

December 17, 2015

THE Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

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S.C. Supreme Court

RE: Kimmie Shipes Heaton, 249607 v. State of South Carolina
Case No. 2014-CP-30-0071, Judge Donald B. Hocker

Dear Mr. Shearouse,

Enclosed for filing please find original of the Petition for Writ of Certiorari and certificate of Service in the above-captioned case. A factor not attributable to the Applicant obstructed her compliance with State procedure. Respondent failed to serve a copy of the Final Order of Dismissal to Applicant. (marked under TAB 7) Applicant wrote inquiry to the clerk of court. Applicant was then mailed a copy of the Final Order. The order was signed by Judge Hocker on April 16, 2015. Applicant received copy on December 2, 2015. (see mailroom stamp on bottom of Final Order, marked under TAB 7) Due to Applicant's lack of knowledge as to procedure in this error, it is her belief that the 30 days given to appeal would start on date Applicant received notice. Applicant prays Appellate Review will accept this appeal. Please return one date stamped copy to Applicant.

Sincerely Yours

Kimimie Heaton #249607
Kimimie Heaton, Pro-Se

cc: office of Attorney General

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Case No. 2014-CP-30-0071
Judge Donald B. Hocker

KIMMIE SHIPES HEATON, 249607

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

Kimmie Shipes Heaton #249607

CGGEI BRC

4450 Broad River Rd.

Columbia, S.C. 29210

Pro - Se

Questions Presented

Did the Lower Court err in denying the Petitioner Post-Conviction relief where she met her burden of proof with regard to after-discovered evidence of that which is material to the issue of guilt or innocence and her allegation of violation of her Constitutional Rights of the Fourteenth Amendment.

ARGUMENTS

State puts forth the following in their Final Order of Dismissal (marked under TAB 7):

"First, the Applicant has already had a full PCR action, including an evidentiary hearing (1999-CP-30-0175). At this hearing, the Applicant MUST have brought all claims she had concerning her mental health. Clearly she was able to participate in her PCR hearing as she testified coherently and thoughtfully on her own behalf." (emphasis added)

On cross examination of Applicant at original PCR Applicant puts opinion evidence on record of her belief of the disputed facts of competency being discussed. (see PCR transcript, page 28, lines 13-23, marked under TAB 5). Applicants PCR attorney was aware of said records and informed Applicant he would not request the records because he thought they would be of "no consequence" to her hearing. Solicitor and Judge expressly ignored the fact that oral evidence was given to support Applicants Claim of incompetency at time of plea entry. Original trial attorney did not know these records existed due to Applicants diminished capacity to inform her attorney. *Cooper v. Oklahoma*, 517 U.S. 348, 369, 116 S. Ct. 1373, 1384, 134 L. Ed. 2d 498 (1996) State law presuming defendant is competent unless he proves his incompetence by clear and convincing evidence violates due process. Applicant wrote Laurens County Mental Health on many occasions exercising

her due diligence by reasonable measures under her circumstances to obtain records, to no avail. While reviewing unrelated information in Applicant's medical records Applicant discovered the Laurens County Mental Health records. This is a rare case of discovery because inmates are not allowed access to their mental health records. Applicant was given the wrong file for what she was there to review. Upon this discovery Applicant immediately filed a PCR for after-discovered evidence. (see PCR Application attached before TAB 1). State puts forth "As stated in Conditional Order of Dismissal this information was discoverable by Applicant on May 5, 1998, when Harold Morgan sent Applicant's plea counsel, Chip Howe, a copy of mental evaluation." The evaluation from Dr. Harold Morgan was based on records from Applicant's adolescence. (see Sentencing transcript, page 31, lines 10-25, page 32, lines 1-5 under TAB 1). State puts forth "Not only did she actually discover this in 1998, but even if she did not, she, by way of exercise of reasonable diligence, certainly could have discovered this information within a year as to she was CLEARLY PRESENT during the mental evaluation. (emphasis added)

The definition of Major Depression with Psychotic Features¹:
The loss of touch with reality. Presence of delusion

1. Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Washington D.C. American Psychiatric Association, 2000

and/or hallucinations most typically auditory. Such psychotic features include delusions of guilt, (e.g. delusions of deserved punishment or of being punished because of moral transgression or some personal inadequacy), nihilistic delusion, hallucinations, when present usually involve voices that berate the person for shortcomings or sins. Delusions of thought insertion (e.g. ones thoughts are not ones own.).

To put forth someone is "clearly present" with such a diagnosis is shocking to the conscience. As a medical doctor, Dr. Ford, gave a diagnosis according to compliance with Diagnostic and Statistical Manual of Mental Disorders. To make such an accusation of being "clearly present" is absurd. By way of the Fourteenth Amendment Applicant is afforded due process of the law. The presence of psychosis, by its own definition, would not allow Applicant to assist in her own defense or enter a plea knowingly and voluntarily. The state puts forth, "Second, Applicant provided no evidence, specifically expert reports or affidavits, that show she was either insane at the time of her crimes or unable to assist in her own defense."

There is no law stating that after-discovered evidence must be expert or in affidavit form. It has been a standing in the courts that a medical record obtained, that was created by a doctor of sound reputation, can be presented

to the Courts for review of relevantly material information. Having seen Dr. Ford over a 5 month period, up until mere days before entering a guilty plea, Dr. Ford maintains his diagnosis of Major Depression with Psychotic Features. By definition stated previously this goes in support that Applicant could not assist with her own defense. The last session with Dr. Ford was 10 days prior to Applicants plea entry. When asked by the Judge 3 times if she was taking medication she answered no. Yet Laurens County Mental Health records show she was taking medication daily. Applicant also gave false information to the Judge about not having seen a doctor. (see plea entry transcript, dated March 20, 1998, page 14, line 25, and page 15 lines 1-9, marked under TAB 3.) The loss of touch with reality displayed supports Applicant's diagnosis. Therefore, Applicant could not, by the Courts definition, enter a plea that is made voluntarily and with understanding of the nature of the charge and the consequences of the plea. The validity of a guilty plea depends on the defendants competence to make a plea. The test for competency to plead guilty is similar to the standard for a defendants ability to stand trial. Is the defendant able to consult with his lawyer with a reasonable degree of RATIONAL understanding? Does the accused have a RATIONAL as well as factual understanding of the proceedings against him? (emphasis added)

If the answer to those questions are "YES" the defendant is deemed competent. *Godinez v. Moran* 113 S.Ct. 2680 (1993)

By definition of psychotic features previously stated, the courts can not presume the integrity of the fundamental rights of the Constitution afforded to the Applicant were waived knowingly and intelligently while suffering from psychosis. The Laurens County Mental Health records show by a preponderance of the evidence that Applicant was mentally deficient at time of plea entry.

An error of law with such egregious Constitutional violation of the Fourteenth Amendment, that resulted in prejudice to the defendant, occurred when the court accepted a plea from a defendant suffering from psychosis. Defendant is seeking correction of error which seriously prejudiced defendant. An error that severely undermines the integrity of judicial proceedings. *U.S. v. Vaughn* 443, F.2d. 92, 94-95 (CA2 1971)

Applicant ask the court to refer to Fed. Rules Cr. Proc.

Rules 11(b)(3), 52(b), 28 U.S.C.A.

Plain error that affects substantial rights may be considered on appeal even though it was not brought to the trial courts attention and the court of appeals may correct a plain error that was material or affected the defendants substantial if the court concludes that the error seriously

affected the fairness, integrity or public reputation of judicial proceedings.

U.S. v. Martinez 277 F.3d 517, 524-27

U.S. v. Olano 507 U.S. 725, 732, 113 S.Ct., 1770, 123 L.Ed. 2d 508

Leading federal case on judges accepting guilty pleas is

M^cCarthy v. U.S. 394 U.S. 459, 89 S.Ct., 1166, 22 L.Ed. 2d 418 (1969)

The U.S. Supreme Court announced that prejudice inheres in a failure to comply with Rule 11.

The Court will reverse the decision of the PCR judge when it is controlled by an error of law.

Suber v. State 371 S.C. 554, 558-59, 640 S.E. 2d 884, 886 (2007)

CONCLUSION

For reasons stated, the Petitioner ask this Honorable Court to grant the Writ and allow full briefing of the issue summarized herein. Alternatively, she respectfully asks that the Court dispense with further briefing and grant her a new trial.

Respectfully Submitted,
Kimmie Shipes Heaton

Kimmie Shipes Heaton # 249607

CGCI, BRC

4450 Broad River Rd.

Columbia, SC 29210

Pro-Se

This 17th day of December 2015.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

case NO. 2014-CP-30-0071, Judge Donald B. Hecker

KIMMIE SHIPES HEATON, 249607

PETITIONER

v.

STATE OF SOUTH CAROLINA,

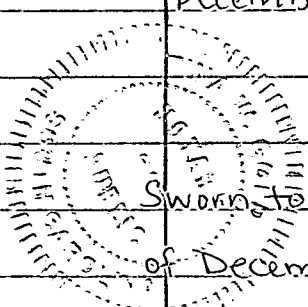
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the
Petition for Writ of Certiorari in the above-entitled case has
been served upon opposing Counsel, Attorney General's
Office, via U.S. Mail, postage prepaid, this 17th day of
December, 2015

Kimmie Shipes Heaton
Kimmie Shipes Heaton
Pro-se

Sworn to before me this 17th day
of December, 2015.



Donald B. Hecker

Notary Public for South Carolina

My Commission Expires: May 24, 2016

Kimmie Heathon # 249607
CGFCI BRC
4450 Broad River Rd.
Columbia, SC 29210

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

