

State of South Carolina
County of Spartanburg
Tyrone Perry # 307793
Petitioner

v

State of South Carolina
Respondent

In the Supreme Court
2015-CP-42-4338
Appellate case No: 2017-001770

Petition for Rehearing

RECEIVED

DEC 15 2017

S.C. SUPREME COURT

In the petitioner's final order of dismissal the judge contends that the petitioner had his full bite of the apple. The petitioner alleges in his PCR application that trial counsel James E Hatcher was ineffective for failing to provide an adequate competency determination that could have clarified his state of mind and that the petitioner is legally incompetent and that counsel was ineffective for failing to get a second opinion on his mental health which violated his constitutional rights Pursuant to South Carolina precedent *Jeter-v-State* 417 SE2d 594 due process prohibits the conviction of a person who's mentally incompetent. *Bishop-v-U.S.* 76 S.Ct 440, 100 This right can't be waived by a guilty plea. *Pate-v-Robinson* 86 S.Ct 836, 15. The test of competency to enter a plea is the same as required to stand trial. *State-v-Lambert* 225 SE2d 340 The 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. *Carnes-v-State* 271 SE2d 121. Pursuant to *Brooks-v-Tennessee* 92 S.Ct 1891, 1895 it requires the petitioner to be the first defense witness. Trial counsel James E. Hatcher NEVER got the petitioner's version of the facts. The petitioner was initially arrested on January 4, 2005. He sat in the county jail until February 2005. where he initially met trial counsel for a probation violation.

and the petitioner had a pending murder charge. See appendix page 81 lines 13 through 18. Trial counsel elected to have petitioner go to prison for eight months and revoke his probation. Throughout this time trial counsel NEVER corresponded with the petitioner in terms of the pending murder charge. The petitioner wrote to trial counsel numerous times to avail requesting for his Rule 5 Brady material and to discuss the pending murder charge. Trial counsel NEVER responded back. So the petitioner wrote trial counsel up with the disciplinary counsel for failure to communicate to plan a defense. In response trial counsel said he communicated with the petitioner by means of his mother who visits him. This practice violates title 17 attorney client privilege and violates Rule 8.4 of misconduct. SEE appendix page 87 lines 1 through 10. Counsel had an obligation to consult directly with the petitioner not his mother who is not on trial. As a result the disciplinary looked into trial counsel's conduct. Trial counsel had the petitioner transported to Spartanburg County jail where he sat for seven days. On the seventh day trial counsel approached the petitioner told him don't write me up no more and think about thirty to life and walked away. This was the petitioner's second encounter with trial counsel and would be the last. Being that the petitioner wrote trial counsel up this led to a conflict of interest. which ultimately led to the denial of the right to have effective assistance of counsel. This conflict actually affected the adequacy of trial counsel's representation of the petitioner. And coincides with Holloway Supra 435 U.S. 487-491 98 S.Ct 1180-1182. Trial counsel learned about the petitioner through his mother without NEVER consulting with the petitioner. See appendix page 91 lines 24 and 25 and page 92 lines one through seven. This deems a deficient performance in which counsel made errors so serious that he wasn't functioning as counsel guaranteed by the 6th amendment Strickland -v- Washington 104 S.Ct at 2064. Trial counsel never consulted with the petitioner in terms of planning a defense, the elements of the charge, my version of the facts, nor my constitutional rights. There's no record of any meetings, no handwritten notes, or any dates of meetings with the petitioner.

Trial counsel learned about the petitioner's mental health and drug use through the petitioner's family which is hearsay. And on trial counsel's own without consulting with the petitioner he obtained the petitioner's medical records without consulting first with the petitioner. The petitioner gave NO consent to trial counsel, nor any hospital, nor mental institution to release any medical records. No consent forms were signed by the petitioner and Hippa laws forbid the release of these documents without the patient's consent. And the petitioner NEVER consented. From February 2005 until October 1, 2005 the petitioner was in prison at Lieber Corr. Institute while trial counsel was in Spartanburg County and trial counsel only had one meeting with the petitioner to tell him not to write him up any more with the Disciplinary Counsel. From October 1, 2005 until February 1, 2006 the petitioner sat in Spartanburg County jail only minutes away from the Spartanburg Public Defender's office and trial counsel NEVER came to visit the petitioner to talk about planning a defense or getting the petitioner's version of the facts. In early December 2005 Spartanburg County transported the petitioner to a competency hearing on Farrow Rd. Trial counsel NEVER informed the petitioner of this hearing and trial counsel definitely wasn't present for this hearing. Per the judge's order the petitioner was supposed to be there for a period of 15 days. The competency hearing lasted no more than fifteen minutes and the petitioner had no knowledge that this hearing was being held due to counsel not relaying the information. The hearing was held nearly a year after the crime which makes it significantly impossible to properly assess the petitioner's state of mind during the time of crime. Prior to this crime the petitioner was labeled Schizophrenic and prescribed halodol among other things. The petitioner suffered from command hallucinations and attempted suicide a number of times. Trial counsel had knowledge of this. Schizophrenia is a Axis I major mental illness according to the DSM 4 manual. The diagnosis rendered from the competency hearing was drug dependency. Counsel was obligated by U.S.C. 3006 A (e) to get a second opinion to rebutt the state's expert diagnosis of drug dependency. Failure to do so violated the petitioner's due process

and equal protection of the law. Pursuant to S.C. Code Ann 17-3-80 funds were available for counsel to get a second opinion but counsel did not. This failure violates U.S.-v. Byers 740 F2d 1104, 1114 where the court held that the defendant was denied psychiatric assistance sufficient to prepare an adequate defense where the petitioner was only allowed access to psychiatrists for the government. For counsel's failure to obtain a second opinion rendered his performance deficient in which counsel made errors so serious that he wasn't functioning as counsel guaranteed by the 6th Amendment. Strickland -v- Washington 104 S.Ct at 2064. In petitioner's original plea trial counsel had knowledge of petitioner's mental illness of schizophrenia but absolutely disregarded it in an attempt to enhance the petitioner's sentence. In retaliation for writing him up with the disciplinary counsel which rendered his performance deficient. Schizophrenia is a Axis I major mental illness according to the DSM 4 manual. Trial counsel had an obligation to get a 2nd opinion due to the fact the petitioner was labeled schizophrenic prior to the crime state experts and counsel acted with deliberate indifference and labeled the petitioner drug dependant. At the petitioner's original plea trial counsel offered the state's competency evaluation as evidence. This was a violation of attorney client privilege. Per the court's order this evaluation was confidential unless the petitioner asserts the insanity defense. Also this hearing was to be done no later than 60 days from the judge's order which was done in September 2005. I went to the competency hearing in December 2005 ninety days after the order. Trial Counsel should not have rendered his opinion concerning drug use at the time of the crime nor should he have relied on evidence presented by a witness who didn't testify. The probative value of this evidence outweighed its prejudicial effect and should've been excluded from evidence pursuant to Rule 403 SCRE. Trial counsel's talk of drug addiction and drug use was so egregious that it fatally infected the proceedings and rendered the entire plea fundamentally unfair. Newton -v- Armontrout 885 F2d 1328 110 S.Ct 3301. The petitioner was mentally ill then and after 13 years of incarceration the petitioner is

still being treated for schizophrenia and prescribed a number of anti psychotic meds that validate Spartanburg County Hospital diagnosis. The petitioner is still mentally ill and has to fight a case in which he's a layman with a limited understanding of the law. If trial counsel would have spoken to the petitioner about this case from the beginning the petitioner would have been sought relief. While in prison the petitioner has received structure and non structure therapy to help him better understand his mental illness. Which contradicts trial counsel's opinion that the case at hand was due to drug dependency. It has been made known to the petitioner by chief psychiatrist Doctor Beverly Wood that trial counsel lacks the skill and knowledge and expertise to render an opinion concerning the petitioner's mental health therefore his statements should be moot and rendered as hearsay evidence cause it has no factual basis. Trial counsel constantly talked of drug addiction but NEVER conducted any blood sample or urinal or hair strand drug test. So his talk of drug use prejudice the petitioner making counsel rendering in state court grossly ineffective legal assistance. Strickland-v-Washington 104 S.Ct 2052, 2064. The trial court erred and violated 44-23-410 by not ordering a psychiatric exam due to the petitioners lack of capacity to understand the proceedings against him or to assist in his own defense as a result of his mental illness. Throughout the plea colloquy the petitioner couldn't understand the questions the judge was asking. There are pauses all through the colloquy especially when the trial court asks of waiving constitutional rights. An explanation was given by Sarah Dunn who was at the plea hearing. See Appendix page 59 line 25 and page 60 line 1-25. The petitioner was incompetent and did what counsel erroneous advice given and said yes. at the plea colloquy so the fact finder can't be relied as correct. Lastly in the order the petitioner states he was promised 25 years but received 50 years In South Carolina precedent Craddock-v-state 491 SE2d 251 trial Counsel promised 25 years in exchange for a plea of guilty. I was promised 25 years by plea counsel with two witnesses present and Brenda

Miller and Sarah Dunn's testimony at the PCR was not ruled upon. In U.S.-V-Brady agents of the state may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant. In the petitioner's case he elected to go to trial. But trial counsel went and got the petitioner's mother to coerce him to plea guilty. On record plea counsel admits the petitioner would not sign the agreement. After getting the petitioner's family Sarah Dunn and Brenda Miller to talk and coerce the petitioner with a promise of 25 years did the petitioner plea. In the PCR court, initial order of dismissal the PCR court violated 17-27-80 by not ruling on this issue. The petitioner presented evidence of coercion overbearing the will of the petitioner and the petitioner is mentally ill. A promise was made of 25 years and counsel admitted the petitioner would not sign the plea until he went and got the petitioner's family. U.S.-V-Brady and Craddock-V-State are contrary to the PCR court's findings. The petitioner never got a full bite of the apple on ALL issues raised at each PCR proceedings. The solicitor would not disclose favorable evidence to the petitioner and PCR counsel failed to file a 59(c) motion pursuant to Marlar-V-State to reserve these issues for appellate review. The petitioner is mentally ill and has to overcome the burden of ineffective assistance of counsel at each step. To the point the petitioner can allege a U.S.-V-Cronic 104 S.Ct 2039 violation. An outright denial of assistance counsel. Original plea counsel NEVER got the petitioner's version of the facts. There's no schedule of meetings, no notes, and the only thing that was in plea counsel's file was the letter I filed on him to the disciplinary counsel. No pre-trial motions were filed, no witnesses investigated, no Jackson-V-Denno hearing, and trial counsel worked with the prosecution to cement their case against the petitioner with constant talk of drug use but with NO factual basis. The petitioner has NO drug charges on his record. Counsel violated attorney client privilege by submitting the

state's competency hearing, get to know the petitioner by talking to his mother and not the petitioner. I NEVER once spoke to plea counsel about my case. Trial counsel knew the petitioner was mentally ill and had a low understanding and no experience in law. Out of retaliation for me writing him up with the Disciplinary Counsel he outright denied me assistance of counsel. Counsel entirely failed to subject the prosecution's case to any meaningful adversarial testing. This violation of my 6th amendment right made the adversarial process itself presumptively unreliable. In my original PCR order of dismissal PCR court stated counsel had 20 years of experience conferred with the petitioner on numerous occasions and discussed pending charges and elements of the charges. But the thing is I NEVER spoke with trial counsel and its in the record. Trial counsel spoke with my mother not me. Trial counsel intentionally pled me guilty without my consent to cover the fact he outright denied me assistance of counsel. Contrary to Powell -v- Alabama 53 S.Ct 55, 64 the court stated that an accused in a capital case requires the guiding hand of counsel at every step in the proceedings against him, without it though he be not guilty he faces the danger of conviction because he doesn't know how to establish his innocence. If the petitioner had no guiding hand. And my trial counsel knew I lacked capable understanding and NEVER spoke with me. With 20 years of experience he would know that voluntary intoxication is not grounds for a defense. But trial counsel made me out to be a black drug addict. But I have no drug charges and trial counsel had NO factual basis for this attack on my character. I pray the Honorable Courts consider this Petition for rehearing. I throw myself at the mercy of the Courts. I would've submitted exhibits, but SCDC has 45 days to respond to requests and photocopies can't get made do to my deadline.

This 12th day of December 2017.

Respectfully Submitted
s/ Tyone Perry 307793

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County of Spartanburg
Tyrone Perry #307793
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Proof of Service

I certify that I have served this Petition for Rehearing by depositing a copy of it in the U.S. mail postage prepaid to the following:

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

This 12th day of December 2017

sv Tyrone Perry
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