminal defendants from being tried and convicted in the State of South Carolina (1) in their absence without any representation of counsel; and (2) in their absence without any meaningful notice of the actual trial date.

The South Carolina Court of Appeals avoided addressing the egregious violation of Petitioner's constitutional rights by cloaking itself with the shield of the rules of error preservation. In both Petitioner's first and second trials, however, the trial judges considered and ruled upon the constitutional issues set forth in this Petition. Both trial judges heard testimony and ruled upon whether it was proper for Petitioner to be tried *in absentia*. The trial judge in Petitioner's first trial was no doubt

aware when it ruled that Petitioner could be tried *in absentia* that it was also implicitly ruling that Petitioner could be tried without counsel when there was no counsel present at the trial on behalf of Petitioner.

In addition, Petitioner has a fundamental right to the assistance of counsel and any erroneous deprivation of that right is *per se* reversible error. See Chapman v. California, 386 U.S. 18, 23, n.8 (1967); Gideon v. Wainwright, 372 U.S. 335 (1963); State v. Thompson, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003). Where the trial judge knowingly allowed Petitioner's first trial to proceed in his absence and without any assistance of counsel, such action by the trial judge clearly deprived Petitioner of his basic constitutional rights and should be subject to reversal.

I. The South Carolina Court of Appeals erred in affirming Petitioner's convictions where the trial court allowed the State to call Petitioner's case to trial in Petitioner's absence and without any representation by counsel when there was no evidence that Petitioner ever understood that he had a Sixth Amendment right to counsel and chose to waive that right.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975); see also Gideon v. Wainwright, 372 U.S. 335, 339-40 (1963). The Sixth Amendment also guarantees that, once the adversarial judicial process has begun, a criminal defendant has the right to have counsel present at all "critical" stages of the proceeding. See Argersinger v. Hamlin, 407 U.S. 25 (1972); see also Powell v. Alabama, 287 U.S. 45 (1932). Notably, this Court has held, "Of all the rights that an accused person has, the right to

be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” United States v. Cronin, 466 U.S. 648, 654 (1984).

A defendant, however, may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. See State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). A waiver is an intentional and voluntary relinquishment of a known right. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938); see also Maxwell v. Genez, 350 S.C. 563, 571, 567 S.E.2d 496, 500 (Ct. App. 2002). The accused must know what he is doing so that “his choice is made with eyes open.” Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942). Notably, the courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. See Zerbst, 304 U.S. at 464; see also Pitts v. North Carolina, 395 F.2d 182, 188 (4th Cir. 1968).

In the present case, there is no question that Petitioner did not waive his right to counsel in his first trial by either affirmative waiver, waiver by conduct, or forfeiture.

Not Waived by Verbal Request

First, to effectuate a valid waiver of the right to counsel by verbal request, the two-pronged Faretta test must be met in which the accused is (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing Faretta, 422 U.S. 806). Here, Petitioner clearly did not waive his right to counsel by verbal request because

Petitioner was tried *in absentia* and without counsel. R. 1 – 74. Accordingly, the trial court has no way of knowing if Petitioner was advised of his right to counsel or adequately warned of the dangers of self-representation. See Prince, 301 S.C. at 423-24, 392 S.E.2d at 463 (citing Faretta, 422 U.S. 806).

Not Waived by Conduct

While a defendant may waive his right to counsel through his conduct, this also does not apply to Petitioner. See Thompson, 355 S.C. 255, 263, 584 S.E.2d 131, 135 (Ct. App. 2003) (citing United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir.1995)). Most courts have held that a defendant must first be warned that his misconduct will thereafter be treated as a waiver. Boykin, 324 S.C. at 556, 478 S.E.2d at 691. “[T]o the extent that the defendant's actions are examined under the doctrine of ‘waiver,’ there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings.” Goldberg, 67 F.3d at 1100.

In Thompson, 355 S.C. at 265-266, 584 S.E.2d at 137, the South Carolina Court of Appeals cited Pennsylvania v. Ford, 715 A.2d 1141 (Pa. Super. Ct. 1998), as “[a]n excellent academic explication of an appellant tried in absentia and without representation[.]” In Ford, “[w]hen the appellant did not appear for jury selection, his private counsel filed a motion to withdraw, arguing that the appellant had not paid a large portion of his fee and his absence impeded trial preparation The [trial] court granted the motion [to be relieved] and proceeded to try the appellant in absentia and without counsel.” Thompson, 355 S.C. at 265-266, 584 S.E.2d at 136 (citing Ford, 715 A.2d at 1143).

“The [Ford] court found the appellant did not validly waive his right to counsel because there was no inquiry on the record as to whether the appellant was aware of his rights or whether he knowingly waived them. Id. at 265-266, 584 S.E.2d at 136 (citing Ford, 715 A.2d at 1144). “The [Ford] court observed that this type of inquiry is ‘quite obviously impossible’ when a defendant fails to appear in court.” Id. “However, the [Ford] court ruled that ‘[f]ailure to appear ... is not tantamount to a knowing waiver.’” Id. Ultimately, the Ford court held that “[t]he appellant’s fugitive status was not a per se waiver nor could it be punished by the ‘negation of constitutional rights’” and that “[h]is fugitive status was a separate wrong with its own consequences.” Id.

In this case, at Petitioner’s first trial on April 13, 2009, the trial court failed to conduct even a minimal inquiry as to: (1) why no attorney was present to represent Petitioner; (2) whether Petitioner was represented by a public defender or a private attorney; or (3) whether Petitioner had waived or forfeited his right to counsel. Therefore, Petitioner did not waive his right to counsel because “there was no inquiry on the record as to whether the appellant was aware of his rights or whether he knowingly waived them.” Thompson, 355 S.C. at 265-266, 584 S.E.2d at 137 (citing Ford, 715 A.2d at 1144); see Faretta, 422 U.S. 806.

Not Relinquished by Forfeiture

This Court has addressed the significance of forfeiting the right to counsel at trial:

[R]ecognizing the *enormous importance* and role than an attorney plays at a criminal trial, we have imposed the *most rigorous restrictions* on the

information that *must be* conveyed to a defendant, before permitting him to waive his right to counsel at trial.

Patterson v. Illinois, 487 U.S. 285, 298 (1988) (emphasis added). The Thompson court noted, “[B]ecause of the drastic nature of the sanction, forfeiture would appear to require extremely dilatory conduct.” Thompson, 355 S.C. at 268, 584 S.E.2d at 137 (citing Goldberg, 67 F.3d at 1101). “Situations where a defendant's own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant.” Id. (citing State v. Coleman, 253 Wis.2d 693, 644 N.W.2d 283, 288 (Ct. App. 2002)).

In Boykin, 324 S.C. at 554-55, 478 S.E.2d at 689-90, the defendant verbally abused and physically threatened defense counsel, and the trial court granted counsel's request to be relieved. Despite the defendant's disruptive and abusive behavior, the Boykin court held:

Although we do not condone Boykin's actions, we do not believe they were so severe as to permanently deprive him of appointed counsel. Both cases which have held a defendant forfeited his right to counsel involved a course of conduct more egregious than the single incident alleged here. Accordingly, we need not decide whether South Carolina should embrace the doctrine of forfeiture because we find that Boykin's conduct in the one event related by Padgett was not sufficient to constitute forfeiture. While the trial judge was certainly justified in granting Padgett's motion to be relieved as counsel, substitute counsel should have been appointed for Boykin. Therefore, the decision of the trial court is reversed and the case remanded for a new trial.

Id. at 558-59, 478 S.E.2d at 692.

In this case, at Petitioner's first trial on April 13, 2009, there was no examination of why Petitioner was not represented by an attorney and no evidence in the record of any conduct by Petitioner that would warrant the severe sanction of

forfeiture of the right to counsel. See Thompson, 355 S.C. at 269, 584 S.E.2d at 138 (finding “[f]orfeiture of counsel is a drastic consequence, requiring more than absence from trial”). As such, Petitioner did not relinquish his right to counsel by forfeiture.

Prejudice is Presumed

The denial of a defendant’s fundamental right to the assistance of counsel is reversible error without the need for the showing of prejudice. Chapman v. California, 386 U.S. 18, 23 n.8 (1967). The actual or constructive denial of the assistance of counsel is legally presumed to result in prejudice. Strickland v. Washington, 466 U.S. 668, 692 (1984).

While Petitioner does not have to prove prejudice from the denial of his right to counsel, an attorney representing Petitioner’s interests could have objected to multiple issues that arose at Petitioner’s April 13, 2009 trial. An attorney may have raised issues relating to the execution of a search warrant. R. 21. An attorney may have objected to a law enforcement officer’s characterization of Petitioner as a “middle level sized drug dealer.” R. 42. He or she may have also objected to the law enforcement officer’s testimony that Petitioner was also selling marijuana. R. 43. An attorney may have also objected to the entering of an unrelated firearm into evidence. R. 43. An attorney may also have objected to a co-defendant’s hearsay statement claiming ownership of drugs found in a car. Additionally, an attorney may have challenged the statement that Petitioner purportedly made to law enforcement regarding these events. Tr. 27. An attorney may also have objected to testimony that a scanner found in Petitioner’s bedroom was used to monitor these law enforcement officers’

communications. Tr. 31. In short, an attorney zealously advocating on Petitioner's behalf may have insured that Petitioner received a fair trial.

Petitioner was erroneously deprived of his fundamental right to assistance of counsel under the Sixth Amendment to the United States Constitution in his April 13, 2009 trial. See Faretta, 422 U.S. at 807; see also Cronin, 466 U.S. at 656. This error was only compounded by the trial court's ruling that Petitioner could be tried *in absentia*.

There are very few published decisions where a trial court permits a defendant to be tried *in absentia* and without counsel. Significantly, the majority of the cases which present this factual scenario arise out of proceedings in South Carolina's state trial courts. See State v. White, 305 S.C. 455, 409 S.E.2d 397 (1991); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991); State v. Cain, 277 S.C. 210, 284 S.E.2d 779 (1981); State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007); State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006); City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 686 (Ct. App. 2006); State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003); see also People v. McCombs, 866 N.E.2d 1200 (Ill. App. Ct. 2007); People v. Gargani, 863 N.E.2d 762 (Ill. App. Ct. 2007); Jackson v. State, 868 N.E.2d 494 (Ind. 2007); State v. Clay, 11 S.W.3d 706 (Mo. Ct. App. 1999); Commonwealth v. Ford, 715 A.2d 1141 (Pa. Super. Ct. 1998).

This case is about the fundamental right to counsel as guaranteed by the Sixth Amendment to the United States Constitution. The appellate courts in South Carolina have refused to address Petitioner's deprivation of this fundamental right

and have allowed to stand the conviction of a defendant who was tried in his absence and without the assistance of counsel where there is no indication anywhere in the record that Petitioner understood he had a right to counsel and was waiving that right. Accordingly, Petitioner respectfully requests this Court to grant certiorari on this issue to review and redress Petitioner's deprivation of his fundamental right to counsel.

II. The South Carolina Court of Appeals erred in affirming Petitioner's convictions where the trial court allowed the State to call Petitioner's cases to trial in Petitioner's absence when the State failed to show that it had meaningfully informed Petitioner of the actual trial dates thus depriving Petitioner of his fundamental right to be present at his own trial.

Petitioner was tried in two separate trials on different charges. Both trials proceeded in Petitioner's absence even though the State had never given him actual notice of the trial date. Instead, in both cases the State relied on the boilerplate language of a bond form that insisted Petitioner remain tethered to the courthouse until it decided to exercise its power and call his case to trial. The State called Petitioner's first case to trial on April 13, 2009, *544* days after he signed his bond form on September 14, 2007. The State then called Petitioner's second case to trial on April 22, 2009, *195* days after he signed his second bond form on October 9, 2008.

Such a practice, insisting that the defendant come to every single term of court until his case is called and refusing to provide the defendant notice of the actual trial date, fails to offer meaningful notice to the defendant that his case will be tried and is a fundamental denial of due process.

An accused's right to be present at his own trial is among the most

fundamental rights our Constitution secures. It is a basic premise of our justice system that “in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.” Snyder v. Massachusetts, 291 U.S. 97, 105–106, (1934). This longstanding right reflects the “notion that a fair trial [can] take place only if the jurors me[e]t the defendant face-to-face and only if those testifying against the defendant [do] so in his presence.” Crosby v. United States, 506 U.S. 255, 259 (1993); see also Diaz v. United States, 223 U.S. 442, 455 (1912) (right to be present is “scarcely less important to the accused than the right of trial itself”). Thus, in general, “if [the defendant] is absent [from trial], . . . a conviction will be set aside.” Crosby, 506 U.S. at 259.

This Court has acknowledged only two exceptions to this general rule. First, at least in noncapital trials, a defendant may waive his right to be present “if, after the trial has begun in his presence, he voluntarily absents himself.” Crosby, 506 U.S. at 260, (quoting Diaz, 223 U.S. at 455). Second, “a defendant can lose his right to be present at trial if, after being warned that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” Illinois v. Allen, 397 U.S. 337, 343 (1970).

Petitioner’s case does not fall within either of these two exceptions recognized by this Court. Rather, the South Carolina courts have conceived an additional exception, one never recognized by this Court: waiver on the basis of a defendant’s

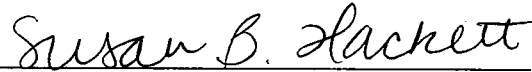
actions prior to the start of trial. The trial judges in Petitioner's two state court trials concluded that Petitioner's actions established such waiver on the basis of only Petitioner's acknowledgment on the bond forms that a trial could proceed in his absence if he failed to attend. The bond forms did not provide any notice of the actual trial date.

Whether the Constitution permits the trial *in absentia* of a defendant who is not present at the start of the trial and who was never given notice of the actual date of trial is a serious question that this Court needs to address. As Justice Sotomayor has recognized, "[a] trial conducted without actual notice to a defendant and in his absence makes a mockery of fair process and the constitutional right to be present at trial." Fairey v. Tucker, 132 S. Ct. 2218, 2221 (2012). This Court's intervention is therefore warranted to ensure the preservation of an accused's right to be present at his own trial in the State of South Carolina.

CONCLUSION:

For the reasons set forth herein, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



SUSAN B. HACKETT

Counsel of Record

Appellate Defender

CARMEN V. GANJEHSANI

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ATTORNEYS FOR PETITIONER

January 16, 2014.

No. 13-_____

In the Supreme Court of the United States

ANTHONY TYRONE WILLIAMSON, Petitioner,

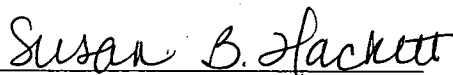
v.

STATE OF SOUTH CAROLINA, Respondent.


**ON PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA COURT OF APPEALS**

CERTIFICATE OF SERVICE

I certify that copies of the petition for writ of certiorari and appendix in this case have been served upon opposing counsel for Respondent, the State of South Carolina, David Spencer, by mailing copies in envelopes properly addressed with postage prepaid to the Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211 on this 16th day of January, 2014. Counsel is also today, January 16, 2014, sending a copy of the petition for writ of certiorari and appendix to opposing counsel by e-mail to: dspencer@scag.gov.


SUSAN B. HACKETT
Counsel of Record

SWORN TO BEFORE me this 16th
day of January, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023.

No. 13-_____

In the Supreme Court of the United States

ANTHONY TYRONE WILLIAMSON, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

***ON PETITION FOR WRIT OF CERTIORARI TO THE
SOUTH CAROLINA COURT OF APPEALS***

A P P E N D I X

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ATTORNEYS FOR PETITIONER

The Supreme Court of South Carolina

The State, Respondent

v.

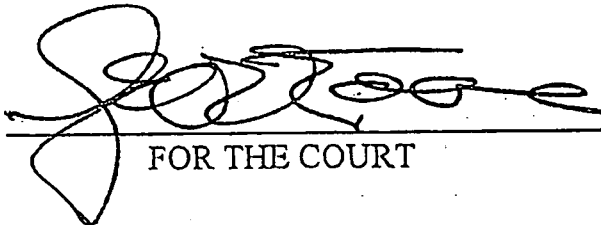
Anthony Tyrone Williamson, Petitioner.

Appellate Case No. 2012-212230

Lower Court Case No.'s 2008GS21317; 2009GS21334

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *State v. Williamson*, Op. No. 2012-UP-089 (S.C. Ct. App. filed Feb. 22, 2012). We deny the petition.


C.J.
FOR THE COURT

Columbia, South Carolina

October 18, 2013

cc:

The Honorable Jenny A. Kitchings

John W. McIntosh

Salley W. Elliott

Alan McCrory Wilson

David A. Spencer

Edgar Lewis Clements, III

Carmen Vaughn Ganjehsani

Connie Reel-Shearin

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SCOTT LOT
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Anthony Tyrone Williamson,

Appellant.

Appeal From Florence County
Ralph King Anderson, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-089
Submitted February 1, 2012 – Filed February 22, 2012

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and

Assistant Attorney General David Spencer, all of Columbia; and Solicitor E.L. Clements, III, of Florence, for Respondent.

PER CURIAM: In this consolidated appeal, Anthony Tyrone Williamson appeals his convictions for two counts of trafficking in cocaine base and possession of cocaine base within a proximity of a school or park. Williamson argues the trial court erred in: (1) proceeding with his first trial although he was not represented by counsel; (2) proceeding with his first trial in absentia without meaningfully informing him his trial would be conducted despite his absence; and (3) denying his motion for a mistrial. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to Williamson's issues concerning his right to counsel and his being tried in absentia: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); State v. Williams, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987) ("In order to claim the protection afforded by [Rule 16, SCRCrimP], a defendant or his attorney must object at the first opportunity to do so.").

2. As to Williamson's motion for a mistrial: State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000) (stating a defendant must show both error and prejudice resulting from such error to receive a mistrial); State v. White, 371 S.C. 439, 447-48, 639 S.E.2d 160, 164 (Ct. App. 2006) ("Insubstantial errors that do not impact the result of a case do not warrant a mistrial when guilt is conclusively proven by competent evidence.").

AFFIRMED.

FEW, C.J., HUFF and SHORT, J.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

The State,

Respondent,

v.


Anthony Tyrone Williamson,

Appellant.

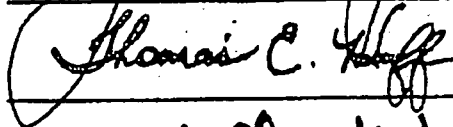
The Honorable Ralph King Anderson, Jr.
Florence County
Trial Court Case No. 2008-GS-21-00317
2009-GS-21-00334

ORDER DENYING PETITION FOR REHEARING

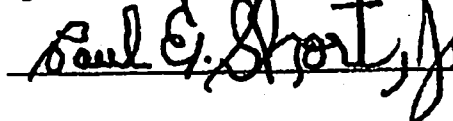
PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



Few, C. J.



Huff, J.



Short, J.

Columbia, South Carolina

cc: Appellate Defender Elizabeth Franklin-Best
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Assistant Attorney General David Spencer

FILED

4 May 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTHONY TYRONE WILLIAMSON,

APPELLANT

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

Opinion No. 2012-UP-089

PETITION FOR REHEARING

Counsel for Anthony Tyrone Williamson respectfully asks this Court to rehear his case. Counsel alleges this Court has either overlooked or misapprehended facts and law that are necessary for the proper conclusion of this case. Specifically, this Court has overlooked that Williamson did not waive his right to counsel when he was tried in his absence and without an attorney. Additionally, the Court overlooked that Williamson did not receive meaningful notice that he trial would occur when he did. Also, this Court has overlooked that Williamson was entitled to a mistrial when law enforcement testified they executed a search warrant while they had a warrant out for his arrest. For these reasons, Williamson respectfully asks this Court to grant his petition for rehearing.

RELEVANT FACTS:

This case involves the consolidation of two appeals. Anthony Tyrone Williamson was not present for either of his trials, but was sentenced on both of them once he was taken into custody. He was indicted by the Florence County grand jury during its January, 2008 term for trafficking in cocaine base and possession of cocaine base with intent to distribute within proximity of the school or park. He was tried before the Honorable Ralph King Anderson, Jr. and a jury on April 13, 2009. Appellant was not represented by counsel, and he did not appear for his trial. He was convicted, and his sentence sealed. This conviction is the basis of this appeal.

Appellant was also indicted by the Florence County grand jury of distribution of cocaine base, 2nd offense, distribution of cocaine base within proximity of a school or park, trafficking in cocaine base, 2nd offense, and possession of cocaine base with intent to distribute during its March 2009 term. He was tried before the Hon. Michael Nettles and a jury on April 22, 2009 on the trafficking charge. Judge Nettles appointed Vic Meetze, Esquire to represent appellant. Appellant was convicted, and again his sentence was sealed.

On October 29, 2009, appellant was present in court and his sentences were unsealed. On that date, Judge Anderson sentenced appellant to 15 years and 10 years, respectively, for the April 13, 2009 convictions. Appellant was sentenced to 25 years for the trafficking conviction secured on April 22, 2009, which was enhanced from the second offense due to the April 13, 2009 convictions.

ISSUE ONE: The trial court judge erred by allowing the state to call Williamson's case to trial when he was not represented by counsel.

On April 13, 2009, the State called appellant's case to trial. He was charged with trafficking in crack cocaine, and possession of crack cocaine within proximity of a school or park. The court stated it would ascertain whether the case could proceed. Tr. 13. The court understood it would have

to analyze whether the defendant voluntarily waived his right to be present, and whether a defendant was warned that a trial would proceed in his absence if he failed to attend. Tr. 16. The State called an employee of the clerk of court's office. According to her testimony, appellant received a bond on September 14, 2007. As a condition of the bond, appellant was to appear at General Sessions Court beginning October 15, 2007. If no disposition was made during that term, appellant was ordered to appear and remain throughout each succeeding term of court until final disposition was made. Tr. 16. On March 10, 2009, a bench warrant was issued for appellant. When asked whether appellant was given or provided a copy of this bond, the clerk responded, "I believe he was." Tr. 16, l. 20. Based on this testimony, the trial court judge concluded that appellant was given notice to appear for court, and was made aware of the fact he could be tried in his absence. The court ordered that the state could proceed with the trial. Tr. 17 – 18. There being no attorney present, no objection was interposed at this time.

The trial court judge erred by allowing the trial to proceed because the judge never inquired whether appellant knowingly and voluntarily waived his right to counsel.

Once the adversarial judicial process has begun, the 6th amendment guarantees a defendant the right to have counsel present at all "critical" stages of the proceeding. A trial is a critical stage of the proceeding. Argersinger v. Hamlin, 407 U.S. 25 (1972); Montejo v. Louisiana, 129 S.Ct. 2079 (2009); United States v. Wade, 388 U.S. 218 (1967); Powell v. Alabama, 287 U.S. 45 (1932).

Appellant never waived his right to counsel. The waiver of the right to counsel must be knowing, voluntary, and intelligent. Johnson v. Zerbst, 304 U.S. 458 (1938). The waiver must be an "intentional relinquishment or abandonment of a known right or privilege. Id. at 464 (emphasis added). The accused must know what he is doing so that "his choice is made with eyes open." Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942). See also Moran v. Burbine, 475

U.S. 412 (1986). The information that a defendant must possess in order to make an intelligent election depends on a range of case-specific factors, including his education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding. Iowa v. Tovar, 541 U.S. 77 (2004). Regarding the significance of the waiver in the context of forfeiting the right to counsel at trial, the Court has held:

[R]ecognizing the enormous importance and role than an attorney plays at a criminal trial, we have imposed the most rigorous restrictions on the information that must be conveyed to a defendant, before permitting him to waive his right to counsel at trial.

Patterson v. Illinois, 487 U.S. 285, 298 (1988 (emphasis added)). See also Faretta v. California, 422 U.S. 806 (1975). In this case, the judge simply did not make any inquiry at all about why no attorney was present to represent appellant and whether appellant waived his right to counsel.

At appellant's second trial, the judge there asked the State to place on the record its justification for going forward with its case against appellant, in his absence and without counsel. There, the State explained that appellant was denied a public defender. The State also informed the judge that appellant had a prior case in which he had hired counsel, but that counsel moved to be relieved because the defendant “failed to cooperate” with him. According to the State, this attorney never appeared on behalf of the appellant on this (the second trial) particular case. Having heard the State’s account, this judge ordered an attorney be assigned to represent appellant. See transcript, April 22, 2009, Tr. 17.

An attorney representing appellant's interests in this first trial may, for example, have objected to a law enforcement characterization of appellant as a “middle level sized dealer.” Tr. 42. He or she may also have objected to the law enforcement officer's testimony that appellant was also selling marijuana. Tr. 43. An attorney may also have objected to entering an unrelated firearm into evidence. Tr. 43. An attorney may have raised issues related to the execution of a search warrant.

Tr. 21. An attorney may also have objected to a codefendant's hearsay statement claiming ownership of drugs found in a car. Additionally, an attorney may have challenged the statement that appellant purportedly made to law enforcement regarding these events. Tr. 27 An attorney may also have objected to testimony that a scanner found in appellant's bedroom was used to monitor these law enforcement officers' communications. Tr. 31. In short, an attorney may have insured that appellant received a fair trial. Respectfully, the trial court judge erred by allowing the state to proceed with its prosecution against appellant on this basis.

ISSUE TWO: The trial court judge erred when he allowed the state to call Williamson's case to trial when the state failed to show it meaningfully informed him that his trial would occur on that date and would proceed in his absence.

The trial court judge erred in allowing the state to proceed when the State failed to show that it had given meaningful notice to appellant that his trial would proceed in his absence if he was not present. April 13, 2009, Tr. 12- 20 and April 22, 2009, Tr. 16- 28. The state chose to call appellant's first case to trial 544 days after he was initially noticed to appear in court. In South Carolina, the solicitors control the docket. S.C. Code Ann. Section 1-7-330 (1976). The State did not provide any evidence to show that any attempt was made to contact appellant to inform him that his trial was going to be held on April 13, 2009 or April 22, 2009. Instead, it relied on the boilerplate language of a bond form that insisted that appellant remain tethered to the courthouse until it decided to exercise its power and call his case to trial. Such a practice fails to offer meaningful notice to defendant that his case will be tried and is a fundamental denial of due process. Peralta v. Heights, 485 U.S. 80 (1988); Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover Bank & Tire Co., 339 U.S. 306, 313 ("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum

they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.”) An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, Grannis v. Ordean, 234 U.S. 385. Appellant was not afforded notice, reasonably calculated, and under all the circumstances, that his case was going to be tried by the state of South Carolina 544 days after he was summoned to court.

ISSUE THREE: The trial court judge erred when he denied Williamson’s motion for a mistrial when a law enforcement officer testified that, at the time they executed the search warrant, they also possessed a warrant for his arrest.

A week after the state secured its first conviction against appellant, it decided to call an additional case to trial before another judge. This trial court judge appointed counsel to represent appellants’ interests at trial. See Appellant’s Brief, 08-GS-21-317. The trial court judge erred, in this second trial, by not granting appellant’s motion for a mistrial when law enforcement testified that it also had an arrest warrant for appellant during its execution of a search warrant.

During its case in chief, the state called Sgt. Drulis to testify regarding the execution of a search warrant. He testified:

“So we entered the residence by force. When we went in, we saw Mr. Williamson walking down the hallway. He was -- he was then detained. When we detain someone, we -- we put them in handcuffs at that time. At that particular time he was also under arrest. We additionally had an arrest warrant for him.”

ROA 80, ll. 7-12.

Trial counsel then objected and then asked the judge to declare a mistrial:

MR. MEETZE: Your Honor, at this time I would make a motion for the court to declare a mistrial in this case. The jury has just been told that along with the search warrant, they also had a warrant for Mr. Williamson's arrest. I think that that certainly prejudices this jury, you know, beyond repair. Certainly the court can give a curative instruction. But, you know, I think that a situation where you just can't unring that bell. And I feel like under the circumstances the proper thing would be to declare a mistrial in this case."

ROA 81.

The trial court judge was exceptionally concerned about this testimony and the state's eliciting it from the officer:

"THE COURT: Ms. Parr, were you aware that there was going to be such testimony with regard to an unrelated arrest warrant?

MS. PARR: Your Honor, I was not aware that there was going to be anything other than, you know, the search warrant; and that's what -- you know, it was in the incident report that they had an arrest warrant for the defendant but not—

THE COURT: Did you specifically discuss with this witness about not getting into that?

MS. PARR: Your Honor, when we went over the testimony -- went over the case, he was just to tell what part he played, that he was one of the ones that discovered the drugs in the flashlight.

THE COURT: Did you specifically tell him not to get in to the arrest warrant?

MS. PARR: No, I can't say I specifically said that.

THE COURT: Okay. Was there a discussion about it?

MS. PARR: Not specifically. We talked about that we can't show that the defendant had had any prior dealings with the law because, you know, he had all of these prior cases and I specifically talked to them about that.

THE COURT: Okay. How long have you been in law enforcement?

AGENT DRULIS: Going on 11 years, sir.

THE COURT: Okay. I think you said you got all kind of training. You're not aware of the fact that you are supposed to bring up unrelated misconduct?

AGENT DRULIS: Yes, sir, and for lack of a better term, when it came out, I wish I could have grabbed it.

THE COURT: All right.

AGENT DRULIS: It was-- it was just one-- I was recalling why we're there. I was recalling the incident.

THE COURT: And there will not be any reference to any unrelated conduct. I'm going to give the jury a curative charge and take the matter under consideration throughout the balance of the trial. I'm not going to grant the mistrial at this time.

ROA 81-83.

The trial court judge gave a curative instruction:

THE COURT: Madame Forelady, ladies and gentlemen of the jury, you have heard testimony concerning an unrelated arrest warrant. That statement was made in error and it was incorrect. There is no such unrelated arrest warrant. Ladies and gentlemen of the jury, even if there were such unrelated arrest warrant, it would be inadmissible because you have a solemn duty in any criminal trial to determine whether or not the State can prove a given defendant guilty of an alleged offense beyond a reasonable doubt without regard to not be influenced by any allegations of any prior misconduct. After all, can you think of anything more unfair than convicting an individual by taking into consideration some unrelated conduct? That's not what we're here about.

There is no such misconduct in this case; that testimony is stricken. It was made in error.

And, Madam Forelady, ladies and gentlemen of the jury, not only is it stricken, you are prohibited from discussing that misstatement of fact in the jury room. And, Madam Forelady, it's going to be your job and your responsibility as a juror cannot allow that to enter into discussion in any way, shape, or form.

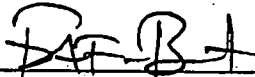
ROA 83-84.

The trial court judge erred by not granting the mistrial because the state's witness interjected irrelevant, and wholly improper character evidence, and appellant was denied his right to a fair trial. SCRE, Rules 403, 404. State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). The arrest warrant

was not related to this case, and the jury's hearing of the warrant tended to offer an improper basis for rendering its verdict. Additionally, the curative instruction was insufficient to cure the harm since the error was so substantial. State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978).

For these reasons, Williamson respectfully asks this Court to rehear his case.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender

This 7th day of March, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Ralph King Anderson, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

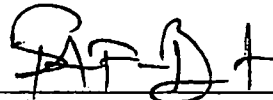
V.

ANTHONY TYRONE WILLIAMSON,

APPELLANT

CERTIFICATE OF SERVICE

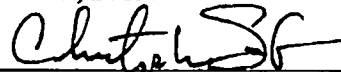
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, this 7th day of March, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 7th day
of March, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.