STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

Opinion No. 2018-UP-198 (S.C. Ct. App. Filed May 9, 2018)

2014-GS-09-00260

THE STATE,

RESPONDENT,

V.

CHARLES WINSTON, JR.,

PETITIONER

APPELLATE CASE NO 2016-001029

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 22, 2018.

QUESTION PRESENTED

Did the Court of Appeals err in not finding that, at the bench trial, the trial court abused its discretion in finding Petitioner guilty rather than guilty but mentally ill when the State only evaluated Petitioner for competency to stand trial and the only evidence in regard to criminal responsibility came from the forensic psychiatrist, called by the defense, who testified that Petitioner suffered from a delusional disorder which impaired his ability to conform?

STATEMENT OF THE CASE

On October 24, 2014, the Calhoun County Grand Jury indicted Petitioner Winston for attempted murder, indictment #2014-GS-09-260. On May 9, 2016, Petitioner proceeded to a bench trial before the Honorable Maite Murphy. Martin R. Banks represented Petitioner at the bench trial. Theodore N. Lupton prosecuted the case. Judge Murphy found Petitioner guilty and sentenced him to thirty (30) years in prison. A timely notice of intent to appeal was served on May 12, 2016, and the direct appeal was perfected. On May 9, 2018, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Winston, Op. No. 2018-UP-198 (S.C.Ct.App. Filed May 9, 2018). A timely petition for rehearing was filed and then denied on June 22, 2018. This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in not finding that, at the bench trial, the trial court abused its discretion in refusing to find Petitioner guilty but mentally ill when the State only evaluated Petitioner for competency to stand trial and the only evidence in regard to criminal responsibility came from the forensic psychiatrist, called by the defense, who testified that Petitioner suffered from a delusional disorder which impaired his ability to conform.

The unchallenged evidence in the record only supports a finding that Petitioner was guilty but mentally ill. The evidence in support of the guilty but mentally ill finding was not challenged by the State during the hearing. Instead, the State challenged Petitioner's position that he should be found not guilty by reason of insanity by introducing a copy of the court ordered competency evaluation pursuant to S.C. Code §44-23-410, (R. pp. 135-145). The competency evaluation found Petitioner competent to stand trial but did not address whether Petitioner was guilty but mentally ill.

The trial judge found that Petitioner failed to prove that he was not guilty by reason of insanity and that finding is **not** challenged on direct appeal. (R. p. 118, line 19- p. 119, 120, 121, lines 1-15). The trial judge also found that Petitioner was competent to stand trial and that finding is **not** challenged on direct appeal. The State's evidence, in the form of the competency evaluation, went to prove competency and challenge the insanity defense, neither of which are challenged on direct appeal. The challenge on direct appeal goes to the trial judge's refusal to find petitioner guilty but mentally ill. A person may be mentally ill yet not legally insane and still competent to stand trial. See State v. Curry, 410 S.C. 46, 52–53, 762 S.E.2d 721, 724–25 (Ct. App. 2014); State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997).

The competency evaluation was conducted pursuant to S.C. Code §44-23-410 and only addressed competency to stand trial. The evaluation relied upon by the State does not make a finding with regard to guilty but mentally ill pursuant to S.C. Code §17-24-20(A). The evaluation,

however, shows that Petitioner has a history of mental health issues dating back to 2010. (R. p. 139). Defense expert, Dr. Amanda Salas, a forensic psychiatrist, testified that Petitioner was guilty but mentally ill. (R. p. 64, lines 6-11). The trial judge's finding that Petitioner failed to prove that he was guilty but mentally ill is not supported by the record. The trial judge abused her discretion in refusing to find Petitioner guilty but mentally ill when the court ordered evaluation only evaluated Petitioner for competency to stand trial and Petitioner proved by a preponderance of the evidence that he was guilty but mentally ill by the unchallenged testimony from the forensic psychiatrist who testified that Petitioner suffered from a delusional disorder which impaired his ability to conform.

On Monday May 9, 2016, trial counsel waived Petitioner's presence and advised the judge that Petitioner wished to waive his right to a jury trial and proceed with a bench trial.[1] (R. pp. 4-7). At this time trial counsel also stipulated that Petitioner was competent to stand trial. (R. p. 4, lines 10-20). A copy of the State ordered competency evaluation was marked as both Court's Exhibit #1 and State's Exhibit #1. (R. p. 5, lines 2-3; p. 8, lines 7-10; R. pp. 135 – 145). The State ordered competency evaluation did not address capacity to distinguish right from wrong or capacity to conform conduct to the requirements of law. On May 11, 2016, Petitioner proceeded to a bench trial, stipulating to the facts alleged in the indictment but presenting mental health defenses. (R. p. 8, lines 2-13). The indictment alleges that on September 30, 2014, Petitioner did, with the intent to kill, attempt to kill Courtney Glover with malice aforethought by cutting her throat and face area. (R. p. 9, lines 4-12, R. pp. 132 – 133). Ms. Glover testified that Petitioner was a neighbor who she had known since she was fourteen. (R. p. 10, lines 7-11). On the night in question she went to Petitioner's house because he had texted her and stated that he

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[1] The record does not contain a waiver from Petitioner in regard to his right to a jury trial. This issue may need to be raised in post-conviction relief.

needed someone to talk to. (R. p. 12, line 23 – p. 13, lines 1-6). Ms. Glover testified that Petitioner attacked her as she was leaving his house. (R. p. 14, lines 2-13).

Petitioner called Dr. Amanda Salas as an expert witness in forensic psychiatry. (R. pp. 37-94). Dr. Salas testified that Petitioner suffered from a delusional disorder. (R. p. 38, lines 18-23). Dr. Salas testified that Petitioner believed that the victim and others placed devices in his body that they could control remotely to torture him. (R. p. 40, line 10 – p. 41, lines 1-8; p. 43, lines 14-17). Dr. Salas testified that Petitioner could tell the difference between legal right and wrong. (R. p. 61, lines 22-23). The doctor testified, however, that the delusional disorder "impaired his ability not only to discriminate a moral right from wrong, but also the inability to conform." Although Petitioner stipulated that he was competent to stand trial, the doctor was of the opinion that Petitioner was not competent to stand trial. (R. p. 77, line 17 – p. 78, lines 1-2).

Trial counsel argued that Petitioner was not guilty by reason of insanity. (R. pp. 106-107). The State argued that Petitioner did not prove that he was not guilty by reason of insanity but told the judge, "I would submit that at most there is a question as to whether or not he had the capacity to conform his acts. And at most, this is guilty but mentally ill." (R. p. 117, lines 16-19). The judge found Petitioner guilty rather than guilty but mentally ill or not guilty by reason of insanity. (R. p. 123, lines 2-3). The judge found that Petitioner failed to establish that he was not guilty by reason of insanity. (R. p. 118, line 19 – p. 119, 120, 121, lines 1-15). In regard to guilty but mentally ill the judge stated:

> The only time the defendant has sought prior treatment for any alleged condition is because of judicial enforcement. There are no fact witnesses regarding past or current condition to show sufficient evidence that at the time of the attack he lacked sufficient capacity to conform his conducts to the requirements of the law. Dr. Salas actually testified that he knew legal right from legal wrong. And the mental illness has not been established. The defendant's conduct contradicts this on every stage of this trial. He clearly is intelligent, articulate, and I think, quite frankly, he knew his only defense to mitigate or escape his responsibility for these

> heinous acts are to allege that he was hearing voices in order to escape liability for his actions. Therefore, the Court finds the defendant guilty of attempted murder.

The trial judge erred. Dr. Salas testified that Petitioner suffered from a delusional disorder which impaired his ability to conform. The State ordered competency evaluation does not address ability to conform but notes prior diagnoses for depressive disorder and alcohol-induced psychotic disorder. If this case had been tried before a jury, the trial judge would have erred in not giving the jury the option of finding Petitioner guilty but mentally ill. See State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990).

In State v. Curry, 410 S.C. 46, 52–53, 762 S.E.2d 721, 724–25 (Ct. App. 2014) (fn. #3 omitted), the South Carolina Court of Appeals wrote:

> As defined by section 17–24–20(A) of the South Carolina Code (2014), A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in [s]ection 17–24–10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. S.C.Code Ann. § 17–24–20(A) (2014). The guilty but mentally ill statute ensures the jury applies the legal definition of insanity properly by emphasizing that a person may be mentally ill, yet not legally insane. State v. Hornsby, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997). "The [guilty but mentally ill] verdict clarifies the distinction between a defendant who is not guilty by reason of insanity and one who is mentally ill yet not criminally insane and, therefore, is criminally liable." Id.

The burden of proof is on the defendant to prove by a preponderance of the evidence that at the time of the crime he was mentally ill. S.C. Code Ann. § 17-24-20(B). Petitioner established by a preponderance of the evidence that he was mentally ill, suffering from a delusional disorder, and because of that mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. This is not a case where there was contradictory evidence in regard to capacity to conform. The State presented no evidence in regard to Petitioner's capacity to conform. The only evidence before the judge was Dr. Salas' testimony that because of Petitioner's delusional disorder, he lacked the capacity to conform.

The judge's findings of fact in regard to refusing to find Petitioner guilty but mentally ill are not supported by the record. When reviewing an action at law, on appeal of a case tried without a jury, this Court will not disturb the judge's findings of fact "unless found to be without evidence which reasonably supports the judge's findings." Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The only testimony presented in this case supports a finding of guilty but mentally ill. The State presented no evidence to contradict this finding and in fact conceded "... that at most there is a question as to whether or not he had the capacity to conform his acts. And at most, this is guilty but mentally ill." (R. p. 117, lines 16-19).

At the close of the case the trial judge stated, ""And I suppose, I guess, as far as the defendant is concerned, if he truly does need medical attention while he is incarcerated, whether it's guilty but mentally ill or just guilty, the Department of Corrections is required to provide mental health treatment while he is incarcerated regardless." (R. p. 130, liens 8-13). As noted by the Court in Curry:

> We are aware that a defendant found guilty but mentally ill "must be sentenced as provided by law for a defendant found guilty." Hornsby, 326 S.C. at 126, 484 S.E.2d at 872. Although a defendant's sentence is the same regardless of whether he is merely guilty or guilty but mentally ill, a defendant found guilty but mentally ill "is entitled to immediate treatment and evaluation." 726 Id. (citing S.C.Code Ann. § 17–24–70 (Supp.1995)). The circuit court included a recommendation for mental health treatment when it issued Curry's sentence, but the court did not mandate treatment as is required for a defendant found guilty but mentally ill pursuant to section 17–24–70 of the South Carolina Code (2014). Because evidence was presented from which the jury could have concluded Curry was guilty but mentally ill under section 17–24–70, the circuit court's failure to include this jury charge amounted to reversible error.

410 S.C. at 54–55, 762 S.E.2d at 725–26 (Ct. App. 2014) (footnotes omitted). The only evidence presented in the present case supported a finding of guilty but mentally ill which would have

mandated immediate treatment and evaluation within the Department of Corrections. The trial judge erred in refusing to find Petitioner guilty but mentally ill. The error requires reversal.

In affirming the finding of guilty rather than guilty but mentally ill the Court of Appeals wrote:

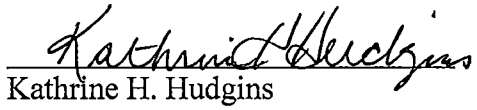
> Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Code Ann. § 17-24-20(A) (2014) ("A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law."); S.C. Code Ann. § 17-24-20(B) (2014) ("To return a verdict of 'guilty but mentally ill' . . . the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill . . . ."); State v. White, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007) ("On appeal, we are limited to determining whether the trial [court] abused [its] discretion."), aff'd in result, 382 S.C. 265, 676 S.E.2d 684 (2009); id. ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support."); State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) ("[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court]'s ruling is supported by any evidence."); State v. Tutton, 354 S.C. 319, 325-26, 580 S.E.2d 186, 190 (Ct. App. 2003) ("The determination of a witness's credibility must be left to the trial [court that] saw and heard the witness and is therefore in a better position to evaluate his or her veracity.").

State v. Charles Winston, Jr. Op. No. 2018-UP-198 (S.C.Ct.App. Filed May 9, 2018) (App. p. 1-2). The judge's finding that Petitioner was guilty instead of guilty but mentally ill is without evidentiary support. Petitioner proved by a preponderance of the evidence that he was guilty but mentally ill. The State presented no evidence to contradict this finding. This is not a case where the trial judge found the State's expert witness more credible than the defense witness in regard to capacity to conform for purposes of a finding of guilty but mentally ill. The State's evidence only went to contradict a finding of not guilty by reason of insanity and a finding of competency to stand trial. The State's evidence did not make a finding in regard to whether Petitioner was guilty but mentally ill. The judge abused her discretion.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of July, 2018.

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THE STATE,

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CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Charles Winston, Jr., #368128, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of July, 2018.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 20th day of July, 2018.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.