

Supreme Court of S.C.
D.E. Shearouse (esq.), Clerk
P.O. Box 11330
Columbia, S.C. 29211

Anthony L. Ogden; ID# 361018
Perry Cor. Inst. / 02B-208
430 Oaklawn Road
Pelzer SC 29669
(Page 1 of 1)

August 29 2016

In Re: Anthony Ogden vs. State, Appellate Case No. 2016-
000139

Dear Mr. Shearouse,

I am writing in concern of the above
referenced matter.

Please find enclosed my pro-se Designation
of matter, and pro-se memorandum of law that
I would like to submit for the courts
consideration in this appeal.

In addition, I would like to "Thank
You" in advance for all of your time, help, and
consideration in these endeavors on my behalf!

RECEIVED

AUG 31 2016

S.C. SUPREME COURT

Sincerely,
Anthony L. Ogden

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Brooks P. Goldsmith, Circuit Court Judge

ANTHONY OGDEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2016-000139

MEMORANDUM OF LAW BY PETITIONER

RECEIVED

AUG 31 2016

S.C. SUPREME COURT

Anthony L. Ogden; #361018
PETITIONER
Perry Corr. Inst. / 02B-208
430 Oaklawn Road
Pelzer, S.C. 29669

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Brooks P. Goldsmith, Circuit Court Judge

APPELLATE CASE NO. 2016-000139

ANTHONY OGDEN PETITIONER,

v.

STATE OF SOUTH CAROLINA RESPONDENT.

DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

Petitioner proposes the following be included in the record on appeal:

- 1) 1 page Correspondence from the SLED Freedom of information coordinator, agent Thomas W. Berry, in regards to the blood tested in this case by their Toxicology Department.
- 2) The official forensic Services Laboratory report on blood taken from "Anthony L. Ogden" that was tested by them.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

October 8, 2015

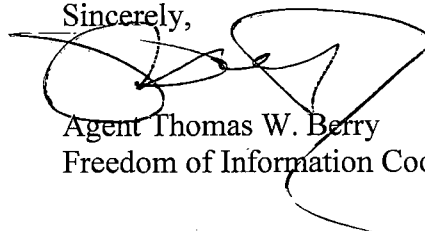
Anthony L. Ogden, #361018
Perry C. I. / Q4B 203
430 Oaklawn Road
Pelzer, SC 29669

RE: South Carolina Freedom of Information Act ("FOIA") Request #2015-0673
SLED Lab No.: L14-01736

Dear Mr. Ogden:

Pursuant to your FOIA request dated September 14, 2015, please find the enclosed information concerning SLED Lab No.: L14-01736.

Sincerely,



Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

D.A. Eck
S.C. Highway Patrol Troop #4
P.O. Box 279
Chester, SC 29706

TOXICOLOGY DEPARTMENT

March 05, 2014
SLED No: L14-01736
Your Case No: 14GW016340HP46
Incident Date: 01/31/2014

[S] Anthony Lamar Ogden
[V-Deceased] Alva Lee Terrell

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 Sample Type: **Blood (Toxicology)** - labeled "Anthony L Ogden"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	Positive	% (g/dL)	0.010

Insufficient sample for further analysis.



Issues Presented

1) Did the original trial/Plea court err by allowing the defendant to waive substantial constitutional rights when from the very beginning of the proceedings his mental health issues, as well as his dementia and Alzheimer's diagnoses were brought to the court's attention.

2) Was both trial counsel and P.C.R. counsel ineffective

STATEMENT

On July 17, 2014, Petitioner (Ogden) appeared before the Honorable Frank Addy, represented by Harry Dest (esq.). (App. I, pg. 1)

The deputy Solicitor Willie Thompson advised the Court that the defendant (petitioner) was pleading guilty under North Carolina Vs. Alford in a DUI - Felony causing death. (App. I, pg 4, Lines 10, 11)

The Court (Hon. Addy) advised the defendant (Mr. Ogden) that the penalty range is a minimum of a year up to 25 years, and a mandatory minimum \$10,000 fine. (App. I, pg 5, Lines 5-7)

Then defense counsel (Mr. Dest) advised that he had obtained the records from the jail. He's taking several different types of medication: Spiriva, which is an inhaler, ONAR, which is also an inhaler, but he's also taking Tranzodone, Citalopram, and Namenda. And, as I indicated, Your Honor, in chambers earlier, that Namenda is a drug dealing with memory loss and dementia. and

the other ones, from what I've been told by Dr. Morgan, deal with mental health issues for mood swings to depression. (App. I, pg. 7, Lines 1 thru 9)

Prosecutor Thompson advised the only thing SLED was able to test for was that it was actually positive for alcohol and not anything else. They weren't able to get reading off of it, but the hospital itself did do a blood draw for medical purposes in which they had a reading of .069. (App. I, pg. 10, Lines 24-25, pg. 11, Lines 1 thru 3)

Prosecutor Thompson advises that when the police learned of his death, they then started doing things like trying to get SLED to test the blood which they did not realize at the time did not have a sufficient sample, and that sort of thing in order to bring this out as a Felony - DUI. (App. I, pg. 11 and 12, Lines 24, 25 and 1-3)

Honorable Addy declares that there is a substantial, factual basis for this plea and it is freely, voluntarily, knowingly and intelligently made. (App. I, pg. 22, Lines 4 thru 6).

Subsequently, on August 11, 2014, the petitioner was taken back before the Honorable Frank Addy in Gaffney, South Carolina, for sentencing. (App. II, pg. 24)

Defense Counsel, Mr. Dest, alleges that since 2004, the court has the records that he has been treated for anxiety disorder, bipolar disorder and severe depression. Judge, in addition to that, in addition to his physical ailments, he also has dementia, which is substantiated by the medication that he was taking prior to the incident. (App. II, pg. 22 (45), Lines 4 thru 9).

And as I indicated, judge, he clearly is not a man who is well, both either physically or mentally. (pg. 26 (49), Lines 10, 11). Mr. Dest also advised the court that the number of people his age in SCDC is around 2.4 percent. (App. II, pg. 26 (49), Lines 11 thru 13).

Hon. Addy also advises Mr. Ogden that he has considered thoroughly the situation that you find yourself in, Sir,


both mentally and physically. (App II, pgs) 28(51) 29(52), Lines 24-25, and Line 1)

Thereafter, the petitioner (Mr. Ogden) was transported to York County for a P.C.R. hearing before the Honorable Brooks P. Goldsmith and represented by Leah Moody (esq.) on November 03, 2015.

Defense Counsel, Ms. Moody, at the very start of the hearing advises the Court, it's a plea and I guess the testimony that he has to show that he was prejudiced. That is the whole point of me going through all of it with me is that he has the burden and I haven't gotten anything. (App III, pgs) 12(88) 13(89), Lines 25 and 1 thru 4)

Trial Counsel, Mr. Dest advises that he hired Doctor Harold Morgan who is a forensic Scientist. (App III, pg. 36(112), Line 9)

Mr. Dest also alleges that it was obvious to him that Mr. Ogden was impaired in some way. (App III, pg 37(113) Lines 9, 10)

During the hearing Mr. Dest also  alleges that he tried to emphasis

that Mr. Ogden had these deficiencies and Dr. Morgan looked into that, but in no way did those mental health deficiencies or issues regarding dementia effect his competency to stand trial. (App. III, pg. 39 (115), lines 1 thru 4)

However, Mr. Dest, does admit that Dr. Morgan did acknowledge to him that he (Mr. Ogden) was on medication for dementia but really was for the onset of Alzheimer's. The medication was called Namenda which is for dementia and the beginning stages of Alzheimer's. (App. III, pg. 39 (115), lines 22 thru 25).

Mr. Dest alleges that there are two blood samples that are taken. One was at the hospital for SLED and apparently there wasn't a sufficient enough sample to get a reading. (App. III, pg. 41 (117), lines 3 thru 5)

In addition, Mr. Dest alleges that he presented statistical information to the judge to show him that less than two percent of the General population at the Department of Corrections was in the age bracket of 55 to 65.

The attorney for the State, Mr. Justin Hunter asked Mr. Dest as far as the plea hearing was concerned, did you have any issues or did you question his ability to understand what the judge was going thru that day? To which, Mr. Dest answered, "No, I did not."

ARGUMENT

Did the original trial/Plea Court err by allowing the defendant to waive substantial constitutional rights when from the very beginning of the proceedings his mental health issues, as well as his dementia and Alzheimer's diagnoses were brought to the courts attention?

When the trial court failed to accord the proper weight to the evidence that suggested the defendant's incompetence his constitutional rights were violated by the court's failure to order a pre-trial psychiatric examination under § 44-23-410(a)(1) and (2), as well as § 44-23-430. Because the lack of such inquiry deprived the petitioner of his right to due process and a fair proceeding. Especially when under questioning the defendant denies that he is on any medication that affects his thinking and then moments later defense counsel advises that the defendant is taking the drug Namenda for dementia and memory loss, where both are an inherent part of thinking and the thought process. And,

Where such evidence raises a bona fide doubt as to a defendant's competence to stand trial the judge on his own motion must impanel jury and conduct a sanity hearing. (U.S.C.A. amend 14) The failure Sua Sponte to conduct such a hearing violates due-process. The United States Supreme Court has found a sanity hearing can not be waived. Bishop Vs. U.S., 76 S.Ct. 440 (also see; Pate Vs. Robinson, 383 U.S. 375, 86 S.Ct. 836.

Was both trial counsel and PCR. Counsel ineffective?

Because of their negligence to show a duty of care by failing to exercise due diligence in the investigation of the case, giving erroneous legal advice, as well as failing to require/request a mental examination, observation, and evaluation by the appropriate facility of the Department of Mental Health and/or Department of Disabilities and Special needs. When there was no dispute as to the evidence possibly relevant to the petitioner's mental condition that was before the court prior to trial. (Rule 407 professional conduct; Drope Vs. Missouri,

95 S.Ct. 896; Pate Vs. Robinson, 383 U.S. 375; 86 S.Ct. 836

The failure of the court to hold a hearing of accused to stand trial when in this case evidence introduced on the accused behalf entitled the accused to such a hearing deprived him of his constitutional right to a fair trial. And, in light of these facts there is no way that his plea could have been voluntary nor his waiver of his substantial rights been knowingly, intelligently, voluntarily, and/or freely given.

Certificate of Service

I, Anthony L. Ogden, hereby certify that a pro-se Designation of Matter, and pro-se memorandum of Law in Appellate Case No. 2016-000139, was this day, postage pre-paid, placed in the hands of the United States Postmaster(s) here at Perry Correctional Institution, and addressed as follows;

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

RECEIVED

AUG 31 2016

Anthony L. Ogden
Anthony L. Ogden; Id# 361018
Pro-se Petitioner

S.C. SUPREME COURT

Sworn and Subscribed before me
this 22nd day of August, 2016.

Nancy C. Merchant
Notary Public for S.C.

1-23-2023
my Commission expires:

Conclusion

Upon the determination by this Court that the petitioner's constitutional right have been abridged by his failure to receive a adequate hearing on his competence to stand trial and/or mental evaluation, as well as denied effective assistance of counsel at each stage, a writ of habeas corpus must issue and the petitioner must be discharged, unless given a new trial within a reasonable time.

Respectfully Submitted,

Anthony S. Ogden
Anthony Ogden; #361018/pro-se.

This 22th day of August 2016.

signed in the presence of Nancy E. Merchant, notary
on 22nd of August 2016

my.com exp. 1-23-2023

Anthony L. Ogden; Id # 36108
Perry Corr. Inst. / OAB-208
430 Oaklawn Road
Pelzer, S.C. 29669

Supreme Court of South Carolina
Mr. Daniel E. Shearouse (esq.), Clerk
Post Office Box 11330
Columbia, S.C. 29211

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AUG 22 2016

PCI Mailroom