

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

CHARLIE G. WOOD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001391

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

RECEIVED
FEB 17 2017
S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT
 The PCR court erred in dismissing petitioner’s case for failure to
 prosecute. 3

CONCLUSION 5

PETITION TO BE RELIEVED AS COUNSEL 6

ISSUE PRESENTED

Whether the PCR court erred in dismissing petitioner's case for failure to prosecute?

*

STATEMENT

On February 4, 2014, petitioner pled guilty to voluntary manslaughter in Anderson County before the Honorable Edward W. Miller. App. 1. App. 3, ll. 5 – 8. Catherine T. Huey represented the State. App. 1. Andrew T. Potter represented petitioner. App. 1. The State made a recommendation of twenty years' imprisonment, which Judge Miller accepted and sentenced petitioner accordingly. App. 14, ll. 9 – 15.

On January 14, 2015, Petitioner filed a PCR application. App. 16. On June 10, 2016, a hearing was held before the Honorable R. Scott Sprouse. App. 30. Hugh W. Welborn represented petitioner. App. 30. Johanna C. Valenzuela represented the State. App. 30. On June 24, 2016, Judge Sprouse dismissed petitioner's PCR application. App. 35. This petition follows.

ARGUMENT

The PCR court erred in dismissing petitioner's case for failure to prosecute.

Petitioner's PCR application listed three grounds for relief: (1) ineffective assistance of counsel; (2) due process violations; and (3) lack of evidence. App. 18. At the hearing before Judge Sprouse, the State told the court that petitioner refused to leave the holding cell and come to the courtroom for the hearing. App. 31, ll. 6 – 19. The State asked Judge Sprouse to dismiss the case for failure to prosecute. App. 31, l. 20 – 32, l. 1.

Petitioner's attorney spoke with his client on the telephone earlier that year, but told the court that since that conversation, petitioner refused to speak with him. App. 32, ll. 7 – 19. PCR counsel stated that he was "at a total loss" and asked Judge Sprouse "to make an appropriate ruling." App. 32, ll. 7 – 19. Judge Sprouse stated that a PCR applicant has the burden of proof and then dismissed the case for failure to prosecute. App. 32, ll. 20 – 23. On June 24, 2016, the court entered a formal written order dismissing petitioner's PCR. App. 35.

The PCR court erred in dismissing the case for failure to prosecute. The proper remedy would have been to continue the case to investigate petitioner's competency. State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). When a trial judge has reason to question a defendant's capacity, "a competency evaluation is compulsory." State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). A trial judge can use a defendant's current conduct in making the determination that a competency evaluation is necessary. State v. Singleton, 322 S.C. 480, 482-84, 472 S.E.2d 640, 641-42 (Ct. App. 1996). The necessity of investigating petitioner's competency was heightened in this case because this was an appeal of a guilty plea and there was no evidence at the plea hearing that petitioner was ever evaluated or that plea counsel ever

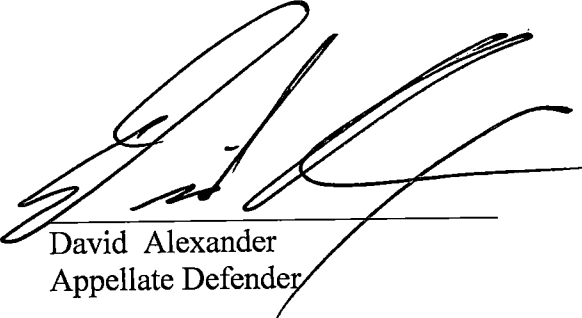
investigated his client's competency. See Ramirez v. State, ___ S.C. ___, ___ S.E.2d ___, 2017 WL 56379 (Jan. 5, 2017).

The facts before the trial judge necessitated a competency evaluation. Petitioner pled guilty at the age of 22. App. 11, ll. 4 – 6. He only made it to the eighth grade, although had finished his GED. App. 11, ll. 7 – 8. He was taken from his family's home when he was eleven years old by DSS because of his parents' substance abuse. App. 11, ll. 9 – 14. Petitioner had been addicted to methamphetamine for six years. App. 11, ll. 9 – 14. His own father introduced him to methamphetamine. App. 14, ll. 2 – 8. At the guilty plea, the solicitor stated that petitioner blacked out during the alleged crime. App. 8, ll. 15 – 21.

At the PCR hearing, the court knew that petitioner inexplicably ceased all communication with his attorney. App. 32, ll. 7 – 19. Petitioner had not made any complaints about PCR counsel or sought to represent himself. App. 32, ll. 7 – 19. No investigation was made by PCR counsel or the court about why petitioner ceased communicating with his attorney or why he refused to leave the holding cell and come to court. App. 32, ll. 7 – 19. These facts required the court to order a competency evaluation and dismissing this case was error.

CONCLUSION

For the foregoing reasons, this Court should reverse the dismissal of petitioner's case and remand to the PCR court for a competency evaluation and a new PCR hearing.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

CHARLIE G. WOOD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

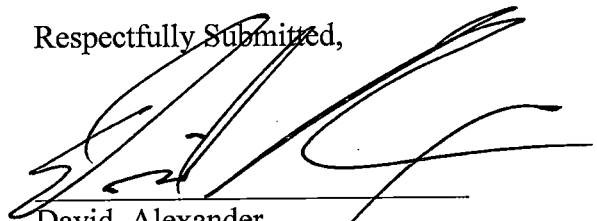
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charlie Gene Wood states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before the Honorable R. Scott Sprouse, which was held on June 10, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Charlie Gene Wood.

Respectfully Submitted,



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of February, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari 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."



David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 17th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

—————
CHARLIE G. WOOD,

PETITIONER

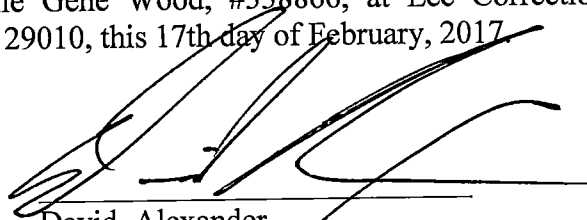
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————
CERTIFICATE OF SERVICE
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Charlie Gene Wood, #338866, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of February, 2017.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2017.

Maria Lumbel (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.