

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari To Spartanburg County  
R. Scott Sprouse, Circuit Court Judge

---

Chadwick D. Anderson

Petitioner

V.

State of South Carolina

Respondent

APPELLATE CASE NO. 2015-001936

---

**RECEIVED**

JUN 20 2016

**S.C. SUPREME COURT**

INDEX

ISSUES PRESENTED

STATEMENT

ARGUMENT

- (1) Plea counsel labored under ineffective assistance of counsel, for failure to request for a second opinion mental examination whereby counsel prejudice petitioner to determine was the petitioner competent to plead guilty.
- (2) Plea counsel and trial Judge labored under ineffective assistance of counsel, for their incorrect advice that petitioner had a right to appeal his guilty plea and sentence, whereby rendered the guilty plea condition.
- (3) Plea counsel labored under ineffective assistance of counsel, due to his erroneous advice whereby he promise petitioner he would receive ten (10) years if he plead guilty. \_\_\_\_\_

Conclusion \_\_\_\_\_

ISSUE PRESENTED

- (1) DID COUNSEL LABOR UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, FOR FAILURE TO REQUEST FOR A SECOND OPINION MENTAL EXAMINATION WHEREBY COUNSEL PREJUDICED PETITIONER TO DETERMINE WAS THE PETITIONER COMPETENT TO PLEAD GUILTY?
- (2) DID PLEA COUNSEL AND TRIAL JUDGE LABOR UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, FOR THEIR INCORRECT ADVICE THAT PETITIONER HAD A RIGHT TO APPEAL HIS GUILTY PLEA AND SENTENCE, WHEREBY RENDERING THE GUILTY PLEA CONDITION?
- (3) DID PLEA COUNSEL LABOR UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, DUE TO HIS ERRONEOUS ADVICE WHEREBY HE PROMISE PETITIONER HE WOULD RECEIVE TEN (10) YEARS IF HE PLEAD GUILTY.

PLEA COUNSEL LABORED UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, TO ACCEPT A PLEA OF GUILTY BECAUSE IT WAS ENTERED UPON THE TRIAL JUDGE'S INCORRECT ADVICE THAT PETITIONER HAD A RIGHT TO APPEAL HIS PLEA AND SENTENCE.

#### ARGUMENT

During the plea colloquy, the trial judge told the petitioner: I will advise each of you that you have ten days from the date that you enter a guilty plea and receive your sentence in which to appeal the plea if you wish to do so. (App. 11.)

Contrary to the judge's statement, pleas of guilty are unconditional and if an accused attempts to attach any condition or any qualifications thereto, the trial judge should direct a plea of not guilty. State v. Truesdale, 296 S.E.2d 528 (1982); State v. Easler, 471 S.E.2d 766. Contrary to the judge's statement, there is no right to appeal a guilty plea. Weather v. State, 459 S.E.2d 838 (1995). Counsel is not required to inform a defendant of the right to appeal absent extraordinary circumstances. The effect of the judge's advising the accused that he had a right to appeal was to render the plea condition.

In State v. O'leary, 393 S.E.2d 186, this court reversed and remanded a guilty plea. In that case, the trial court permitted the accused to condition his guilty plea upon the right to appeal the constitutionality of the statute under which he was pleading. As this court held, Truesdale; supra, guilty pleas are unconditional and if an accused attempts to attach any condition, the trial court must direct a plea of not guilty. This court went on to hold that it is thus, impermissible for a defendant to preserve constitutional issue while entering a guilty plea. The court must not accept the plea on such terms.

The trial judge's advise to the accused in this case had a right to appeal had the same effect. Just like O'leary, the petitioner here entered his plea thinking he had the right to appeal. Rather, it was a plea entered by an accused who thought that based on what the judge told him, he had a right to appeal.

## ARGUMENT

The Petitioner was mentally incompetent at the time of the armed robbery in 2010; and at the time of the guilty plea on July 15, 2011; and was allowed to plead guilty in violation of the S.C. Constitution, United States Constitution, and the Federal Constitution, Fourteenth Amendment Due Process clause. Incorporated into allegation is that petitioner was denied the effective assistance of counsel and due process of law at his July 15, 2011 plea hearing for concurrent terms of thirty (30) years for five (5) counts of armed robbery, concurrent terms of fifteen (15) years for each count of accessory after the fact of armed robbery, and a consecutive term of ten (10) years for the remaining armed robbery charge. Because he had been mentally incompetent at the time of this crime in 2010 and at the July 15, 2011 guilty plea.

In the petitioner's case there is evidence to support this claim, that the petitioner has a long mental health history. And counsel failed to investigate his mental health history. There are genuine probative evidence in support of this issue based on the mentally incompetent, whereby the petitioner's records indicate that in 3-14-97, the petitioner had been diagnosed with a 315.9- Learning Disorder. At ten (10) years of age, he had been characterized as mentally disabled and emotionally disturbed, and had been placed in special classes his entire academic career. In 2-12-98, the petitioner had been diagnosed with Attention-Deficit/Hyperactivity Disorder. His level of intellectual functioning is below mental retardation. His I.Q. score is in the range of sixty (60). The petitioner was also diagnosed with a Schizophrenia disorder. Which causes him to see things and hear voices of all source.. (App. Page 136-137).

Due process footnote (4) prohibits the conviction of a person who is mentally incompetent. Bishop v. United States, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed 835 (1956). This constitutional right can not be waived by the incompetent, by guilty plea or otherwise. Carroll v. Beto, 421 F.2d 1065, 1067, (5th Cir. 1970). While a plea may only be attacked on the basis

that it was not knowing and voluntary. It's contradictory to argue that a defendant may be incompetent, and yet knowing or intelligently waive his rights. Pate v. Robinson, 383 U.S. 374, 384, 86, S.Ct. 836, 841, L.Ed.2d (1966). Pate v. Robinson, make it clear that the conviction of an accused person who is not mentally competent to stand trial violates due process. This constitutional right can not be waived by the incompetent, by guilty plea or otherwise, and thus, it must be protected by adequate state procedures.

When a prisoner, either state or federal, seeking post conviction relief, asserts with substantial fact to back up his allegation, that at the time of the trial he was not mentally competent to stand trial and that there was no resolution of that precise issue before he was tried, convicted and sentenced. The protection of the fourteenth amendment to the constitution requires that such conviction and sentence be set aside unless upon adequate hearing it is shown that he was mentally competent to plead guilty. 3. Constitutional law 268.2 (2).

As a matter of procedural due process procedures, a criminal defendant is entitled to an evidentiary hearing on claims of mental incompetence. If he present clear and convincing evidence to create a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate and cooperate with counsel.

Petitioner's claims of incompetency to plead guilty, insanity at time of act, and an unknowing and involuntary guilty plea were not barred by the procedural default rule of Wainwright v. Sykes at Horace v. Wainwright, 781 F.2d 1558 (11th Cir. 1986).

The petitioner argues his plea counsel was ineffective for failing to request a mental examination which may have formed the basis of an insanity defense or a determination that he was not competent to plead guilty. Cite, Jeter v. State 417 S.E.2d 594 (S.C. 1992). Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 80 L.Ed.2d 674 (1984). Applicable to guilty pleas under Hill v. Lockheart, 474 U.S. 52, 106, S.Ct. 366, 88, L.Ed.2d 203 (1985) both deficient performance and prejudice to prevail on an effective assistance of counsel claim.

CONCLUSION

Petitioner Respectfully Requests This Court Vacate His  
Guilty Pleas And Order A New Trial.

Respectfully Submitted,

---

Chadwick D. Anderson  
Petitioner

This \_\_\_\_ Day of \_\_\_\_\_ 2016.

## AFFIDAVIT OF XAVIER PERRY

I, Xavier Perry, affirms that the following statements are factual and based upon my own personal knowledge and experiences. I declare upon penalties of perjury per. 28 U.S.C. § 1746, that the following statements are true and that I have not been threatened into or promised anything for making the following statements.:

I, Xavier Perry, am the codefendant of Chadwick Anderson. Mr. Anderson and I both plead guilty on July 15<sup>th</sup>, 2011 due to erroneous advice from our counsel, Mr. James Cheek. Mr. Cheek advised both Mr. Anderson and I that we would both receive no greater than ten years if we plead guilty to armed robbery charges. Mr. Cheek also advised both myself and Mr. Anderson that if we were not to plead guilty on that day, then we should both be prepared to face trial on the following week; where he advised us that we would both be sentenced to life in prison. It was only after this erroneous advice that Mr. Anderson decided to plead guilty.

I've known Mr. Anderson since I was 13 years old and can attest to the fact that Mr. Anderson has some form of mental disability. I believe this is

why Mr. Anderson admitted to have been apart of the armed robberies that I alone committed. Mr. Anderson did not help me commit the armed robberies in which we we charged with. Mr. Anderson committed no armed robberies with me or any on his own that I have knowledge of. Mr. Anderson drove me to places on several occasions, but had no idea that I was going to commit a robbery.

Executed at Bishopville, South Carolina

by ~~Xavier L. Perry~~  
Xavier L. Perry

CHAD WILK Anderson #346881

AMS

~~PE~~ Q3A-ZZY  
130 OAKLAWN Rd  
Pelzer SC, 29669

RECEIVED  
JUN 15 2016  
P.C.I. MAILROOM

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court.  
P.O. Box 11330  
Columbia SC, 29211