

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Orangeburg County
Maite Murphy, Circuit Court Judge

S.C. Supreme Court

JOHNNY WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002167

PETITION FOR WRIT OF CERTIORARI

JOHN H. STROM
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10/19/1971

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ISSUE PRESENTED

Did the PCR court err in finding petitioner was effectively represented where defense counsel was dismissive of Petitioner's mental illness, including her refusal to join in his motion for a competency hearing, where it was undisputed Petitioner was a diagnosed schizophrenic on numerous antipsychotic drugs, where the facts of Petitioner allegedly participating in the shooting of his friend were bizarre, and where Petitioner's mental illness was a significant mitigating evidence that counsel stubbornly and inexplicably refused to argue to the sentencing judge?

STATEMENT

Petitioner's Mental Health History

In 1999 Petitioner was diagnosed with schizophrenia. App. 48, ll. 7-18. Prior to that diagnosis Petitioner had been hospitalized at the State Mental Health Hospital in Columbia as a ten or thirteen year old for a period of six months. App. 49, ll. 14 – App. 50, ll. 1.

Diagnosis and Treatment from Department of Corrections

In 2005, Petitioner was referred to mental health treatment while serving a three year sentence for a possession of crack cocaine with intent to distribute. Supp. App. 32 – Supp. 33¹. On August 4, 2006, Petitioner's Department of Corrections ("DOC") medical summary diagnosed Petitioner as "presently mentally ill" and suffering from an unspecified adjustment disorder. Supp. App. 29. Petitioner's clinicians believed he had been self-medicating with alcohol and cocaine in an effort to treat visual and audio hallucinations. Supp. App. 29 – Supp. App. 33.

Petitioner began a course of treatment and was prescribed the following medications: Haldol, Zoloft, Buspar, and Congentin.² *Id.* DOC mental health staff believed that this course of treatment greatly assisted Petitioner in managing his illness. *Id.* The DOC's medical summary

¹The Supplemental Appendix contains Petitioner's mental health records from the DOC and the Department of Mental Health. These records were entered into the PCR hearing record as Petitioner's Exhibit No. 1 and 2.

² This Court may take judicial notice of the following drug information. Haldol is a brand name for haloperidol, a conventional antipsychotic, used to treat psychotic disorders and severe behavioral problems. Buspar is a brand name for buspirone, which is used to treat anxiety disorders or for short term treatment of acute anxiety. Zoloft is a brand name for Sertraline, which used to treat depression and panic attacks. Congentin is a brand name for Bzotropine Mesylate used to treat tremors, a frequent side effect of anti-psychotic medications. National Library of Medicine, Medline Plus, National Institute of Health (March 26, 2015), available at: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/>.

indicates that on multiple occasions Petitioner forgot to take his prescribed medications. Supp. App. 22 – Supp. App. 28.

Diagnosis and Treatment with Department of Mental Health

Petitioner was released from custody in December, 2006. *Id.* On December 18, 2006, Petitioner referred by DOC to the Department of Mental Health (“DMH”) for a psychological assessment. Supp. App. 56 – Supp. App. 64. This assessment confirmed Petitioner’s earlier schizophrenic diagnosis. *Id.* The evaluating doctor concluded that Petitioner exhibited several symptoms of schizophrenia including: hearing voices, visual hallucinations, disorganized thinking, mood swings, and memory loss. Supp. App. 64.

The Department of Mental Health assigned Petitioner a clinician that he met with regularly. Supp. App. 46 – Supp. App. 52. During this time Petitioner continued to take the medications prescribed during his incarceration. *Id.* While taking these medications, Petitioner reported that the hallucinations and voices were less frequent. Supp. App. 27 – Supp. App. 52.

The mental health clinicians treating Petitioner also reported that the medications were successful in stabilizing Petitioner’s illness and that Petitioner was cooperative and engaged in his treatment. *Id.* Beginning in March of 2007, Petitioner missed several counseling appointments, but continued to engage in therapy. Supp. App. 48 – Supp. App. 51. After June 16, 2007, Petitioner ceased going to counseling and the DMH had no further contact with him. *Id.*

January 27, 2008 Incident

Around two in the morning on January 26, 2008, Timothy Green and his girlfriend were at home in Orangeburg County when there was a knock at the door. App. 11, ll. 1-13. Green opened the door and saw Petitioner, whom he had known since the fourth grade, and another individual that he did not recognize. App. 10, ll. 10 – App. 11, ll. 12. Immediately upon opening the door, Green

was shot in the leg. *Id.* The bullet pierced a major artery in Green's leg causing severe bleeding. App. 16, ll. 20 – App. 17, ll. 18.

Green managed to close and lock the door. App. 11, ll. 13. Petitioner and the unknown individual forced the door open. *Id.*, ll. 13-21. As Green attempted to flee, he was shot three additional times: once in the left elbow and twice more in his leg. *Id.* at ll. 22-25. Green's girlfriend was in the master bedroom during the shooting and did not see the gunmen. App. 12, ll. 3-14. The girlfriend called 911 while hiding in the closet. *Id.* In April, 2008, Petitioner was located in North Carolina, arrested, and extradited to South Carolina. App. 13, ll. 16-22.

Indictments

On December 10, 2008, Petitioner was indicted by the Orangeburg County Grand Jury for one count of assault and battery with intent to kill (ABIK) and one count of first degree burglary. App. 109 – App. 112. Jillian Ullman was appointed to represent Petitioner. Assistant Solicitor Don Sorenson represented the State.

Alibi Witnesses and Federal Telephone Wiretap

Petitioner provided Ullman with three alibi witnesses who would testify that, on the night of the shooting, Petitioner was at work and then played video games with them. App. 55, ll. 5-24. Prior to trial one of the witnesses was killed. App. 82, ll. 18-23. Ullman served the State with notice of an intent to assert an alibi. App. 14, ll. 6-15. Two weeks before the case was set for trial and a month after the notice of an alibi was sent, the U.S. Attorney's Office contacted the Solicitor's office informing them that they had a wiretap on an Orangeburg resident named Sigmond James. App. 14, ll. 21 – App. 15, ll. 13.

On January 27, 2008, Federal law enforcement had intercepted a telephone conversation between James and an unknown individual, whom the State alleged was Petitioner. *Id.* In the

conversation, the unidentified caller, who law enforcement posited was Petitioner, described shooting Green and planning to tell law enforcement that he was playing video games that night if he was questioned about his whereabouts. *Id.*

Petitioner's Motion for a Competency Evaluation

On July 14, 2009, Petitioner appeared before the Honorable William H. Seals and requested a competency evaluation.³ App. 79, ll. 24 – App. 80, ll. 15. Ullman declined to join Petitioner in his motion. *Id.* Without the assistance of counsel, Petitioner attempted to argue that an evaluation of competency evaluation was necessary in light of his mental health problems and the revelation of the wiretap. *Id.* Petitioner specifically cited his past treatment for schizophrenia *Id.* Judge Seals denied Petitioner's request for an evaluation. *Id.*

Guilty Plea

On July 20, 2009, Petitioner pled guilty to both indictments before the Honorable Edgar Dickson. App. 3, ll. 1 – App. 5, ll. 22. In exchange for pleading guilty, the State agreed on a sentencing range of fifteen to twenty eight years. App. 20, ll. 1-13. In arguing for the fifteen year minimum, Ullman highlighted Petitioner's supportive family, his dedication to his children, and his struggles with drug addiction. App. 19, ll. 19 – App. 20, ll. 13. Ullman requested that Petitioner be eligible for the Alcohol and Drug Treatment Unit while incarcerated. App. 20, ll. 20-25.

Ullman only briefly addressed Petitioner's mental illness. She explained to the court that Petitioner had made her aware of his history of mental health problems. App. 21, ll. 1-18. Ullman then incorrectly explained that Petitioner was only prescribed Seroquel⁴, which Ullman alleged was

³ The transcript of this hearing is not available. App. 44, ll. 7-25.

⁴ This Court may take judicial notice that Seroquel is a brand name for Quetiapine, an extended release drug used to treat schizophrenia. U.S. National Library of Medicine, Medline Plus: Resperidone, National Institute of Health (March 26, 2015), available at: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a698019.html>.

for depression. *Id.* Ullman stressed that Petitioner seemed coherent during their conversations. *Id.* She believed Petitioner understood the State's case and she did not "think that there is a mental health issue in this case." *Id.*

Judge Dickson accepted Petitioner's guilty plea after confirming that any drug treatment program would be administered within the confines of Petitioner's incarceration. App. 21, ll. 23 – App. 23, ll. 7. In accordance with the State's recommendation, Judge Dickson sentenced Petitioner to twenty years imprisonment for ABWIK and twenty eight years imprisonment for first degree burglary. App. 23, ll. 8- 20. The sentences were to be served concurrently. *Id.*

Dismissal of Petitioner's Direct Appeal

After sentencing, Petitioner requested Ullman file an appeal. App. 61, ll. 16-22. Accordingly, Ullman filed a written notice of appeal. App. 84, ll. 10 – App. 85, ll. 19. However, she did not state grounds for appeal as required by South Carolina Appellate Court Rule 230(d)(B)(iv). *Id.* Ullman would recall at the PCR hearing that she did not believe Petitioner's mental problems provided a basis for appealing the guilty plea. *Id.*

Ullman did not request to withdraw as counsel pursuant to Rule 264, SCACR. *Id.* At the PCR hearing, Ullman recollected that she filed the notice of appeal, but stated to the Court of Appeals that she did not know of any legal basis for the appeal. *Id.* She believed that Petitioner was informed that he had the opportunity to provide the court with a basis for an appeal, but she was unaware if Petitioner filed anything. *Id.* The Court of Appeals dismissed Petitioner's appeal for failing to show that any issues were preserved for review. App. 25.

Renewed Mental Health Treatment with DOC

Once in DOC custody, Petitioner resumed mental health treatment on July 30, 2009. Supp. App. 27. An evaluation on September 23, 2009, reported that since restarting his antipsychotic

medications, Petitioner's hallucinations "are minimal now." Supp. App. 24 – Supp. App. 26. Beginning on December 16, 2009, DOC reduced the dosage of Risperdal based on their assessment that Petitioner's schizophrenia was in remission. *Id.*

Unfortunately, at a February 5, 2010 mental health check, Petitioner reported hearing voices "from his victim" and reported "that he had [experienced] audio hallucinations twice in the past month." Supp. App. 23. In March Petitioner's medication dosages were further reduced and he reported that audio hallucinations were increasingly frequent. *Id.* Finally, on April 9, 2010, DOC returned Petitioner's anti-psychotic drugs to their original dosage level. Supp. App. 21.

From May through August of 2010, Petitioner reported that the audio hallucinations had again decreased. Supp. App. 19 – Supp. App. 20. On September 1, 2010, Petitioner reported an increase in audio hallucinations and requested an increase in dosage. *Id.* On January 5, 2011, DOC clinicians reported that Petitioner was having a hard time remembering to take his medications at the prescribed intervals. Supp. App. 18.

The DOC medical summary reveals that Petitioner forgets to take his antipsychotic medications at the prescribed times. Supp. App. 18 – Supp. App. 20. The medical summary is also replete with instances when Petitioner's dosages were reduced because his condition was stabilized, only to have the audio hallucinations dramatically increase; necessitating a return to higher dosages. Supp. App. 19 – Supp. App. 20; Supp. App. 45 – Supp. App. 51.

PCR Application and Evidentiary Hearing

On January 19, 2010, Petitioner filed for post-conviction relief alleging ineffective assistance of plea counsel for failing to seek a medical evaluation and failing to perfect Petitioner's appeal. App. 26 – App. 33. The State filed its return on April 1, 2011. App. 34 – App. 49. Petitioner was represented by Tommy Thomas and the State was represented by Megan Harrigan.

Petitioner's Testimony

On May 29, 2014, an evidentiary hearing held was before the Honorable Maite Murphy. App. 40 – App. 96. Petitioner and Ullman both testified at the hearing. Petitioner testified that during the pendency of his case, he told Ullman about his mental health problems and the medications that he was prescribed. App. 50, ll. 2 – App. 51, ll. 18. Petitioner stated that he also explained to defense counsel that he suffered from visual and auditory hallucinations. *Id.* Petitioner said that counsel was unmoved and dismissive of his mental illness. App. 51, ll. 17-23. Petitioner specifically recalled that plea counsel did not seek any of his medical records from DMH or DOC, despite Petitioner requesting she do so. App. 53, ll. 3-24.

Petitioner further testified that he did not have a good memory of the day of his guilty plea as he was not provided an adequate dosage of antipsychotic medications until he entered DOC custody. App. 55, ll. 16-24; Supp. App. 33. Petitioner's diagnosing doctors concluded that short term and long term memory loss were symptoms of his schizophrenia. App. 56, ll. 2-23. Petitioner stated he asked defense counsel to file an appeal. App. 67, ll. 21-25. However, as counsel did not provide the Court of Appeals with a basis for the appeal it was dismissed. App. 68, ll. 1-9.

Testimony of Plea Counsel

Plea counsel testified that she had been a public defender for two years prior to representing Petitioner. App. 76, ll. 22 – App. 77, ll. 3. Counsel admitted that Petitioner told her he was prescribed Haldol, Seroquel and Risperdal⁵. App. 75, ll. 4-15. Counsel claimed that in her opinion DOC overprescribes mental health medicines that are later determined unnecessary. *Id.* Counsel did not elaborate on how she came to this conclusion. When asked if she requested Petitioner’s records from DMH, plea counsel conceded that she did not. *Id.* at ll. 16-21. She admitted that this omission precluded her from determining the validity of DOC’s assessment of Petitioner. *Id.*

Counsel also conceded that she did not investigate whether Petitioner was treated for mental illness during his prior incarceration with DOC or whether Petitioner was being treated for mental illness at the county jail during her representation. App. 76, ll. 1-13. Counsel stated that she believed Petitioner requested the competency hearing solely to delay his upcoming trial. *Id.* at ll. 17-21. Despite having made no independent investigation into Petitioner’s mental health and having been told by Petitioner that he was prescribed at least three antipsychotic medications, counsel averred that “mental health was never an issue by the time I represented him I had been a public defender for two years. I didn’t feel there was a reason to get him evaluated.” App. 76, ll. 22 – App. 77, ll. 1.

⁵ This Court may take judicial notice that Risperdal is a brand name for Risperidone, an antipsychotic prescribed to treat schizophrenia. U.S. National Library of Medicine, Medline Plus: Resperidone, National Institute of Health (March 26, 2015), available at: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a694015.html>.

On re-direct examination, defense counsel reiterated, that in her opinion, the DOC overmedicates inmates. App. 80, ll. 16-24. This opinion led her to not request any of Petitioner's mental health records and to abandon Petitioner in his efforts to secure a competency evaluation. App. 81, ll. 2-13. *Id.* at ll. 14-24. Counsel reaffirmed that, at the time of the guilty plea, she had absolutely no concerns about Petitioner's mental health and that she believed the guilty plea was motivated by the federal wiretap revelation. App. 82, ll. 12 – App. 83, ll. 7.

Order of Dismissal

The PCR court denied Petitioner's application by way of an Order of Dismissal issued on August 24, 2014. App. 97 – App. 108. The court concluded that plea counsel was not ineffective for failing to seek a mental competency evaluation of Petitioner. App. 104. The PCR court noted that defense counsel claimed that Petitioner was able to assist with his defense and that counsel had no reason to question Petitioner's mental health. App. 104 – App. 105.

The PCR court also summarily determined that defense counsel's failure to perfect Petitioner's appeal of his guilty plea did not prejudice Petitioner. App. 105. The court further concluded that Petitioner was unable to produce an issue at the PCR hearing demonstrating why his appeal should have gone forward. *Id.* Specifically, the court held that defense counsel's inability to provide a basis for the appeal was reasonable based on prevailing professional standards and the sentence Petitioner received. App. 106.

This Petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding petitioner was effectively represented where defense counsel was dismissive of Petitioner's mental illness, including her refusal to join in his motion for a competency hearing, where it was undisputed Petitioner was a diagnosed schizophrenic on numerous antipsychotic drugs, where the facts of Petitioner allegedly participating in the shooting of his friend were bizarre, and where Petitioner's mental illness was a significant mitigating evidence that counsel stubbornly and inexplicably refused to argue to the sentencing judge.

Counsel was completely ineffective in presenting Petitioner's mental illness to the plea court as a major mitigating factor in Petitioner's culpability for his alleged participation in the shooting of his longtime friend. Counsel's willful decision to ignore Petitioner's request for further investigation into his mental health problems, including a competency evaluation, fell well below prevailing professional norms given Petitioner's documented history of schizophrenia. Supp. App. 29 – Supp. App. 33.

Defense counsel's indifference to Petitioner's mental illness also denied Petitioner, his "one fair bite at the apple" as counsel failed to raise the denial of Petitioner's motion for a competency evaluation as a grounds for appeal. App. 43, ll. 4-18. Absent counsel's failings, Petitioner would have presented substantial mitigation evidence tending to rebut the aggravating circumstances surrounding the strange shooting. App. 54, ll. 2-9. *See Nance v. Ozmint*, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8 (2006); *see also Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) ineffective assistance of counsel standard to guilty plea challenges).

Discussion

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland*, 466 U.S. at 686. “Where allegations of ineffective assistance of counsel are made, the question becomes, ‘whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.’ ” *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 686). As such, courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 668).

First, the applicant must demonstrate counsel’s representation was deficient, which is measured by an objective standard of reasonableness. *Strickland*, 466 U.S. at 687–88. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’ ” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel’s performance in such a manner that, but for counsel’s error, there is a reasonable probability the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” *Brady v. United States*, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the

charges against him); *see also Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given).

In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief. *See Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). “In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases, and 2) if there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty.” *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing *Hill v. Lockhart*, 474 U.S. at 56–58). On review, a PCR judge's findings will be upheld if there is evidence of probative value sufficient to support them. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. *Nance v. Ozmint*, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8 (2006) (quoting *Wiggins*, 539 U.S. at 524-25, 123 S.Ct. 2527). At a minimum, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Walker v. State*, 407 S.C. 400, 406, 756 S.E.2d 144, 147 (2014) (citing *Strickland*, 466 U.S. at 691).

Deficient Performance

In this case, Petitioner did not freely and intelligently plead guilty because plea counsel failed to conduct a reasonable investigation into Petitioner's mental health records, which deprived Petitioner of mitigating and potentially exculpatory evidence regarding his culpability. Supp. App. 29 – Supp. App. 33; *Rosemond v. Catoe*, 383 S.C. 320, 326, 682 S.E.2d 5, 9 (2009)(counsel ineffective for failing to present evidence of Petitioner's mental illness as mitigating factor, despite trial court finding that Petitioner was competent to stand trial).

Counsel's decision to ignore Petitioner's request for further investigation fell below prevailing professional norms. *Strickland*, 466 U.S. at 691. Green, friend of Petitioner's since the fourth grade, was shot roughly six months after Petitioner stopped receiving treatment with DMH. App. 7, ll. 3-12; Supp. App. 49 – Supp. App. 48. Plea counsel admitted that, despite Petitioner telling her that he had been prescribed at least three antipsychotic medications, she did not seek Petitioner's mental health records. App. 75, ll. 4-15; *see Hill*, 474 U.S. at 52; *see also Walker*, 407 S.C. at 406, 756 S.E.2d at 147. Moreover, counsel incorrectly stated to the plea court that Petitioner was taking Seroquel for depression when, in fact, Seroquel was prescribed as an anti-psychotic medication to treat Petitioner's schizophrenia App. 21, ll. 1-18.

Counsel decided not to investigate based only on her unsubstantiated belief that DOC over-prescribes inmates.⁶ App. 75, ll. 4-15. Petitioner's treatment history reveals that Petitioner has only received mental health counseling while incarcerated or immediately after being released. Supp. App. 1 – Supp. App. 64. That Petitioner was only receiving mental health treatment while incarcerated simply reflects a lack of access to mental health care in other circumstances.

Counsel also stated that during her meetings with Petitioner he appeared alert and able to participate in planning his own defense. App. 76, ll. 7-22. However, Petitioner's medical records, which counsel did not request, reveal that he is able to maintain a degree of lucidity and situational awareness in the intervals between hallucinations. Supp. App. 21 – Supp. App. 26.

Finally, Petitioner explicitly requested that counsel file an appeal. App. 61, ll. 16-22. Judge Seals' denial of a competency evaluation provided an arguable basis for the appeal given Petitioner's mental illness. App. 79, ll. 24 – App. 80, ll. 18. Unfortunately, plea counsel failed to investigate Petitioner's extensive history of mental health problems and did not join in Petitioner's motion or raise any sort of objection to the plea court regarding Judge Seals' denial. *Id.*

⁶ Plea counsel's assumption is especially erroneous in light of *T.R. et al v. SCDC*, C/A: 2005-CP-40-2925 (S.C. Ct. Common Pleas, Jan. 8, 2014). In an order granting judgment in favor of the "approximately 3,500 state inmates who meet the definition of being mentally ill" (including schizophrenics), Judge Baxley held that DOC failed to provide basic mental health care and acted with deliberate indifference to the mental health needs of inmates. Before detailing the decades-long systematic failures of the DOC to treat mentally ill inmates, the Court lamented that "over 70,000 cases of every imaginable sort have come to this Court over the years. This case, far above all others, is the most troubling."

Among the many shortcomings, the court highlighted a grossly inadequate screening and intake system which frequently failed to identify those in need of treatment. Despite these shortcomings, DOC identified Petitioner as mentally ill within a year of being in custody. Supp. App. 29.

Plea counsel had a duty investigate Petitioner's mental health records as Petitioner made her aware of his history of mental health treatment. At a minimum, Petitioner's long history of schizophrenia would have a mitigating factor in a judge's or a potential jury's appraisal of Petitioner's culpability. *Nance*, 367 S.C. at 557 n. 8, 626 S.E.2d at 883 n. 8; *see also Wiggins*, 539 U.S. at 538.

Prejudice

As to prejudice, plea counsel's deficient representation and cursory dismissal of petitioner's mental illness, including her refusal to join in his motion for a competency hearing, where it was undisputed petitioner was a diagnosed schizophrenic on numerous antipsychotic drugs, and where the facts of petitioner allegedly participating in the shooting of his friend were bizarre; denied Petitioner the opportunity to present mitigating evidence to the sentencing judge. App. 53, ll. 7 – App. 54, ll. 4; *Nance*, 367 S.C. at 557 n. 8, 626 S.E.2d at 883 n. 8; *see also Wiggins*, 539 U.S. at 538. Counsel's stubborn and inexplicable refusal to present any evidence of Petitioner's schizophrenia or to the sentencing judge resulted in Petitioner being sentenced to twenty eight years imprisonment, the maximum sentence under the agreement reached between counsel and the State. App. 20, ll. 1-13.

Petitioner's case was being prepared for trial until the revelation of the federal wiretap. App. 76, ll. 14 – App. 77, ll. 12. At that point Petitioner requested a competency evaluation. However, without confirming whether there was any basis in Petitioner's medical records for an evaluation, counsel refused to aid him in securing a competency evaluation. App. 64, ll. 3-22. After Petitioner failed in his self-represented attempt to secure a competency evaluation, he agreed to plead guilty. App. 92, ll. 6 – App. 93, ll. 24. Counsel's unjustified belief that a mental evaluation was

unnecessary was a natural outgrowth of counsel's refusal to request Petitioner's mental health records.

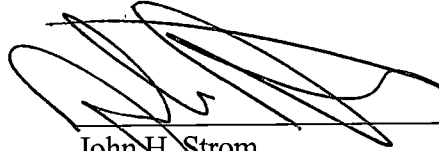
Petitioner's decision to plead guilty did not relieve plea counsel of her duty to conduct a reasonable and independent investigation into possible defenses. *See Praylow v. Martin*, 761 F.2d 179 (4th Cr. 1985). Counsel's inaction coerced Petitioner into pleading guilty without bringing forward "all reasonably available mitigation evidence tending to rebut any aggravating evidence introduced by the State." *Nance*, 367 S.C. at 557 n. 8, 626 S.E.2d at 883 n. 8.

Accordingly, the PCR court erred in finding that Petitioner was not prejudiced by counsel's failure to request his mental health records. App. 97 – App. 108; *Nance*, 367 S.C. at 557 n. 8, 626 S.E.2d at 883 n. 8; *see also Wiggins*, 539 U.S. at 538.

CONCLUSION

Based on the foregoing reason, Petitioner Johnny White respectfully requests that his petition for writ of certiorari be granted to allow a full briefing on the issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Maite Murphy, Circuit Court Judge

JOHNNY WHITE,

PETITIONER,

V.

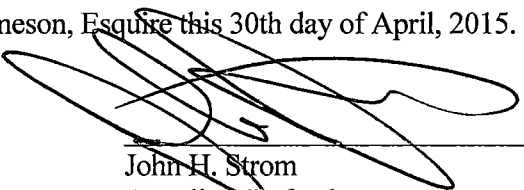
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002167

CERTIFICATE OF SERVICE

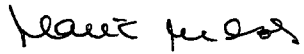
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan Jameson, Esquire this 30th day of April, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of April, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.