

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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RUBEN RAMIREZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-208626

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AMENDED BRIEF OF PETITIONER

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## ISSUES PRESENTED

1. The PCR judge erred in finding no error in trial counsel's failure to secure an independent mental competency evaluation for petitioner. In addition, the PCR judge erred in denying PCR counsel's request to leave the record open to submit proof of petitioner's mental incompetency to stand trial/plead guilty, which was available for review before the close of his PCR action; and the PCR judge erred in denying PCR counsel's Rule 59(e) motion requesting review of proof of petitioner's mental incompetency and the issuance of an amended order in recognition of the same.
2. The PCR judge ruled properly in granting petitioner's request for a belated direct appeal of his guilty but mentally ill pleas, which were unconstitutional pleas obtained in violation of due process.

## STATEMENT

Petitioner Ruben Ramirez pled guilty but mentally ill to assault and battery with intent to kill, kidnapping, first degree burglary, first degree criminal sexual conduct, and lewd act upon a child during the November 2008 term of the Greenville County General Sessions Court before Judge Edward Miller. Petitioner received concurrent twenty-year prison sentences for all of his convictions, save his lewd act conviction for which Judge Miller imposed a consecutive fifteen-year sentence, suspended upon five years probation. App. 1-25. Petitioner did not enjoy the benefit of a direct appeal in the case. Monti Desai represented petitioner at the plea proceeding.

On November 2, 2009, petitioner filed a PCR application with the Greenville Office of the Clerk of Court. App. 27-34. The respondent filed a return dated April 7, 2010, requesting that a hearing be held in response to petitioner's PCR action. App. 35-38. A PCR hearing was convened on May 9, 2011, at the Greenville County Courthouse before Judge G. Edward Welmaker. App. 40-81. Petitioner did not appear at the PCR hearing, but was represented at that hearing by Matt Kappel.

On May 23, 2011, PCR counsel filed a motion to hold the record open to allow a new competency evaluation. Supp App. 1-3. On July 27, 2011, Judge Welmaker issued an order of dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 114-121. On August 11, 2011, PCR counsel filed a Rule 59(e), SCRPC, motion in the case. App. 122-126. Thereafter, the respondent filed a return to the Rule 59(e), SCRPC, motion. App. 128-130. On November 22, 2011, Judge Welmaker issued an order denying the Rule 59(e), SCRPC, motion, but granted petitioner's request for a belated direct appeal. App. 132-133.

Petitioner appealed Judge Welmaker's Orders, and per this Court's Orders dated June 25, 2014, and April 15, 2015, respectively, this amended brief of petitioner follows.

## QUESTION I

The PCR judge erred in finding no error in trial counsel's failure to secure an independent mental competency evaluation for petitioner. In addition, the PCR judge erred in denying PCR counsel's request to leave the record open to submit proof of petitioner's mental incompetency to stand trial/plead guilty, which was available for review before the close of his PCR action; and the PCR judge erred denying PCR counsel's Rule 59(e) motion requesting review of proof of petitioner's mental incompetency proof and the issuance of an amended order reflecting in recognition of the same.

Petitioner pled guilty but mentally ill to assault and battery with intent to kill, kidnapping, first degree burglary, first degree criminal sexual conduct, and lewd act upon a child. The solicitor summarized the facts of the case at the plea proceeding. According to the state's version of the case, petitioner knocked on the door of the prosecutrix's residence, forced his way through the door when it was opened, took the prosecutrix to the woods nearby, beat her, took off her underwear, rubbed his penis on her vagina, and touched her breasts. App. 12, l. 18 – p. 14, l. 9.

Petitioner received a state mental evaluation from a state doctor and an independent psychological evaluation scheduled by trial counsel. The state's forensic psychiatrist found that petitioner was competent to stand trial. App. 83-85. Subsequently, at the behest of trial counsel, an independent psychological examination was conducted by Stephen M. Gedo, Jr., PH.D, who found that petitioner had no psychosis, but suffered from severe mental retardation, intellectual impairment, ADHD, and possessed the intellectual functioning of a 4-to-7-year old child. App. 86-90. However, Gedo failed to make a finding regarding petitioner's competency to stand trial. Trial counsel did not request an independent competency finding.

Petitioner was not present at the PCR hearing, but petitioner's trial counsel was present at the PCR hearing and testified during the hearing. The chief issue raised at the PCR hearing was whether counsel erred in failing to have an independent re-evaluation performed on petitioner solely on the question of whether he was mentally competent to stand trial. The independent examination of petitioner that was arranged by trial counsel was limited to a psychological/mental illness examination. Gedo made no independent finding as to whether petitioner was mentally competent to stand trial. Trial counsel in effect admitted that he erred in failing to have petitioner examined independently and solely on the question of mental competency in order to have challenged the state's medical doctor's finding that he (petitioner) was mentally competent to stand trial. App. 47, lines 6-15; App. 50, lines 1-8; App. 55, l. 18-p. 57, l. 7. Counsel admitted his error as follows:

PCR Counsel: Now, once again, having looked at Dr. Gedo's report, looking at the DSM, looking at his IQ, looking at his global assessment and then revisiting the competency exam, would it not seem to be prudent to have potentially reevaluated his competency?

Trial Counsel: I think you can say that.

PCR Counsel: The question is would you say that?

Trial Counsel: Uh, probably.

App. 65, l. 21-p. 66, l. 3.

At the close of the PCR hearing held on May 9, 2011, PCR counsel implored the PCR judge to hold the record open to obtain an independent competency evaluation of petitioner (App. 74, l. 25 - p. 81, l. 7), which trial counsel failed to do, but the PCR judge denied PCR counsel's request.

Then, 14 days later on May 23, 2011, PCR counsel filed a motion to hold the record open in order to obtain a mental competency evaluation of petitioner (Supp App 1-3), which had already been scheduled to take place on May 31, 2011, but the PCR judge denied the motion to hold the

open the record.<sup>1</sup> App. 132-133. Nonetheless, an independent mental competency evaluation was conducted on May 31, 2011, and according to the Rule 59(e) motion (See Supp App.), a copy of the May 31, 2011 evaluation results, which found petitioner mentally incompetent in 2008 when the plea was taken and in 2011, were available on June 10, 2011, for the PCR judge's perusal. Unfortunately however, on July 27, 2011, the PCR judge signed an order of dismissal (written) sans a review of the results of the May 31, 2011 mental evaluation report available on June 10, 2011, and found that trial counsel was not ineffective in failing to have secured an independent mental competency evaluation of petitioner in the case. App. 116-118.

In response to the order of dismissal filed by the PCR judge, PCR counsel filed a timely Rule 59(e), SCRPC, motion on August 11, 2011, revealing that on May 31, 2011, which was 22 days after the PCR hearing was held, and 8 days after the motion to hold the record open was filed, and 57 days before the PCR judge signed the order of dismissal in the case, petitioner was

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<sup>1</sup> The Motion to Hold the Record Open and Allow Submission of a New Competency Evaluation was denied by the PCR judge in the order of dismissal signed on July 27, 2011, based on the following rationale: Two (2) weeks after the PCR hearing in this case (and while the matter was still under advisement), counsel for the Applicant filed a Motion to Hold the Record Open and Allow Submission of a New Competency Evaluation. That Motion is denied. A full PCR hearing was held on any and all issues the Applicant wished to litigate. The Applicant was notified of the date of the PCR hearing approximately one (1) month in advance and was on notice to present any and all pertinent evidence to this Court during this hearing. Given that the PCR hearing took place eighteen (18) months after the PCR application was filed, there was ample time for evidence to be obtained for submission at that hearing. As such, allowing the record to remain open for the submission of a competency evaluation, especially since this issue was known to the Applicant and was, in fact, the sole issue argued at the hearing-would give the Applicant a second opportunity to marshal facts and evidence to support his position. This Court finds this would be [not one as granted but] a second "bite at the apple" and contrary to the position expressed by the South Carolina Supreme Court. See, e.g., Odom v. State, 337 S.C. 256, 523 S.E. 2d 753 (1999). App. 114-120.

independently evaluated for mental competency by Dr. Thomas Martin, who subsequently diagnosed petitioner as mentally incompetent in 2008 and 2011. Note that the Dr. Martin's evaluation and his results were submitted before the close of the PCR action in petitioner's case and could have been reviewed by the PCR judge before the July 27, 2011 order of dismissal was signed in the case. Dr. Martin's report included the following findings:

Dr. Martin issued his report on June 10, 2011 and concluded that the Plaintiff is not competent to stand trial today and would not have been competent to stand trial on November 3, 2008. In essence, the Dr. Martin stated that the Plaintiff suffers from "severe mental retardation with coexistence maladaptive social and language skills." These disabilities would have been equal present in the Plaintiff at the time of the incident as well as Plaintiff's court date in 2008 because there is "no medical or psychiatric treatment for severe mental retardation." Dr. Martin further concluded that "in light of [Ruben's] history and current presentation it remains unclear...how [he] was ever found 'competent to stand trial.'"

App. 124, paragraph 6; Supp. App. 4-7.

Despite the findings of petitioner's mental incompetency by Dr. Martin, which were represented in the Rule 59(e), SCRCP, motion filed on August 11, 2011, the PCR judge ruled by order dated November 22, 2011, (App. 132-133), that the order of dismissal signed on July 27, 2011, would not be amended and that the PCR case would not be re-opened to determine what bearing Dr. Martin's evaluation and his findings of petitioner's mental incompetency had on the case. App. 132-133.

A.) The PCR Judge's "One Bite at the Apple" Justification

In the order of dismissal issued in the case, the PCR judge justified his refusal to entertain petitioner's independent mental competency evaluation results secured within the boundaries of his PCR action on the ground that "the PCR hearing took place 18 months after the PCR application

was filed and there was ample time for evidence to [have been] obtained for submission of [the PCR] hearing” and that any consideration of petitioner’s independent competency results would be tantamount to allowing petitioner “a second bite at the apple.” App. 120. Again, according to PCR counsel’s Rule 59(e) motion, the independent competency results were submitted to the PCR judge on June 10, 2011, (See Supp. App.), which occurred well before the PCR judge signed the order of dismissal on July 27, 2011, denying relief to petitioner.<sup>2</sup> Furthermore, the “one bite at the apple” rule applies to successive PCR actions. Here, petitioner had only one PCR action filed and pending. None other. In Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), the Court explains the “one bite at the apple” rule as follows.

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than “one bite at the apple as it were.” *Matthews v. Evatt*, 105 F.3d 907, 916 (1997)(quoting *Gamble v. State*, 298 S.C. 176, 379 S.E.2d 118, 119 (1989)). A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. *Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987); see S.C. Code Ann. § 17-27-90 (1976 and Supp. 1997). In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in a previous application. *Tilley v. State*, 334 S.C. 24, 511 S.E.2d 689 (1999). Additionally, successive PCR applications are.

In the case at bar, petitioner did not file a separate or successive PCR action. Rather, petitioner requested leave to submit the results of the independent mental competency evaluation

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<sup>2</sup> In the Rule 59(e) motion, PCR counsel noted that June 10, 2011, was the date on which the independent mental competency evaluation was summarized by Dr. Martin; however, August 20, 2011, appears as the date on which Dr. Martin signed off on the independent mental competency evaluation results.

within the parameters of his pending PCR action, either on June 10, 2011, before the order of dismissal was issued, or after August 11, 2011, via his Rule 59(e) motion, which was before the PCR judge issued the order dated November 22, 2011, denying the Rule 59(e) motion that requested a review of the independent mental competency evaluation results proving petitioner's mental incompetence and the issuance of an amended order reflecting the findings from the independent mental competency evaluation. To the contrary and for the sake of judicial economy, the PCR judge should have entertained petitioner's independent mental competency evaluation results.

B.)The PCR Judge's Denial of the Motion to Hold the PCR Record Open

The PCR hearing in this case was held on May 9, 2011. On May 23, 2011, PCR counsel filed a Motion to "Hold The Record Open And Allow Submission of a New Competency Evaluation." The independent mental competency evaluation was conducted on May 31, 2011, and the results were obtained on June 10, 2011, (and signed off by Dr. Martin on August 10, 2011), but the PCR judge signed the order of dismissal on July 27, 2011, without entertaining the independent mental competency evaluation results, which were obtained and available before the close of the PCR action. On August 11, 2011, PCR counsel filed a Rule 59(e) motion to amend the order of dismissal and grant PCR relief in light of the independent mental competency evaluation findings that petitioner was mentally incompetent in 2008 and 2011. In the order of dismissal, the PCR judge ruled that the motion to hold the record was denied because petitioner had "ample time for evidence to be obtained for submission at [the PCR] hearing." App. 120.

Our Court has addressed the issue of when to grant a request to leave a record open. This issue arose in the case of Trotter v. Trane Coil Factory, 393 S.C. 637, 714 S.E.2d 289 (2011), where the Court held that the trial judge did not err in denying the employer's "requests for continuance and to leave the record open" as the trial judge had previously granted two prior requests to leave

the record open, and because the information sought to supplement the record would not have been forthcoming quickly, which meant the record would have been open probably indefinitely therein causing undue delay in the case. In the case at bar, no prior grants to hold the record open were ever given; and also, holding the record open in petitioner's case would not have caused any undue delay in his PCR action because the motion to leave the record open was for an evaluation that had already been scheduled and concluded before the PCR judge signed the order of dismissal.

Furthermore, petitioner's request to hold the PCR record open was tantamount to a motion for a continuance. The granting or denial of a motion for a continuance is within the second discretion of the trial judge whose ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant. State v. Babb, 299 S.C. 451, 385 S.C. 2d 827 (1989) citing to State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983). The Babb Court cited to State v. Motley, 251 S.C. 568, 164 S.E.2d 569 (1968), for further clarification on this issue as follows:

When a motion for a continuance is based upon the contention that counsel for the defendant has not has time to prepare his case its denial by the trial court has rarely been disturbed on appeal. It is axiomatic that determination of such motions must depend upon the particular facts and circumstances of each case. 385 S.E.2d at 829.

In Babb, the state levied forgery charges against the defendant, who pled not guilty; and at trial, counsel requested a continuance to obtain a handwriting expert to testify, but the motion was denied. The Babb Court found no abuse of discretion in the trial judge's denial of the continuance motion because the defendant in that case acted in a very frivolous manner regarding his legal representation (first he desire no counsel and then sought representation by private counsel and then by a public defender) and that the passage of time during that process meant that he sacrificed his

own defense, which in turn meant that the failure to prepare for trial with respect to securing an expert was “the result of [the defendant’s] failure to act.”

Nonetheless, the facts and circumstances of petitioner’s case are different here to the extent that petitioner was proactive in painstakingly and diligently investigating and perfecting the sole issue raised at PCR, i.e., petitioner’s mental competency, within the parameters of the PCR action. For example, fourteen days after the PCR hearing was held, PCR counsel moved on May 23, 2011, to hold the record open in order to obtain an independent mental competency evaluation; which had already been scheduled (to occur on May 31, 2011), at the time of the filing of that motion. Then, the independent mental competency evaluation was conducted and the results were produced on paper on June 10, 2011, and submitted to the PCR judge prior to the signing of the order of dismissal. Note that after the June 10, 2011 results were produced, counsel filed an additional motion on June 20, 2011, repeating again the motion to hold the record open to review the independent mental competency evaluation results. App. 124. There was no failure to act in petitioner’s case.

Therefore, under the facts and circumstances of petitioner’s case, PCR counsel’s motion to hold the record open, which was tantamount to a motion for a continuance should have been granted. There was no request for a new PCR hearing, but rather the option of holding the record open to review supplemental information within the boundaries of the PCR action. Also, there was no prejudice to the state because petitioner’s mental competency was the sole issue raised at PCR so there was no element of surprise or inability to respond by the state, particularly where petitioner had previously been examined for competency by a state doctor. Clearly, the PCR judge erred in denying counsel’s request to hold the record open to review relevant and material information regarding petitioner’s mental competency, which was the sole issue presented at PCR.

C.) The PCR Judge's Order Denying Petitioner's Rule 59(e) Motion

After the PCR judge signed the order of dismissal on July 27, 2011, PCR counsel filed a Rule 59(e) motion requesting that the PCR judge consider the independent competency evaluation results that proved petitioner was mentally incompetent in 2008 and 2011 and amend the order of dismissal to reflect an accurate ruling in light of the finding of petitioner's mental incompetency, and also to find trial counsel ineffective in failing to uncover this before the plea proceeding.

Due process prohibits the conviction of a person who is mentally incompetent and this right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992), citing to Bishop v. United States, 350 U.S. 961 (1956). See also Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004); Pate v. Robinson, 383 U.S. 375 (1966). Also, the test of competency to enter a plea is the same as required to stand trial, which is the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Jeter v. State, supra; Matthews v. State, supra. In this case, petitioner presented evidence subsequent to the PCR hearing by Dr. Martin establishing that petitioner was mentally incompetent at the time he entered his guilty plea.

D.) Ineffective Assistance of Counsel

In order to show that trial counsel was ineffective in failing to develop the defense that the defendant was not mentally competent to stand trial, the defendant must show that an attorney was deficient in failing to investigate into the defendant's mental capacity and that the defendant was either insane at the time the crime was committed or incompetent at the time of the plea. Jeter v. State, 308 S.C. 230, 417 S.E. 2d 594 (1992); Matthews v. State, 358 S.C. 456, 596 S.E. 2d 49 (2004). In a PCR action challenging mental competency, a petitioner must prove by a preponderance of the

evidence that he was incompetent at the time he entered his plea. Lee v. State, 396 S.C. 314, 721 S.E. 2d 442 (2011); Matthews v. State, supra. This has been proved in the case at bar.

In Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992), the court held that in order to show counsel's deficient legal performance in failing to investigate into a defendant's mental capacity, petitioner must show prejudice to the extent that there was a reasonable probability that he would have been found incompetent but for counsel's error in investigating into the matter of competency. Here, Dr. Martin found that petitioner was not mentally competent to plead guilty in 2008 and was not competent mentally upon examining him in 2011. In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove that counsel's performance was deficient, and that the deficient performance prejudiced his case. Strickland v. Washington, 466 U.S. 668 (1984). In the case at bar, it is evident from the evidence adduced per Dr. Martin's report that petitioner was incompetent to plead guilty to the charges at the plea proceeding that if counsel had properly investigated into this matter by scheduling an independent evaluation of petitioner's competency rather than seeking a psychological evaluation only, then counsel would have known that petitioner was mentally incompetent to plead guilty and been able to apprise the plea judge of the same at the plea proceeding. Counsel's deficient performance in this regard violated petitioner's Sixth Amendment right to effective assistance of counsel guaranteed under the United States Constitution. See also Hill v. Lockhart, 484 U.S. 52 (1985).

E.) Newly Discovered Evidence Regarding Petitioner's Incompetence

In the event this Court agrees with the PCR judge; nonetheless, this independent mental competency evaluation should have been deemed as newly discovered evidence in the case. A party requesting a new trial based on after discovered evidence must show that the evidence: 1.) is such that it would probably change the result if a new trial were had; 2.) has been discovered since the

trial; 3.) could not by the exercise of due diligence have been discovered before the trial; 4.) is material is to the issue of guilt or innocence and; 5.) is not merely cumulative or impeaching. State v. Freeman, 319 S.C. 110, 459 S.E. 2d 867 (1995) citing to Hayden v. State, 278 S.C. 610, 299 S.E. 2d 854 (1983). In this case, petitioner presented newly discovered evidence subsequent to the PCR hearing by Dr. Martin establishing that petitioner was incompetent at the time he entered his guilty plea. In order to show that trial counsel was ineffective in failing to develop the defense that the defendant was not competent to stand trial, the defendant must show that an attorney was deficient in failing to investigate into the defendant's mental capacity and that the defendant was either insane at the time the crime was committed or incompetent at the time of the plea. Jeter v. State, 308 S.C. 230, 417 S.E. 2d 594 (1992); Matthews v. State, 358 S.C. 456, 596 S.E. 2d 49 (2004). In a PCR action challenging mental competency, a petitioner must prove by a preponderance of the evidence that he was incompetent at the time he entered his plea. Lee v. State, 396 S.C. 314, 721 S.E. 2d 442 (2011); Matthews v. State, supra.

In the case at bar, the report of Dr. Martin clearly reported that petitioner was neither competent to stand trial at the time of testing nor at the time of his plea. See Supp. App. 4-7. Thus, per the newly discovered evidence report, Dr. Martin's evaluation results yielded a finding that petitioner was mentally incompetent to stand trial or plead guilty and that his mental incompetence was discovered subsequent to his plea, which could not have been discovered previously because of trial counsel's ineffectiveness in failing to obtain an independent test of petitioner's mental competency in addition to his goal of securing a psychological profile of petitioner prior to trial, and that the evidence was material to guilt or innocence and not merely cumulative or impeaching.

Clearly, the newly discovered evidence in this case established petitioner's mental incompetence in fact and that he was incompetent at the time of the plea, and that as a result,

petitioner's Rule 59(e), SCRCR, motion should have been granted based on this newly discovered evidence.

## QUESTION II

The PCR judge ruled correctly in granting petitioner's request for a belated direct appeal of his guilty but mentally ill pleas, which were unconstitutional pleas obtained in violation of due process.

In his PCR application filed in the case, petitioner stated that he was not advised of his right to appeal. App. 29; App. 115. The PCR judge's order of dismissal was silent on petitioner's request for a belated appeal (see App. 114 – 121); however, in his order denying petitioner's Rule 59(e) motion filed in the case, the PCR judge granted petitioner's request for a belated direct appeal. See App. 132.

If after advising an indigent client requesting an appeal the client wishes to appeal, the trial counsel must serve and file a notice of appeal as required by Rule 203, SCACR. See In Re Anonymous Member of the Bar, 303 SE 306, 400 S.E. 2d 483 (1991). A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). See also, Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure an appeal on his behalf.

In the case at bar, the plea judge admitted during the plea proceeding that petitioner's 31 I.Q. reading was "as low as any [he had] ever seen." App. 24, l. 10 -11. Also, the plea judge was privy to the state's mental evaluation of petitioner and the defense's psychological evaluation of petitioner. The state's evaluation listed "No diagnosis" for AXIS I – III. App. 83. The psychological evaluation revealed that petitioner was severely mentally retarded with an I.Q. level

of 31 – 44, which was the equivalent functioning of a 4-to-7-year old. App. 89. Petitioner was seventeen at the time of that evaluation. Petitioner admitted during the evaluation that “his mind was not right.” App. 86. Moreover, the psychological evaluation diagnosed petitioner as intellectually impaired and having ADHD, adjustment disorder with mixed disturbance of emotions and conduct. App. 89-90.

During the plea proceeding, the solicitor admitted that petitioner had a “mental illness.” App. 5, l. 16 – 18. Also, defense counsel indicated that petitioner was “unaware of whether his actions were right or wrong.” App. 5, lines 7 – 8.

Clearly, if one is unaware of whether his actions are right or wrong, then per State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990), petitioner’s case did not fit under a guilty but mentally ill conviction. In Hartfield, supra, the Court held that:

[insanity] is a defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

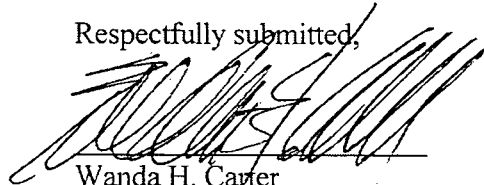
A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

Therefore, since due process prohibits that conviction of one is mentally incompetent, petitioner’s guilty pleas cannot stand as constitutionally sound. See Jeter v. State, supra. The trial judge erred in accepting petitioner’s pleas in the case as unconstitutional in nature.

CONCLUSION

Based on the foregoing arguments, petitioner requests that this Court vacate both orders issued by the PCR judge and remand the case for a new proceeding in the circuit court that is consistent with petitioner's state of mental incompetency.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
ATTORNEY FOR PETITIONER.

This 4th day of May, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge  
\_\_\_\_\_

RUBEN RAMIREZ,

PETITIONER,

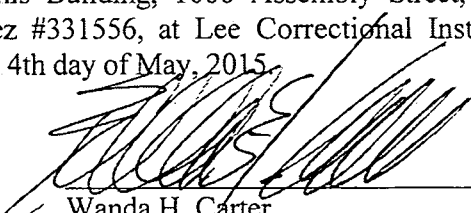
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

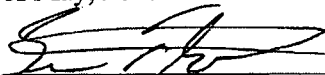
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the amended brief of petitioner, in this case has been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Ruben Ramirez #331556, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 4th day of May, 2015.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of May, 2015.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022