

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2016-001761

RECEIVED

JUL 03 2017

S.C. SUPREME COURT

MATTHEW J. EARGLE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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I. Petitioner’s issue is only preserved as to whether plea counsel rendered deficient performance by failing to join in the State’s request for a *Blair, infra*, hearing prior to the plea, and not as to whether plea counsel should have requested a new mental health evaluation immediately before the plea hearing, because the latter issue was not raised to or ruled upon by the PCR court..... 7

II. Plea counsel did not provide deficient performance because the record demonstrates that counsel had no reason to question Petitioner’s competency at the time of the plea. Counsel had Petitioner evaluated by DMH, who found him competent to stand trial. Also, plea counsel did not oppose the State’s initial request for a *Blair* hearing, made the trial court aware of Petitioner’s mental health history, and utilized Petitioner’s mental health history in mitigation..... 8

III. No prejudice results because none of the records pertaining to Petitioner’s mental health indicate a reasonable probability that he was incompetent at the time of the plea, and because the record demonstrates that a *de facto Blair* hearing was conducted as part of the plea proceedings..... 11

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PETITIONER'S QUESTION 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?

RESPONDENT'S COUNTER-QUESTION PRESENTED

Whether the record supports the PCR court's determination that plea counsel was not ineffective for stipulating to the results of the DMH report and for failing to make an independent request for a *Blair, infra*, hearing at the time of Petitioner's plea because no communications exist which would have caused counsel to question whether Petitioner was competent to stand trial and because the trial court's examination of Petitioner during the plea returned no question of competency.

STATEMENT OF THE CASE¹

Petitioner Matthew Eargle (“Petitioner”) waived presentment to the Lexington County Grand Jury and was direct-indicted for kidnapping on October 3, 2012. (App. 154-55 (Indictment No. 2012-GS-32-02255)). That same day, Petitioner pled guilty to the kidnapping charge pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970). He was represented by Eleventh Circuit Public Defender Robert M. Madsen. (App. 1). Lawrence G. Wedekind of the Eleventh Circuit Solicitor’s Office appeared on behalf of the State. (*Id.*).

Prior to the plea hearing, on August 29, 2012, the South Carolina Department of Mental Health (“DMH”) evaluated Petitioner for his capacity to conform and competency to stand trial. (App. 4-6, 128-45). The report found him to be capable of conforming and competent to stand

¹ Rule 243(e)(2), SCACR, requires a “concise statement of the case, containing the facts material to the consideration of the questions presented.” Rule 208(b)(1)(C), SCACR, further defines the matter appropriate for inclusion in the statement of the case, and states that it “shall not contain contested matters.” Respondent notes that Petitioner’s statement of the case contains declarations and citations to portions of the record which are contested and therefore believed improper for inclusion.

In particular, Petitioner’s statement of the case at ten points cites to Petitioner’s own PCR testimony. (App. 56-73). Petitioner declares in the petition, for example, that some prescribed medication “was more effective” and others “less effective at managing his illness,” or that his mental health “began to deteriorate” at certain times due to certain conditions identified by the Petitioner. (Cert. Pet. at 3). These, among others, are facts in dispute, and the PCR court found “the vast majority” of them “incredible, self-serving and dubious; otherwise known as malingering.” (App. 152).

Petitioner on fifteen other occasions cites to findings and conclusions provided by his own mental health expert which were contested during the lower court proceedings. (App. 73-94, 120-27). At one point, Petitioner writes that the doctor “exclaimed” his concerns at the conclusion of his testimony, which is not reflective of the transcript of proceedings. (Cert. Pet. at 7). The PCR court found this expert’s testimony to “equate to nothing more than a red herring to this Court’s limited inquiry of whether counsel rendered constitutionally effective assistance of counsel.” (App. 151).

Despite their inclusion in Petitioner’s statement of the case, Respondent does not concede that these matters are uncontested, and has fashioned its own statement of the case in a manner it feels comports with Rules 208(b)(1)(C) and 243(e)(2), SCACR.

trial. (*Id.*). Plea counsel Madsen received both evaluations on September 28, 2012, five days prior to the plea. (App. 99). The evaluations were prompted by prior commitments to mental health facilities and two suicide attempts at the county detention center. (App. 6).

The Honorable Roger M. Young, Sr. presided, accepting Petitioner's plea and sentencing him to a term of twenty-five (25) years' imprisonment. (App. 27). At the plea hearing, the State noted that Petitioner "did have a mental competency hearing, and [suggested] that [the court] do a *Blair*² hearing." (App. 4). Petitioner's counsel responded:

Judge, we stipulate to the findings in the report. I believe he's competent. I'll explain as part of my mitigation the reason that I felt it necessary, but we stipulate that he is competent in the report.

(App. 4). The State suggested in return that if they "don't clear the first hurdle, the rest of it might not be valid." (App. 4). The plea continued at this point, with the court next inquiring as to specific findings by DMH, and then making specific inquiries of Petitioner not only of his desire to plea and waiver of trial rights, but of his medications, cognizance of the proceedings, and understanding of the plea process. (App. 5-17).

A "global plea" was entered wherein Petitioner's additional charges from the kidnapping incident, those of armed robbery and possession of a weapon by a convicted felon, were dropped. (App. 15). Petitioner also had the following charges from an incident a few days earlier dropped as a result of the kidnapping plea: two charges of attempted murder; two charges of pointing and presenting; and two charges for use of a handgun during a crime of violence by a convicted felon. (App. 15, 19). Petitioner received an additional dismissal of a charge of grand larceny, \$5000-\$10,000, dismissed. (App. 15).

² *State v. Blair*, 275 S.C. 529, 533, 273 S.E.2d 536, 537 (1981).

Petitioner did not appeal his sentence or conviction, and is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court.

Petitioner filed an application for post-conviction relief (“PCR”) on January 15, 2013. (App. 29-35). On behalf of the State, Assistant Attorney General Walt Whitmire made a Return served June 12, 2013, and requested an evidentiary hearing. (App. 36-42).

Kristy Goldberg, Esquire, was appointed to represent Petitioner, and she filed an amended application on October 10, 2014. (App. 43-44). Within that amended application, Petitioner for the first time raised the following claim:

Ineffective assistance of counsel in that counsel stipulated to Applicant’s competency at the time of his plea and failed to require the court to conduct a hearing under *State v. Blair*. Applicant asserts there is a reasonable probability that he was incompetent at the time of the plea.

(App. 43).

Immediately thereafter, Assistant Attorney General Whitmire filed a memorandum of law in opposition, arguing that Petitioner could not meet his burden of proving ineffective assistance of counsel under the applicable legal standard. It was filed October 14, 2014. (App. 45-49).

An evidentiary hearing was conducted the next day, October 15, 2014, before the Honorable DeAndrea G. Benjamin. (App. 50). The above-cited claim was the only claim Petitioner pursued at the hearing. (App. 55). Petitioner testified in furtherance of his case, as did Dr. Thomas V. Martin, who was qualified as an expert in forensic psychiatry. (App. 7-45). Dr. Martin presented a report concerning a forensic psychiatric examination conducted upon Petitioner on April 23, 2014. (App. 123-27). This report, titled “Brief Forensic Psychiatric Summary,” did not address competency to stand trial. (App. 123-27). Dr. Martin did testify that he “felt with confidence that [Petitioner] was competent to participate in the evaluation” he

conducted. (App. 82).

Assistant Attorney General Whitmire presented testimony from plea counsel Madsen and offered into evidence Petitioner's criminal responsibility and competency evaluations conducted prior to entry of the guilty plea. (App. 46-62, 128-45).

On August 2, 2016, Judge Benjamin issued an order of dismissal which denied and dismissed Petitioner's PCR application with prejudice. (App. 146-53). It was filed in Lexington County on August 12, 2016. (App. 146).

Petitioner, by and through PCR counsel, timely filed a notice of appeal on August 25, 2016. Represented by Laura Caudy of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, Petitioner filed his Petition for Writ of Certiorari, to which Respondent makes the instant Return.

STANDARD OF REVIEW

“On certiorari in PCR cases, the Court applies an ‘any evidence’ standard of review. *McHam v. State*, 404 S.C. 465, 472, 746 S.E.2d 41, 45 (2013). This Court will affirm the PCR court’s findings if there exists “any evidence of probative value” to sustain them, and will “reverse the PCR judge’s decision when it is controlled by an error of law.” *Suber v. State*, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007). “This Court gives great deference to the PCR judge’s findings of fact and conclusions of law.” *McHam v. State, supra*.

ARGUMENT

The record supports the PCR court’s determination that plea counsel was not ineffective for stipulating to the results of the DMH report and for failing to make an independent request for a *Blair, infra*, hearing at the time of Petitioner’s plea because no communications existed which would have caused counsel to question whether Petitioner was competent to stand trial and because the trial court’s examination of Petitioner during the plea returned no question of competency.

- I. Petitioner’s issue is only preserved as to whether plea counsel rendered deficient performance by failing to join in the State’s request for a *Blair, infra*, hearing prior to the plea, and not as to whether plea counsel should have requested a new mental health evaluation immediately before the plea hearing, because the latter issue was not raised to or ruled upon by the PCR court.

“A party may not argue one ground at trial and an alternate ground on appeal.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). “In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.” *Id.* at 142, 587 S.E.2d 693. In a PCR action, an applicant must move to alter or amend the court’s order of dismissal pursuant to Rule 59(e), SCRCP, when that order does not address any particular claim. *Marlar v. State*, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007). The failure to do so will result in the application of a procedural bar. *Id.*

The issue presented by Petitioner is only preserved as to whether counsel should have independently requested a competency hearing pursuant to *State v. Blair*, 275 S.C. 529, 533, 273

S.E.2d 536, 537 (1981) (“*Blair*”), prior to the plea, and not whether Petitioner should have been subject to an additional competency evaluation immediately before the plea. Plea counsel’s failure to independently request a *Blair* hearing and his stipulation to Petitioner’s competency was the issue presented to the PCR court. (App. 43, 55). The issue concerning whether plea counsel should have requested an additional competency evaluation immediately prior to the plea was never presented to the PCR court, nor was it addressed in the PCR court’s order of dismissal. (App. 146-53).

- II. Plea counsel did not provide deficient performance because the record demonstrates that counsel had no reason to question Petitioner’s competency at the time of the plea. Counsel had Petitioner evaluated by DMH, who found him competent to stand trial. Also, plea counsel did not oppose the State’s initial request for a *Blair* hearing, made the trial court aware of Petitioner’s mental health history, and utilized Petitioner’s mental health history in mitigation.

“In order to find that petitioner’s trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner’s competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner’s proceedings.” *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 50–51 (2004) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984); *Gallman v. State*, 307 S.C. 273, 414 S.E.2d 780 (1992)). At all times during the proceeding, an applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. at 558, 640 S.E.2d at 886. Moreover, the proceeding is coupled with “a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgement in making all significant decisions in the case.” *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006).

To prevail on the present issue before this Court, Petitioner had to prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea. *Lee v. State*, 396 S.C. 314, 320-22, 721 S.E.2d 422, 466-47. “The test of competency to enter a plea is

the same as required to stand trial.” *Id.* (internal quotation omitted). That is, an “accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” *Id.*

Counsel’s representation cannot be found deficient when the record supports a finding that “counsel reasonably relied on his own perceptions” concerning his client’s competency. *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). As found by the PCR court, counsel had Petitioner evaluated by DMH prior to the plea. Furthermore, the record demonstrates that Petitioner presented in competent manner at the time of the plea such that counsel cannot be found ineffective for failing to make an independent request for a *Blair* hearing. Nothing in the record can be construed to entertain the notion that plea counsel was on notice that Petitioner may not be competent on the day of the plea hearing.

At the outset of the plea, the State requested a *Blair* hearing. (App. 4). Plea counsel did not oppose a need for the hearing, but rather stipulated to the DMH’s evaluation which found Petitioner competent to stand trial. (App. 4). Plea counsel received this evaluation five days before the plea. (App. 137 (note fax date)). It was conducted on August 29, 2012, thirty-five days prior to the plea. (App. 137). The evaluation found Petitioner competent to stand trial, and categorized Petitioner’s symptoms as “best characterized by the diagnoses of Cocaine Dependence in a Controlled Environment, Antisocial personality Disorder, and Borderline Personality Disorder.” (App. 137-45). Plea counsel incorporated this document into the plea proceedings at the outset, candidly informing the court that he “would have never thought that [Petitioner] was someone who needed to be evaluated” had it not been for his discovery of

Petitioner's past suicide attempts. (App. 5). That information, according to counsel, caused him to feel "compelled to have him evaluated for competency." (App. 5).

Then, the court inquired of plea counsel whether he believed his client to be competent. (App. 13-14). Counsel represented to the court that he had no question about Petitioner's ability to assist in his own defense. (App. 14). Counsel stated: "As I mentioned, Your Honor, besides some of the historical stuff that I had received from him and some stuff from the jail, I wouldn't have had a question as to his competency if I had not have found out about those things." (App. 14).

Plea counsel later went on to describe Petitioner's suicide attempt wherein he "ended up with over a hundred stitches in his arm by cutting himself." (App. 22). This mitigation presentation went on to explain the conditions of Petitioner's confinement which cause him to deteriorate and his struggle with substance abuse and depression. (App. 21-23).

Furthermore, where the record demonstrates that a petitioner had a basic understanding of his charges and the criminal process, no finding of ineffective assistance can result. *Lee v. State*, 396 S.C. 314, 321, 721 S.E.2d 442, 446 (Ct. App. 2011). As previously outlined, the totality of the record indicates that Petitioner understood the charges against him and the proceedings which would occur as a result. The DMH evaluation noted that Petitioner could "adequately describe his current charges," the role of the judge, jury, trial witnesses, a solicitor, and his defense attorney. (App. 143). Petitioner also "explained the context of plea bargaining" and "courtroom decorum." (App. 144). No other testimony refutes this finding. Doctor Martin, who was retained by Petitioner for purposes of PCR, did not testify or opine as to whether Petitioner was competent at the time he entered his guilty plea. (App. 81-86).

Also as noted by the PCR court, counsel testified at PCR that when he met with Petitioner, he “asked appropriate questions” and counsel “had no problem communicating with him” in a manner which might raise concern as to whether the client was competent to stand trial. (App. 97). It was only his history as a cutter and the divulgence of some mental health history that triggered counsel’s determination that a mental health evaluation would be appropriate in this case. (App. 98-100). Counsel further testified that “during the plea [Petitioner] did in [counsel’s] opinion a very good elocution of kind of why he was doing the *Alford* plea, and telling the Judge and he answered all the questions appropriately so [he] never had any concern” about his competency. (App. 103-04).

The record of plea counsel’s observations and interactions with Petitioner during the course of his representation, coupled with the findings of mental health experts made part of the record in this case, demonstrates that plea counsel had no objectively reasonable basis to independently seek a *Blair* hearing prior to entry of the guilty plea, and did not render deficient performance by stipulating to the findings by DMH. The record thus supports the PCR court’s finding that counsel did not provide ineffective assistance in this regard.

III. No prejudice results because none of the records pertaining to Petitioner’s mental health indicate a reasonable probability that he was incompetent at the time of the plea, and because the record demonstrates that a *de facto Blair* hearing was conducted as part of the plea proceedings.

“When a PCR applicant raises issue of competency in the context of a plea proceeding, the two-prong *Strickland* analysis still applies; however, because of the nature of the claim, proof of deficiency of counsel is intertwined with prejudice.” *Ramirez v. State*, 419 S.C. 14, 21, 795 S.E.2d 841, 844-45 (2017). If a court determines that counsel rendered deficient performance, a PCR applicant is only then entitled to relief “if he demonstrates a reasonable probability that he was incompetent at the time he pled guilty.” *Id.* at 22, 795 S.E.2d at 845. “A reasonable

probability is a probability sufficient to undermine confidence in the outcome.” *Gallman v. State*, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992).

Petitioner cannot meet this standard. For reasons discussed herein, nothing in the record demonstrated a reasonable probability that Petitioner did not understand the nature of the proceedings or could not render adequate assistance in his defense. There are no competing opinions other than that issued by DMH concerning Petitioner’s competency to stand trial on the day of the plea. Petitioner’s expert, Dr. Martin, could not render an opinion as to whether Petitioner was competent from August to October 2012, including on the day of the guilty plea. (App. 81-86, 123-27). The record otherwise evidences that Petitioner did not have trouble communicating with counsel during consultations leading up to the plea. (App. 5, 14, 97-104).

Furthermore, Petitioner cannot demonstrate that he was prejudiced by counsel’s failure to independently request a *Blair* hearing because the failure to do so does “not waive the right to such hearing.” *State v. Blair*, 275 S.C. at 533, 273 S.E.2d at 537. Addressing S.C. Code Ann. §§ 44-23-410 and 44-23-430, *Blair* went on to hold that “a competency to stand trial hearing ‘shall’ be held after a psychiatric examination has been ordered.” *Id.* In this case, the State requested such a hearing, plea counsel stipulated to the competency findings, and then the court went on to accept Petitioner’s plea. (App. 4-15). The acceptance of a knowing, voluntary and intelligent guilty plea is a *de facto* finding of competency to go forward with the proceeding. “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969)).

Upon recognition of the DMH evaluation, the plea court noted:

Well, it does sound like [Petitioner] has some mental health issues, but according to the examining doctor here, they do not rise to the level of interfering with his ability to understand what he is doing or to assist his counsel. Defense counsel has concurred in that, so at this point I'd have to go along with it. **Let me talk with him a few minutes and we'll go forward.**

(App. 5-6 (emphasis added)). The plea court's colloquy indicated intent to inquire as to whether Petitioner was competent to proceed. The plea court then undertook a question-and-answer session with Petitioner which, while indicative of a standard plea colloquy, also elicited information regarding whether Petitioner understood the nature of the proceedings, and what effects his medications may have on his ability to enter a knowing and intelligent plea. (App. 6-17). Consider the following portion of the colloquy:

COURT: Do you know why you're taking those [drugs]?

PETITIONER: Supposed to keep me calm.

COURT: Well, is it working?

PETITIONER: Yes, sir.

COURT: It is helping you understand what you're doing a little bit better or does it make it worse?

PETITIONER: I guess a little better.

COURT: All right. So you take the prescribed amounts?

PETITIONER: Yes, sir.

COURT: When's the last time you took some?

PETITIONER: This morning.

COURT: And is that when you're supposed to regularly take it?

PETITIONER: Yes, sir.

...

COURT: What are you doing here today?

PETITIONER: Going to trial about some charges that I have.

COURT: Well, you told me you don't want to go to trial.

PETITIONER: Well, I mean I'm going before you on some charges I have.

...

(App. 8-9).

Later, the court inquired as to his age, education, and family history, during which time Petitioner offered comprehensive, rational responses. (App. 12-13). Petitioner later made a direct and coherent apology to the victims. (App. 24). Then, Petitioner went on to articulate his version of the kidnapping, explaining why he entered a plea pursuant to *Alford, supra*. (App. 25). The plea court's failure to halt proceedings indicates a finding of competency. Moreover, Petitioner's interactions with the court indicate that he embodied a rational and factual understanding of the proceedings. On this record, Petitioner cannot demonstrate prejudice.

CONCLUSION

Considering the foregoing, the State requests this Court deny the Petition for Writ of Certiorari.

Respectfully Submitted,

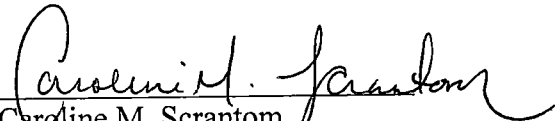
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ATTORNEYS FOR RESPONDENT

July 3, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
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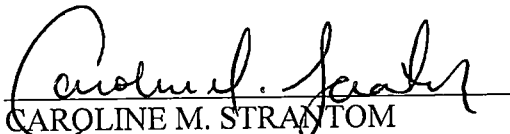
Appellate Case No. 2016-001761

PROOF OF SERVICE

I, Caroline M. Strantom, counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari on the Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Lara M. Caudy, Appellate Defender, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 3rd day of July, 2017.



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