

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jun 29 2020

S.C. SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

ORLANDO PAUL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001332

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to obtain the services of an independent psychiatrist in order to develop a mental illness defense on petitioner's behalf.

STATEMENT OF FACTS

Petitioner Orlando Paul pled guilty to armed robbery and two counts of attempted murder during the January 2016 term of the Florence County General Sessions Court before Judge D. Craig Brown who sentenced him to imprisonment for an aggregate term of twenty-eight years. App. 1-26. William Neetze represented petitioner at the plea proceeding and Assistant Solicitor Todd Tucker appeared on behalf of the state.

On January 17, 2017, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 36-42. The respondent filed a return dated April 26, 2017, requesting dismissal of the application as untimely filed. App. 43-46. Per a hearing held subsequently regarding the timelines of the PCR filing, a ruling was granted in favor of petitioner and a PCR hearing was convened on March 4, 2019, at the Florence County Courthouse before Judge William H. Seals, Junior. App. 48-105. Petitioner was present at the PCR hearing and represented by Jonathan Waller, Esquire, and Assistant Attorney General Lindsey McCallister appeared on behalf of the state.

On July 30, 2019, Judge William H. Seals, Jr. issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 109-122.

Petitioner appealed Judge Seals' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to obtain the services of an independent psychiatrist in order to develop a mental illness defense on petitioner's behalf.

In the case at bar, petitioner was accused of shooting Adunte Gibson and Latasha Davis on October 11, 2014. There was a dispute between them over the purchase and re-sale of a phone. App. 13, l. 9 – p. 19, l. 18.

During the PCR hearing held in the case, petitioner testified that the police bypassed the detention center and took him to the hospital when he was apprehended because they discovered that he had slit his wrists and cut his throat after they found him. App. 55, lines 1-12. Petitioner admitted that while detained, he was not in his right frame of mind and could not communicate, and that when the heavy medication was eased, then he reverted back to not being able to hold or complete a line of thought. App. 56, l.10-p.57, l.25. Petitioner stated that he shot the couple because he thought his life was in danger. Ap. 58, l.17-25. Note that petitioner had also written a suicide note. App. 62, l.11-15. Petitioner added that he had previously signed himself into Pee Dee Mental Health, but that trial counsel did not obtain his mental records from that facility. App. 65, l.7-14. Petitioner desired a jury trial on the charges filed against him. App. 65, l.3-15.

Petitioner and trial counsel admitted that a mental health report issued by the state hospital doctor revealed he was competent to stand trial. App. 67, l.24-p. 68, l.20. Trial counsel testified at the PCR hearing that the state hospital doctor found petitioner to be competent for trial and able to distinguish between right and wrong, and that petitioner was criminally responsible, and that his mental health issues were general. App. 80, l.4-p. 81, l.13. Also, trial counsel was aware of petitioner's suicide attempt in connection with the case. App. 86, l.6-20.

The PCR judge ruled that petitioner's pleas were given voluntarily, and that petitioner was clearheaded and understood what he was doing in entering the guilty pleas. App. 120-121.

Clearly, an independent psychiatric evaluation of petitioner was needed as a precaution in light of petitioner's suicide attempt (slit wrists and throat) and his prior mental health hospitalizations in addition to the state doctor's hospital evaluation. Undoubtedly a question of competency and sanity should have been further explored.

Under S.C. Code Ann. 17-24-10, insanity is defined as whether at the time of the crime the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong. Under S.C. Code Ann. 17-24-20, guilty but mentally ill is defined as whether if at the time of the crime the defendant had the capacity to distinguish right from wrong, but because of mental defect or disease he lacked sufficient capacity to conform his conduct to the requirements of the law. Also, see State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990). Due process prohibits the conviction on one who is mentally incompetent. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992).

As a rule, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). Also, with respect to cases where mental issues abound, counsel has a duty to investigate, prepare, and present evidence of mental illness on behalf of the defense. See Williams v. Taylor, 120 S.Ct. 1495 (2000), where the counsel was found ineffective in failing to present mitigating evidence of the defendant's mental retardation and mental impairments during the sentencing phase of his death penalty trial, and that the absence of this evidence prejudiced his sentencing phase defense in the case. See also Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand the investigation into the defendant's background with enough sufficiency to learn of the defendant's diminished mental

capacity and his impaired mental and psychological state, and that prejudice resulted because this was not presented at his death trial sentencing phase of the case. Compare Rompilla v. Beard, 545 U.S. 374 (2005), where the Court held that trial counsel erred in failing to investigate into the defendant's prior conviction file in order to uncover his mental health issues for presentation at sentencing. In Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), the Court found that counsel was ineffective in failing to provide the psychiatrist who testified at trial with all the defendant's extensive medical records and information so that the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis could have been presented during the penalty phase of the case. Moreover, in Nance v. Frederick, 358 S.C. 480, 596 S.E.2d 62 (2005), the Court reversed because trial counsel pursued a guilty but mentally ill verdict, but omitted his expert's qualifications and failed to provide the jury with any insight into petitioner's mental illness. Furthermore, in Nance v. Ozmint, 367 S.C. 547, 557 S.E.2d 883 (2006), the Court found that trial counsel erred in failing to investigate into and present evidence of the defendant's mitigating social history documents outlining his troubled childhood and mental illness. Additionally, in Council v. State, 380 S.C.159, 670 S.E.2d 356 (2009), trial counsel was found ineffective in failing to investigate into and present mitigating evidence of petitioner's mental illness at the time of the crime, his frontal lobe brain dysfunction, and yearly decline in cognitive functioning, borderline IQ and schizophrenia, and that it was error not to present this at the sentencing hearing. Finally, in Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009), the Court held that trial counsel's error in failing to present evidence of the defendant's mental illness was deficient and that such deficient performance was prejudicial to the case (resentencing hearing ordered).

In the case at bar, counsel violated petitioner's Sixth Amendment right to effective assistance of counsel with respect to his guilty plea case because trial counsel failed to develop a possible defense per evidentiary proof via an independent mental examination on the question of petitioner's competency and/or sanity, and petitioner was prejudiced as a result because he entered pleas at a plea proceeding held in the case without the benefit of an independent mental assessment. See Hill v. Lockhart, 484 U.S. 50 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that the petition be granted and full briefing allowed on the above-raised issue.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of June, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Orlando Paul states that:

1. She is Deputy Chief 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 William H. Seals, which was held on March 4, 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 Orlando Paul.

Respectfully Submitted,

s/Wanda H Carter
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 29th day of June, 2020.

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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.”

s/Wanda H. Carter

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This 29th day of June, 2020.