

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

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S.C. Supreme Court

SHANNON TREMELL HOPKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001799

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in dismissing Petitioner's application for untimeliness where the evidence showed Petitioner had been diagnosed with cognitive and behavioral disabilities; where he was not medicated during the period he failed to file his PCR application; and where his disciplinary records showed profuse offenses and resulting administrative actions.

STATEMENT

On June 8, 1998, the Spartanburg County Grand Jury indicted Petitioner Shannon Tremell Hopkins on one count of attempted armed robbery and one count of armed robbery. R. *. On August 25, 1998, Appellant appeared at a plea hearing before The Honorable J. Derham Cole. Michael David Morin represented Petitioner, and Beverly Dorine Jones represented the State. App. 1. At the hearing, the State alleged that on December 13, 1997, Petitioner held the occupants of a stopped vehicle at gunpoint and demanded valuables, but the vehicle sped away. Petitioner then allegedly entered a nearby grocery store, held the gun to a cashier, and removed money from the cash register. App. 17, ln. 22—App. 21, ln. 22. The court accepted Petitioner's guilty pleas and sentenced him to thirty years imprisonment for armed robbery and twenty years concurrent for attempted armed robbery. App. 23, ll. 22-23; App. 29, ll. 12-19. Thereafter Petitioner filed a motion for reconsideration and submitted evidence that he has a very low I.Q. and that at the time of the crimes, he had not taken his medication for helping him control his behavior. On November 4, 1998, the plea court denied the motion, finding that the evidence did not warrant a reduction in Petitioner's sentence. App. 36-37. Petitioner then filed a timely notice of appeal, and a brief was filed on his behalf pursuant to *Anders v. California*.¹ The court of appeals dismissed the appeal and filed the remittitur on January 28, 2000. *State v. Hopkins*, Op. No. 2000-UP-032 (filed January 11, 2000). App. 82.

On June 1, 2011, Appellant filed an application for post-conviction relief, alleging violation of due process and ineffective assistance of counsel. App. 31-47. The State filed a return and motion to dismiss for lack of timeliness on January 10, 2012. App. 48-52. The PCR court issued a conditional order of dismissal. Petitioner submitted documentation for purposes of showing his

¹ 386 U.S. 738 (1967)

incompetence at the time of his plea. On September 19, 2012, this Court reversed the dismissal and remanded for a hearing pursuant to *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009). App. 55, ll. 2-22; App. 82.

On April 3, 2013, Petitioner attended a hearing before The Honorable J. Mark Hayes, II. Suzanne H. White represented Petitioner, and W. Barry Bland represented the State. App. 53. Petitioner testified that he had taken psychiatric medications, including Mellaril, Prozac, and lithium since he was twelve or thirteen and was evaluated during a stay in juvenile detention. App. 58, ln. 12—App. 59, ln. 11. He said that for the eight months prior to his plea, he was detained in county jail and could not afford his medications. App. 59, ln. 12—App. 60, ln. 18. He explained that he had previously been treated for retardation and bipolar disorder. App. 61, ll. 1-7. Petitioner also testified that during the years after the court of appeals dismissed his case, he did not believe he was “in his right mind because . . . [he] didn’t get started on [his] medication ‘til like the end of 2009 [or] 2010,” when a psychiatric doctor finally evaluated him at a state prison facility. App. 63, ll. 2-14.

On July 26, 2013, the PCR court issued an order dismissing Petitioner’s claim. App. 81-86. The court recapped the following evidence before it: (1) Petitioner’s testimony and (2) Petitioner’s records from the South Carolina Department of Corrections. The records showed that Petitioner had earned 1165 work credits, 279 education credits, and 4893 service credits and that Petitioner was at the time employed in food service at a minimum security prison. The records also showed three assaultive disciplinary charges and seventy-six non-assaultive charges, ranging from sexual misconduct, failing to obey, false statement to harm, out of place, disrespect, inciting/creating a disturbance, and use of profanity. The court concluded that “[e]ven assuming [Petitioner] had mental issues which were incorrectly being treated, there is lack of sufficient evidence upon which

this Court can rely to establish those mental issues or incorrect treatment . . . resulted in him not filing his application.” App. 85.

ARGUMENT

The PCR court erred in dismissing Petitioner’s claim for untimeliness because the evidence shows Petitioner had cognitive and behavioral disabilities resulting in the failure to file his PCR application.

The PCR court erred in dismissing Petitioner’s claim for untimeliness because the evidence shows Petitioner had cognitive and behavioral disabilities resulting in the failure to file his PCR application. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). Generally, a person convicted of a crime may claim a denial of this right in a post-conviction relief application within the later of one year after either the entry of judgment or conviction or the final remittitur or decision in an appeal. S.C. Code Ann. § 17-27-45(A). However, when a PCR applicant alleges his untimely application was due to mental incompetence, the PCR court must first determine whether the alleged mental incapacity in fact prevented his application. *Ferguson*, 382 S.C. at 619, 677 S.E.2d 602. “If the PCR court finds mental incompetence prevented his filing a PCR application, the court should determine the duration of the incompetence, and whether the application was filed within one year of . . . regaining competency. PCR should proceed only if [the] application was timely filed within one year of the date that he regained competence.” *Id.*

In this case, Petitioner suffered identifiable cognitive and behavioral incapacities. He testified that he had taken psychiatric medications, including Mellaril, Prozac, and lithium since he was twelve or thirteen. He also explained that he had been treated for retardation and bipolar disorder. Further, he testified that he did not take corrective medications until late 2009 or 2010.

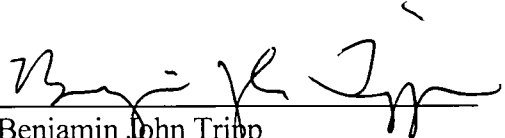
The evidence also showed that Petitioner's behavior-control problems and cognitive shortcomings prevented him from filing a PCR application. The nature and quality of offenses in his extensive disciplinary records and his prior diagnosis of bipolar disorder show that during the period at issue, his time was preoccupied by uncontrollable behaviors and the drawn-out administrative procedures leveled against him as a result. Additionally, his professionally-identified mental retardation could have only exacerbated the lack of time and understanding needed to recognize and take action in accordance with a right to file a PCR application.

The PCR court improperly counterbalanced the foregoing evidence with the records of Petitioner's work, education, and service credits. The court undertook neither an analysis of how much effort and time the credits actually represented nor how they related to each qualitatively. Indeed, the 1165 work credits and 4893 service credits compared to 279 education credits most strongly suggests Petitioner was functionally equipped to do nothing more than follow direct, explicit orders and says very little of a capacity for independent thinking and action.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Shannon Hopkins's petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
J. MARK HAYES, II, CIRCUIT COURT JUDGE

SHANNON TREMELL HOPKINS,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shannon Tremell Hopkins states:

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

Therefore, counsel requests that the Court relieve him as counsel for Shannon Tremell Hopkins.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of January, 2014

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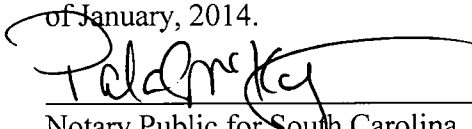
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Shannon Tremell Hopkins, #252133, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 30th day of January, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of January, 2014.


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