

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

APR 06 2015

---

CERTIORARI TO RICHLAND COUNTY  
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

---

**SC SUPREME COURT**

Cichey L. Mayo,

Petitioner,

v.

State of South Carolina,

Respondent

APPELLATE CASE NO. 2013-000520

---

**AMENDED**  
SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI

---

Cichey L. Mayo  
Attendale C.I.  
P.O.Box 1151  
Fairfax, SC 29827

PRO SE PETITIONER

**I N D E X**

INDEX .....	1
ISSUE PRESENTED .....	2
STATEMENT OF ISSUE ON APPEAL .....	3
STATEMENT .....	4
ARGUMENT .....	5,6,8
CONCLUSION .....	10
<b>Opposition to Counsel Relieved as Counsel .....</b>	<b>11</b>

## ISSUE PRESENTED

The Judge erred by the failure to consider the factors basis surrounding the appellant's competency at the first trial, because the trial of an incompetent defendant is a due process violation that can never waived.

The record of the guilty plea does not show that the trial judge provided an explanation of the constitutional rights appellant was waiving, thus rendering the plea invalid.

Did the trial court erred in the pronouncement of sentence from the bench to a "forty seven (47)" years sentence for murder?

## STATEMENT OF ISSUE ON APPEAL

Pursuant to the reasoning in S.C.Code Ann. § 44-23-410, by statute a trial court must order a mental evaluation if any criminal defendant displays signs of being mentally incompetent to stand trial. The Court of Appeals held that the statute's language is mandatory. State v. Singleton, 322 S.C. 480, S.E.2d 640 (Ct.App.1996).

The trial judge impose a illegal sentence from the bench to forty seven (47) years sentence outside the statute.

The Court failed to explain the waiver of the constitutional rights to appellant. Instead he merely listed them out and asked appellant if he knew he was waiving those rights. This is insufficient to insure the guilty plea was voluntarily given.

## STATEMENT

In September 2001, the Richland County Grand Jury indicted Mayo for murder, assault and battery with intent to kill, armed robbery and two counts of attempted armed robbery, indictments #2001-GS-40-6648, 66-50,6651 and 6696. On June 4, 2002, Mayo appeared before the Honorable L. Henry McKellar and pled guilty as charged. Attorney Charlie J. Johnson, Jr. represented Mayo at the plea. Judge McKellar illegally sentenced Mayo to forty seven (47) years for murder, thirty (30) years concurrent for armed robbery, twenty (20) years concurrent for both attempted armed robbery charges and twenty (20) years concurrent for assault and battery with intent to kill. A notice of intent to appeal was filed but dismissed by the South Carolina Supreme Court on October 28, 2002, as untimely filed.

On October 3, 2011, Mayo filed an application for post-conviction relief seeking a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). On October 10, 2011, the State filed a return and motion to dismiss as untimely filed pursuant to S.C. Code Ann. § 17-27-45(a). On April 24, 2012, the Honorable James R. Barber, III signed a conditional order of dismissal, allowing thirty day for petitioner to file objections to the conditional order of dismissal. On May 15, 2012, Mayo filed objections to the conditional order of dismissal. Judge Barber then ordered an evidentiary hearing to address the issue of the belated appeal. Attorney Wilson P. Davis was appointed to represent Mayo at the evidentiary hearing. On October 18, 2012, an evidentiary hearing was held before the Honorable Clifton B. Newman. Attorney Davis represented Mayo at the evidentiary hearing. Attorney Rob A. Corney was present on behalf of the State. In a written order filed March 4, 2013, Judge Newman denied relief and dismissed the application. A timely notice of intent to appeal was served on March 12, 2013. This Supplemental follows.

## ARGUMENT

The Judge erred by the failure to consider the factors basis surrounding the appellant's competency at the first trial, because the trial of an incompetent defendant is a due process violation that can never be waived.

In Drop v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 903 (1975), the United States Supreme Court observed:

- ° It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.

A failure to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966). The trial of an incompetent defendant is an error which may not be waived. See, for example, State v. Torrence, 322 S.C. 475 S.E. 703 (1996).

In this case, the Appellate Defender alleges on page 5 in the Johnson Petition for Writ of Certiorari, that the Appellant had a learning disabilities and was emotionally disabled and unable to control his impulses. (App. p. 70, lines 6-12). Petitioner testified that at the time of the shooting he was in the eleventh grade but enrolled in classes for the learning disabled and the emotionally handicapped because it took him longer to grasp things. (App. p. 70, lines 18-20). As set forth, the state had failed to employ procedures adequate to assure his competence to stand trial.

As stated, in State v. Buchanan, 394 S.E.2d 1 (S.C. App. 1990), the defendant shall be:

- ° (a) examined and observed at the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed fifteen (15) days relative to his mental capacity to stand trial. (see 44-23-410 (1) or section 44-23-410 (2), Code of Laws of South Carolina, 1976)

And shall be:

- ° (b) Examined as aforesaid to determine whether or not the above-named defendant is criminally responsible pursuant to the McNaughten test for his action on or about dated August 22, 2001.

Both due process and common dictate, that the Petitionere uncontrol impulses created a violation under McNaghtea Rule. As a result, the irresistible impulse test to the basic Mc'Naghten Rule. Under this test a person is not responsible for his acts, even if he knew the nature and quality of the act and that the act was wrong. If the act was caused by an insane impulse that made him unable to control his conduct. On June 4, 2002, the Petitioner entered his guilty plea, the circuit court lacked subject matter jurisdiction. See Carter v. State, 329 S.C. 355, 362, 465 S.E.2d 773, 777 (1998) ("Issues related to subject matter jurisdiction may be raised at any time.")

#### ARGUMENT

The record of the guilty plea does not show that the trial judge provided an explanation of the constitutional rights appellant was waiving, thus rendering the pleas invalid.

In accepting appellant's guilty plea, the judge briefly told appellant he was waiving his right to remain silent, confront witnesses, and have a jury trial. The judge did not explain these rights to make sure appellant understood the important rights he was waiving. (App.p.68, lines 21-24; p.69, line 20- p.70, lines 1-3-).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advise of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykia v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed 274 (1969).

"A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." Pittman v. State, 337 S.C. 597,601,524 S.E.2d 623,625 (1999). The plea "Court's warning should include an explanation of the defendant's waiver of constitutional rights." State v. Armstrong, 263 S.C. 594,598, 211 S.E.2d 889,891 (1975).

In this case, the court failed to explain the waiver of the constitutional rights to appellant. Instead he merely listed there out and asked appellant if he knew he was waiving those rights. This is insufficient to insure the guilty plea was voluntarily given.

The Petitioner into an unfreely, unknowingly, involuntary and unintelligently given guilty plea, that has the effect of shifting the burden of persuasion, violated Due Process and is grounds for an acquittal even if its embodied within an indictment. Clearly there is nothing cited by law that mandates that these strict rules of Court and requirements of law be solely limited to a Judge's charge. They apply to any charge placed before a Jury or a Defendant in order to manipulate, mentally and/or psychologically coerce and/or force him into a plea. Such a heavy weight of shifting the burden of persuasion and the taking away of one's presumption of innocence by the indictment(s) of South Carolina have been unjustly and unconstitutionally used against Petitioner in the State of South Carolina, to mentally and/or psychologically coerce and/or force them into plea bargains and at their Trials, for far too long.

With respect, the Petitioner plead guilty under [Duress]. As set forth, [Duress is a condition of mind proceed by improper external pressure or influence that practically destroys the free agency of a party and caused him to-

do an act or form a contract not of his own violation. "Duress" may be defined as subjecting a person to a pressure which overcome his or her will and coerces his or her to comply with demands to which he or she would not yield if acting as a free agent. Some definitions of "duress" contain not only the element of pressure overcoming the Petitioner's will but also the element that the pressure or compulsion consists of improper, wrongful, or unlawful conduct, acts or threats.

Further, "duress" has been defined as the condition of mind produced by the wrongful conduct of another rendering a person incompetent to contract with the exercise of his or her free will power, or as the condition of mind produced by an improper external pressure destroying free agency so as to cause the Petitioner to act or contract without use of his or her own volition, or as unlawful constraint whereby a person is forced to do some act against his or her will.

#### ARGUMENT

Did the trial court erred in the pronouncement of sentence from the bench to a "forty seven (47)" years sentence for murder?

The Petitioner contends the circuit court lacked subject matter jurisdiction to impose a [forty seven (47)] years sentence upon the Petitioner. Specifically, Petitioner asserts that the [General Assembly] enacted a provision in [S.C. Code Ann. § 16-3-20 (A)], for a "Forty Seven (47) years sentence. Pursuant to S.C. Code Ann. § 16-3-20 (A) provides as follows:

- A person who is convicted of or plead guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years.

Simply put, if the death penalty is not sought and if the jury or trial judges does not find an aggravating circumstance, the Court has discretion to sentence the defendant to a mandatory minimum sentence of 30 years or life imprisonment.

However, the Fifth Amendment Due Process Clause requires Petitioner not be sentenced on basis of [materially untrue.]

This legal framework and foundation being firmly in place, the Court is compelled to look at the facts in regard to this case sub-justice because the law arises from S.C.Code Ann. § 16-3-20 (A). In order to understand the meaning of any statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context; Robinson v. Shell Oil Company, 117 S.Ct. 843,846 (1997). Article 12 Section 2 utilizes the words "shall" is mandatory see United States v. Meyers, 106 F.3d 936,941 (CA 10 1997). In order to understand the meaning of any word, phrase, or sentence "the Cardinal Rule is that the words should be given their plain and ordinary meaning unless something in the text requires a different meaning and/or interpretation" Seekinger v. The Vessel Excaliber 483 S.R2d 775 (SC App.1997); also see United States v. Ron Pair Enterprise Inc., 109 S.Ct. 1026,1030 (1989).

Article 1 Section 23 of the South Carolina dictates: "The provisions of the Constitution shall be take, deemed and construed to be mandatory and/or prohibitory and not merely directory, except where made directory or promissory by its own terms."


Therefore, it can be factually stated that not only by the Petitioner's Fourteenth Amendment Rights of Due Process, but also by the provision of S.C. Code Ann. § 16-3-20 (A), it is mandatory that the Petitioner's Due Process matters to be sentence accordingly to the Statute. However, in this case, the sentence was not foreseeable, and having the trial judge sentence orally pronounced from the bench in a illegal manner.

Nowhere in S.C.Code Ann. § 16-3-20 (A), does the legislature provide for the sentence of [forty seven (47) years.

CONCLUSION

For the foregoing reasons, petitioner should receive a new trial  
as a matter of law.

Respectfully submitted,

  
\_\_\_\_\_  
Cichey L. Mayo

PRO SE PETITIONER

This 25th day of March, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO RICHLAND COUNTY  
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

---

Cichey L. Mayo,

Petitioner,

v.

State of South Carolina,

Respondent

APPELLATE CASE NO. 2013-000520

---

OPPOSITION TO COUNSEL RELIEVED AS COUNSEL

---

1. The Petitioner Object to the Counsel request to be Relieve as Counsel.
2. The Sixth Amendment to Constitution requires that in all criminal prosecution, the accused shall have the right to the assistance of counsel.
3. The Petitioner Amended Supplemental Petition for Writ of Certiorari, warrant a legal argument and the Petitioner is presently on lock-up status and while on administrative segregation has no assest to the law library.

Therefore, counsel requests should be denied.

Respectfully submitted,

  
\_\_\_\_\_  
Cichey L. Mayo

This 25th day of March, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

APR 06 2015

\_\_\_\_\_  
CERTIORARI TO RICHLAND COUNTY  
CLIFTON NEWMAN, CIRCUIT COURT JUDGE  
\_\_\_\_\_

100 SUPREME COURT

Cichey L. Mayo,

Petitioner,

v.

State of South Carolina,

Respondent

-----  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Amended Supplemental Petition for Writ of Certiorari in this case have been served on Alan Wilson, Attorney General at, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of March, 2015.

Cichey Mayo  
Cichey L. Mayo

PRO SE PETITIONER

March 25, 2015

Cichey L. Mayo,  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827

RECEIVED

APR 06 2015

SC SUPREME COURT

The Honorable Daniel E. Shearouse, Clerk of Court  
State of South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina 29211

RE: Cichey L. Mayo v. State of South Carolina  
Appellant Case No.: 2013-000520

Dear Mr. Shearouse:

Enclosed please find the original Amended Supplemental Petition for Writ of Certiorari in the above-captioned matter. We would appreciate it if you would file the original and return a clocked -in copy to me. Right now, I am on lock-up status, this is why this Petition being file late.

By copy of this letter to opposing counsel, we are hereby serving the Attorney with a copy of these document.

Thank you for your assistance.

Sincerely,

cc: Alan Wilson, Attorney General

  
Cichey L. Mayo

Wichey Mayo  
K9871692

Allendale Corr Inst / F-5 B-side #228  
Box 1151  
Fairfax, S.C. 29821

**RECEIVED**

MAR 31 2015



The Honorable David E Shearouse, Clerk of Court

The State of South Carolina Supreme Court

P.O. Box 11330

Columbia, South Carolina 29211

SCDC

APR 16 2015

MAIL ROOM