

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

—————  
DIKEEM DARGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002416

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

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ORIGINAL

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S.C. SUPREME COURT

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## **ISSUE PRESENTED**

Whether the PCR judge discretion by denying PCR counsel's motion for a continuance where SCDC delayed petitioner's receipt of his Rule 5 pre-trial discovery from PCR counsel until four days before the PCR hearing, where trial counsel's failure to review that discovery with petitioner was the only PCR issue, the solicitor's office having no coherent Rule 5 pre-trial policy went unchallenged, and where petitioner pled guilty to murder as a 17 or 18 year old young man because defense counsel told him he would be sentenced to life without parole if he did not plead guilty in this botched drug deal homicide case since this was petitioner's "one bite at the apple" in PCR?

## STATEMENT

During the March 2015 term the Sumter County Grand Jury indicted Petitioner for Murder, Armed Robbery, and Criminal Conspiracy. App. 76 – 77. On May 16, 2016, Petitioner pled guilty to murder in front of the Honorable W. Jeffrey Young. App. 1. John P. Meadors represented the state. Id. S. Elaine Cooke represented Petitioner. Id.

Pursuant to Petitioner's guilty plea, the armed robbery and conspiracy charges were dismissed. App. 3, ll. 4 – 9. Judge Young accepted Petitioner's guilty plea as freely, knowingly, and voluntarily made. App. 13, ll. 16 – 22. Judge Young sentenced Petitioner to thirty-one years' imprisonment. App. 16, ll. 18 – 19.

On October 20, 2016, Petitioner filed an application for post-conviction relief (PCR). App. 19 – 24. On June 13, 2017, the state filed its return. App. 27 – 30. On July 25, 2017, an evidentiary hearing was held before the Honorable D. Craig Brown. App. 32. Lance S. Boozer represented Petitioner. Id. Julie Coleman represented the state. Id.

On September 7, 2017, Judge Brown issued an Order of Dismissal that denied Petitioner's application for post-conviction relief because Petitioner did not produce evidence that plea counsel provided deficient performance. App. 68 – 75.

This petition follows.

## ARGUMENT

The PCR judge discretion by denying PCR counsel's motion for a continuance where SCDC delayed petitioner's receipt of his Rule 5 pre-trial discovery from PCR counsel until four days before the PCR hearing, where trial counsel's failure to review that discovery with petitioner was the only PCR issue, the solicitor's office having no coherent Rule 5 pre-trial policy went unchallenged, and where petitioner pled guilty to murder as a 17 or 18 year old young man because defense counsel told him he would be sentenced to life without parole if he did not plead guilty in this botched drug deal homicide case since this was petitioner's "one bite at the apple" in PCR.

### **Relevant Facts**

The facts alleged by the state are as follows. On December 1, 2014, two individuals chased down the decedent, Lance Meyers. App. 5, l. 25. One of the pursuers shot and hit Meyers. App. 6, ll. 12 – 17. Meyers fell to the ground and “witnesses described what they thought looked like people going and checking his pockets for money.” App. 6, ll. 17 – 20.

Petitioner turned himself in later that day and gave a statement where he claimed he was the shooter. App. 6, l. 23 – 7, l. 1. Petitioner stated the incident started out as a marijuana deal. App. 7, ll. 1 – 6. However, once Meyers arrived, it turned into a robbery. App. 7, l. 6 – 9.

The next day Petitioner gave a second statement where he stated his co-defendant, Stevens, set up the drug deal and tried to fire his gun at Meyers but it did not go off. App. 7, ll. 23 – 25. Meyers then rushed Stevens, and Petitioner, reached for his own gun and, shot Meyers as he was running away. App. 8, ll. 1 – 3. After Petitioner turned himself in, he helped the police find the gun. App. 8, l. 3 – 6. Petitioner's age at the time of the incident was in dispute. The record shows that Petitioner was either 17 or 18 at the time of the crime. App. 61, ll. 5 – 8; App. 15, ll. 14 – 15. Petitioner had no prior criminal record. App. 14, l. 17.

Plea counsel told Petitioner that he would receive life imprisonment without parole if he did not plead guilty to murder in this botched drug deal case. App. 46, ll. 12 – 21. Under that wrongful advice, on May 16, 2016, Petitioner pled guilty to murder in front of the Honorable W. Jeffrey Young. App. 1. John P. Meadors represented the state. Id. S. Elaine Cooke represented Petitioner. Id.

Pursuant to Petitioner’s guilty plea, the armed robbery and conspiracy charges were dismissed. App. 3, ll. 4 – 9. Judge Young accepted Petitioner’s guilty plea as freely, knowingly, and voluntarily made. App. 13, ll. 16 – 22. Judge Young sentenced Petitioner to thirty-one years’ imprisonment. App. 16, ll. 18 – 19.

At Petitioner’s evidentiary hearing, PCR counsel requested the court for a continuance because Petitioner did not have the opportunity to properly review his Rule 5 materials at PCR to formulate a defense for his PCR hearing. App. 35, ll. 4 – 10. Petitioner requested his Rule 5 materials from PCR counsel. App. 35, ll. 7 – 10. PCR counsel received Petitioner’s Rule 5 materials from plea counsel and forwarded them to Petitioner the same day. App. 35, ll. 10 – 15. PCR counsel estimated that he sent Petitioner those materials over a month before the hearing. App. 35, ll. 13 – 15. However, PCR counsel explained that the amount of documents were, “fairly numerous,” and “[W]hen [SCDC] receive it [SCDC] vet the material, send them back to Columbia, presumably Broad River. And then at Broad River, or Columbia they look through it and determine what... he’s entitled to and... send it back to his institution where he can be provided a copy.” App. 35, ll. 17 – 23. This screening process delayed the transfer of Petitioner’s numerous Rule 5 materials to him until a few days before his post-conviction relief hearing. App. 36, ll. 7 – 10. Due to this delay, Petitioner was deprived of a meaningful opportunity to prepare for his evidentiary hearing. App. 36, ll. 7 – 10.

Plea counsel testified at Petitioner's PCR hearing as well. She stated that it was the practice of some solicitors in Sumter County to have an open file policy; however, the solicitor in this case, John Meadors, depending on the type of case, sometimes has an open file policy and sometimes does not. App. 53, ll. 6 – 10; App. 55, ll. 11 – 13.

PCR counsel reemphasized the size of Petitioner's Rule 5 materials and raised the fact that no continuances had been requested prior to this one. App. 36, ll. 10 – 11; App. 36, l. 15. The state opposed the request because they had a witness present, plea counsel, who had to travel for the evidentiary hearing and were ready to proceed. App. 5, l. 18 – 6, l. 3. Judge Brown denied Petitioner's request for a continuance. App. 6, ll. 4 – 7.

On September 7, 2017, Judge Brown issued an Order of Dismissal that denied Petitioner's application for post-conviction relief because Petitioner did not produce evidence that plea counsel provided deficient performance. App. 68 – 75.

### **Discussion**

In Winkler v. State, 418 S.C. 643, 795 S.E.2d 686 (2016), a death penalty case, this Court held the trial judge erred when he denied Winkler's continuation to investigate evidence of brain damage. Id. at 663, 795 S.E.2d at 697. After conviction, Winkler filed an application for post-conviction relief and was appointed counsel. Id. at 659, 795 S.E.2d at 695. Two months into the representation counsel suspected Winkler suffered from brain damage. Id. at 660, 795 S.E.2d at 695. Counsel requested funding to investigate, which was approved, and hired a neuropsychologist. Id. Counsel moved to extend the deadlines in the scheduling order by ninety days. He explained that testing and analysis would require approximately ten weeks. Id. at 660-661, 795 S.E.2d at 696. The judge extended the deadline for filing an amended application, but refused to extend the PCR trial date. Id. at 661, 795 S.E.2d at 696.

Winkler was unable to obtain the recommended PET scan because of elevated blood glucose levels. Id. Thereafter, counsel helped Winkler get treatment for his previously undiagnosed diabetes. Id. Despite receiving weeks of diabetes treatment, Winkler's blood sugar was still too high to perform an accurate study of his brain and additional time was needed for treatment and analysis. Id. Counsel requested a continuance of six months to file his final amended PCR application and to adjust other dates, which included the trial. This request was denied. Id. at 662, 795 S.E.2d at 696.

PCR courts have the discretion to grant continuances for good cause. Winkler v. State, 418 S.C. 643, 662, 795 S.E.2d 686, 697 (2016). In this case, Petitioner requested a continuance because, through no fault of his own, Petitioner never had a meaningful opportunity to review evidence against him to properly formulate a defense for his PCR hearing. The deprivation of Petitioner's ability to defend himself at his own evidentiary hearing constituted "good cause" sufficient to warrant his continuation request.

"The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). The South Carolina Rules of Criminal Procedure provide that the presiding judge may grant a continuance based upon "a showing of good and sufficient legal cause." Rule 7(c), SCRCrimP. As such, "[t]he granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion." State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." State v. Irick, 344 S.C. 460, 464,

545 S.E.2d 282, 284 (2001); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006) (“An abuse of discretion occurs when the trial court’s ruling is based on an error of law”).

“It is axiomatic that determination of [a motion for continuance] must depend upon the particular facts and circumstances of each case.” State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) (quoting State v. Babb, 299 S.C. 451, 454-455, 385 S.E.2d 827, 829 (1989)). While “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process,” the decision must rest upon, “the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” Ungar v. Sarafite, 376 U.S. 575, 589, 84 S.Ct. 841, 850 (1964).

This Court explained that the PCR statute, much like the Rules of Criminal Procedure, stated additional time should be granted, “if ‘good cause is shown to justify a continuance.’” Id. at 662, 795 S.E.2d at 697, (quoting S.C. Code Ann. § 17-27-160(c)). This Court found the PCR court abused its discretion when it denied Winkler’s second motion for additional time because Winkler presented, “good cause,” for the continuance. Id. at 663, 795 S.E.2d at 697. This Court found no evidence to support the PCR judge’s finding that PCR counsel had, “‘ample opportunity,’” to investigate and develop the evidence related to potential brain damage. Id. Thus, Winkler provided, “good cause,” to justify a continuance. Id. According to the Court, the PCR court’s denial of the continuance request, “left PCR counsel in a position from which they could not present evidence to support the claim that trial counsel was ineffective for failing to investigate Winkler’s brain damage.” Id.

In State v. McMillian, 349 S.C. 17, 24, 561 S.E.2d 602, 605 (2002), this Court held the trial court abused its discretion when it denied McMillian’s motion for continuance to obtain the

transcript of his first trial in order to prepare for his second trial. McMillian made a timely request for the transcript of his first trial, but his second trial started before he received it. Id. at 19, 561 S.E.2d at 603. He moved for a continuance to obtain the transcript in order to impeach a witness against him, but his request was denied. Id. The Court found the PCR court abused its discretion because, “[t]he only ‘neutral’ witness for the state during McMillian’s second trial was Dorothy Williams Rumph.” Id. at 21, 561 S.E.2d at 604. Therefore, the Rumph’s credibility, “was essential to McMillian’s defense,” and the crucial nature of Rumph’s testimony could not be overstated. Id. The Court concluded that, “the verdict hinged upon her credibility,” and without the transcript from the first trial, “McMillian was hindered in his ability to impeach her.” Id. at 23, 561 S.E.2d at 605.

In the instant case, the PCR judge’s denial of Petitioner’s motion for continuance, as in Winkler, deprived Petitioner of the ability to defend himself at his post-conviction relief hearing. The state provided Petitioner his “voluminous” Rule 5 materials, but he was not afforded the opportunity necessary to use his Rule 5 materials as they were intended, to formulate his defense, because he was not given enough time to review the documents properly.

Petitioner testified at the PCR hearing that before he pled guilty he wrote plea counsel a letter asking for his discovery. App. 41, ll. 2 – 7. He stated that plea counsel told him she had to get his discovery documents for him, but when she sent him the documents, they were incomplete. App. 41, ll. 8 – 13. The incoherent discovery practice of solicitors in Sumter County brought confusion and unpredictability to the already complicated process of discovery because some solicitors in Sumter County had an open file policy, but the solicitor in this case had an open file police “sometimes.” App. 53, ll. 6 – 10; App. 55, ll. 11 – 13; State v. Lunsford, 318 S.C. 241, 456 S.E.2d 918 (1999).

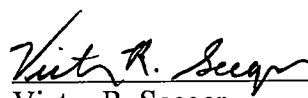
Petitioner testified at the PCR hearing that the Rule 5 materials that PCR counsel provided him had many more documents in it than the Rule 5 provided by plea counsel. App. 43, ll. 2 – 5. Petitioner testified that SCDC only gave him his Rule 5 materials four days before the hearing date and that he did not have the opportunity to properly review his Rule 5 materials. App. 42, l. 5 – 43, 1. Judge Brown denied Petitioner’s continuation request without bothering to ask him what documents he still needed to review or how that additional review would aid in the preparation of his defense.

This Court held in Winkler, that Winkler was not required to present any specific evidence that he suffered from neurological and cognitive impairments for a continuance to be granted, *only that good cause be shown*. Winkler, at 646, 795 S.E.2d at 688. (emphasis added).

Petitioner showed good cause for his continuance request when his PCR counsel explained that Petitioner, through no fault of his own, was unable to review his Rule 5 materials to formulate a defense because of the delay caused by the SCDC’s mail vetting process. Therefore, because Petitioner showed good cause for a continuance, the PCR court abused its discretion when it denied Petitioner’s continuation request.

**CONCLUSION**

By reason of the foregoing arguments, Petitioner respectfully requests that this Court grant his Petition for Certiorari and remand his case for a new post-conviction relief hearing or, in the alternative, to allow for full briefing on this issue.

  
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Victor R. Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

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DIKEEM DARGAN,

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PETITION TO BE RELIEVED AS COUNSEL

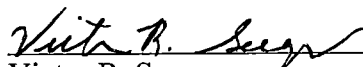
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Counsel for Dikeem Dargan states:

1. He is 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 post-conviction relief hearing before Judge D. Craig Brown, which was held on July 25, 2017, 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 Dikeem Dargan.

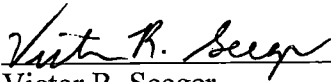
Respectfully Submitted,

  
\_\_\_\_\_  
Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 13th day of July, 2018.

**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."

  
\_\_\_\_\_  
Victor R. Seeger  
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ATTORNEY FOR PETITIONER

This 13th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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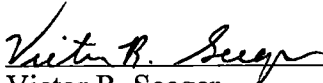
V.

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 Julie Coleman, 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 Dikeem Dargan, #368191, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 13th day of July, 2018.

  
\_\_\_\_\_  
Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 13th day of July, 2018.

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