

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Clarendon County
Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

OCT 04 2017

ANDREW L. BLACKMON,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO.2016-002514

PRO SE RESPONSE TO THE PETITION FILED BY COUNSEL,

Lara M. Caudy
Appellate Defender

Andrew Lee Blackmon
MacDougal Correctional Institution
1516 Old Gilliard Rd.
Ridgeville S.C. 29472

Issues presented

Did counsel's failure to file a motion with the court according to Ake v. Okl 470 U.S 68 and the criminal justice act of 1964 18 U.S.C.A (sec)3006a(e) violate petitioners constitutional right to access to psychiatric assistance for an adequate defense.

Did counsel's failure to inform Mr. Blackmon of his constitutional right to be provided with psychiatric assistance who would conduct an appropriate examination, and assist in evaluation, preparation and presentation of the defense; before he advised him to plead guilty render his guilty plea involuntary and not freely given.

Argument

Plea counsel's failure to petition the court for access to psychiatric assistance who would conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense according to *Ake v Okl* 470 U.S 68 105 S.Ct. 1087, 84 LE.d 2d 53 (1984)

Violated Mr. Blackmon's constitutional right according to the constitution of the state of S.C 1895 Article I. Declaration of (rights refs & annos) S.C. Const. Art. I section 14 trial by jury: witness: defense. As Mr. Blackmon had a right to compulsory process for obtaining witnesses in his favor.

The record proves that Mr. Blackmon did make a preliminary showing (see court order) that his mental state at the time of the alleged crime will likely be at issue in this proceeding. Therefore the court was constitutionally mandated to provide Mr. Blackmon with access to a competent psychiatrist who would conduct an appropriate examination and assist in the evaluation, preparation, and presentation of the defense. If counsel would have filed a motion for psychiatric assistance according to *Ake v Okl* 470 U.S 68. And the criminal justice act 18 U.S.C.A (sec) 3006A (e) the court would have to grant the motion. By this Mr. Blackmon has established that with due diligence an insanity defense could have been developed. *Jeter v. State*, 308 S.C 230, 233-34, 417 S.E2d 594, 596 (1992) (citing *State v. Vickers*, 306 N.C 90, 291 SE2d 599 (1992)); See *Daniel v. State* 282 S.C. 155, 317 S.E.2d 746 (1984).

Additionally, counsel failed to inform Mr. Blackmon of his constitutional right to access to psychiatric assistance for an adequate defense before he advised him to enter a plea of guilty. The records support this fact specifically the P.C.R hearing transcript in which Mr. Blackmon requested to have counsel have a second evaluation and counsel response was that seeing another psychiatrist cost money. There is no doubt that had counsel informed Mr. Blackmon that he did not need money for psychiatric assistance for his defense because the state was constitutionally mandated to provide him with this provision Mr. Blackmon would have agreed for counsel to petition the court for psychiatric assistance for his defense before he plead guilty.

With respect to a guilty plea the applicant must show that there is reasonable probability that if not for counsel's error he would not have plead guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S 52 106 S.c.t 366 (1985). To establish the prejudice prong of the Strickland test for ineffective assistance of counsel, a defendant must show that but for counsel's unprofessional errors, the result of the proceeding would have been different. Also the constitutional guarantee of effective assistance of counsel applies to pretrial critical stages that are part of the whole course of criminal proceedings in which defendants cannot be presumed to make critical decisions without the counsel's advice *Blaine Lafler v. Anthony Cooper* 132 S.ct. 1376. Mr. Blackmon contends that counsel failed to exercise his constitutional due process right to access to psychiatric assistance that would conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense. *Ake v. Oklahoma* 470 U.S 68, 105 S.ct. 1087, 84 L.Ed.2d 53 (1985). The record proves Mr. Blackmon did make a preliminary showing that his sanity at the time of the crime would be at issue at trial. Please (see) court order for evaluation of criminal responsibility and capacity to conform issued by the Honorable R. Ferrell Cothran. The basis for the order states I have considered the showing made in support of the motion requesting this evaluation and find that defendant's mental state of mind at the time of the alleged crime will likely be at issue in this proceeding. Mr. Blackmon would not have plead guilty and insisted on going to trial had he the opportunity to exercise his constitutional right for psychiatric assistance for his defense.

Bailey v. State, 309 S.C 455,424 S.E 2d. The Sixth and Fourteenth Amendment of the United States Constitution compel every state to provide counsel to indigent criminal defendants, Gideon V Wainwright, 372 U.S. 335, 83 S.Ct.792 Led.2d 799 (1963); furthermore, the U.S Supreme Court has held that the defendant must have “a fair opportunity to present his defense” (thereby) requiring the state to provide the “basic tools” for an adequate defense to an indigent defendant Ake v Okl 470 U.S 68, 105 S.Ct. 1087,84 LE.d 2d 53 (1985). The State is required to provide defendant access to a psychiatrist where a defendant’s sanity is at issue at trial. Although the state is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the services necessary to a meaningful defense. Also, criminal law-273.1(1) states that an accused who has not received reasonable effective assistance from counsel in deciding to plead guilty cannot be bound by that plea because a plea of guilty is only valid if made intelligently and voluntarily. U.S.A Constitution Amendment, 6 Fed rules c.r. proc rule 11, 18 U.S co. Mr. Blackmon contends that his plea was not freely and voluntary given because defense counsel never informed him of his constitutional right to access psychiatric assistance according to (Ake v Okl 470 U.S 68). Had defense counsel informed Mr. Blackmon of this right, there is no doubt he would have exercised this right, and would have chosen to go to trial. Mr. Blackmon contends that he was prejudiced by counsel’s failure to inform him of this right before counsel advised him to enter a plea of guilty. Hill v lockhart, 474 U.S 52 59 (1985).

The constitution of the state of S.C 1895 Article I. Declaration of (Rights refs & Annos)
S.C. Const Art I, section 14
Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both (1970(56)2684; 1971 (57) 315)
Accordingly Mr. Blackmon has a S.C. constitutional right to have a compulsory process for obtaining witnesses in his favor; because counsel failed to file a motion for psychiatric assistance according to the criminal justice act of 1964 18 U.S (sec) 3006 a(e). Mr. Blackmon was not afforded this right. Counsel had a right as Mr. Blackmon's attorney to be heard as to the statute of 18 U.S.C. 3006A(e), and he failed to utilize it. Mr Blackmon was prejudiced by counsel's failure to exercise his constitutional right to have the compulsory process for obtaining a witness in his favor particularly psychiatric assistance. Also, criminal law-474 states that criminal rule governing expert testimony regarding defendants mental condition permits defendant to introduce expert testimony relating to mental disease or defect and any other mental condition of defendants bearing upon issue of guilt to prove that defendant did not possess the requisite mens rea of specific intent to commit the crime. (U.S. v Walker 537 f2d 1192, 1195 4th cir 1976) States that the (sec) 4244 expert is expected to be neutral and detached, but the (sec) 3006A(e) examiner can be a partisan witness for the defense (U.S v Reasons, supp, at 311 (4th cir) .

Under the criminal Justice Act of 1963 18 U.S.C.A. (sec) 3006A(e), psychiatric assistance is one of the expert services available to an indigent defendant to afford him reasonable opportunity to prepare an adequate defense. Thus, conviction for bank robbery would be conditionally reversed since defendant has been denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution, in that counsel had failed to request psychiatric examination pursuant to (sec)3006A(e) and such examination was necessary to an adequate presentation of an insanity defense; *Loe v. United States* (1982,ED Va 545 Supp 6 (62.)). Also, in *Profit v. United States*, 582 F2d 854, 857 (4th cir. 1978)477 U.S. 910, 100 S.Ct. 2997, 64 Led.2d 860(198). The Court of Appeals, after discussing the psychiatric services available to an indigent defendant under (sec)300A(e), held that “the failure of defense counsel to seek such assistance when the need is apparent deprives an accused of an adequate representation in violation of his Sixth Amendment right to counsel.” Quoting from the *United States v. Fessel*, 531 F.2d 1275, 1279 (5th cir) the court ruled that the 3006A(e) examination is required, and defense counsel has a duty to seek it; whenever the services are necessary to the preparation and presentation of an adequate defense”.

b

Submitting these exhibits as part of
my pro se response please clock stamp
and submit to S.C.T.

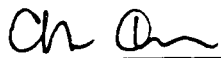
Thank you

Having complied with the defendant's request, the State hereby requests the information subject to disclosure under Rule 5(b)(1)(A)&(B).

The State hereby requests information subject to Rule 5(e)(1) Notice of Alibi; Rule 5(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill; and any intent of the defendant to rely upon the defenses of necessity or self-defense.

This Motion is pursuant to Circuit Rule 5, upon compliance by the prosecution with the defendant's previous Motion for Discovery and Disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.

7
6



Christopher Durant
Assistant Solicitor
Third Judicial Circuit

Manning, South Carolina

June 3, 2013

Blackmon, Andrew

NARRATIVE NOTES

DATE	
2/1/13	Inmate here. Has medications that include Prozac 20mg QD, Lamictal 50mg QD, Dilantin 300mg PO QD. V.O. Dr Dixon continue as ordered - L Blackmon
2-7-13	V.O. Dr Dixon Trazadone 50mg @ HS - L Blackmon
3-9-13	Inmate seen at Clarendon Mental Health. Rx: Increase Prozac to 40mg QD and Trazadone to 150mg @ HS - L Blackmon
3/28/13	Dilantin level drawn. Dr Dixon notified. ↑ Dilantin to 300mg BID per verbal order - L Blackmon
4/3/13	Dilantin level drawn: result 35.9 - so reduce dilantin to 400mg Q Day + rev level 4/12 per Dr. Dixon - L Blackmon
4/10/13	I/m 40 dizziness, weakness - @ neuro exam - BP 110/80 - P 71 - Explained to I/m dizziness may be coming from med - in process of adjusting med to achieve therapeutic level - L Blackmon

Name: Blackmon, Andrew

Form # 131

499

NKDA

* Dr: Psychosis, Epilepsy *

NARRATIVE NOTES

DATE	
4/12/13 0830	Dilantin level drawn ————— (CSD/RA)
1200	Dilantin results (27.8) N 10-20 - Reported to Dr. Dixon - Ordered to ↓ Dilantin to 300mg QD and re-check Dilantin level 5/2/13 Will continue to monitor I/m ————— (CSD/RA)
4/16/13	I/m returned from M.H. U ↑ on trazadone script for 200mg NS due to I/m reporting not sleeping at night - Will hold script & speak to Dr. Smith before proceeding ————— (CSD/RA)
4/17/13	Spoke to Dr. Smith regarding ↑ trazadone (200mg) & informed Dr. Smith of sleep observations of I/m @ night & that appears to report I/m sleeping & has to awakened in am - Also informed Dr. Smith of Dilantin levels ↑ & that there could be correlation of trazadone & Dilantin - Causing Dil ↑ to spike - Dr. Smith said he would ↓ trazadone to 100mg x 7 days then ↓ trazadone to 50mg - Will repeat Dil level end of month & re-level - both levels & I/m's ? insomnia - (CSD/RA)

Name: Blackman, Andrew

Form # 131

4/99
 Dr. [Signature]
 Bi Polar

IKDA

NARRATIVE NOTES

DATE	
4/23/13	I/m to diggers & possible seizure -
	Questioned dose of meds & requested 4-1/2
	blanket, mattress - Denied requests
	due to policy for issuing these articles -
	I/m angry & throw up hands in disgust -
	I/m has asked for these items numerous
	times - each time has told I/m no - I/m
	is observed walking around & around
	inside the perimeter of the housing area -
	Officers report no seizure at any time while
	here - Will continue to monitor - C. [Signature]

Name: Blackman, Andrew
Form # 131 4/99 Dr. Seizure
NKDA Pr. Delan



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Beverly Cardwell
Jane B. Jones
Everard Rutledge, PhD
J. Buxton Terry
Sharon L. Wilson
STATE DIRECTOR
John H. Magill

December 03, 2015

McCormick Correctional Institution

DOB: 09/16/1970

RE: Andrew Blackmon
Attn: Medical Records

Santee-Wateree
Mental Health Center
215 N. Magnolia Street
Sumter, SC 29151
Information: (803) 775-9364
Richard B. Guess, MEd, Executive Director

In reply to your request for information concerning the above named client:

Information is enclosed.

Our fee for the above report is _____.

Please make check payable to:

Santee-Wateree Community Mental Health Center
P. O. Box 273, Manning, SC 29102

This case has been closed since _____ and the client had not received services during the time period requested.

A thorough search of our files fails to reveal a record under this name or SSN.

Other:

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS
WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE
REGULATIONS LIMIT YOUR RIGHT TO MAKE ANY FURTHER
DISCLOSURE OF THIS INFORMATION WITHOUT THE PRIOR WRITTEN
CONSENT OF THE PERSON TO WHOM IT PERTAINS.**

Sincerely,

Crystal Guess, Admin Specialist
Clarendon County MHC

MISSION STATEMENT

To support the recovery of people with mental illnesses.



Vital Signs and Measurements							
Srvc & Date	Height	Weight	Blood Pressure	Pulse	Waist Circumference	BMI	FSBS
H012 02/07/2013							
H052 03/07/2013							

Date of Last AIMS: N/A

Mental Status Examination

Sensorium Alert: Oriented: Other: (describe)

Appearance Normal For Patient: (if not, describe)

Behavior Cooperative: (describe)

Psychomotor Abnormalities None: Other: (describe)

Speech Normal For Patient: (if not, describe)

Cognition Attention: Intact: (if not, describe)
 Concentration: Intact: (if not, describe)
 Memory: Intact: (if not, describe)

Emotion Mood: Euthymic: (if not, describe)
 Affect: Appropriate: (if not, describe)

Thought Content Hallucinations: No: Yes: (describe)
 Delusions: No: Yes: (describe)

Thought Process Logical/Goal directed: Distractible: LOA: FOI:

Suicidal Ideation No: Yes: (describe)

Homicidal Ideation No: Yes: (describe)

Abnormal Movement None: Face: Lips/Tongue: Trunk:

Diagnosis and Impression of Progress

Prim Dx	Code	Description
<input checked="" type="checkbox"/>	296.90	Mood Disorder NOS
<input checked="" type="checkbox"/>	305.00	Alcohol Abuse

Axis I: R/o PTSD

Explanation of Axis I diagnosis:
Does not appear to be signif depressed by affect.

Axis II: No diagnosis for this axis

Explanation of Axis II diagnosis:
None

Axis III: Seizure disorder, on med. HTN, high choles, not on meds.

Axis IV: Legal charges. Several recent death of family, friends.

GAF: 60 | Additional Rating: (describe)

Medication Ordered

Mental Health Medication	Dosage	Frequency	Amnt	Refills	Date D/C	Sample	SmplDsg	SmplAmf
PROZAC	40 mg	1 qd	30	2				
TRAZODONE	150 mg	1 qhs prn insomnia	30	2				

Physical Healthcare Medication

Medication	Dosage	Frequency	Purpose	Date of Deletion
Dilantin	300 mg	1 qd	sz	
Lamictal	50 mg	1 qd	sz	

Other: OTC, Herbs, Vitamins, etc. Dosage: Frequency: Purpose: Date of Deletion:

No current medication

Medication Education Provided:

Client Family

Medication, dose, time to take Lab monitoring required/reason Financial availability Neuroleptic Consent

Purpose/Expected benefits/Risk Expected length of tx. Alternative to medication/Risk of no treatment

Common side effects Effects on pregnancy/nursing Other (describe)

Justification for Continued Treatment

Requires monitoring of response to medication Symptoms unstable Improve level of functioning

Requires monitoring for medication side effects Prevent decompensation Prevent hospitalization

MMO Status and Client's Goal

Remain in MMO

Patient verbally agrees to continue this level of care.

Patient agrees to continue current goal.

Follow-up PMA (page 2)

ID: 10260462

Date: 03/07/2013 11:53:55

Did He consent to send ITN?

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): 2013-GS-14-0070
A/Warrant No.(s): 2013A1420100014

3-15-13

ORDER FOR CRIMINAL RESPONSIBILITY
AND CAPACITY TO CONFORM EVALUATION
(M'NAUGHTEN)

Select one of the following:

(Controls access to evaluation report as outlined below.)

- Ex parte evaluation requested by defendant prior to assertion of insanity defense.
- Evaluation requested by either party after defendant's assertion of insanity defense.
- Evaluation requested by consent of both parties at any time.

The State of South Carolina,

Defendant.

ANDREW LEE BLACKMON

Judge charged jury no consider insanity defense

This matter is before me for an order requiring defendant Andrew Lee Blackmon, charged with Entering a bank with intent to steal, to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about January 25, 2013 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

~~BASIS FOR ORDER.~~ I have considered the showing made in support of the motion requesting this evaluation and find defendant's mental state at the time of the alleged crime(s) will likely be at issue in this proceeding.

This order is issued for the following reasons:

~~Diagnosis with Manic Bipolar Disorder and not taking medication~~

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has statutory

11 of 12 I appreciate that she said she did not

I FESS? CARD
She never said I lied
DONT KNOW WHAT HAPPEND WHS

BLUE COAT AVOID

POLICE SAY I WAS GOING TO

Pre med at False conu

June 6, 2016

Andrew Lee Blackmon 357777-F1-120
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Dear Mr. Blackmon,

I am responding to your letter of April 20, 2016.

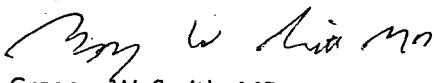
In it, you stated a 'psychiatric diagnostic evaluation' was not done. Actually, one was done; what the South Carolina Department of Mental Health calls an Initial Physician's Medical Assessment (PMA) was done February 7, 2013. I assume a copy could be obtained by the same procedure you used to get a copy of my note from August 20, 2013.

You asked me to give my opinion of a report by Marla Domino, PhD. However, I cannot comment on the accuracy of the report by this person since I was not involved in the evaluation.

~~Lastly, you asked me to provide a written statement of all communications with attorneys Lewis King Cutter or Lance Boozer. I do not recall communicating with either of the attorneys you mentioned, or in fact any attorneys connected with your case.~~

I hope this answers your questions.

Sincerely,



Gregory W. Smith, MD
Greenville Mental Health Center
124 Mallard Street
Greenville, SC 29601

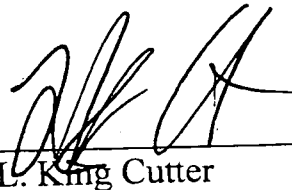
6) Are you or any immediate family members familiar with the symptoms and effects of Bipolar Disorder or Post-Traumatic Stress Disorder?

7) Have you or any immediate family members ever suffered a seizure?

Manning, South Carolina

November 4, 2013

Respectfully submitted,



L. King Cutter

Lee County Public Defender

PO Box 339

Manning, South Carolina 29102

(803) 433-0188