

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
Brooks P. Goldsmith, Circuit Court Judge  
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**ORIGINAL**  
**RECEIVED**  
JAN 13 2016  
**SC SUPREME COURT**

GREGG C. HIERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001148  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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ATTORNEY FOR PETITIONER

## INDEX

INDEX.....	1
ISSUE PRESENTED.....	2
STATEMENT.....	3
ARGUMENT.....	7
CONCLUSION.....	11

**ISSUE PRESENTED**

The PCR court erred in finding Petitioner voluntarily pled guilty where defense counsel failed to have Petitioner examined for mental competency, despite the bizarre facts of Petitioner's alleged armed robbery and despite being informed of Petitioner's mental illness, which resulted in Petitioner being coerced into pleading guilty because he was denied access to prescription medications necessary to manage his paranoid schizophrenia while in pre-trial detention.

## STATEMENT

### **Relevant Facts**

At around 10:30 a.m. on July 21, 2012, Petitioner walked into the Rite Aid Pharmacy location at Five Points in Columbia with a duffel bag. App. 6, l. 16 - 8, l. 22. Petitioner immediately approached the pharmacy counter. He explained to the pharmacy technician that “you are being robbed” and that there was a bomb in his duffel bag. *Id.*

The technician was skeptical of the bomb threat, believing that the item in the duffel bag was either a tape recorder or a baby monitor. Petitioner then reiterated the bomb threat and touched a red button on the device. *Id.* Petitioner ordered all employees and customers out of the store.

Once alone in the store, Petitioner went into to the back of pharmacy and consumed approximately twenty Vicodin. It was undisputed that Petitioner intended to commit suicide. Petitioner then drank several beers and passed out. *Id.* SLED’s bomb squad responded to the incident and quickly determined that the threat was a hoax. *Id.* Petitioner was taken to the hospital where he recovered from his overdose. *Id.*

Petitioner was charged with one count of armed robbery and one count of making a bomb threat. *Id.* Petitioner waived presentment of his charges to the Richland County Grand Jury. *Id.* During his pre-trial incarceration, Petitioner wrote several letters to the solicitor inexplicably demanding to plead guilty. App. 8, ll. 9-13; App. 39, ll. 1-4. In these letters Petitioner clarified that “the entire purpose of this robbery was not to hurt anyone but for him to actually commit suicide.” *Id.*

## **Guilty Plea**

On December 13, 2012, Petitioner pled guilty before the Honorable J. Ernest Kinard, Jr. App. 1 - 11. Luke Shealey represented Petitioner; however his brother Brian Shealey represented Petitioner at the hearing. Assistant Solicitor Dolly J. Garfield represented the State. Pursuant to plea negotiations, the State recommended a ten year sentence for the armed robbery. The bomb threat charge would be *nol procesed*. App. 8, l. 12 - 9, l. 25.

Speaking in favor of the negotiated sentence, Brian Shealey noted that Petitioner was homeless at the time of the incident with no family to support him. *Id.* Shealey confirmed that the incident was a suicide attempt. *Id.* Shealey further stated that Petitioner understood that due to his prior record he was facing the possibility of life without parole. App. 10, ll. 1-5.

When examined by the court, Petitioner denied that he had “any mental conditions.” App. 5, ll. 12-14. At the conclusion of the hearing, Petitioner declined to address the court and stated that he was satisfied with the guilty plea. App. 10, ll. 6-18. The trial court then sentenced Petitioner to ten years imprisonment. *Id.*

## **PCR Application and Evidentiary Hearing**

On December 4, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 12 - 16. On February 27, 2014, the State filed a Return. App. 17 - 21.

On April 2, 2015, an evidentiary hearing was held before the Honorable Brooks P. Goldsmith. App. 22 - 45. Anna R. Good represented Petitioner. Assistant Attorney General J. Clayton Mitchell, III, represented the State. Luke Shealey (“defense counsel”) and Petitioner testified at the hearing.

### Petitioner's Testimony

Petitioner testified that he and defense counsel only met twice before the guilty plea hearing. At these meetings they discussed the incident and whether Petitioner should be evaluated for competency to stand trial. App. 27, ll. 1-20. Petitioner stated that he asked defense counsel to move to have him evaluated because he was a diagnosed paranoid schizophrenic. App. 28, ll. 6-21.

Petitioner further stated that he had been prescribed Risperdal<sup>1</sup> and Remeron<sup>2</sup> to help manage his symptoms. App. 28, l. 22 - 29, l. 15. Petitioner testified that he only pled guilty because he was denied these medications while in pre-trial detention, but knew that they were available once he was in SCDC custody. *Id.*

Petitioner stated that defense counsel never had him evaluated. App. 30, l. 11 - 31, l. 16. He then reiterated that he only pled guilty in order to be transferred to SCDC and receive his medications. *Id.* Petitioner averred that he would not, without having been denied his medications, have pled guilty because he did not believe he had committed an armed robbery. *Id.*

Rather, Petitioner had intended to commit suicide because he was despondent, homeless, and without access to mental health care. App. 31, ll. 17-25. Petitioner further noted that he had asked all of the drug store employees and customers to leave prior to attempting suicide. App. 32, ll. 1-12.

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<sup>1</sup> This Court may take judicial notice that Risperdal is a brand name for Risperidone, an antipsychotic prescribed to treat schizophrenia. U.S. National Library of Medicine, Medline Plus: Risperidone, National Institute of Health (March 26, 2015), available at: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a694015.html>.

<sup>2</sup> This Court may take judicial notice that Remeron is a brand name for Mirtazapine, an antidepressant prescribed for long term management of serious depression, including suicidal thoughts. U.S. National Library of Medicine, Medline Plus: Mirtazapine, National Institute of Health (January 5, 2015), available at: <https://www.nlm.nih.gov/medlineplus/druginfo/meds/a697009.html>.

### Defense Counsel's Testimony

Agreeing with Petitioner's assessment, defense counsel testified that he did not believe Petitioner had committed an armed robbery. App. 38, l. 3 - 39, l. 18. "[F]or an armed robbery there has to be a taking, an asportation. And he didn't actually take [the pills] from the presence of anybody." *Id.*

Moreover, counsel recollected that the pharmacy technician wrote a statement indicating that she did not actually believe Petitioner had a bomb. *Id.* Plea counsel claimed that he was undermined in his representation by the letters Petitioner wrote to the solicitor "demanding to get into court." App. 39, ll. 1-18. Armed with these letters, the solicitor then threatened to file notice of intent to seek life without parole on Petitioner if he elected to go to trial. *Id.* Ultimately, defense counsel was able to negotiate a ten year sentence. *Id.*

When pressed on cross-examination, plea counsel recalled that Petitioner was homeless at the time of the incident and that one of his goals during representation was to secure Petitioner housing in a temporary mental health or substance-abuse treatment center. App. 40, ll. 19-25. Counsel denied having any concerns about Petitioner's competency, believing that Petitioner had acted very purposeful towards the goal of committing suicide. App. 41, ll. 4-25. Counsel then conceded that Petitioner should have been evaluated to provide mitigating evidence with respect to criminal liability.

### **Order of Dismissal**

On May 8, 2015, the PCR court filed an order of dismissal denying Petitioner's application. App. 48 - 56. The court held that Petitioner had freely, intelligently, and voluntarily entered his guilty plea. The court rejected Petitioner's argument that he was not competent to stand trial and that counsel was ineffective for failing to request a competency evaluation. App. 52 - 53.

## ARGUMENT

**The PCR court erred in finding Petitioner voluntarily pled guilty where defense counsel failed to have Petitioner examined for mental competency, despite the bizarre facts of Petitioner's alleged armed robbery and despite being informed of Petitioner's mental illness, which resulted in Petitioner being coerced into pleading guilty because he was denied access to prescription medications necessary to manage his paranoid schizophrenia while in pre-trial detention.**

### **Discussion**

A guilty plea is a "solemn, judicial admission of the truth of the charges against an individual." *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007).

However, "guilty 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) (provides that 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).

Similarly, 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). The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone; it 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) (voluntariness determined from the record made at the time of the guilty plea, and from the record of the PCR hearing).

## Deficient Performance

In this case, trial counsel's performance was deficient, as it fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 687-88. Petitioner testified at the evidentiary hearing that he had been denied access to the prescription drugs Risperdal and Remeron while in pre-trial detention. App. 28, l. 6 - 29, l. 15; App. 31, l. 1 - 32, l. 12. Petitioner further testified that he only pled guilty so that he could be transferred to SCDC and gain access to these drugs. *Id.*

Petitioner was homeless at the time of the incident and his actions were an attempt to commit suicide. Petitioner is a diagnosed paranoid schizophrenic. *Id.* Defense counsel admitted he was aware of Petitioner's mental illness. He testified that "one of my goals I listed was -- he didn't have a housing situation. So I was trying to find him a mental health and/or substance abuse housing solution. . . . [M]y goal was to see if I could get away from the armed robbery, maybe find him someplace more stable." App. 40, ll. 22 - 41, ll. 3.<sup>3</sup>

Counsel further conceded that, while he was not concerned about Petitioner's competency, a competency evaluation may have mitigated his criminal responsibility. App. 41, ll. 4-25. A competency evaluation would have also likely documented Petitioner's schizophrenia and, thus, allowed Petitioner to receive medication while in pre-trial detention. S.C. Code Ann. § 44-23-410(D).

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<sup>3</sup> To prove armed robbery, the State must demonstrate, in addition to the commission of a robbery, that either one of two additional elements was present: (1) that the robber was armed with a deadly weapon or (2) *that the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.* *State v. Muldrow*, 348 S.C. 264, 267-68, 559 S.E.2d 847, 849 (2002); *see also State v. Jones*, 342 S.C. 248, 536 S.E.2d 396 (Ct.App.2000) (*emphasis added*).

Petitioner and defense counsel both believed that Petitioner had not committed an armed robbery because the pharmacy technician did not believe Petitioner's bomb threat and Petitioner did not forcibly take anything from or in the presence of one of the employees. App. 31, ll. 1-23; App. 38, l. 3 - 39, l. 4. Nevertheless, Petitioner pled guilty in order to be transferred to SCDC so that he could have access to his medications.

Although Petitioner pled guilty, an "unsound result" occurred in this case. The record does not reflect that Petitioner freely and intelligently waived his constitutional trial rights as his guilty plea was not a "solemn, judicial admission of the charges against him," but rather a desperate cry to gain access to the prescription medications vital to managing his schizophrenia. App. 28, l. 6 - 29, l. 15; *Dalton*, 76 S.C. at 137-138, 654 S.E.2d at 874. Petitioner was coerced into pleading guilty because defense counsel's objectively unreasonable decision not to seek a competency evaluation effectively precluded Petitioner from having access to such medication during pre-trial detention. *See Brady*, 397 U.S. at 758; *see also Boykin*, 395 U.S. 238; *accord Hazel*, 275 S.C. 392, 271 S.E.2d 602; *Berry*, 381 S.C. at 635, 675 S.E.2d at 427.

### **Prejudice**

Petitioner was prejudiced by plea counsel's deficient performance because, absent the denial of medications necessary to manage his schizophrenia, Petitioner would not have pled guilty, but would have insisted on going to trial and forcing the state to prove all of the elements of armed robbery. App. 52 - 55. Defense counsel was aware of Petitioner's schizophrenia, his homelessness, and his seemingly irrational desire to be immediately transferred to SCDC custody. App. 39, l. 1 - 42, l. 7.

Despite expressing bewilderment at Petitioner's insistence on pleading guilty and despite being aware of his history of mental illness, counsel admitted he did not seek a competency

hearing or otherwise attempt to secure Petitioner access to his medications. *Id.*; see *Boykin*, 395 U.S. 238; *Ray v. State*, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991).

All of Petitioner's actions to bring about a hasty guilty plea (less than five months after his arrest), such as writing letters to the solicitor or informing the court that he was satisfied by his representation, were the result of Petitioner being denied medicine necessary to manage his schizophrenia. Defense counsel's failure to seek any kind of mental health examination for Petitioner coerced him into pleading guilty.

Accordingly, had Petitioner had access to his medications during his pre-trial detention, there is a reasonable probability that, but for defense counsel's errors, Petitioner would not have pled guilty and would have insisted on going to trial. App. 52 - 55; see *Hill*, 474 U.S. at 57-59.

**CONCLUSION**

Based on the foregoing reason, Petitioner Gregg C. Hiers respectfully requests that his petition for writ of certiorari be granted to allow a full briefing on the issues.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Brooks P. Goldsmith, Circuit Court Judge

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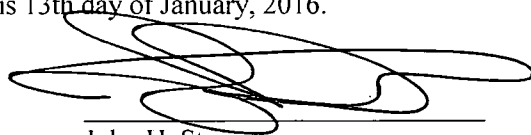
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CERTIFICATE OF SERVICE

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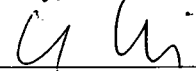
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Clayton Mitchell, Esquire this 13th day of January, 2016.



John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day  
of January, 2016.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025.