STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Kershaw County
Honorable Jocelyn Newman, Circuit Court Judge

APPELLATE CASE NO. 2017-001242

PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUES PRESENTED

I. Did the PCR court err in finding that Petitioner Ryan F. Trojan failed to meet his burden to establish ineffective assistance of counsel prior to and leading up to his guilty plea?

II. Did the PCR court err in finding that Petitioner Ryan F. Trojan's guilty plea was entered into knowingly and voluntarily?

STATEMENT

Petitioner was indicted for Attempted Murder in October 2013 in Kershaw County General Sessions. Petitioner was represented by Ronald Moak. Petitioner pled guilty on July 9, 2014 to a lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN). Counsel represented Petitioner during the plea. The Honorable Deandrea G. Benjamin sentenced Petitioner to eleven (11) years' imprisonment. Petitioner did not appeal his sentence or his plea.

The incident in question took place on July 14, 2013, where the victim, Dillon Robertson, was struck in the head with a baseball bat. Witnesses to the incident identified Petitioner Ryan Trojan as the person responsible. Dillon Robertson and some friends had attended a house party in Camden where the Petitioner had also attended with separate friends. Petitioner and the victim had a previous history that involved the Petitioner being severely beaten by Dillon Robertson and several others just a few months prior to this incident. During the plea colloquy, the State contended that there was no evidence that Dillon Robinson provoked the Petitioner that night or that Dillon Robertson tried to fight the Petitioner. (R. p. 72, lines 1-8). Dillon Robertson and his group of friends had left the party and, according to the State, returned shortly thereafter because they forgot some personal property (a cell phone). *Id.* at lines 21-25. Petitioner testified during the plea that on that night, he and Dillon Robertson were yelling at each other, that Dillon Robertson became aggressive, and that the homeowner made them leave. R. p. 75, lines 5-12. Thereafter, as Petitioner was in his car backing up, Dillon Robertson returned to the residence. *Id.* at lines 13-15. Petitioner testified that he recalled Dillon Robertson coming right at him (Petitioner) when he returned to the party, and at that point he swung the baseball bat, striking Dillon Robertson. *Id.* at lines 15-24.

During the plea, Petitioner's counsel informed the court that this was not a self-defense case but that Petitioner wished to state his own version of the facts to the court. R. p.77, lines 24-25, p. 78, lines 1. When questioned by the court, Petitioner responded that the only reason he was pleading was due to his fear of trial and unfamiliarity with the process. R. p. 78, lines 2-11. The court then permitted a break so that Petitioner's counsel could speak with him, and after the break Petitioner proceeded with the guilty plea.

During the PCR hearing, plea counsel Ron Moak testified that he did not personally request the victim's medical records since Petitioner made a decision to plead guilty. R. p. 43, lines 21-25. Additionally, Mr. Moak conceded that the solicitor's office did not have the medical records or the review of the medical exam in that case, yet the State's case consisted of an allegation of brain injury to the victim R. p. 45, lines 14-23. Mr. Moak's testimony attributed the severity of the charge directly to the nature of the victim's injuries from that night. *Id.*

The victim's injuries were of particular relevance in this case. Petitioner's PCR counsel issued a subpoena to Daniel Grigg, the Deputy Director for the Department of Legal Licensing and Regulation (LLR) to testify during the hearing. Mr. Grigg testified that his responsibilities include overseeing the Athletic Commission through the Department. R. p. 15, lines 24-25, p. 16, lines 1-2. Mr. Grigg offered testimony concerning the application process for MMA (mixed martial arts) fighters. He testified that the Athletic Commission is responsible for processing these applications and that these fights are "highly regulated" in this state. R. p. 16, lines 3-8. Mr. Grigg was then questioned as to Dillon Robertson's application for an MMA fighting license, which was submitted March 21, 2014 and which was approved. R. p. 18, lines 7-11. When questioned, Mr. Grigg further testified that the regulations do distinguish between "brain injury" and "cerebral hemorrhage" due to the severity of the injuries involved, and that in his opinion

and based on his recollection of the regulations, if there is a hemorrhage then an applicant would not be licensed to fight. R. p. 20, lines 24-25, p. 21, lines 1-11. Mr. Grigg also affirmed that part of the process includes a physical by a physician at least twice before any decision is made to grant the application. R. p. 20, lines 22-23. Essentially, the victim in this case, Dillon Robertson, applied for an MMA fighter license with LLR approximately eight (8) months following the incident that caused his injuries.

ARGUMENT

I. The PCR court erred in finding that Petitioner Ryan F. Trojan failed to meet his burden to establish ineffective assistance of counsel prior to and leading up to his guilty plea.

The crux of this case involved the injuries inflicted upon the victim Dillon Robertson. Mr. Moak did discuss his view of the "imperfect" defense of self-defense, however, by his own admissions he did seek to obtain the medical records prior to the guilty plea. There was no opportunity for either Petitioner or his counsel to review and ascertain the extent of the injuries inflicted on the victim. While counsel was able to get a reduced charge to ABHAN, this charge did not differ greatly from the original charge of Attempted Murder, only insofar as the intent elements were concerned. The nature of the injuries inflicted on a victim is distinguished by the elements of different degrees of Assault and Battery.

The victim's medical records and diagnoses were directly relevant to the prosecution of this case given the degree of injuries which the State alleged. Counsel's failure to obtain medical records or other diagnoses of the victim prior to Petitioner's guilty plea was ineffective assistance of counsel. The Order of Dismissal recounts that Mr. Moak was in fact aware that the victim continued to engage in MMA fights after the incident that caused him serious injuries, yet plea counsel did not investigate this further because he did not believe it was relevant and rather focused on getting a deal from the Solicitor. R. p. 6. The Order of Dismissal also recounts that plea counsel did not request any medical records because Petitioner had always maintained that he wanted to plead guilty and not go to trial. *Id.*

Petitioner believes the PCR court erred in finding that Petitioner failed to meet the first prong of the Strickland test- that plea counsel failed to render reasonably effective assistance

under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). Petitioner reiterates the plea counsel's testimony that he did not seek out the medical records in the case. There was no opportunity to discuss the nature of the injuries on the victim and whether that would affect the charges brought by the Solicitor's office or if it would affect their offer. The fact that plea counsel further ignored the evidence that the victim was participating in MMA fights after the injuries compounds his errors in this case. Plea counsel was inefficient due to his egregious omissions in failing to actively seek the medical records on behalf of the defense, and in failing to pursue any investigation or theory of defense from the fact that the victim participated in MMA fights after the injuries and was licensed by LLR to engage in these fights. As this case directly concerned the victim's medical condition following the injuries, plea counsel's omissions in this regard deprived Petitioner of potential mitigation evidence that could have resulted in a more favorable plea negotiation with the state or that could have been considered by the sentencing judge.

In Porter v. McCollum, the United States Supreme Court ruled that counsel for the petitioner failed to present mitigating evidence that resulted in an ineffective assistance of counsel. Porter v. McCollum, 130 S. Ct. 447, 175 L.Ed.2d 398, 558 U.S. 30, 78 USLW 3315 (2009). While that case concerned mitigation evidence for sentencing, here the Petitioner makes similar claims with respect to his counsel's failure to request the victim's medical records. As discussed, these records would have been helpful in mitigation concerning the nature of the injuries, or could have changed Petitioner's mind to go to trial instead of plead guilty. In Porter, standby counsel (during the penalty phase) had failed to obtain any of the defendant's records, including medical or military records, and did not interview the defendant's family members. *Id.* at 558 U.S. 39. Citing another case, the Porter court noted:

"In Wiggins v. Smith, 539 U.S. 510, 524, 525, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), we held counsel 'fell short of ... professional standards' for not expanding their investigation beyond the presentence investigation report and one set of records they obtained, particularly 'in light of what counsel actually discovered' in the records." *Id.*

Petitioner contends that this case is very similar to his own plea counsel's failure to request medical records or make any effort to investigate the severity of the victim's injuries, and that his plea counsel relied exclusively on the State's version of the facts and incomplete evidence.

II. The PCR court erred in finding that Petitioner Ryan F. Trojan's guilty plea was entered into knowingly and voluntarily.

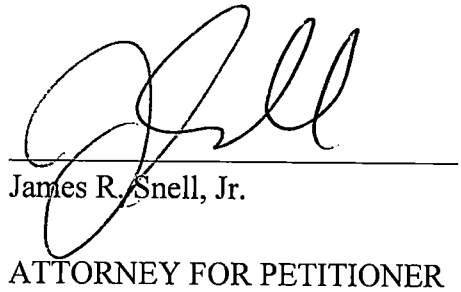
A defendant who pleads guilty simultaneously waives several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury and the right to confront his accusers. State v. Patterson, 278 S.C. 319, 332, 295 S.E.2d 264, 265 (S.C. 1982). For such a waiver to be valid under the due process clause, it must be an intentional relinquishment or abandonment of a known right or privilege. *Id.* Further, the record must clearly establish waiver. *Id.* See also Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

Petitioner testified that he had previously advised his counsel he wished to have a trial. R. p. 37, lines 6-8. He further testified that his counsel's response was to focus on a plea and that counsel and the Solicitor "brought pressure" on Petitioner to take the plea. *Id.* at lines 9-14. Petitioner testified that when he met with his counsel to discuss the plea, that it was a brief meeting, and that his counsel's response to having a trial was to go with [the plea] first... try this

first. R. p. 38, lines 13-21. Petitioner contends that his plea counsel's inefficient advice as well as the hurried nature of the plea rendered his plea involuntary.

CONCLUSION

Based on the foregoing, certiorari should be granted, Petitioner's conviction and sentence reversed, and the case remanded.



James R. Snell, Jr.

ATTORNEY FOR PETITIONER

This 16th day of October, 2017.

STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I hereby certify that I have served a copy of the ***Petition for Writ of Certiorari*** and the ***Appendix*** in this case on the Attorney General's office, by depositing a copy of it in the United States mail, postage prepaid, on October 16, 2017 addressed to the following as counsel of record:

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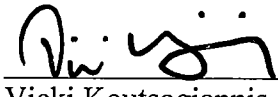

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October 16, 2017
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