ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
NOV 20 2015
S.C. Supreme Court

---

Certiorari to Orangeburg County

Edgar W. Dickson, Circuit Court Judge

---

EZEKIEL HAYNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000147

---

# PETITION FOR WRIT OF CERTIORARI

---

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

# INDEX

## ISSUE PRESENTED

Whether the PCR court committed reversible error in placing unreasonable limitations, not provided for in the Uniform Post-Conviction Relief Act, on Petitioner's second "re-opened" PCR action by prohibiting him from offering evidence of his mental capacity and competency where those were the dominant issues involved in determining whether his guilty plea was unknowingly, involuntarily, and or unintelligently tendered?

## STATEMENT

On December 8, 2004, the body of Petitioner's fourteen year-old female second cousin ("Minor") was found in a small pond in Orangeburg County, approximately three to four miles outside of Elloree. App. 12, ll. 6-12. The cause of death was asphyxiation. *Id.* The autopsy report also stated that Minor had lacerations on her head and face. *Id.*

Police interviews revealed that Minor had told friends she was going out with Petitioner the night before her body was discovered. App. 13, ll. 1-5. Petitioner, then eighteen years-old, initially denied being with Minor that night. *Id.* at ll. 8-20. On December 9, 2004, Police inspected an abandoned trailer across the street from where Petitioner lived. Inside, law enforcement found a significant amount of Minor's blood and an earring matching one recovered from Minor's body. *Id.*

Police also found a shoe print in the abandoned trailer that "matched" a pair of boots owned by Petitioner. *Id.* Petitioner was arrested. The following day, December 10, 2004, Petitioner gave a statement to police where he admitted to striking Minor with a tire iron and strangling her to death with the cord from a venetian blind. App. 14, ll. 1-8.

**Indictment and Guilty Plea**

On March 14, 2005, Petitioner was indicted for his cousin's murder. App. 398. On May 17, 2005, Petitioner appeared before the Honorable Perry M. Buckner and pled guilty. App. 1 - 99. Peggy Hinds represented Petitioner and Solicitor David Pascoe represented the State. Pursuant to negotiations, defense counsel and the State had agreed to recommend a sentencing range of thirty to forty years. App. 2, ll. 9-15.

After the factual basis for the plea was provided, Petitioner, at the court's invitation, then made a rambling, at times incoherent, statement expressing remorse for Minor's death, but stating in

the third person that "if I, [Petitioner], could have controlled what happened I would." App. 18, ll. 16 - 22, ll. 17. The trial court heard from a series of his cousin's and Petitioner's family members as well as clergy. App. 22, ll. 25 - 27, ll. 11.

The trial court accepted Petitioner's guilty plea and sentenced him to forty years imprisonment. App. 27, ll. 15 - 28, ll. 8.

**First PCR Application and Evidentiary Hearing**

On April 20, 2006, Petitioner filed an application for post-conviction relief alleging that he had entered into an involuntary guilty plea because of the ineffective assistance of counsel. App. 31 - 39. On September 21, 2006, the State filed a return.

On May 19, 2008, an evidentiary hearing was held before the Honorable James C. Williams, Jr. App. 47. Glenn Walters represented Petitioner and Assistant Attorney General Lance S. Boozer represented the State. Petitioner, Betty Haynes (Petitioner's mother), Nathaniel Haynes, Jr. (Petitioner's brother), and plea counsel all testified.

Petitioner testified that at age sixteen he was in a serious car accident. App. 85, ll. 15 - 53, ll. 21. Petitioner stated that as a result of the accident he experienced memory loss, headaches, and seizures. *Id.* "I couldn't do things that I used to could do. I couldn't read, write, spell, things like that." App. 54, ll. 2-3. Petitioner explained that he told plea counsel about his reduced cognitive abilities many times, but that she did not bring the issue before the court or seek to have Petitioner evaluated. App. 54, ll. 12 - 55, ll. 15.

Petitioner's mother and brother testified that after the car accident Petitioner went from being a good student looking forward to applying to colleges to flunking out of school. App. 64, ll. 1-25. Petitioner's mother stated that she had informed plea counsel about Petitioner's reduced

cognitive abilities, but that plea counsel dismissed her concerns about Petitioner's mental competency. App. 68, ll. 5 - 69, ll. 21.

Plea counsel claimed that, when she first interviewed Petitioner, he denied ever being treated for any mental illness. App. 83, ll. 1-25. Plea counsel averred that she saw no reason to have Petitioner evaluated and that Petitioner was engaged in his defense. *Id.* She also recalled that Petitioner understood the gravity of the murder charge and the terms of the plea deal. App. 84, ll. 1 - 85, ll. 2.

Plea counsel believed that Petitioner did not have any viable defenses and recalled he was unable to provide identifying information on a group of people that he claimed to be with on the night of the murder. App. 85, ll. 3-23. Plea counsel stated that she had Petitioner privately polygraphed twice and that results of both tests indicated deception. App. 86, ll. 1-18. Finally, plea counsel noted that Petitioner's cognitive functions appeared to be significantly worse at the PCR hearing than when she represented him. App. 88, ll. 3-8.

***Pro-Se* Rule 59(e) and First Order of Dismissal**

Prior to the order of dismissal being issued, Petitioner submitted a filing on May 27, 2008, titled "Motion to Alter/Amend Pro-se Rule 59(e), SCRCP. Motion to Reconsider per se Applicable S.C. Court Rules." App. 100 - 102. The filing specifically requested that the PCR court take into account the additional grounds raised in Petitioner's PCR application that were not presented at the evidentiary hearing. *Id.* In the filing Petitioner further stated that his appointed PCR attorney had been neglectful in failing to raising these other issues. *Id.*

On October 29, 2008, the PCR court denied Petitioner's application in a written order of dismissal. App. 109 - 115. The court ruled that Petitioner "presented no testimony or evidence

regarding the elements" of an insanity defense. *Id.* The court also determined that plea counsel "had no reason to request a mental evaluation as [Petitioner] exhibited no signs of mental illness. *Id.*

On November 3, 2008, the State filed a Return to Petitioner's *pro-se* Rule 59(e) motion. App. 103 - 105. On March 4, 2009, the PCR court dismissed Petitioner's Rule 59(e) motion. App. 106 - 107.

On August 17, 2009, Petitioner filed, through Elizabeth A. Franklin-Best, a petition for writ of certiorari. App. 116 - 123. On November 17, 2009, the State, represented by Assistant Attorney General Mary S. Williams, filed a Return. App. 124 - 133. On June 10, 2010, the South Carolina Supreme Court denied the petition for writ of certiorari. App. 135.

**Second PCR Application**

On July 13, 2010, Petitioner filed a second application for post-conviction relief alleging, among other grounds, judicial misconduct. App. 136 - 152. On May 17, 2011, the State filed a Return and Motion to Dismiss. App. 153 - 158.

On June 6, 2011, the Honorable Edgar W. Dickson issued a Conditional Order of Dismissal. App. 160 - 164. On December 20, 2011, Judge Dickson issued a Final Order dismissing Petitioner's second PCR application. App. 166 - 167.

Petitioner's family retained Tara D. Shurling on September 29, 2011. App. 172. On January 31, 2012. Petitioner, through Counsel Shurling, filed a Reply to the Conditional Order of Dismissal arguing that Petitioner's second PCR application was justified by the failure of the appointed counsel in his first PCR action to adequately present evidence of Petitioner's mental illness. App. 168 - 175. On February 2, 2012, Petitioner, again through Counsel Shurling, filed a Rule 59(e) to alter or amend the previously issued final order.

On August 17, 2012, the State filed a Return to Petitioner's January 31, 2012 and February 2, 2012, Rule 59(e) motions. App. 181 - 195. On August 20, 2012, a hearing was held before the Honorable Edgar Dickson. App. 196 - 225. On March 12, 2013, Judge Dickson issued an "Order Re-Opening PCR Action Docketed at 2006-CP-38-0462." App. 226 - 235. Judge Dickson ruled that, in the interests of justice, Petitioner should be permitted to re-litigate his first PCR application. *Id.*

However, Judge Dickson barred Petitioner from presenting evidence "regarding Petitioner's mental capacity and competency" as the court ruled these issues were adequately addressed during the first PCR. App. 233. Petitioner was not prohibited from addressing other issues regarding how his mental health history may have been used "to rebut or otherwise explain evidence offered against him had he gone to trial." App. 234.

**Amended PCR Application and Second Evidentiary Hearing**

On September 3, 2013, Petitioner filed an amended PCR application. On February 20, 2014, an evidentiary hearing was held before Judge Dickson. Tara D. Shurling represented Petitioner and Assistant Attorney General Megan H. Jameson represented the State. App. 242 - 355.

Prior to any testimony, the State renewed its objection to the re-opening of Petitioner's PCR action and Counsel Shurling renewed her objection to the limitations placed on argument by the March 12, 2013 Order. App. 249, ll. 9 - 259, ll. 16. Petitioner, Petitioner's mother, and plea counsel all testified.

Petitioner's Testimony

Petitioner stated that the car accident happened a little less than a year before his cousin's murder. App. 268, ll. 6 - 271, ll. 15. Petitioner explained that following the accident he experienced

seizures, mood swings, and significant memory loss. *Id.* Petitioner further testified that plea counsel never explained to him that his statement to police while he was in custody, could have been ruled inadmissible. App. 266, ll. 7 - 267, ll. 17. He also recalled that plea counsel refused to tell the judge about his mental history. App. 273, ll. 1-10.

Testimony of Petitioner's Mother

Betty Haynes testified that she provided signed authorization allowing plea counsel access to her son's mental health records. App. 299, ll. 3-16. Ms. Haynes also recounted that Petitioner's behavior had markedly changed after his car accident and that Petitioner experienced significant memory loss. App. 303, ll. 7 - 304, ll. 8.

Testimony of Plea Counsel

Plea counsel claimed that she explained to Petitioner that she could challenge the admissibility of his statement to police and that the judge could suppress the statement. App. 307, ll. 5-23. Counsel also alleged that she explained to him that even if the statement was ruled admissible, she could still argue to the jury that it was a false confession. *Id.*

Counsel averred that she was unaware of Petitioner's reduced mental cognition and was told by his family only that he had been diagnosed with a seizure disorder. App. 314, ll. 1-13. When confronted with a "Vocational Rehabilitation Assessment" of Petitioner, counsel conceded that it stated that Petitioner also suffered from "auditory hallucinations." App. 316, ll. 14 - 317, ll. 18. However, she countered that the assessment, which she had access to while representing Petitioner, also contained potentially damaging allegations that Petitioner suffered from "aggressive behavior, assaultive behavior." App. 318, ll. 15-21.

Counsel Shurling then asked plea counsel if she ever considered retaining an expert witness on the subject of false confessions. App. 320, ll. 1-2. Plea counsel admitted that she had not thought to do so, but that "[t]o be truthful with the court. I would probably look into that today." *Id.* at ll. 3-24. Counsel further admitted that the State's case against Petitioner was entirely circumstantial, except for Petitioner's incriminating written statement. App. 321, ll. 3-24.

On cross-examination, plea counsel claimed that Petitioner never told her that the statement to law enforcement was inaccurate or false. App. 327, ll. 2-20. Counsel stated that the written statement was substantially similar to the version of events that he described to her. *Id.* Counsel recalled that Petitioner initially wanted to stand trial, but eventually asked her to initiate plea negotiations. App. 330, ll. 14-24.

Counsel reiterated on cross-examination that she had "no doubt" that Petitioner knew the charges he was facing and their consequences. App. 334, ll. 4-16. She also reiterated that she did not introduce the "Vocational Rehabilitation Assessment" because she did not want the court to see that Petitioner had exhibited hostile and aggressive behavior. App. 335, ll. 3-8.

**Order of Dismissal and Post-Trial Motions**

On November 4, 2014, the PCR court denied Petitioner's application by a written Order of Dismissal. App. 356 - 375. The court ruled that all allegations of ineffectiveness regarding plea counsel's handling of Petitioner's mental history violated the limitation in the court's March 12, 2013 Order reopening Petitioner's PCR action. App. 368 - 370. Further, the court held that counsel was not ineffective for failing to investigate whether Petitioner's statement to police could be suppressed. App. 371 - 373.

On December 11, 2014, Petitioner filed a Rule 59(e) alleging that Petitioner had followed the limitations of the Order reopening Petitioner's PCR action by not addressing Petitioner's competency to stand trial or his sanity at the time of incident. App. 376 - 381. On December 16, 2014, the State filed a Return. App. 382 - 389. On December 30, 2014, the PCR court denied Petitioner's motion. App. 390 - 395.

## ARGUMENT

**The PCR court committed reversible error in placing unreasonable limitations, not provided for in the Uniform Post-Conviction Relief Act, on Petitioner's second "re-opened" PCR action by prohibiting him from offering evidence of his mental capacity and competency where those were the dominant issues involved in determining whether his guilty plea was unknowingly, involuntarily, and or unintelligently tendered?**

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 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (provides that a defendant's decision to plead guilty must be knowingly and voluntarily made); *see also State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

Due process prohibits the conviction of a person who is mentally incompetent. *Bishop v. United States*, 350 U.S. 961 (1956). This right cannot be waived by a guilty plea. *Pate v. Robinson*, 383 U.S. 375 (1966). The test of competency to enter a plea is the same as required to stand trial. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). 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. *Carnes v. State*, 275 S.C. 353, 271 S.E.2d 121 (1980).

Furthermore, this Court has held that the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." *Berry v. State*, 381 S.C.

630, 635, 675 S.E.2d 425, 427 (2009). However, "the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

**Discussion**

In the present case, whether Petitioner's diminished cognitive functions - manifested by memory loss, violent mood swing, seizures, speech difficulty, and auditory hallucinations - resulted in him unknowingly, involuntarily, or unintelligently pleading guilty, was the all-embracing issue of Petitioner's re-opened PCR action.

Successive applications are disfavored and the applicant has the burden to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. *Tilley v. State*, 334 S.C. 24, 28, 511 S.E.2d 689, 691 (1999). However, PCR courts have the authority to allow successive applications where "a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application." S.C. Code Ann. § 17-27-90; *see also Gamble v. State*, 2958 S.C. 176, 178, 379 S.E.2d 118, 119 (1989) (PCR rules "contemplate adjudication on the merits of the original petition, one bite at the apple as it were").

In the March 12, 2013 Order re-opening Petitioner's PCR the court stated it wished "to allow Applicant his right to be fully heard on collateral review, his one full bite at the apple." App. 233. However, the court placed the following crippling limitation on Petitioner's re-opened PCR:

> This Court however, expressly declines to address . . . issues involving the Applicant's mental capacity. This Court finds that all questions regarding

> Applicant's mental capacity and competency were dealt with adequately at the initial hearing. . . . The Court is satisfied with Judge Williams' ruling on Ms. Hinds's investigation into Mr. Haynes's mental health history and her decisions resulting therefrom. Therefore, this Court declines to hear *any* matters regarding the Applicant's mental capacity, competency, or his state of mind.

App. 233 (*emphasis in original*).

The court then created an exception to this prohibition: "Applicant may not raise issues concerning his competence to stand trial or his sanity, he is not prohibited from [addressing] other issues concerning how evidence of his mental health history might have been used to rebut or otherwise explain evidence offered against him had he gone to trial." App. 234. This limitation and the attendant exception acted in concert to effectively deprive Petitioner of "his one full bite at the apple."

Testimony alleging that counsel was ineffective for failing to introduce Petitioner's mental health history in mitigation clearly falls within the exception. App. 368. Likewise, evidence that plea counsel failed to adequately investigate whether Petitioner's impaired cognitive abilities impacted the voluntariness of his statements would also come within the exception. App. 369 - 372. Nevertheless, the Order of Dismissal ruled that these two issues raised by Petitioner violated the "competency to stand trial" subject matter prohibition. App. 233 - 234.

The March 12, 2013 Order prohibited testimony on Petitioner's competency to stand trial. *Id.* Yet, it purported to allow testimony on whether Petitioner's reduced mental capacity prevented him from making a rational evaluation of his chances of success at trial when deciding whether to plead guilty. App. 235. The limitation also ostensibly allowed Petitioner to present evidence that he lacked the mental capacity to voluntarily write a statement to police, but precluded evidence

regarding plea counsel's "investigation into [Petitioner's] mental health history and her decisions resulting therefrom," which necessarily includes plea counsel's determination regarding the likelihood of the written statement being inadmissible. App. 233.

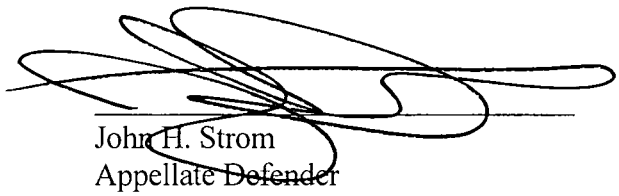
The lines of inquiry available to Petitioner on the re-opening of his PCR and those that were unavailable represent a series of distinctions without differences. The test of competency to enter a plea is the same as required to stand trial. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). Similarly, it impossible to adequately challenge the reasonableness of plea counsel's investigation into whether Petitioner's written statement to police could be suppressed without also challenging plea counsel's investigation and conclusions about Petitioner's mental health history.

Accordingly, the PCR court committed reversible error by prohibiting Petitioner from addressing plea counsel's ineffectiveness with respect to issues involving the Petitioner's mental capacity; where the over-arching issue in Petitioner's re-opened PCR action was whether Petitioner's diminished cognitive functions resulted in him unknowingly, involuntarily, or unintelligently pleading guilty.

## CONCLUSION

Based on the foregoing reason, Ezekiel Haynes' petition for writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Orangeburg County

Edgar W. Dickson, Circuit Court Judge

---

EZEKIEL HAYNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

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 Clay Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Ezekiel Haynes, #309200, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 20th day of November, 2015.

John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of November, 2015.

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