

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable R. Knox McMahon, Circuit Court Judge

SUSAN HENDRICKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000354

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in denying Petitioner relief pursuant to Austin v. State, 305 S.C. 453, 246 S.E.2d 395 (1991) , where Petitioner pleaded guilty but mentally ill to four murder charges following numerous diagnoses of mental illness including multiple personality disorder, where competency was not established at the time of the alleged out-of-court appeal waiver, and where Petitioner therefore did not knowingly and intelligently wave the right to appellate review of a PCR order of dismissal?

STATEMENT

Petitioner was indicted by a Pickens County grand jury on February 21, 2012 on four counts of murder and four counts of possession of a weapon during the commission of a violent crime. App. 176 – 183. On April 26, 2013, she appeared before the Honorable Letitia H. Verdin for a guilty plea. App. 1. John Mauldin and Teal Johnson represented Petitioner, and Walt Wilkins served as the solicitor. David Price, Ph.D. testified at the plea regarding Petitioner's competency and mental state. App. 4 l. 22 – App. 22 l. 11. Dr. Price is a licensed clinical and forensic psychologist who had evaluated Petitioner. Id. He indicated that she was not capable of conforming her behavior to the requirements of the law at the time of the murders. App. 9 l. 19 – App. 10 l. 4.

Dr. Price elaborated on that expert conclusion by advising the plea court of the extent of Petitioner's medical history:

Ms. Hendricks has a long standing mental disorder. She's had psychiatric admissions since the late 80's to Marshall Pickens, which is a psychiatric facility. She's had a psychiatric admission to what was then Charter Hospital which is now The Carolina Center for Behavior Health. She's been under psychiatric treatment since the 90's.

The week before this crime ... she was diagnosed in Dr. Sherbondy's office as having bi-polar disorder, an obsessive compulsive disorder, a post-traumatic stress disorder, a generalized anxiety disorder, and a borderline personality disorder. **All of which are very significant mental illnesses.**

App. 10 ll. 5 – 23 (emphasis added). Dr. Price informed the court that Petitioner was abused, sexually and physically, as a child. App. 12 ll. 1 – 23. He outright declared “[t]his is the worst I’ve seen” regarding the sexual abuse. Id. She applied for Social Security disability around 2002 without the assistance of counsel and was successfully granted those benefits. App. 14 l. 7 – App. 15 l. 4. Plea counsel requested that the court take judicial notice “of the high percentage of

cases where people are unrepresented ...85 percent ... are denied.” Id. With no objection from the state, the court took judicial notice. Id.

Petitioner had “significant psychiatric impairment” and “was treated with significant psychiatric drugs ... for over a decade” according to Dr. Price. App. 16 ll. 2 – 16. Social Security evaluations found that Petitioner was “not capable of performing substantial meaningful activity.” Id. The conditions affecting Petitioner are incurable. App. 17 ll. 14 – 21.

Dr. Price diagnosed Petitioner with “a dissociative identity disorder” also known as multiple personality disorder. App. 17 l. 22 – App. 20 l. 19. This likely developed following the sexual abuse, explained Dr. Price:

One thing in common with people that have such a disorder is they all have a history of sexual abuse and physical abuse as a child when their psyche starts to split. And if you would think, when you’re a child and you have limited psychological defenses, it’s an adaptive break because only one personality endures any punishment or suffer abuse, and sometimes it transitions out.

App. 18 ll. 3 – 21. Dr. Price testified that a companion of Petitioner recalled three distinct personalities. App. 19 l. 16 – App. 20 l. 1. This greatly impacted her memory and resulted in Petitioner being seen by a neurologist. App. 20 ll. 2 – 19. The neurologist determined Petitioner’s memory problems were psychogenic and not post-concussive or neurologically based. Id. Although her MRI, CT, and MRA scans were normal, she had dissociative periods where she was unable to retain memories about what she did. Id.

Dr. Price concluded his testimony at the guilty plea by clarifying that Petitioner could not control “when her [personalities] transition out.” App. 20 l. 20 – App. 21 l. 13. He classified her “relatively rare disorder” as “very authentic” after spending over 40 hours with Petitioner. Id. At the time of the plea, he had only seen two people with the multiple personality disorder, with Petitioner being the second one. Dr. Price verified that there was no danger of fraud or

malingering and once again authenticated the diagnosis. Id. On cross-examination, Dr. Price indicated that Petitioner’s “major personality would have known right from wrong at the time of the incident.” App. 22 ll. 1 – 8. However, Petitioner “couldn’t control the personality that would have presented herself.” Id. The plea court commended Dr. Price, acknowledged him for his “outstanding and fine reputation,” and thanked him for his guidance. App. 43 ll. 12 – 15.

The state offered to allow Petitioner to plead guilty but mentally ill to four counts of murder with a negotiated sentence of life for each. App. 23 ll. 9 – 19. In exchange, the state would dismiss the possession of a weapon charges. Id. The state noted that Petitioner could not conform her conduct to the law and should be considered guilty but mentally ill. App. 24 ll. 3 – 5.

The plea judge found that Petitioner was “able to understand the nature of the proceedings extremely well against her and she has also been able to assist her lawyers in preparation of her defense in this case.” App. 27 ll. 8 – 16. As a result, the plea judge found that Petitioner was “competent to stand trial in this case and enter a plea of guilty.” Id. After engaging in a colloquy with Petitioner, the plea judge advised her that she had ten days from the date of the plea to appeal. App. 30 ll. 10 – 14.

The facts as alleged by the state revolved around the deaths of four members of Petitioner’s family: her two sons, her ex-husband, and her stepmother. App. 30 l. 20 – App. 35 l. 10. After Petitioner pleaded guilty, the plea court made multiple findings before accepting her plea:

I find that the State has proved by the preponderance of evidence that the defendant suffers from a mental illness, including but not limited to bi-polar disorder, obsessive compulsive disorder, post-traumatic stress disorder, generalized anxiety disorder and borderline personality disorder, that she ... suffers from it today and that she suffered from it at the time of this incident.

... I further find that the defense has proven by preponderance of the evidence, and is not challenged by the State, that the defendant had the capacity to distinguish right from wrong, recognized her acts as being wrong, but because of her mental disease or defect, she was unable to conform her conduct to the requirements of the law.

I further accept her plea of guilty but mentally ill as being freely and voluntarily made with the advice of extremely competent counsel with whom she says is satisfied. And the plea has a substantial factual basis.

App. 35 l. 15 – App. 36 l. 10. Petitioner was sentenced to life on each murder indictment. App. 43 ll. 16 – 22.

Petitioner filed a timely application for post-conviction relief on April 16, 2014. App. 46 – 70. She claimed that her plea attorney did not appeal “because the presiding judge blocked an appeal.” App. 47. She alleged ineffective assistance of counsel and after-discovered evidence. App. 48. The state made its Return on October 10, 2014. App. 71 – 75.

An evidentiary hearing was convened on April 21, 2016 before the Honorable R. Knox McMahon. App. 76. Jeremy Thompson represented Petitioner, and Patrick Schmeckpeper appeared on behalf of the state. Petitioner, counsel Mauldin, and Donna Schwartz-Maddox, M.D. testified at the hearing.¹ At the outset, PCR counsel indicated that Petitioner had vacillated as to whether she wanted to proceed with the hearing. App. 80 l. 10 – App. 81 l. 6.

Dr. Schwartz-Maddox testified that the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) edition changed from the time of Petitioner’s plea to the time of the PCR hearing; the former would have used the DSM-IV-TR, and Dr. Schwartz-Maddox relied on the DSM-V at the latter. App. 87 ll. 5 – 24. Dr. Schwartz-Maddox’s primary diagnosis was “a major neurocognitive disorder secondary to a traumatic brain injury with behavioral disturbance.” *Id.* Dr. Schwartz-Maddox simplified that condition and referred to it as “dementia

¹ Dr. Schwartz-Maddox was qualified as an expert in forensic psychiatry by the PCR court. App. 84 ll. 7 – 11.

due to a closed head injury.” Id. She also diagnosed Petitioner with an active illness of post-traumatic stress disorder as well as a few other conditions which affected her memory and mental state. App. 87 l. 25 – App. 88 l. 23; App. 129 – 134.

During the course of PCR counsel’s representation, Dr. Schwartz-Maddox suggested that Petitioner be evaluated by a neuropsychologist. App. 90 l. 23 – App. 92 l. 5. The results found that Petitioner “tested severely impaired in all ranges of her brain functioning” such that the neuropsychologist believed Petitioner may have a brain tumor; even her motor functioning was impaired. Id. According to a CAT scan from 2011, however, there were no tumors. Id. Dr. Schwartz-Maddox explained that the multiple impairments were likely a result of her closed head injury. Id. She testified similar to Dr. Price that Petitioner was guilty but mentally ill. App. 92 ll. 13 – 22.

The PCR judge took the matter under advisement and asked both parties to send him proposed orders within thirty days. App. 127 ll. 4 – 9. There was no mention about a possible appeal. On July 29, 2016, the PCR judge issued an Order of Dismissal. App. 135 – 143. Notably, the section entitled “Findings of Fact and Conclusions of Law” relied on various cases from outside South Carolina and the Fourth Circuit.² Petitioner filed a *pro se* “Petition to Appeal and Obtain Indigent Defense to Appeal PCR” but her appeal was dismissed from this Court for failure to timely serve the notice of appeal on counsel for the state. App. 144.

Petitioner filed a second application for post-conviction relief on August 30, 2017. App. 145 – 151. Through this action, she alleged that PCR counsel failed to file a notice of appeal, contrary to her desires. App. 146. Petitioner specifically requested a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 147. The state filed a

² Forsyth v. Ault, 537 F.3d 887 (8th Cir. 2008); McClain v. Hall, 552 F.3d 1245 (11th Cir. 2008); Stokley v. Ryan, 659 F.3d 802, 806 (9th Cir. 2011).

Return and Motion to Dismiss on or about November 19, 2018. App. 152 – 160. The state alleged that a single letter, in the face of Petitioner’s multiple mental illnesses, constituted a knowing and voluntary waiver of her right to appeal. App. 154 – 158.

A Conditional Order of Dismissal was signed by the Honorable Perry H. Gravely on or about November 26, 2018. App. 161 – 165. It found that Petitioner “voluntarily waived her right to appeal her initial post-conviction relief action.” App. 164. Petitioner filed a Reply and Objection to the Conditional Order of Dismissal on or about January 22, 2019. App. 166 – 167. Petitioner denied knowingly and voluntarily waiving her right to pursue an appeal. Id. The Reply and Objection indicated that Petitioner filed a *pro se* document which was construed as a notice of appeal by this Court thus indicating Petitioner’s desire to appeal. App. 167.

A Final Order of Dismissal was filed on February 12, 2019. App 171. After reviewing only the state’s motion to dismiss, the conditional order of dismissal, and Petitioner’s response, the circuit court concluded that “a sufficient reason has not been shown why the conditional order of dismissal should not become final.” App. 172.

This petition follows.

ARGUMENT

The PCR court erred in denying Petitioner relief pursuant to Austin v. State, 305 S.C. 453, 246 S.E.2d 395 (1991) , where Petitioner pleaded guilty but mentally ill to four murder charges following numerous diagnoses of mental illness including multiple personality disorder, where competency was not established at the time of the alleged out-of-court appeal waiver, and where Petitioner therefore did not knowingly and intelligently wave the right to appellate review of a PCR order of dismissal.

Relevant facts

Susan Hendricks was sentenced to death by incarceration. Ms. Hendricks is mentally ill; that fact is indisputable. In determining that she waived appellate review from the denial of her post-conviction relief application, the PCR court overlooked this crucial and undeniable truth. Similarly, PCR counsel failed to investigate or follow up on Petitioner's competency after receiving a letter from her, a client he knew to have multiple personality disorder. The letter does not, and cannot, constitute a knowing and voluntary waiver, especially considering Petitioner's extensive history of mental illness.

Petitioner blacked out during the incident giving rise to the quadruple homicides. App. 81 l. 17 – 82 l. 6; App. 92 ll. 13 – 22. As noted by Dr. Schwartz-Maddox, Petitioner had been prescribed and was taking Klonopin that night as well; Klonopin can cause an individual to black out. App. 94 ll. 5 – 10. Petitioner confirmed that she had blacked out that evening and also notified the PCR court that she had blacked out previously too. App. 99 l. 19 – App. 100 l. 16. They could last hours, and she would not remember anything that occurred during that time period; she had to be told what transpired. Id.

Unlike at her guilty plea where she had been declared competent, Petitioner was not subject to *any* scrutiny by a circuit court judge or her attorney at the time she drafted the letter to counsel wherein she supposedly waived appellate review. Therefore, she could not have knowingly and voluntarily waived the right to pursue a PCR appeal. She may have understood the proceedings during the guilty plea phase, according to the minimal competency requirements, but she was not questioned *at all* at the time she wrote the letter. Based upon her diagnoses, the uncurable nature of her illnesses, and the fluid complexity of competency, it was an error for the PCR court to determine that she knowingly and voluntarily waived her right to an appeal.

Discussion

In King v. State, this Court set forth the procedure for cases where review is sought pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991):

(1) When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order. At the same time this petition is served, petitioner shall serve and file an Austin petition addressing the questions from the previous post-conviction relief order. The Austin petition shall comply with the requirements of Rule 227(d). The Appendix shall contain the entire records from both post-conviction relief proceedings. Respondent's return to the petition shall address the questions from the latest post-conviction relief order, including whether the right to appellate review of the previous post-conviction relief order was knowingly and intelligently waived. At the same time this return is served, respondent shall serve and file an Austin return addressing the questions from the previous post-conviction relief order.

(2) When the post-conviction relief judge has found that the applicant is *not* entitled to an Austin v. State review, the petition shall raise the question of waiver of the right to appellate review of the previous post-conviction relief order along with all other questions petitioner seeks to have reviewed from that order. The petition shall also contain a "Statement of Austin Questions" listing the questions to be raised if an Austin v. State review is granted. An Austin petition addressing the questions will not be allowed unless certiorari is granted on the Austin v. State question.

King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868–69 (1992).

“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); Austin v. State, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In Austin, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” Austin at 454, 409 S.E.2d at 396.

In South Carolina, “[a]ll applicants are entitled to a full and fair opportunity to present claims in one PCR application.” Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Pursuant to the rules and statutes governing PCR proceedings, an applicant is entitled to a full adjudication on the merits of the original petition. Id. This includes the right to seek appellate review of the denial of PCR and the right to assistance of counsel in that appeal. Id., 337 S.C. at 261, 523 S.E.2d at 755-56. This Court held an individual can appeal a denial of a PCR application after the statute of limitations has expired if the individual either (1) requested and was denied an opportunity to seek appellate review or (2) did not knowingly and intelligently waive the right to appeal. Austin, 305 S.C. at 455, 409 S.E.2d at 396.

Under Austin, the PCR court incorrectly ruled that Petitioner was not entitled to appeal the denial of her post-conviction relief applications because she voluntarily waived her right to appeal. Petitioner has been mentally ill for over a decade and filed a *pro se* appeal. She desires an appeal to the denial of her post-conviction relief application. This Court should grant certiorari and grant Petitioner a belated appeal.

“A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver ... must depend, in each case, upon the particular facts and circumstances surrounding that case, including the

background, experience, and conduct of the accused.” Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct 1019, 1023, 82 L.Ed. 1461, 1466 (1938). A defendant makes an intelligent waiver when he “knows what he is doing and his choice is made with eyes open.” Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268, 275 (1942).

“Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual’s functioning at different times in different ways.” Indiana v. Edwards, 554 U.S. 164, 175, 128 S.Ct. 2379, 2486, 171 L.Ed.2d 345 (2008).

In 2006, this Court held that a defendant was not mentally competent to waive his right to pursue post-conviction relief. In Hughes v. State, the defendant was convicted of murder, armed robbery, criminal conspiracy, possession of a firearm, and possession of a stolen vehicle and sentenced to death. 367 S.C. 389, 626 S.E.2d 805 (2006). Hughes wrote the Attorney General requesting to waive further proceedings such that he would be executed. Id. at 393, 626 S.E.2d at 807. This Court in response remanded his case for a competency hearing. Id. Much like Petitioner, Hughes vacillated and decided to pursue PCR. Id.

Following Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004), Hughes’ case was remanded for another hearing on whether he was competent to waive his right to pursue PCR and whether that decision was knowing and voluntary pursuant to Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). Id. at 395, 626 S.E.2d at 807-8. The circuit court found that Hughes was competent to waive his right to PCR and his decision was knowing and voluntary. Id. This Court disagreed and remanded the case.

In doing so, this Court noted the importance of an in-person examination regarding waiver of appellate or PCR rights:

This procedure is necessary and appropriate because it provides the parties an opportunity to fully explore the issues and develop a record for our review. We

are not bound by the circuit court's findings or rulings, although we recognize the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony.

...

In deciding the issue of an appellant's competency, we carefully and thoroughly review the appellant's history of mental competency; the existence and present status of mental illness or disease suffered by the appellant, if any, as shown in the record of previous proceedings and in the competency hearing; the testimony and opinions of mental health experts who have examined the appellant; the findings of the circuit court which conducted a competency hearing; the arguments of counsel; and the appellant's demeanor and personal responses to our questions at oral argument regarding the waiver of appellate and PCR rights.

Hughes at 395-6, 626 S.E.2d at 808-9 (internal citations omitted). Although Hughes was a capital case, the same principles apply here. When an individual diagnosed with multiple personality disorder corresponds with counsel outside the courtroom, any important decisions contained in that communication are subject to scrutiny. It is both unfair and prejudicial to conclude that Petitioner waived her PCR appeal because competency was not established at the time the letter was written. Although not established at the time the letter was drafted, the minimum standard for competency as contained in Singleton, supra, is as follows:

The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

Singleton at 83, 437 S.E.2d at 58.

This appeal will not be furthered by debating whether Petitioner was competent at the time she wrote the letter to PCR counsel; doing so would be pure speculation. Instead, the lack of inquiry regarding Petitioner's competency, especially considering her medical history which

was known to PCR counsel and the PCR court, should be the focus. Petitioner did not knowingly and voluntarily waive her right to a PCR appeal.

Similar to Petitioner, the defendant in Hughes alternated between waiving and pursuing PCR multiple times:

Petitioner stated he wished to waive PCR in 2000, then changed his mind and filed a PCR application. He again tried to waive PCR later in 2000, but again changed his mind and decided to pursue PCR in 2001. He expressed his wish for PCR at a hearing in 2002, then changed his mind and indicated a renewed desire to waive it.

Hughes at 399, 626 S.E.2d at 810. A hospital social worker from the South Carolina Department of Correction's Gilliam Psychiatric Hospital testified that Hughes was delusional. Id. He suffered from hallucinations and was medicated on an emergency basis as approved by Dr. Donna Schwartz-Watts, the same psychiatrist who testified at Petitioner's evidentiary hearing.³ Hughes, however, "seemed to understand the reason for the punishment, *i.e.*, that he murdered someone, although he also asserted racial bias and the State's wish to dissect his superior physical body as reasons for his punishment." Id. at 401, 626 S.E.2d at 811.

A similar claim of racial bias can be found in the second half of the letter Petitioner sent to PCR counsel wherein she requests a referral to an agency or attorney "that would help the white inmates file a suit or represent us in a suit against SCDC and reverse racism?" App. 159.

It is unlikely Petitioner understood the possible consequence of writing said letter to PCR counsel. She inartfully conveyed her intent, which was to obtain different representation for the appeal. A similar illustration of her difficulty in communicating with counsel was evident at her guilty plea. Before accepting Petitioner's plea, the plea judge questioned counsel Mauldin as to

³ Dr. Schwartz-Maddox clarified at the evidentiary hearing in Petitioner's matter that her legal name is Donna Schwartz-Maddox, but her medical license lists Donna Schwartz-Watts. App. 83 l. 82 – App. 83 l. 7.

whether Petitioner was able to provide information to assist in her defense. App. 25 ll. 11 – 18. In response, counsel Mauldin indicated that it had “been different on the different occasions [he had] been with her. Sometimes more fruitful, sometimes not so fruitful.” Id. The changes in Petitioner’s demeanor and helpfulness which varied from visit to visit were likely manifestations of her multiple personality disorder. Likewise, it is impossible to know her competence at the time the letter was written.

Petitioner’s mental illnesses can be distinguished from those of the defendant in Hill v. State, 377 S.C. 462, 661 S.E.2d 92 (2008). In that case, this Court held the defendant was competent to withdraw his PCR and waive appellate review. Dr. Schwartz-Watts testified in that matter that Petitioner’s severe depressions and anxiety disorders were in remission and Petitioner was not on any medication for mental illness. Id. at 468, 661 S.E.2d at 96. Additionally, Dr. Schwartz-Watts testified regarding Hill’s decision to waive his appeals, something that was not addressed in Petitioner’s case. Id. at 469, 661 S.E.2d at 96. This Court examined Hill and concluded, among other things, that “his long and short-term memory are ample, and do not appear to have been affected by his self-inflicted gunshot wound.” Id. at 472, 661 S.E.2d at 97. In contrast, Petitioner suffered from memory lapses in conjunction with her multiple personality disorder.

This Court has held that a defendant may expressly and implicitly wave any challenge to a conviction on direct appeal. In State v. Tucker, the defendant entered into a plea agreement which contained a waiver of his right to file an appeal on a motion regarding the Interstate Agreement on Detainers Act (IAD). 376 S.C. 412, 656 S.E.2d 403, 405 (2008). He also waived his right to file for post-conviction relief, but that matter was not ripe for this Court’s

review. Nonetheless, both rights were waived “several times during the trial court’s plea colloquy.” Id.

Regarding the IAD motion, this Court held that Tucker “waived any and all defects” and likewise “waived his right to appeal the trial court’s ruling on his IAD motion under the terms of his guilty plea.” Id. at 418, 656 S.E.2d at 406-7. Weighing against him was the fact that he “showed a high level of savvy regarding the criminal justice system by presenting and arguing his motion to dismiss on the IAD although his attorneys were present.” Id. at 420, 656 S.E.2d 407.

Unlike the matter *sub judice*, the defendant in Tucker waived appellate review at a guilty plea. He was subject to questioning by the plea judge, and “answered that he agreed to accept the seven years proposed in his plea agreement.” Id. This Court therefore held that he knowingly and intelligently entered into a guilty plea expressly waiving his right to appeal his IAD motion. Id. Petitioner did not waive any appellate review at her plea. In fact, she attempted to pursue a direct appeal as well as a PCR appeal. She was not subject to scrutiny regarding her competency at any point other than the two transcripts contained in the Appendix: the guilty plea proceeding and the evidentiary hearing. Outside of those two appearances, her decisions should have been scrutinized, especially one which ended her PCR appeal.

“A determination of mental competence may change from one period of time to another, particularly when the administration of medication or treatment, or the lack thereof, may affect a person’s mental faculties.” Hughes v. State 367 S.C. 389, 407-8, 626 S.E.2d 805, 814 (internal citations omitted). “[Q]uestions of mental competence, unlike issues of historical fact, call for a basically subjective judgment.” Id., at 407, 626 S.E.2d at 814. “[T]he competence determination depends substantially on expert analysis in a discipline fraught with subtleties and

nuances.” Id. citing Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986). However, in Petitioner’s case there was no determination of competence. The Final Order of Dismissal simply concluded that Petitioner knowingly and voluntarily waived her PCR appeal. Because it is unknown whether she was competent at the time she wrote that letter, it was error for the PCR court to rule that she had waived that right. This Court should grant her a belated PCR appeal.

The Chief Administrative Judge for the Thirteenth Circuit who signed the Conditional Order of Dismissal and Final Order of Dismissal was not the same as the PCR judge who had the opportunity to hear from an expert witness as well as Petitioner. In fact, according to the Final Order of Dismissal, the judge who signed it did not review the guilty plea transcript or the PCR transcript. As such, there were no competency determinations made even though Petitioner’s status as mentally ill was made known.

Competency was not established at the time the letter was sent to PCR counsel. There was no testimony from Petitioner or anyone else that she could have satisfied the Singleton standard. It is impossible to know her frame of mind or which personality wrote the letter. Therefore, there is a question of her state of mind, based upon previous and well-documented diagnoses. The circuit court erred in concluding that a single letter written by a mentally ill individual constituted a knowing and voluntary waiver of Petitioner’s PCR appeal.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant certiorari, reverse the PCR court's determination that Petitioner is not entitled to belated review, and allow briefing on the Austin question.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of August, 2019.

STATEMENT OF AUSTIN QUESTION

Whether the PCR court erred in denying relief, where Petitioner could have established the defense of not guilty by reason of insanity through her lay testimony at trial, where plea counsel did not discuss with Petitioner the possibility of an insanity defense and thereby did not inform her of a potential defense that could have been used at trial?

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable R. Knox McMahon, Circuit Court Judge

SUSAN HENDRICKS,

PETITIONER

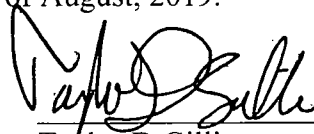
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STATE OF SOUTH CAROLINA,

RESPONDENT

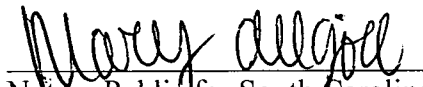
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Taylor Z. Smith, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Susan Diane Hendricks, #355210, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 30th day of August, 2019.



Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 30th day of August, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027

RECEIVED

AUG 30 2019

S.C. SUPREME COURT