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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable H. Steven DeBerry IV, Circuit Court Judge

JOBE S. HAMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001089

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did Trial counsel err in allowing petitioner to plead guilty without first scheduling a mental evaluation out of an abundance of caution prior to the plea proceeding because counsel was on notice that petitioner's mental state was an issue in the case?

STATEMENT

Petitioner Jobe S. Hames pled guilty to first degree criminal sexual conduct during the December 2018 term of the Cherokee County General Sessions Court before Judge R. Keith Kelly and was sentenced to imprisonment for a period of twenty-five years. App. 1-20. Petitioner was represented by Michael Berry, Esquire, at the plea proceeding and Assistant Solicitor Adrienne Barry appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On September 12, 2019, petitioner filed a post-conviction relief application with the Cherokee County Office of the Clerk of Court. App. 22-33. The respondent filed a return dated November 7, 2019. App. 34-44.

A PCR hearing was convened on August 2, 2021, at the Cherokee County Courthouse before Judge H. Steven DeBerry, IV. App 46-86. Petitioner was present at the hearing and represented by Rodney Richey, and Assistant Attorney General William Ray appeared on behalf of the state. On September 9, 2021, Judge DeBerry issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 88-101.

Petitioner appealed. This petitioner follows.

ARGUMENT

Trial counsel erred in allowing petitioner to plead guilty without first scheduling a mental evaluation out of an abundance of caution prior to the plea proceeding because counsel was on notice that petitioner's mental state was an issue in the case.

The state alleged that petitioner committed sexual battery on his nephew, a minor, by inappropriately touching him from 2013 (around the time the minor was six years old) until 2017 when the activities were revealed. App. 8, 1.10-p. 12, 1.14.

During the PCR hearing held in the case, petitioner raised the allegation that counsel was ineffective in his case by failing to secure a mental evaluation for him. Petitioner explained at the hearing that he asked counsel to schedule a mental evaluation for him since he knew he had mental health issues due to the psychological effects of being abused previously, but that counsel told him that such an evaluation was not necessary because there didn't seem to be any competency problems with him. Petitioner stated that his family contacted counsel about his delayed intelligence and mental health issues as well. App. 50, 1.7-p. 58, 1.21. Petitioner's mother (Geneva Hames) testified at the PCR hearing and stated that petitioner was born with autism and was ADHD, and that there was a family history in effect of schizophrenia which petitioner possessed also. App. 61, 1.9-p. 20, 1.11.

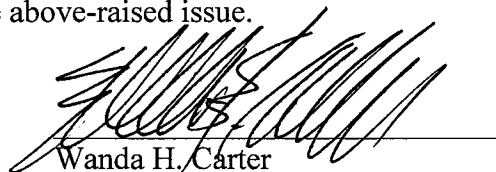
Trial counsel testified at the PCR hearing and claimed that during the course of his representation of petitioner, he did not believe that petitioner had competency issues and that although petitioner was developmentally delayed and "simple minded," he believed petitioner was able to assist with his defense in the case, and that he understood the discussions about the case. Counsel stated that he did not feel it was appropriate to have petitioner evaluated mentally. App. 73, 21-p. 77, 1.25. App. 79, 1.2-11.

In the Order of Dismissal, issued in the case, the PCR judge denied relief on petitioner's allegation that trial counsel was ineffective in failing to obtain a mental evaluation of him prior to the plea proceeding.

Clearly, petitioner was incompetent at the time of the plea proceeding due to his mental health issues, which in addition might have been a defense in the case. Counsel admitted that petitioner was simple minded and slow and delayed developmentally. Moreover, there was evidence presented that petitioner suffered from autism, ADHD, and schizophrenia. This was a sufficient showing via a preponderance of the evidence that he (petitioner) was incompetent at the time of this plea. Garren v. State, 423 S.C., 813 S.E.2d 704 (2018). Due process prohibits the conviction of a person who is mentally incompetent and the right cannot be waived by a guilty plea; and the test of competency to plead is whether the defendant had sufficient capacity to consult with his lawyer with a reasonable degree of rational understanding and had a rational as well as factual understanding of the proceeding against him. Jeter v. State, 388 S.C. 230, 417 S.E.2d 594 (1992). Here, the petitioner met his burden of proof that he was not competent to plead guilty as charged.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request 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 7th day of February, 2022.

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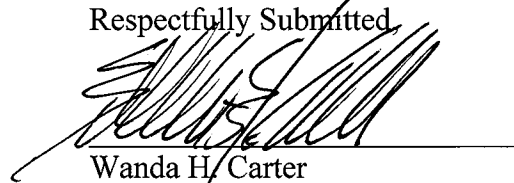
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jobe S. Hames states:

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 H. Steven DeBerry IV, which was held on August 2, 2021, 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 Jobe S. Hames.

Respectfully Submitted,



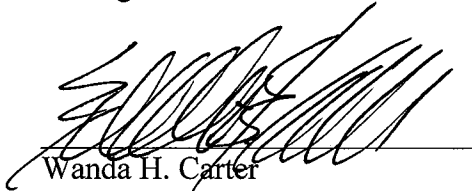
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of February, 2022.

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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This 7th day of February, 2022.