

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

SHELDON HUGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001333

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the lower court erred in denying petitioner post-conviction relief where petitioner's plea was not freely, voluntarily, intelligently, or knowingly entered because he was under the influence of prescription medication?

STATEMENT

On February 1, 2017, petitioner appeared before the Honorable R. Markley Dennis, Jr. in Charleston County and pled guilty to entering a bank with intent to steal. App. 1; 80-81. He was sentenced to twenty-five years' imprisonment. App. 102. Lorelle Proctor and Tamara Van Pala represented petitioner and Ted Corvey, assistant solicitor, represented the state. App. 1.

Petitioner filed an application for PCR on August 25, 2017. App. 104-12. The state filed a return on October 30, 2017. App. 114-18.

On March 21, 2019, an evidentiary hearing was held before the Honorable Jennifer McCoy. App. 119. Tommy Thomas represented petitioner and Benjamin Limbaugh, assistant attorney general, represented the state. App. 119. On April 30, 2019, Judge McCoy signed an order denying the application for PCR. App. 176.

On May 21, 2019, petitioner filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. App. 177. On July 23, 2019, Judge McCoy signed an order denying petitioner's motion. App. 179.

This petition for a writ of certiorari follows.

ARGUMENT

The lower court erred in denying petitioner PCR where petitioner's plea was not freely, voluntarily, intelligently, or knowingly entered because he was under the influence of prescription medication.

Relevant facts

On December 16, 2015, petitioner entered a bank, approached the counter, and passed a note to the teller demanding money. App. 65, ll. 19-21. The teller handed petitioner money from her drawer until he instructed her to stop. A police officer, dressed in plain clothes, standing at the next teller window witnessed the entire exchange. The officer approached petitioner and identified himself as law enforcement. Petitioner took off on foot and the officer chased him through the parking lot into a wooded area. App. 66-68. The officer lost sight of petitioner and called for assistance. Subsequently, police detained petitioner and the officer who witnessed the incident identified him. App. 68-71.

Pre-trial motions

On the day of petitioner's plea, he told the court, he was unhappy with his attorneys, Ms. Proctor and Ms. Van Pala. App. 4, ll. 2-3. The court told petitioner he could hire another attorney or represent himself. The court informed petitioner that pretrial motions were going to be heard that day and warned him against self-representation. App. 4, l. 8-5, l. 11. After petitioner consulted with his attorneys, the defense made pretrial motions and the court conducted a *Jackson v. Denno*¹ hearing and a *Neil v. Biggers*² hearing. App. 23-59; 64-79. The court ruled against petitioner on both suppression motions. App. 58, l. 10-59, l. 22; 78, l. 12-79,

¹ *Jackson v. Denno*, 378 U.S. 368 (1964).

² *Neil v. Biggers*, 409 U.S. 188 (1972).

1. 16.

Guilty Plea

Petitioner and his attorneys conferred and afterwards told the court petitioner was ready to accept the negotiated plea offered by the state. App. 79, ll. 17-21. During petitioner's plea the court asked him whether he was under the influence of any alcohol or medication. Petitioner responded that he was on Depakote, Remeron, and Vistaril and had been taking the medication for the past thirteen months.³ App. 84, l. 13-22. The court asked petitioner whether the medication he was taking "affect[ed] [his] ability to consider or reason?" Petitioner responded, "I can't answer that question." App. 85, ll. 1-4. The court replied, that petitioner seemed able to function "pretty well" and that petitioner had responded articulately to the court's questions. The court asked petitioner whether he had understood the questions he was asked and if he had been truthful. Petitioner said he answered truthfully, and he wished to plead guilty. App. 85, l. 5-86 l. 14. After the court accepted petitioner's plea, defense counsel told the court petitioner suffered from depressive mood disorder as well as drug addiction. App. 95, ll. 4-7.

PCR hearing

At the PCR hearing petitioner testified he only met with Ms. Proctor to discuss his case twice and he did not fully understand what he was facing or the ramifications of his decision to plead guilty. App. 128, l. 9-129, l. 2. He also said he thought he was "railroaded into taking [the] plea." App. 129, 14-16. Petitioner told the PCR court, at the time of the plea he was taking medication for "mental health" and that he continued to be treated with mental health medication throughout his incarceration. App. 141, ll. 16-21. For most of his incarceration petitioner has

³ Depakote is considered a mood stabilizer and is used for the treatment of mania associated with bipolar disorder. Remeron is an antidepressant and is used in the treatment of major depressive disorder. Vistaril is used for the treatment of anxiety.

been housed at Lieber Correctional Facility in the mental health unit. App. 141, l. 22-142, l. 9. Petitioner said that at his plea, he felt pressured to give certain answers. Petitioner testified the plea court understood that he was unhappy with his attorneys and that he had mental health problems. App. 142, l. 13-143, l. 6. Petitioner asserted that he did not believe his plea was freely and voluntarily given because his judgement at that time was unsound. App. 143, ll. 22-25. Petitioner stated that, although he was evaluated for competency prior to his plea at the Medical University of South Carolina and was found competent, he did not understand what was going on at his plea. App. 144, ll. 3-14. Petitioner stated that he did not have enough information to have made a knowing and intelligent plea. App. 144, ll. 15-25.

Counsel Proctor testified during her representation she had concerns regarding petitioner's competency. Although petitioner had already been evaluated for competency Proctor sent him for an additional evaluation. App. 153, ll. 11-18; 159, 3-13. Proctor told the court she was aware that petitioner was taking medication at the time of the plea. App. 159, ll. 11-13.

Discussion

Before a defendant can plead guilty, it must be established that the defendant is competent and that defendant's decision to plead guilty is a knowing and voluntary one. *Sims v. State*, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993). The test for competency is, “whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding” and the requirement that the defendant “have a rational as well as a factual understanding of the proceedings against him.” *Id.* at 422–23, 438 S.E.2d at 254.

“The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings.” *Godinez v. Moran*, 509 U.S. 389, 401

n.12 (1993). “The purpose of the ‘knowing and voluntary’ inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced.” *Id.*

The record below reveals, at the time petitioner plead guilty, there was something amiss with his mental health. Plea counsel testified at PCR that she had concerns regarding petitioner’s competency and petitioner was evaluated for competency more than once. Petitioner testified at PCR that he did not fully understand the ramifications of his plea. Petitioner also testified that during his incarceration he had been housed at the mental health unit. Petitioner’s testimony at PCR reflects he did not understand what happened at his guilty plea and petitioner felt pressured to please the court with his answers.


Garren v. State addresses whether a defendant’s guilty plea was involuntary as a result of medication which the defendant claimed impaired his ability to enter a voluntary plea. 423 S.C. 1, 813 S.E.2d 704 (2018). In that case, this Court found the applicant failed to demonstrate that his guilty plea was rendered involuntary by medications he was purportedly being given while in jail. *Id.* In *Garren*, the defendant told the plea court he was not under the influence of any drugs or alcohol and the only evidence in the record supporting applicant’s claim was his PCR testimony. *Id.* at 16, 813 S.E.2d at 712.

This case is distinguishable from *Garren* because petitioner’s responses during the plea hearing establishes that he had difficulty understanding the proceeding. Unlike *Garren*, petitioner was candid with the plea court that he was on multiple medications. Petitioner explained what medications he was taking and how long he had been taking medications. Additionally, petitioner was honest with plea court when asked if it affected his ability to reason answering he was not sure. At that moment petitioner’s attorney should have stopped the plea or

the plea court should have halted the plea. It was apparent petitioner was unsure about what effect the medications had on his ability to make decisions. Instead of stopping the proceedings the plea court minimized petitioner's concern by insisting "you're able to function pretty well" and "you've responded to my questions articulately." Petitioner's understanding was that the court did not take his hesitance seriously and he carried on answering nothing but "yes, sir" to the next several questions. Petitioner was trying to be honest but was unaware of the rights he was waiving because he was under the influence of multiple prescriptions.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to allow full briefing on this issue.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of February, 2020.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

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V.

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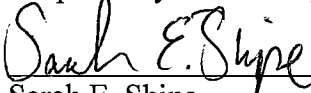
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sheldon Huger states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
 2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Jennifer B. McCoy, which was held on March 21, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. She 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 her as counsel for Sheldon Huger.

Respectfully Submitted,



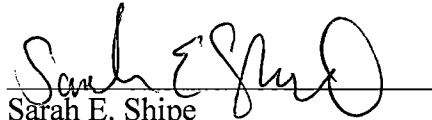
Sarah E. Shipe

Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of February, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."


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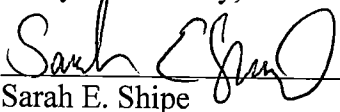
V.

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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 Benjamin Limbaugh, 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 Sheldon Huger, #303793, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 18th day of February, 2020.



Sarah E. Shipe
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: December 31, 2029.