

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

ARTHUR PETERSON,

V.

STATE OF SOUTH CAROLINA,

S.C. SUPREME COURT
PETITIONER

RESPONDENT

APPELLATE CASE NO 2019-000829

PETITION FOR WRIT OF CERTIORARI

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Trial counsel erred in allowing petitioner to be coerced into entering an involuntary and unlawful conditional guilty plea where he forfeited mental evaluations by a private doctor and the state hospital doctors in support of an insanity defense in exchange for a plea bargain to a lesser offense and sentence and the dismissal of a weapons charge instead, and where had petitioner exercised his right to a trial, then there was a reasonable likelihood that an insanity defense would have been successfully developed, presented, and received favorably by a jury.3

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ISSUE PRESENTED

Trial counsel erred in allowing petitioner to be coerced into entering an involuntary and unlawful conditional guilty plea where he forfeited evaluations from a private doctor and state hospital doctors in support of an insanity defense in exchange for a plea bargain to a lesser offense and sentence and the dismissal of a weapons charge instead, and where had petitioner exercised his right to a trial, then there was a reasonable likelihood that an insanity defense would have been successfully developed, presented, and received favorably by a jury.

STATEMENT

Petitioner Arthur Peterson was indicted on charges of murder and possession of a weapon and pled guilty but mentally ill to the lesser included offense of voluntary manslaughter during the January 2013 term of the Charleston County General Sessions Court before Judge Kristi L. Harrington, who handed down a twenty-year sentence. Rose Mary Parham represented petitioner during the plea proceeding and Assistant Solicitor Bruce DuRant appeared on behalf of the state. The guilty plea proceeding was conducted in two parts: 1.) a pre-trial motion hearing held on the morning of January 31, 2013, and 2.) the actual plea that was entered on the afternoon of January 31, 2013. Since a transcript of the sentencing hearing held on May 28, 2013, was not transcribed, a reconstruction of the sentencing hearing was held on June 13, 2018, which was subsequently transcribed. App. 109-138. Petitioner did not appeal his conviction or sentence.

Petitioner filed a PCR application with the Charleston County Office of the Clerk of Court on May 5, 2014. App. 87-102. The respondent filed a Return dated March 20, 2015, requesting that a PCR hearing be held in the case. App. 103-107.

A PCR hearing was convened on October 4, 2018, at the Charleston County Courthouse before Judge Michael G. Nettles. App. 141-210. Petitioner was present at the hearing and represented by James Falk and Assistant Attorney General Megan H. Jameson appeared on behalf of the state.

On May 6, 2019, Judge Nettles signed an Order of Dismissal, which was filed on May 9, 2019, therein denying petitioner's allegations of the ineffective assistance of counsel in the case. App. 212-229. Petitioner appealed Judge Nettles' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in allowing petitioner to be coerced into entering an involuntary and unlawful conditional guilty plea where he forfeited evaluations by a private doctor and state hospital doctors in support of an insanity defense in exchange for a plea bargain to a lesser offense and sentence and the dismissal of a weapons charge instead, and where had petitioner exercised his right to a trial, then there was a reasonable likelihood that an insanity defense would have been successfully developed, presented, and received favorably by a jury.

In the case at bar, petitioner fatally shot the mother of Shakira Fields. Fields was a paralyzed paraplegic with whom petitioner had been ministering to religiously and developed a friendship with prior to the shooting. On March 14, 2011, Fields had informed petitioner that her mother had been abusing her. In response to this report of abuse, petitioner called 911 and an ambulance, and then walked into the kitchen where Fields' mother stood and shot her. App. 74, 1.20-p. 77, l.13.

A.) Morning Session of Guilty Plea Proceeding (January 31, 2013)

At the morning session of the guilty plea proceeding held on January 31, 2013, which was on a Thursday, trial counsel moved for a continuance in order to have retained private psychiatrist (Susan Knight) conclude her evaluation of petitioner pending receipt of discovery materials and Shakira's mental records. Also at that time, counsel moved for a continuance in order for petitioner to be evaluated by psychiatrists from the state hospital as well. App. 42, l. 18 – p.47, l. 9. The private psychiatrist testified at the morning guilty plea proceeding session and stated that she had concerns about petitioner's mental state after interviewing him and needed to review the discovery materials and Shakira Fields' mental records before deciding on the issue of insanity. App. 26, l.11-p. 33, l.10.

The solicitor responded at that morning proceeding on Thursday, January 31, 2013, and promised that the plea offer to a lesser offense (voluntary manslaughter) and a lesser sentence of 25 years and the dismissal of the weapon charge¹ would expire on Monday, February 4, 2013, if the continuance motion was not granted; and that if the case was continued, then the plea offer would expire on the following Friday on February 8, 2013. App. 6, 1.13-p.7, 1.25. App. 9, 1.16-p.10, 1.14; App. 25, 1.15-pg. 26, 1.7. At sentencing, the solicitor agreed to a 24-year sentence in the case. App. 125, 1.12-23.

The judge granted the continuance until February 4, 2013, for petitioner's private psychiatrist to finalize her evaluation, but denied the continuance motion for time to seek a state evaluation in the case. App. 42, 1.3-p. 46, 1.9. Ultimately, petitioner was unable to enjoy the benefit of the continuance because doing so would have excluded the plea bargain as an option.

B.) Afternoon Session of Guilty Plea Proceeding (January 31, 2013)

Although the continuance motion was granted on the morning of January 31, 2013, until February 4, 2013; nonetheless, petitioner pled guilty per the plea bargain at the afternoon plea proceeding held on January 31, 2013. The sentencing hearing was set for May 28, 2013, for sentencing. App. 59, 1.1-p.85, 1.11. A reconstruction hearing was held on June 13, 2018, to reconstruct the May 28, 2013 sentencing hearing during which time petitioner was sentenced to 24 years imprisonment. App. 109-138.

C.) Summary of Trial Counsel's PCR Hearing Testimony

Trial counsel testified that during her initial interviews with petitioner, she noticed that petitioner was "anxious," "antsy," and "could not sit still," and was hallucinating with numbers

¹ The murder charge would have carried a sentence of life (day for day), but the lesser offense of manslaughter per the plea offer would have carried an 85 % service time and ultimately a nine-year prison sentence time reduction.

and scriptures and decisions; and that as a result, she immediately called Susan Knight (forensic psychologist) to evaluate him for mental issues. Unfortunately, Dr. Knight never completed her assessment because she never received the requested discovery materials and Field's mental health records. App. 151, 1.18-p.152, 1.4; App. 159, 1.6-7; App. 153, 1.10-18; App. 159, 1.6-7; App. 153, 1.10-18; App. 154, 1.13-18. Counsel added that petitioner did not want to pursue a mental illness defense in the beginning of the case, but later changed his mind and decided that it was in his best interest to have the state doctors evaluate him. App. 156, 1.3-19; App. 163, 1.6-25. This led to counsel's request for a continuance in order to obtain the evaluations for petitioner. App. 166, 1.21-p.167, 1.14. Counsel's explanation as to how the case culminated into a plea proceeding rather than a trial despite the requests for evaluations follow:

Q:...when you were asking for the continuance, what were you seeking?

A:...60 days...but [the solicitor] kept telling me that his [plea] offer...might [be] withdraw[n]...so there was [a] risk involved.
App. 162, 1.13-19.

D.) Summary of Petitioner's PCR Testimony

Petitioner testified that he was unable to talk to Dr. Knight initially because his jaw locked, which according to his interpretation meant he was not supposed to talk to her, but stated that later on he was able to speak freely, and that he desired an opportunity to be evaluated by Dr. Knight and the state doctors as well. App. 180, 1.7-p.180, 1.18, 182, 1.18. App. 179, 1.9-19. App. 185, 1.11-16, App. 174, 1.13-p. 175, 1.13.

E.) PCR Judge's Ruling

The PCR judge ruled that petitioner failed to meet his requisite burden of establishing that trial counsel erred regarding the handling of petitioner's mental health issues and in effect any evaluation(s) connected to his competency issues. App. 225-227.

F.) Analysis

In the case at bar, petitioner was coerced into pleading guilty involuntarily because he was forced to choose between developing an insanity defense, via properly conducted evaluations, and accepting a plea offer plea on a lesser offense, which was a plea offer that would have expired had he exercised his right to receive his mental evaluations per the continuance. In effect, petitioner's plea was a conditional plea, which meant it was an illegal plea as the acceptance of the plea bargain hinged upon his abandonment of his right to receive mental evaluations, which in all reasonable likelihood would have established an insanity defense in the case.

Petitioner stated that his mom died when he was young and that his father was abusive, and that when his wife and daughter experienced medical problems, he began to "fall apart." Petitioner stated that he started experiencing mania and hearing voices and had psychological problems so badly that he turned to psychiatric treatment and began taking medications for his state of being. Petitioner added that he was hospitalized at the MUSC Psychiatric Institute in August, 2008. Also, petitioner stated that he was on suicide watch twice after being jailed. App. 181, 1.11-p.182, 1.7. Petitioner believed that he was being guided by the Holy Spirit. App. 171, 1.21-p.174, 1.4.

Trial counsel stated at the plea proceeding that when she talked to petitioner after his arrest, she "knew immediately from talking to [him] that there were going to be mental issues in

the case.” App. 13, lines 1-9. Note that counsel did secure a private doctor to evaluate petitioner, but the final exam was never completed; and note further that counsel requested an evaluation by state doctors at the estate hospital as well. Also at the plea proceeding, counsel summarized her dilemma as follows regarding giving notice of an insanity defense:

If I give notice of the insanity defense, then the state would probably have him sent off for evaluation, and then the plea offer is off the table. So I’m in a catch-22...I don’t necessarily want to ask—you know I ask for a state evaluation, your honor could deny it, or you could grant it, but if it’s granted, then the plea offer is going to be off the table. App. 20-lines 14-23.

Based on the circumstances of this case, petitioner’s plea was clearly a conditional plea. Conditional pleas are illegal. A court may not accept a conditional plea where a condition or qualification is attached to the plea such as the deprivation of a constitutional right. State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982); State v. O’Leary 302 SC17, 393 S.E.2d 186 (1990); State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001); In Re Johnny Lee W., 371 S.C. 217, 638 S.E.2d 682 (2006). Here, petitioner was deprived his right to a state evaluation under S.C. code Ann. {44-23-410, and a Blair² hearing, and his Sixth Amendment right to a trial where an insanity defense could have been presented, all of which rights he waived because the threat of the expiration lesser offense plea bargain expiring before he could be evaluated. Thus, petitioner’s pleas were conditional pleas, which were illegal pleas as well.

Additionally, due process prohibits the conviction of one who is mentally incompetent. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466, U.S. 668 (1984). Specifically, with respect to cases where mental issues exist, counsel has a duty to investigate, prepare, and

² State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

present evidence of mental illness on behalf of the defense. In Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017), the Court held that when establishing ineffective assistance of counsel in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea, and once such a reasonable probability has been established then prejudice is also demonstrated. See also Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004). In Ramirez, plea counsel was found ineffective in failing to request an additional competency evaluation for the defendant where he was on notice that the defendant suffered from retardation and had problems interacting with him.

Compare Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), where the Court found that counsel was ineffective in failing to present the psychiatrist who testified at trial and explained all the defendant's extensive medical records and information in support of the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis to testify at the penalty phase in order to preclude a death sentence. Also, compare Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand the investigations into the defendant's background with sufficiency in order to learn of the defendant's diminished mental capacity and childhood abuse, rape, and molestation in order to show his impaired mental and psychological state. Compare further, Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990), where the Court held that counsel was ineffective in failing to develop an insanity defense when the state's psychiatrist diagnosed the defendant as legally insane. Finally, in the federal court cases of People v. Coroma, 80 Cal. App. 3d 684, 145 Cal. Rptr. 899 (1st Dist. 1978); Ramseyer v. Glodgett, 853 F. Supp. 1239 (WD. Wash. 1994), and Hull v. Hyler, 190 F.3d 88 (C.A. 3PA, 1999), the courts found counsel ineffective in failing to investigate into evidence establishing their clients' mental incompetence.

Clearly, in the case at bar, counsel's handling of a mental illness defense, which obviously existed in the case, by failing to obtain timely state mental evaluations constituted deficient legal representation that was below the range of competence demanded of criminal attorneys in violation of the Sixth Amendment. Prejudice existed as a result. See Hill v. Lockhart, 484 U.S. 52 (1985), and Ramirez v. State, *supra*, and Matthew v. State, *supra*. But for counsel's error in this regard, a reasonable likelihood exists that the outcome of petitioner's case would have been different.

In State v. Hartsfield, 300 S.C. 469, 383 S.E.2d 802 (1990), the Court addressed the insanity defense and GBMI under S.C. Code. Ann. 17-24-10 & 20 below:

It is a defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. This section codified the common-law defense of insanity. State v. Grimes, 292 S.C. 204, 355 S.E.2d 538 (1987).

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 as defined in Section 17-24-10 (A), but because of mental disease or defect he lacked sufficient to conform his conduct to the requirements of the law.

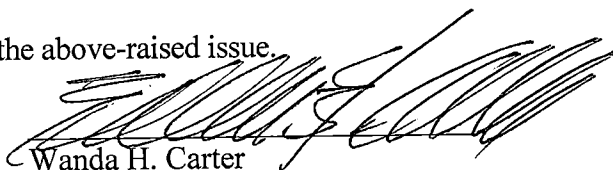
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997),

citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970).

Therefore, “the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty.” See Gustine v. State, *supra*.

CONCLUSION

In the case at bar, petitioner’s plea was an illegal plea as it was both conditional and involuntary in nature. Therefore, based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of January, 2020.

STATE OF SOUTH CAROLINA

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ARTHUR PETERSON,

PETITIONER

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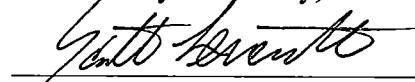
CERTIFICATE OF SERVICE

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 Benjamin Limbaugh, 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 Arthur F. Peterson, #355559, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of January, 2020.



Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 21st day of January, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.