ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

DeAndrea G. Benjamin, Circuit Court Judge

MATTHEW J. EARGLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001761

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to have Petitioner evaluated immediately before he pled guilty and failed to request a competency hearing pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and where Petitioner was prejudiced because there is a reasonable probability that Petitioner was incompetent at the time of the plea due to his severe mental illness?

STATEMENT OF THE CASE

Petitioner has a long documented history of major mental illness dating back before his teenage years. App. 124. Since he was a young child, he has suffered from emotional stress, anxiety, and depression. App. 124. At nine years old, Petitioner began "self-mutilation practices," such as cutting his arms and legs and swallowing razor blades. App. 124. He has been hospitalized on numerous occasions throughout his life due to his depression and tendency to harm himself. In order to manage his illness, Petitioner takes a regimen of psychotropic medications. He has been treated at the Patrick B. Harris Psychiatric Hospital in Anderson, the Gilliam Psychiatric Hospital in Columbia, and the Geo Care Columbia Regional Care Center. App. 124.

In May 2012, Petitioner was arrested for armed robbery, kidnapping, and possession of a weapon by a convicted felon. App. 15, ll. 19-23. While Petitioner was incarcerated at the local detention center after his arrest, he attempted to commit suicide by cutting his arms. His injuries were so severe that he required over one hundred stitches. App. 22, ll. 9-14. As a result of this suicide attempt, Petitioner was housed by himself in "the tank" at the Lexington County Detention Center and put on suicide watch. "The tank" is a small cell in the booking area that only has a toilet. Petitioner was made to wear a "turtle suit," which is a "little green thing that straps over your shoulder." He was not allowed to wear clothes and he did not have access to a mattress, a pillow, a toothbrush, or any other essentials. App. 61, ll. 9-22.

A couple of months after Petitioner's suicide attempt, he was hospitalized at the Geo Care Columbia Regional Care Center, also known as Just Care, for treatment. At Geo Care, Petitioner received regular counseling and "was in population around other people." He was also prescribed different medications than the medications he received at the detention center. App.

62, ll. 4-8. The medication Petitioner was prescribed at Geo Care was more effective than the regimen he was taking at the detention center. Overall, his mental health improved at Geo Care and Petitioner did not try to harm himself while he was there. App. 62, ll. 4-10.

While Petitioner was hospitalized at Geo Care, he was evaluated by a forensic psychiatrist to determine whether he was competent to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410. This evaluation took place on August 29, 2012. The examiner ultimately found Petitioner was competent to stand trial. She concluded that Petitioner was "not currently experiencing symptoms of a mental illness to such an extent that they would significantly compromise his present capacity to understand the proceedings against him or to assist in his own defense." App. 137-144. She also diagnosed Petitioner with depression, not otherwise specified, antisocial personality disorder, and borderline personality disorder. App. 137. The report of her findings was submitted on September 26, 2012. App. 144.

After a two week stay at Geo Care, Petitioner was transported back to the Lexington County Detention where he was again housed in "the tank." Petitioner's mental health began to deteriorate again in part due to the conditions of "the tank" and because he was prescribed different medications than he was taking at Geo Care. These medications were less effective at managing his illness. App. 62, l. 21 – 63, l. 12.

On October 3, 2012, less than five months after his arrest, Petitioner pled guilty to kidnapping pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) before the Honorable Roger M. Young. App. 1. Petitioner waived presentment to the Lexington County Grand Jury. App. 154-155. Assistant Solicitor Lawrence G. Wedekind represented the state, and Circuit Public Defender Robert M. Madsen represented Petitioner. App. 1.

On the morning before he pled guilty, an officer came to "the tank," gave Petitioner a uniform, and told him he was going to court. App. 63, ll. 13-18. As Petitioner was getting ready to leave, he briefly saw his mental health counselor at the jail and told her his medication was not working and that he was not sleeping well. App. 63, l. 24 – 64, l. 3. This exchange was documented in Petitioner's mental health records.

Petitioner was unaware that he would be transported to court that day. When he got there, he spoke with plea counsel who told him *for the first time* that the state was willing to dismiss all of Petitioner's pending charges if he pled guilty to kidnapping without a sentence recommendation. App. 65, ll. 6-10. Petitioner felt very overwhelmed. Counsel had not informed Petitioner of the state's offer before that morning and he had little time process what was going on. App. 65, ll. 11-14. Petitioner later testified at the evidentiary hearing that he "didn't understand any of it" and that he was so overwhelmed he "just wanted to get out of there." App. 65, l. 11 – 66, l. 19.

At the beginning of the plea hearing, the solicitor informed the court that Petitioner had been evaluated for competency to stand trial and suggested the court conduct a Blair hearing to determine whether Petitioner was in fact competent. Before the judge could respond, plea counsel said he "stipulate[d] to the findings in the report" and that he believed Petitioner was competent. App. 4, ll. 1-10. Based on counsel's concession, the court did not hold a Blair hearing. The court said, "Well, it does sound like he [Petitioner] has some mental health issues, but according to the examining doctor here [the one who evaluated Petitioner in August 2012] they do not rise to the level of interfering with his ability to understand what he is going or to assist his counsel. *Defense counsel has concurred in that, so at this point I'd have to go along*

with it." App. 5, l. 25 – 6, l. 6 (emphasis added). The court made no independent determination that Petitioner was competent to plead guilty.

The court ultimately accepted Petitioner's plea and sentenced him to twenty five years' imprisonment. App. 14, l. 23 – 15, l. 1; App. 27, ll. 7-8.

At the evidentiary hearing, Petitioner testified that he never wanted to plead guilty and that he had never asked plea counsel to negotiate a plea agreement with the solicitor on his behalf. Petitioner asserted that if he would have "been thinking clearly" that day, he would not have pled guilty and would have insisted on exercising his right to a jury trial. App. 60, ll. 4-7; App. 67, ll. 2-5.

On January 15, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 29-35. The state filed a return to this application dated June 12, 2013. App. 36-42. With the assistance of counsel, Petitioner filed an amended application raising the claim argued in this petition. App. 43-44. The state filed a memorandum of law on October 14, 2014. App. 45-49. An evidentiary hearing was convened on October 15, 2014 before the Honorable DeAndrea G. Benjamin. Assistant Attorney General Walt Whitmire represented the state, and Kristy Goldberg represented Petitioner. App. 50.

Dr. Thomas Martin, who was qualified as an expert in forensic psychiatry, testified on Petitioner's behalf at the evidentiary hearing. In addition to reviewing Petitioner's extensive mental health records, Dr. Martin also met with Petitioner on April 23, 2014 for approximately three hours at Kirkland Correctional Institution where he was housed. App. 75, l. 25 – 76, l. 2. Dr. Martin explained that Gilliam Psychiatric Hospital is located within Kirkland and the institution has the greatest number of psychiatric and mental health resources of all the

institutions within the South Carolina Department of Corrections. This is why Petitioner was placed at Kirkland. App. 78, ll. 4-9.

Dr. Martin ultimately diagnosed Petitioner with depressive disorder, not otherwise specified and personality disorder, not otherwise specified with antisocial and borderline features. App. 126. He testified that the medications Petitioner was taking while at Kirkland were the same medications Petitioner was prescribed while at Geo Care in August 2012 when he was evaluated for competency to stand trial. App. 77, l. 22 – 78, l. 9. Dr. Martin found these psychotropic medications, which included a mood stabilizer called Neurontin, an antidepressant called Remeron, and a sedative to help Petitioner sleep called Trazodone, to be effective. However, while incarcerated at the Lexington County Detention Center, Petitioner was prescribed the mood stabilizer Lamictal, as well as Benadryl and Ativan, which were used to help Petitioner sleep. Dr. Martin testified that these medications were not effective in managing and treating Petitioner's mental illness. App. 78, l. 13 – 80, l. 11. Because they were not working, Petitioner stopped taking these medications and "self-discontinued" shortly before he pled guilty. Petitioner informed the psychiatrist at the jail of this fact the morning of his guilty plea. He also told the psychiatrist he was not sleeping well. Dr. Martin noted that this was documented in Petitioner's mental health records from the jail. App. 79, l. 16 – 81, l. 7.

Dr. Martin asserted that "competence is a fluid construct entity" and, consequently, "needs to be checked periodically." App. 82, ll. 10-12. He explained, "[M]ental illness is never a perfectly linear plateau. Mental illness changes. Medications change. Environment will change and [these factors] can in a positive way or in a negative way affect levels of competency." App. 83, ll. 19-25. Because Petitioner has a "very erratic mental health history that has been very difficult to manage over the years," Dr. Martin said Petitioner should have

been watched closely. Moreover, he opined that Petitioner should have been evaluated for competency immediately before he pled guilty and a Blair hearing should have been conducted so the court could determine whether Petitioner was competent to plead guilty that day. App. 84, l. 12 – 88, l. 18.

Lastly, and significantly, Dr. Martin exclaimed that, because of Petitioner's erratic mental health, Martin had concerns regarding whether Petitioner was competent on the day he ultimately pled guilty. App. 86, ll. 14-18.

Rob Madsen, Petitioner's plea counsel, testified that Petitioner "seemed normal" to him, but given Petitioner's history of mental illness and his previous suicide attempts, Madsen submitted a request on July 31, 2012 to have Petitioner evaluated for competency to stand trial. He received the psychiatrist's report on September 27, 2012, which indicated Petitioner was competent at the time of the evaluation. App. 98, l. 9 – 99, l. 19.

Madsen corroborated Petitioner's testimony that he was brought to court on the morning of October 3, 2012 without any warning or notice. Madsen said the solicitor "put him [Petitioner] on the list to bring him over to court without any notice to me and, of course, there was no notice to him since I did not know." Counsel, as well as Petitioner, learned of the plea offer for the first time that morning. App. 101, ll. 12-20. Madsen admitted he was hesitant to go forward with a guilty plea that morning because Petitioner "had always maintained through the course of representation that he hadn't done it, that it was kind of a quasi drug deal owing some money." App. 102, ll. 1-8. This is why Madsen suggested Petitioner plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). App. 102, ll. 9-20.

Madsen claimed Petitioner "seemed that morning the same as any other time that I had met with him" and therefore Madsen "stipulated" to Petitioner's competency and went forward with the guilty plea. App. 101, ll. 16-23.

By order filed August 12, 2016, the PCR court denied Petitioner relief. App. 146-153. The court found Petitioner failed to prove counsel was ineffective for not having Petitioner evaluated immediately before he pled guilty and for failing to require the plea court conduct a Blair hearing to determine whether Petitioner was competent to plead guilty. App. 150-151. The court emphasized the fact that Petitioner was evaluated in August 2012 and found to be competent to stand trial. App. 150-151. The court also noted plea counsel's testimony that based on his observations, he believed Petitioner was competent. App. 150-151. Lastly, the court found "Dr. Martin was unable to render a finding on [Petitioner's] competency on the day of the plea" and therefore Petitioner could not prove prejudice. App. 151-152.

Because plea counsel was ineffective for failing to have Petitioner evaluated to determine whether he was competent to stand trial immediately before he pled guilty and require the court conduct a Blair hearing, and because there is a reasonable probability that Petitioner was incompetent at the time of his plea due to his severe mental illness, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to have Petitioner evaluated immediately before he pled guilty and failed to request a competency hearing pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981). Petitioner was prejudiced because there is a reasonable probability that Petitioner was incompetent at the time of the plea due to his severe mental illness.

Given counsel's awareness of Petitioner's long history of severe mental illness, his suicide attempt while he was incarcerated pretrial, and his subsequent treatment at Geo Care mere weeks before Petitioner pled guilty, counsel should have requested Appellant be evaluated to determine if he was competent to plead guilty immediately before his plea. Counsel also should have required the court hold a Blair hearing as the solicitor suggested. His failure to do so violated Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel. Moreover, as evidence by Dr. Martin's testimony at the evidentiary hearing, there is a reasonable probability that Petitioner was incompetent at the time of the plea due to his severe mental illness.

"The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel." Bailey v. State, 392 S.C. 422, 432, 709 S.E.2d 671, 676 (2011) (citing U.S. Const. amend. VI and Strickland v. Washington, 466 U.S. 668 (1984)). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686; see Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. 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 hearing on his competency to stand trial, he 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 with his attorney with a reasonable degree of rational understanding and have an understanding of the proceedings against him. Id.

Before Petitioner pled guilty, plea counsel was put on notice that Petitioner suffered from severe mental illness and had attempted to commit suicide on numerous occasions. Counsel learned from staff at the detention center that Petitioner had cut himself so badly that he had to be hospitalized and received over one hundred stitches to repair his wounds. Counsel was also aware that Petitioner was treated at Geo Care and was prescribed psychotropic medications to manage his illness. Petitioner told counsel on repeated occasions that he did not like being housed in "the tank" and that he was not feeling well. Counsel merely told Petitioner that he

"had to do better at the jail." App. 71, ll. 16-20. Based on this information, counsel should have requested Petitioner be evaluated again immediately before he pled guilty and required the court hold a Blair hearing to determine if Petitioner was competent. Instead, because Petitioner "seemed normal" to counsel, who was not a medical doctor, counsel conceded Petitioner was competent. This was clearly deficient performance. See App. 98, l. 19.

Moreover, there is a reasonable probability that Petitioner was incompetent at the time of his guilty plea due to his severe mental illness. When Petitioner was evaluated in August 2012 and found competent to stand trial, he was hospitalized at Geo Care and receiving regular psychiatric counseling. He was also prescribed a different regimen of medications at Geo Care that was more effective at treating his illness and was placed "in population around other people" instead of in isolation as was the case when he was housed in "the tank." App. 62, ll. 3-15. This is likely why Petitioner was found competent at the time of the evaluation.

However, by the time Petitioner pled guilty, he had been transferred back to the Lexington County Detention Center and housed in "the tank," where he did not even have a mattress or a pillow. He was also prescribed different medications that were not effective in treating and managing his illness. Consequently, his mental health began to deteriorate in the weeks before he pled guilty.

If Petitioner would have been competent and understood the proceedings, he would not have pled guilty. App. 67, ll. 2-6. Instead, he would have insisted on exercising his right to a jury trial, particularly because he has always maintained his innocence. App. 102, ll. 3-6.

Therefore, Petitioner respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of February, 2017.

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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the appendix in the above referenced case have been served upon Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the appendix have been served upon Matthew J. Eargle, #298691, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 16th day of February, 2017.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of February, 2017.

Brittany Wells (L.S)
Notary Public for South Carolina
My Commission Expires: November 3, 2026.