

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
Court of Common Pleas  
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2015 – 001148  
Lower Court Case No. 2014-CP-40-07338

Gregg C. Hiers, #270630,

Petitioner,

v.

State of South Carolina,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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MAY 31 2018

**SC SUPREME COURT**

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## **PETITIONER'S QUESTION 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 OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Petitioner was represented by Luke Shealey, Esquire, and Brian Shealey, Esquire. On December 13, 2012, Petitioner appeared before the Honorable J. Ernest Kinard, Jr., where he waived presentment to the Richland County Grand Jury and pled guilty to Armed Robbery (2012-GS-40-6498). Pursuant to negotiations between Petitioner and the State, Judge Kinard sentenced Petitioner to ten (10) years' imprisonment. Petitioner did not appeal his guilty plea or sentence.

Petitioner then filed an application for post-conviction relief on December 4, 2013. Respondent made its Return on March 5, 2016, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court.

An evidentiary hearing was held on April 2, 2015, at the Richland County Courthouse. Petitioner was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. The Honorable Brooks P. Goldsmith, issued an Order of Dismissal filed on May 18, 2015, denying relief.

Petitioner filed a notice of appeal. A Petition for Writ of Certiorari was filed on January 13, 2016. This Return follows.

## STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

## ARGUMENT

**Certiorari is not warranted where Plea Counsel reasonably relied on his own perceptions in determining whether Petitioner required a mental evaluation and Petitioner failed to meet his burden of proof showing that he was mentally incompetent at the time of his plea.**

Petitioner argues the PCR Court erred in failing to find Plea Counsel ineffective for allowing Petitioner to plead guilty without having him mentally evaluated. Respondent submits that Plea Counsel was not deficient in failing to have him evaluated prior to his guilty plea because Plea Counsel reasonably relied on his own observations of Petitioner. Furthermore, Respondent submits Petitioner can show no prejudice as a result of Plea Counsel's alleged deficiency because Petitioner failed to introduce any credible evidence or arguments supporting Petitioner's claim that he was mentally incompetent at the time of his plea.

### Relevant Law

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to

trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

### Discussion

Petitioner argues Plea Counsel was ineffective for failing to have him mentally evaluated prior to his plea. As a result, Petitioner claims he did not knowingly and intelligently enter his guilty plea. However, the PCR Court properly found that Plea Counsel was not ineffective in his representation.

Respondent submits, Plea Counsel properly relied on his own perceptions in determining whether Petitioner was competent to enter his guilty plea. See Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992) (holding that Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial). At the PCR hearing, Plea Counsel stated that he had no concerns about Petitioner's competency. (App. p. 41, lines 4-9). Plea Counsel based his opinion on their conversations and meetings. (App. p. 41, lines 4-9). Plea Counsel noted that in his past experience competency issues with clients are almost immediately apparent. (App. p. 41, lines 6-7). Respondent submits, Plea Counsel was clearly not deficient in failing to have Petitioner mentally evaluated prior to his guilty plea because he relied on his own perceptions after meeting and interacting with Petitioner.

Furthermore, Petitioner can show no prejudice as a result of Plea Counsel's alleged deficiency. Petitioner came woefully short of his burden of proof when he failed to introduce any credible evidence or arguments to support his assertion that he was mentally incompetent at the time of his plea. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Notably, Petitioner told the plea judge that he did not suffer from any mental conditions at the time of plea. (App. p. 7 lines 12-13). Furthermore, Petitioner provided no credible evidence or arguments to support his assertion that he was mentally incompetent at the time of the plea. To the contrary,

Petitioner testified during the PCR hearing that he was ready to plea. (App. p. 31 lines 7-8).

Based off of the foregoing, Respondent submits that Petitioner failed to meet his burden of proof.

## CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling as there is ample evidence of probative value to support the PCR Court's denial of Petitioner's application. Should this Court grant Certiorari, Respondent requests permission under the rules to fully brief the issue discussed above.

Respectfully submitted,

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Attorney General

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SC Bar #: 101443

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BY:   
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ATTORNEYS FOR RESPONDENT

May 31, 2016

STATE OF SOUTH CAROLINA  
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APPEAL FROM RICHLAND COUNTY  
The Honorable Brooks P. Goldsmith, Circuit Court Judge

**SC SUPREME COURT**

Appellate Case No. 2015-001148

Gregg Hiers, #270630,.....Petitioner,

v.

State of South Carolina,.....Respondent.

**CERTIFICATE OF SERVICE**

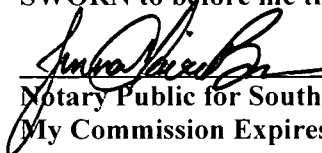
The undersigned hereby certifies that a copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

**John H. Strom, Esquire  
Appellate Defender  
S.C. Commission on Indigent Defense  
PO Box 11589  
Columbia, SC 29201**

This 31<sup>st</sup> day of May, 2016.

  
\_\_\_\_\_  
J. CLAYTON MITCHELL  
ATTORNEY FOR RESPONDENT

SWORN to before me this 25<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: 04-28-2025



ALAN WILSON  
ATTORNEY GENERAL

May 31, 2016

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MAY 31 2016

SC SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Gregg Hiers, #270630 v. The State of South Carolina  
Appellate Case No. 2015-001148

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving petitioner today.

Sincerely,

J. Clayton Mitchell  
Assistant Attorney General  
S.C. Bar No. 101443

JCM/jcb  
Enclosures

cc: John H. Strom, Esquire