

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

OCT 19 2015

S.C. Supreme Court

RUBEN RAMIREZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-208626

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. NO: 2009-CP-23-9285
COUNTY OF GREENVILLE)	FILED MAY 23 4:15
Ruben Ramirez, Jr.,)	
)	
PLAINTIFF,)	MOTION TO HOLD THE RECORD OPEN
)	AND ALLOW SUBMISSION OF A NEW
vs.)	COMPETENCY EVALUATION
)	
State of South Carolina,)	
)	
DEFENDANT.)	
_____)	

COMES NOW, the Plaintiff by and through his attorney, who moves this court to permit a new competency evaluation to be submitted for the court's review of Plaintiff's application for post-conviction relief.

In support of this motion, counsel presents the following:

1) The Plaintiff pleaded guilty but mentally ill to Assault and Battery with Intent to Kill, Kidnapping, Criminal Sexual Conduct with a Minor in the 1st Degree, Buglary 1st and Lewd Act Upon a Child on November 3, 2008 before Circuit Judge Edward Miller. The Plaintiff was sentenced to twenty years in the Department of Corrections and fifteen years consecutive suspended upon five years of probation.

2) Prior to Plaintiff's guilty plea, the Plaintiff was evaluated by Dr. Mayank H. Dalal for competency on June 7, 2007. In Plaintiff's competency evaluation, Dr. Dalal relied upon the Plaintiff for the history of his mental condition. Specifically, Dr. Dalal stated that Plaintiff "denied a history of inpatient or outpatient psychiatric treatment" and a "history of major medical or psychological problems in the past." Nor did Dr. Dalal cite any additional studies or information that he reviewed regarding Plaintiff's mental condition for completing the

competency evaluation. Following a review of the Plaintiff for 100 minutes, Dr. Dalal concluded the Plaintiff to be competent.

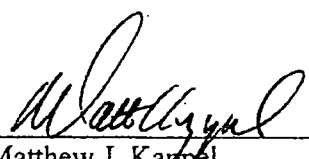
3) Prior to Plaintiff's guilty plea, the Plaintiff was also evaluated by Dr. Stephen M. Gedo, Jr. PhD who evaluated the Plaintiff on five occasions for up to three to four hours for each session, the last session held on March 27, 2008. Dr. Gedo concluded that the Plaintiff suffered from Severe Mental Retardation with an IQ level of 31-44 and an age equivalent function of 4-7 years old (Plaintiff was 17 years of age when Dr. Gedo evaluated him).

4) Plaintiff's only ground for post conviction relief was that the competency evaluation conducted by Dr. Dalal was defective and Plaintiff's counsel did not object to it during the trial stage of the case. An evidentiary hearing was held on the Post Conviction Relief on May 9, 2011 and the court took the case under advisement and has not yet ruled upon Plaintiff's application for relief.

5) To date, Plaintiff has not had an additional competency evaluation. However, Plaintiff's family has engaged the services of Dr. Thomas V. Martin of Columbia, SC to conduct an additional competency evaluation commencing on Tuesday, May 31, 2011 at the South Carolina Department of Corrections facility in Bishopville, SC.

THEREFORE, counsel for the Plaintiff would respectfully request that in the interests of justice that the court hold the record open and allow the submission of Dr. Martin's competency evaluation which he will begin next week. There is no harm or prejudice upon the State because Plaintiff is simply asking the court to delay its decision in the case for a couple of weeks and then consider the findings of Dr. Martin, whatever they may be.

signature to follow on next page



Matthew J. Kappel
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May 23, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Ruben Ramirez, Jr.,)
)
 PLAINTIFF,)
)
 vs.)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. NO: 2009-CP-23-9285
 2011 MAY 23 P 4: 15

CERTIFICATE OF SERVICE
 STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

The undersigned hereby certifies that he did this day serve one copy of Plaintiff's Motion To Hold The Record Open And Allow Submission Of A New Competency Evaluation by US Mail postage prepaid to the following address:

Asst. Attorney General Karen Ratigan
 Office of the S.C. Attorney General
 P.O. Box 11549
 Columbia, S.C. 29211



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 Greenville, SC 29603
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 S.C. Bar Number: 15390

May 23, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No: 2009-CP-23-9285
COUNTY OF GREENVILLE)	
Ruben Ramirez, Jr.)	AFFIDAVIT OF THOMAS V. MARTIN, M.D.
PLAINTIFF,)	
VS)	
State of South Carolina)	
DEFENDANT,)	

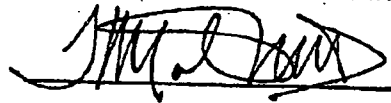
PM 4:23

I, Thomas V. Martin, M.D. am a licensed physician (psychiatrist) in the state of South Carolina. I am Board Certified in General and Forensic Psychiatry by the American Board of Psychiatry and Neurology and the American Board of Forensic Psychiatry. My practice is located at 1330 Richland Street, Columbia. My practice includes the care and treatment of patients from childhood to geriatrics. I have been qualified to testify in numerous counties in South Carolina as well as the United States Federal Courts.

Being duly sworn, do swear and affirm the following.

1. I evaluated Ruben Ramirez, Jr. on May 31, 2011 at the Lee Correctional Institution.
2. Mr. Ramirez carries a documented history and diagnoses of "Severe Mental Retardation and Attention Deficit/Hyperactivity Disorder (ADHD)" with associated "language impairment" and previous enrollment in special education services.
3. It is my opinion with a reasonable level of medical and psychiatric certainty that Mr. Ramirez suffers from severe mental retardation with coexistent maladaptive social and language skills and that he is NOT considered competent to stand trial.
4. I am available by telephone or Court Appearance.
5. I am attaching my complete Forensic Psychiatric Evaluation of Mr. Ruben Ramirez, Jr.

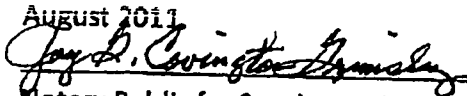
Further affiant sayeth not:



Thomas V. Martin, M.D.

SWORN TO BEFORE ME THIS 10th DAY of

August 2011


 Notary Public for South Carolina

My Commission Expires: 12-15-2011

MARTIN PSYCHIATRIC SERVICES, PC
THOMAS V. MARTIN, M.D.

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**Brief Forensic
Psychiatric Summary**

NAME: RAMIREZ, Ruben Jr.
INMATE #: 00331556
DOB:
REFERRAL: Mr. Matthew Kappel, Esq.
114 Whitsett Street
Greenville, SC 29601
EVALUATION: May 31, 2011
REPORT: June 10, 2011
EXAMINER: Thomas V. Martin, M.D.

COMPETENT TO STAND TRIAL: NO.

INTRODUCTION:

Ruben Jr. Ramirez is a 20 year old Hispanic male, former Beck Academy 8th grader in the special education program, who pled "guilty, but mentally ill" to *Criminal Sexual Conduct (CSC) with a Minor, Lewd Act on a Minor, Burglary 1st*, and *Assault and Battery With Intent to Kill (ABWIK)* in the Greenville County Court of General Sessions on or about November 3, 2008. Mr. Ramirez was sentenced to 20 years incarceration at the SC Department of Corrections (SCDC) followed by five years of probation. He is currently incarcerated at the Lee Correctional Institution in Bishopville, SC.

Mr. Ramirez carries a documented history and diagnoses of "*Severe Mental Retardation* and *Attention Deficit/Hyperactivity Disorder (ADHD)*," with associated "language impairment" and previous enrollment in special education services.

Mr. Ramirez is petitioning the Greenville County Court of General Session for Post-Conviction Relief (PCR) due to ineffective assistance of counsel during his 2008 court case.

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REASON FOR REFERRAL:

This Forensic Psychiatric Evaluation was requested by Mr. Ramirez's present attorney, Mr. Matthew Kappel, Esq. in order to determine whether Mr. Ramirez suffered from a psychiatric condition that may have precluded his "competency to stand trial" that should have been more thoroughly examined as part of his criminal proceedings in 2008. The current forensic evaluation includes an assessment of Mr. Ramirez's present competency to stand trial.

STATEMENT OF CONFIDENTIALITY:

Mr. Ramirez vocalized an understanding of the purpose for this consultation; and that its contents, findings, and recommendations would be submitted to his attorney, Mr. Matthew Kappel, Esq. He was assured that no part of the content, opinions or conclusions derived would be discussed with unauthorized parties.

SOURCES OF INFORMATION:

- 1) Request by Mr. Kappel, Esq. for a forensic psychiatric evaluation of Mr. Ramirez, May 23, 2011.
- 2) Maudlin Police Department Incident reports.
- 3) Handwritten Statement and Waiver of Rights by the Defendant, January 28, 2007.
- 4) SC Department of Mental Health (SCDMH) Forensic Evaluation of the Defendant by Mayank H. Dalal, M.D, June 7, 2007.
- 5) Highlands County School District records, Sebring, FL of the Defendant.
- 6) Psychological Record and Report, Highlands County School District, Sebring, FL.
- 7) Report of Psychological Evaluation of the Defendant by Stephen M. Gedo, Jr., Ph.D., February 5, 12, 19, March 11 and 27, 2008.
- 8) Sebring Pediatric Clinic records of the Defendant.
- 9) 2-1/2 hour clinical psychiatric interview with Mr. Ramirez at the Lee Correctional Institution, May 31, 2011.

PERTINENT DATA:

Mr. Ramirez has a documented history of "special needs" stemming from his early diagnosis of "mental retardation" and "language impairment." Although a physically healthy child, Mr. Ramirez suffered lifelong intellectual challenges that were initially assessed and addressed through special education programs in school. While residing in Florida, Mr. Ramirez was tested by the Highlands County School District and in 1998, he was assessed with a Full Scale I.Q. of "57," which falls in the range of "mental retardation." Additional psychoeducational testing substantiated Mr. Ramirez's "intellectual deficiencies." Testing revealed his weaknesses in both abstract and concrete reasoning abilities, his weaknesses in the use of common sense, judgment, and reasoning as well as judgment in practical situations. Mr. Ramirez demonstrated weaknesses in flexibility in new learning situations, ability to learn visual-motor skills from repetitive experiences, ability to absorb new material in an associative context, general overall psychomotor ability, visual motor dexterity, pencil manipulation, and speed and accuracy ability. Furthermore, the school district determined that Mr. Ramirez failed to see a total

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situation based on visual comprehension and organization and environmental experiences (social intelligence).

Mr. Ramirez's social adaptive behavior was also markedly deficient as assessed in the school district. He demonstrated poor communication skills, poor daily living skills, and poor social skills in follow-up adaptive behavior assessments. Overall, Mr. Ramirez was found to have a low adaptive level that only confounded his low intellectual ability. Based on his multiple intellectual, language and social deficiencies, Mr. Ramirez was placed in the school district's special education program.

A forensic psychiatric evaluation was reported by Dr. Dalal from the SCDMH in 2007 as part of Mr. Ramirez's legal proceedings. This evaluation did not include contemporary psychoeducational testing or a review of past special education services assessments and programs. Subsequently, Dr. Dalal opined that Mr. Ramirez suffered from "no diagnosis."

A follow-up psychological evaluation of Mr. Ramirez was ordered in 2008 as part of a forensic assessment of his intellectual and mental ability surrounding his alleged crime charged in early 2007. Psychologist, Dr. Gedo, performed a comprehensive examination of Mr. Ramirez's past records and administered contemporary psychological assessment tools as part of his evaluation. Essentially, Dr. Gedo substantiated Mr. Ramirez's previous school affiliated psychological evaluations and determined that he suffered from "severe mental retardation and ADHD." Dr. Gedo assessed Mr. Ramirez's IQ to fall between 31-44, which is in the "severe" mental retardation range. He also noted that Mr. Ramirez became "confused easily, and his attention did appear to wander at times." "He was clearly cognitively limited across the entire range of cognitive functioning." "Judgment and insight appeared poor, while impulse control appeared grossly intact." During Mr. Ramirez's evaluation, Dr. Gedo noted no evidence of a "Paraphilia" or other major mental, mood or thought disorder illnesses. Dr. Gedo opined that Mr. Ramirez (then age of 17 years) was "functioning at intellectual levels of a 4-7 year old."

In my examination of Mr. Ramirez, I found him to be simple-minded, intellectually and socially deficient, easily confused and highly suggestible with facts and history. He was easily manipulated into agreement with this Examiner on unrelated or even pertinent material during the evaluation. He expressed some recollection of the documented struggles he suffered in school and how his social development was oftentimes thwarted by ridicule and ostracization by peers. He recounted his need for special education services and being held back in school or promoted forward for social reasons. He never was able to develop peer-aged close and long-term relationships. His dating history was nonexistent. He denied any sexual experience prior to his criminal charges in 2007.

MENTAL STATUS EXAMINATION:

On the date of this consultation, Mr. Ramirez was alert and oriented to person, place, time, and situation. He was pleasant, polite, genuine, and interactive. He attempted to establish a rapport with this Examiner, but behaved child-like and immature for his age. Mr. Ramirez's speech was of normal rate, soft tone, and normal rhythm. He described

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his mood as "okay," and he displayed animated emotional expression. His thoughts were very concrete and obsessive on doing the right thing. There was no active evidence of hallucinations, delusions or paranoia. Mr. Ramirez appeared to have a very low level of intellectual functioning. A basic cognitive examination revealed deficits in memory, insight and judgment. He was highly suggestible, easily influenced into acknowledging erroneous data, and appeared to react and give answers to please the Examiner. Mr. Ramirez gave no evidence of active suicidal or homicidal ideations, plans, or intent.

DIAGNOSTIC IMPRESSIONS:

DSM-IV

- AXIS I:** ADHD, by history.
- AXIS II:** Mental Retardation, Full Scale I.Q.: 31-57, with significant documented deficiencies in adaptive social behavior.
- AXIS III:** No Major Medical Illness.
- AXIS IV:** Psychosocial Stressors: Incarceration, legal issues, and separation from his family.
- AXIS V:** 45

COMPETENCY TO STAND TRIAL:

It is with a reasonable level of medical and psychiatric certainty that Mr. Ramirez suffers from severe mental retardation with coexistent maladaptive social and language skills. This is affirmed by individual consultation with Mr. Ramirez, from his school district mental health records, and from previous independent psychological assessments. It is not entirely clear to this Examiner that Mr. Ramirez suffers from ADHD, as his ability to concentrate and complete multiple tasks and consistently control otherwise hyperkinetic behavior may be a direct product of his severe intellectual incapacitation.

Mr. Ramirez can recite the names of the charges once levied against him. He vocalized a vague and inconsistent impression of the purpose of a PCR action. Mr. Ramirez seems to have developed a blind trust for his present attorney, Mr. Kappel, and vocalized his plan to follow his advice at all times, without question. He also attempted to describe the basic roles of the Prosecutor and the Judge as it applies to his current situation. Mr. Ramirez was not consistent or always accurate with his reported understanding of his legal case. He was able to concretely site several pertinent facts related to his case and how they might be a part of his PCR, but there was no true evidence or indication that he possesses rational or abstract understanding or applicative ability that is also necessary to formulate a viable court presentation. Therefore, Mr. Ramirez is NOT considered competent to stand trial.

CONCLUSIONS AND RECOMMENDATIONS:

There is no medical or psychiatric treatment for severe mental retardation. Special needs and learning services have already been offered in Mr. Ramirez's earlier education with a modicum of improvement in his adjustment and social adaptability. As in *Jackson v. Indiana*, there should be no expectation that Mr. Ramirez's intellectual condition to improve over time, even with mental health services offered.

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Mr. Ramirez's presentation to this Examiner was consistent with documented findings in Mr. Ramirez's early school records and from the psychological evaluation in 2008. In light of his history and current presentation, it remains unclear to this Examiner how Mr. Ramirez was ever found "competent to stand trial," to viably assist his attorney, and offer a guilty plea in 2008. Furthermore, it is apparent that Mr. Ramirez's mental health assessment, in light of a documented "severe mental retardation" condition, did not include an additional assessment by the SC Department of Disabilities and Special Needs (SCDDSN), which is typically required under statute in similar court proceedings.

Signed electronically

Thomas V. Martin, M.D.

Psychiatrist

Diplomate, Psychiatry, American Board of Psychiatry and Neurology

Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology