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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

R. Knox McMahon, Circuit Court Judge

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NOV 23 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON DASHUN ADAMS,

APPELLANT

APPELLATE CASE NO. 2016-000090

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to order a competency evaluation to determine Appellant's fitness to stand trial where evidence in the record demonstrated (1) Appellant was learning disabled, (2) Appellant had undergone a competency evaluation six years prior to his trial in connection to charges against him as a juvenile, and (3) his trial counsel expressed some concerns regarding Appellant's competency?

STATEMENT OF THE CASE

During its July 2015 term, a Greenville County grand jury indicted Appellant for murder (2013-GS-23-5553), burglary in the first degree (2013-GS-23-5554), armed robbery (2013-GS-5556), and possession of a weapon during the commission of a violent crime (2013-GS-23-5556). R. 451-452; R. 454-455; 457-458. On May 15, 2015, through counsel, Appellant requested a competency evaluation before the Honorable Letitia H. Verdin. R. 444, ll. 5-6. Judge Verdin denied the request. R. 448, ll. 14-21; R. 448, l. 23 – R. 449, l. 1. Thereafter, the state, represented by Lucas C. Marchant and W. Ryan Holloway, called the case for trial before the Honorable R. Knox McMahon. R. 1. Ivan J. Toney represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 432, ll. 3-17. Judge McMahon sentenced Appellant to forty years' imprisonment for murder, thirty years' imprisonment for burglary in the first degree, thirty years' imprisonment for armed robbery, and five years' imprisonment for possession of a weapon. R. 439, ll. 1-16; R. 453; R. 456; R. 459-460.

Appellant filed and served a notice of appeal on January 15, 2016. This brief follows.

ARGUMENT

The trial judge erred in failing to order a competency evaluation to determine Appellant's fitness to stand trial where evidence in the record demonstrated (1) Appellant was learning disabled, (2) Appellant had undergone a competency evaluation six years prior to his trial in connection to charges against him as a juvenile, and (3) his trial counsel expressed some concerns regarding Appellant's competency.

Relevant facts

On May 15, 2015, Appellant, through counsel, moved for a competency evaluation. R. 444, ll. 5-6. The basis of the motion was that Appellant was learning disabled and had been evaluated six years previously in connection with juvenile charges against him. R. 444, ll. 8-16.

The state argued against the request, essentially complaining that Appellant had not requested the competency evaluation sooner – when he had different counsel. R. 445, l. 5 – R. 448, l. 9. The solicitor noted that Appellant had been in jail for 848 days at that point. R. 445, ll. 8-9. After noting he had spent at least an hour with Appellant during an interrogation, the solicitor explained he “did not see anything, of course, that brought to light any concern ... that he had any problem communicating” with the individuals in the room. R. 445, l. 24 – R. 446, l. 6. It was the solicitor's belief that Appellant had not made “enough showing” “that he [could] not effectively communicate with [trial counsel] about the charges or preparing his own defense.” R. 446, ll. 18-21. The prior evaluation, the solicitor's opinion, was not sufficient “to warrant an evaluation just based on that in and of itself.” R. 446, ll. 21-25.

When the judge requested a response about trial counsel's conversations with Appellant, trial counsel noted his belief that Appellant was intelligent and that the two had meaningful conversations. R. 447, ll. 1-5. Trial counsel noted his “concerns during” their conversations,

which covered matters that were subject to privilege and confidentiality. R. 447, ll. 9-11. Trial counsel was also alarmed by Appellant's classification as learning disabled. R. 447, ll. 6-9. Trial counsel explained he was concerned about Appellant's "ability to comprehend right versus wrong and appreciate the consequences of actions." R. 447, ll. 17-19. Counsel indicated he had confidential correspondence in his file that contributed to this concern. R. 447, ll. 20-22. Further, Appellant's mother indicated Appellant suffered from a low IQ. R. 447, l. 24 – R. 448, l. 1.

The judge held that "general concerns" were not "enough" for her to order an evaluation. R. 448, ll. 14-17. The judge analyzed the reasons separately. She found Appellant's classification as learning disabled insufficient to warrant a competency evaluation. R. 448, ll. 17-18. While she admitted it was "concerning" that Appellant had a previous competency evaluation, she did not know the results, and therefore, did not consider that factor as favoring a current evaluation. R. 448, ll. 18-21. However, the judge indicated she would order the Department of Juvenile Justice to release the competency evaluation. R. 448, ll. 23-25. The judge offered to hold a conference call if trial counsel received the prior evaluation and it brought "to light some issues." R. 449, ll. 12-17.

The record contains no additional information regarding the prior competency evaluation or a conference call with the judge based on receipt of the prior competency evaluation.

Discussion

An individual's constitutional right to due process of law as provided in the Fourteenth Amendment to the United States Constitution prohibits the conviction of an incompetent defendant. Medina v. California, 505 U.S. 437, (1992); Drope v. Missouri, 420 U.S. 162 (1975); Pate v.

Robinson, 383 U.S. 375 (1966). Therefore, states must provide procedures adequate to protect this right. Pate, 383 U.S. at 378.

South Carolina law provides that whenever a judge “has reason to believe that a person on trial before him, charged with the commission of a criminal act ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or assist in his own defense as a result of lack of mental capacity,” the judge shall order an examination of the individual by the Department of Mental Health. S.C. Code Ann. § 44-23-410.

The test for determining competency to stand trial is whether the defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” State v. Weik, 356 S.C. 76, 81, 687 S.E.2d 683, 685 (2002) (citing Dusky v. United States, 362 U.S. 402 (1960)); State v. Bell, 293 S.C. 391, 395-396, 360 S.E.2d 706, 708 (1987). Competency to stand trial relates to the time the defendant is before the court for trial, not the time of the alleged offense. Monahan v. State, 365 S.C. 130, 616 S.E.2d 422 (2005). “Factors to be considered in determining whether further inquiry into a defendant’s fitness to stand trial is warranted include evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial.” State v. Burgess, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003)(citing State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981)). “In some circumstances, the presence of just one of these factors may justify a trial court’s ordering a further inquiry into a defendant’s competency to undergo trial.” Id.

The Supreme Court found plea counsel provided ineffective assistance by failing to request a competency hearing to determine the defendant’s fitness to stand trial where the defendant presented evidence at his post-conviction relief (PCR) hearing that he was learning

disabled, suffered a major head injury from a near-fatal car accident a year before the crimes, and as a result of the accident had severe frontal lobe brain damage. The defendant's expert at the PCR hearing testified that the defendant was incompetent and could not assist in his defense. The Court concluded the defendant "clearly established by a preponderance of the evidence" that he was incompetent at the time he entered his guilty plea. Matthews v. State, 358 S.C. 456, 459-460, 596 S.E.2d 49, 50-51 (2004).

This Court held a trial judge erred in failing to order a competency evaluation for a criminal defendant. State v. Buchanan, 302 S.C. 83, 85-86, 394 S.E.2d 1, 2 (Ct. App. 1990). According to this Court, when Buchanan's case was called for trial, "Buchanan's behavior was strange." Id. at 84, 394 S.E.2d at 1. At the request of the solicitor, the judge issued an order for an evaluation of Appellant's "mental capacity to stand trial" and criminal responsibility. Id. The next day, Buchanan met briefly with a psychiatrist, who testified the encounter was not long enough to enable the doctor to render an opinion on competency. Id. The following day, Buchanan was tried in his absence and without counsel. Id. He was convicted and sentenced. Id. After sentencing, the judge issued a second order to determine "mental capacity to stand trial." Id. This Court held the trial judge abused his discretion by failing to comply with the statute because the trial judge had reason to believe that a competency examination was necessary. Id. at 86, 394 S.E.2d at 2.

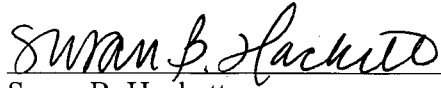
Similarly, this Court held a trial court erred in failing to order a competency examination based on the defendant's attorney's report that the defendant "suffers from symptoms suggestive of schizophrenia and was under psychiatric care at the time of the hearing, along with his mother's testimony regarding the seriousness and duration of his mental problems and the statement of the trial judge at the conclusion of the hearing indicating he believes [the defendant]

needs additional treatment for his mental condition.” State v. Singleton, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (Ct. App. 1996). According to this Court, the trial judge had reason to believe that a competency examination was necessary, and failure to order the examination was an abuse of discretion. Id.

The trial judge erred in denying Appellant’s request for a competency evaluation. According to the statute, whenever a judge “has reason to believe that a person on trial before him, charged with the commission of a criminal act ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or assist in his own defense as a result of lack of mental capacity,” the judge shall order an examination of the individual by the Department of Mental Health. S.C. Code Ann. § 44-23-410. The record demonstrated that Appellant’s counsel was concerned with Appellant’s mental capacity due to his classification as a learning disabled student in school. The record further demonstrated that Appellant had been evaluated at a previous time to determine his competency. While the results of the prior competency evaluation were unavailable, the simple fact that a prior evaluation had been ordered and conducted provided the judge with a “reason to believe” that Appellant was “not fit to stand trial” because he lacked the capacity to understand the proceedings or assist in his defense. The trial judge failed in her duty to safeguard Appellant’s constitutional right to not be prosecuted while incompetent.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand the matter for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of November, 2016.

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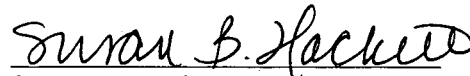
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon D. Adams states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of the request for a competency evaluation before Judge Letitia Verdin on May 15, 2015, and the record of Appellant's trial before Judge R. Knox McMahon on January 4-6, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Brandon D. Adams.

Respectfully Submitted,



Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of November, 2016.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Competency evaluation request transcript dated May 15, 2015;
- (2) Entire trial transcript dated January 4-6, 2016;
- (3) True-billed indictments (2013-GS-23-5553, -5554, -5556); and
- (4) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 23, 2016


Susan B. Hackett
Appellate Defender

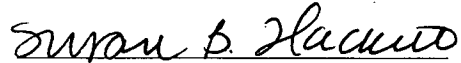
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(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 23, 2016.


Susan B. Hackett
Appellate Defender

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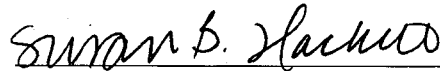
V.

BRANDON D. ADAMS,

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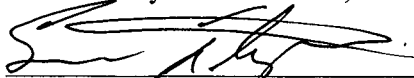
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Brandon D. Adams, 366619, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of November, 2016.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of November, 2016.

 (L.S)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.