

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Laurens County

Frank R. Addy, Circuit Court Judge

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ADRIAN J. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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SUSAN B. HACKETT  
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

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ISSUE PRESENTED

Did the PCR court err in finding plea counsel's failure to request a mental evaluation for his fifteen-year old client, who was charged with murder, was not ineffective assistance of counsel?

## STATEMENT

When Petitioner was fifteen-years old, he was charged with murder. App. 12 lines 20-22; App. 71 lines 16-17. Although he was charged as a juvenile, the family court waived jurisdiction over his case. App. 13 lines 5-6; App. 71 lines 15-19. During its December 2009 term, a Laurens County Grand Jury indicted Petitioner for murder. App. 90-91. On June 22, 2010, Petitioner entered a guilty plea to the lesser included offense of voluntary manslaughter in exchange for a negotiated sentence of thirty years. App. 1; App. 2 lines 1-9; App. 3 lines 5-15. The Honorable Eugene C. Griffith, Jr. accepted the negotiated guilty plea and imposed a sentence of thirty years. App. 12 lines 4-14; App. 15 lines 18-24; App. 92. Michael W. Barcroft represented Petitioner, and Ron Fleming represented the prosecution. App. 1. Petitioner did not appeal his conviction or sentence.

On April 27, 2011, Petitioner filed an application for post-conviction relief (PCR). App. 17-44. On June 17, 2011, Petitioner, through counsel, filed an amended application for post-conviction relief. App. 45-48. The matter proceeded to a hearing on November 18, 2011 before the Honorable Frank R. Addy. App. 54. Rodney Richey represented Petitioner, and J. Rutledge Johnson represented the state. App. 54. On November 22, 2011, Judge Addy issued a Form 4 order denying Petitioner relief and ordering the state to submit a more formal proposed order. App. 81-82. On December 2, 2011, Judge Addy issued a formal order denying relief. App. 83-89.

## ARGUMENT

The PCR court erred in finding plea counsel's failure to request a mental evaluation for his fifteen-year old client, who was charged with murder, was not ineffective assistance of counsel.

Petitioner testified during the PCR hearing that plea counsel should have requested a psychological evaluation be conducted. App. 59 lines 23-25. Petitioner testified he suffered from mental health issues. App. 60 lines 1-3. Plea counsel testified during the PCR hearing as well. On this subject, plea counsel claimed Petitioner never told plea counsel "he wanted a psychological evaluation." App. 71 lines 13-15. Plea counsel admitted Petitioner was only fifteen-years old at the time of his arrest. App. 71 lines 16-17. According to plea counsel, the pre-waiver evaluation included "a psychological evaluation and those type of things." App. 71 lines 19-22. He admitted the evaluation did not examine Petitioner's competency or criminal responsibility, however. App. 71 lines 22-23. Plea counsel opined "there wasn't any question about that that [Petitioner] was competent." App. 71 lines 24-25. On cross-examination, plea counsel asserted he consulted with Dr. Hobson, "a psychiatrist or psychologist" whom he guessed "consulted with [the Department of Juvenile Justice] about all their waiver evaluations." App. 75 lines 1-4. Plea counsel sent the pre-waiver evaluation to Dr. Hobson for review and discussed a strategy for defending against the evaluation. App. 75 lines 4-8. According to plea counsel, Dr. Hobson said he would not be able to help. App. 75 lines 9-10.

The PCR judge concluded that Petitioner "never discussed needing a mental evaluation." App. 87. Further, in his order denying relief, the PCR judge found that plea counsel "erred on the side of caution and contacted a physician concerning [Petitioner], but the physician did not find any mental issues sufficient for a full evaluation." App. 87. According the PCR judge, plea counsel

“was proactive on behalf of [Petitioner] in retaining a physician for consultation.” App. 87. Ultimately, the PCR court determined Petitioner had not met his burden of proving counsel provided deficient performance or that he was prejudiced. App. 87-88.

In PCR actions, the burden is on Petitioner to prove his allegations by a preponderance of the evidence. Rule 71.1(e), SCACR. In order to prove ineffective assistance of counsel, Petitioner must show that counsel rendered deficient performance resulting in prejudice to him. Strickland v. Washington, 466 U.S. 668, 687 (1984). In light of the fact that Petitioner pled guilty to the charged offense, Petitioner must show that counsel’s performance was deficient and that there is a reasonable probability that, but for counsel’s errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Similarly, when a Petitioner challenges counsel’s failure to request a Blair<sup>1</sup> hearing on Petitioner’s competency to stand trial, Petitioner must show that counsel was deficient and the deficiency prejudiced the outcome of the proceedings. Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 50-51 (2004). To establish prejudice concerning counsel’s failure to fully investigate Petitioner’s mental capacity, Petitioner must show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea. Id. at 459, 596 S.E.2d at 50.

An individual’s constitutional right to due process of law prohibits the conviction of an incompetent defendant. This right may not be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). The competency required to enter a guilty plea is the same as required to stand trial. Id. at 232, 417 S.E.2d at 596. The defendant must have the ability to consult

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<sup>1</sup> State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

with his attorney with a reasonable degree of rational understanding and have an understanding of the proceedings against him. Id.

In the instant case, Petitioner established that plea counsel did not consult with him regarding a competency evaluation despite Petitioner's young age and history of mental health problems. Therefore, plea counsel rendered deficient performance, which prejudiced Petitioner's case.

CONCLUSION

Petitioner respectfully requests this Court reverse the findings of the PCR court, vacate his conviction and sentence, and order a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of April, 2012.

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CERTIORARI TO LAURENS COUNTY  
FRANK R. ADDY, CIRCUIT COURT JUDGE

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PETITION TO BE RELIEVED AS COUNSEL

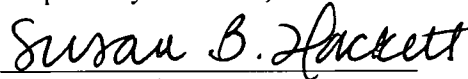
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Counsel for Adrian J. Robinson states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 18, 2011. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Adrian J. Robinson.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 23rd day of April, 2012

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IN THE SUPREME COURT

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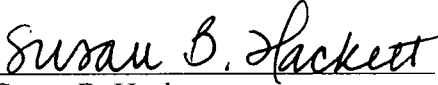
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Adrian J. Robinson, #341512, at Lee Correctional Institution this 23rd day of April, 2012.

  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day  
of April, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013.