

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County  
Court of Common Pleas  
R. Ferrell Cothran, Jr., Circuit Court Judge

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2010-CP-43-709  
Appellate Case No. 2012-209533

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**RECEIVED**

MAY 15 2013

**S.C. Supreme Court**

GEORGE R. LINDSEY, JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

DANIEL GOURLEY  
Assistant Attorney General  
Bar No. 100934

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**INDEX**

ISSUE PRESENTED .....3

STATEMENT OF THE CASE.....4

STANDARD OF REVIEW .....6

ARGUMENT .....7

CONCLUSION.....11

## **ISSUE PRESENTED**

- I. The PCR court did not abuse its discretion by denying Petitioner's motion for funding to retain a medical examiner to determine Petitioner's mental condition where Petitioner's motion was already ruled upon by a previous circuit court judge, Counsel consulted with an expert prior to Petitioner's plea, and Petitioner stated at his plea hearing that he suffered from no mental illnesses and agreed to waive all defenses.
  
- II. The PCR court did not abuse his discretion by denying Petitioner's motion for continuance to retain an expert to conduct an examination of the Petitioner's mental condition, where the PCR judge stated prior to the hearing that he would hear all testimony and then make a decision and both Petitioner and Counsel testified at the hearing.

## STATEMENT OF THE CASE

Petitioner was indicted during the January 2009 term of the Sumter County Grand Jury for Murder and Possession of a Firearm or Knife During Commission of a Crime of Violence (2009-GS-43-0108). Petitioner was represented by Jack Howle, Esquire. On June 4, 2009, Petitioner pled guilty before the Honorable George C. James, Jr. to the lesser offense of Voluntary Manslaughter. On June 8, 2009, Petitioner was sentenced to eighteen years incarceration. Petitioner did not appeal his sentence.

Thereafter, Petitioner filed an application for post-conviction relief on June 18, 2007. Petitioner filed a "Notice of Withdraw Issues in Original Post Conviction Application" and a "Notice of Amended and Supplemental Pleadings Rule 15(a)" on September 9, 2010. Respondent made its Return on January 13, 2011, requesting an evidentiary hearing be held on Petitioner's application.

On October 24, 2011, an evidentiary hearing on the matter was convened before the Honorable R. Ferrell Cothran, Jr. at the Sumter County Courthouse. At the start of the PCR hearing, Petitioner presented two motions upon which the court ruled prior to receiving any testimony on the merits of the Petitioner's application. First, Petitioner requested the PCR court to relieve his PCR counsel, Charles Brooks, III, Esquire. Additionally, Petitioner made a renewed motion (previously submitted and denied twice by the Honorable W. Jeffrey Young) for funding for a mental evaluation to determine his state of mind on the day of the shooting, as well as a motion for continuance to allow time to procure the evaluation. The PCR court denied the motion to relieve counsel as well as the motion for continuance, but agreed to leave the record open for a short period to allow Petitioner to submit any relevant information in support of his motion for mental evaluation. The PCR court failed to receive any such information from Petitioner. The PCR court in its Order of Dismissal denied such motion.

By Order dated February 22, 2012 and filed February 29, 2012, Judge Cothran denied Petitioner's application with prejudice. Petitioner filed a Petition for Writ of Certiorari on March 11, 2013. This Return follows.

## STANDARD OF REVIEW

“The decision of whether to order a competency examination is within the discretion of the trial judge, whose decision will not be overturned absent a clear showing of abuse of discretion.” State v. White, 364 S.C. 143, 147, 611 S.E.2d 927, 929 (2005). This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead reviews the evidence to determine whether the trial judge’s ruling is supported by any evidence. State v. Preslar, 364 S.C. 466, 472 613 S.E.2d 38, 384 (2005). Furthermore, “the admission or exclusion of evidence is left to the sound discretion of the trial judge.” State v. Gaster, 349 S.C. 545, 564 S.E.2d 82 (2002). A court’s ruling on the admissibility of evidence of will not be overturned on appeal, absent a showing of abuse of discretion or legal error, which results in the prejudice of the defendant. State v. Mcleod, 362 S.C. 73, 606 S.E. 2d 215 (Ct.App. 2004). “In order for an error to warrant, the error must result in prejudice to the appellant.” State v. Preslar, 354 S.C.466, 613 S.E.2d 381 (S.C. App. 2005).

## ARGUMENT

- I. **The PCR court did not abuse its discretion in denying Petitioner's motion for funding to conduct a mental health evaluation where the motion had already been ruled upon by a prior judge, Counsel consulted an expert regarding Petitioner mental status prior to Petitioner pleading guilty, and Petitioner stated during the plea hearing that he had no mental illness**

Petitioner asserts the post-conviction relief (PCR) court abused its discretion in denying funding to retain a mental health expert in order to evaluate his mental health condition at the time of the offense. This argument is without merit, as the record provides ample evidence to support the PCR court's denial of Petitioner's motion for funding to obtain a mental health expert.

PCR counsel raised several motions including a motion for funding to retain a mental health expert for a mental competency evaluation at the beginning of the PCR hearing. PCR counsel stated, "my client had requested motions to be given funding to pay for an evaluation. Judge Young had actually denied it as the chief administrative judge one time. In addition to that, I went back to submit a motion again for funding to have somebody paid to do an evaluation---mental evaluation," which judge Young denied. (App. p. 86 line 17---p. 87 line 28). However, one circuit court judge may not amend or set aside the order of another. *See, e.g., Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986). Therefore, the PCR court did not have the authority to grant the motion for funding, because the motion was already ruled upon by Judge Young, the Chief Administrative Judge.

However, even if this Court determines that the PCR court did have the authority to grant the motion, the PCR court did not abuse his discretion in denying the motion. A decision to order a competency evaluation is within the sound discretion of the trial judge and will not be

disturbed absent an abuse of discretion. White, 364 S.C. at 147. Petitioner stated he did not have any mental illnesses. (App. p. 6 lines 13-14). Petitioner further stated, he understood that he was waiving all defenses by entering a plea of guilty. (App. p. 12 line 24—p. 13 line 2). At the PCR hearing, Petitioner testified he did inform the plea judge that he did not suffer from any mental illnesses. (App. p. 118 lines 7-10). However, Petitioner testified he was concerned because Dr. Lakin never formally interviewed him. (App p. 119 lines 10-12). Petitioner questioned whether a doctor would be able to tell whether a person was sane or insane without conducting a formal interview. (App. p. 119 lines 10-12).

Furthermore, at the plea hearing, Counsel testified,

Your Honor, I do not have any concerns of his competency. I will say that I consulted with Dr. Lakin at length on a couple of occasions in regard to the temporary insanity matter when we looked at that as well and after my conversations with her, she felt that that would not be sufficient to be shown from what she saw in the case anything else. I explained that to him as well...but as far as his competency in understanding my questions and his response, I have no question about his competency, Your Honor.

(App. p. 4 lines 12-18).

At the PCR hearing, Counsel testified he consulted with Dr. Lakin regarding the Petitioner's mental competency. (App. p. 128 line 10—p. 129 line 4). Counsel testified he sought Dr. Lakin's opinion in regards to a possible defense of "temporary insanity or something of that nature." (App. p. 128 lines 15-17). Counsel further testified Dr. Lakin did not actually interview Petitioner, however, "she looked at what the manslaughter was, the heat of passion" and determined that "heat of passion and not a temporary insanity [] would be a true defense for him." (App. p. 128 lines 19-24). Counsel testified Dr. Lakin indicated that if she took the stand she could not testify that Petitioner suffered from temporary insanity. (App. p. 129 lines 2-4). Counsel further testified Dr. Lakin did not feel a psychological report would have been

beneficial to Judge James when he was making his sentencing determination. (App. p. 131 line 16—p. 132 line 7).

In addition, Petitioner testified he arrived at his house to find his wife and six year old daughter sitting in the car. (App. p. 108 lines 12-17). Petitioner immediately got into the car and found both his wife and daughter visually upset. (App. p. 108 lines 12-21). Petitioner's daughter explained her Uncle (Victim) had placed his "thing" in her mouth. (App. p. 109 lines 12-15). Petitioner, accompanied by his wife and daughter, drove to his sister-in-law's house. (App. p. 109 lines 18-19). Upon arriving Petitioner retrieved his gun from his car and began to bang on his sister-in-law's house. (App. p. 109 line 21—p. 110 line 6). Both his wife and mother-in-law attempted to both verbally and physically take the gun from Petitioner. (App. p. 110 lines 2-6). Petitioner then saw Victim and "ran over there and shot him." (App. p. 110 lines 16-18). Petitioner further testified "after I got that shot, I got in the car. I knew I had need to go to my mother, *so I could turn myself in*. So I went to my mother's house." (App. p. 110 lines 21-24) (emphasis added). At trial Solicitor testified Petitioner "hid the gun. It was over in some grass and weeds wherever he went and he did show them where...where it was located." (App. p. 19 lines 16-17).

The M'Naughten test is the standard in South Carolina for determining whether a defendant's mental condition at the time of the offense rendered him criminally responsible. State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993). "The defendant is considered legally insane, if at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong." Id. As evidenced by Petitioner's testimony, Petitioner did not lack the capacity to distinguish for moral or legal right from wrong. Petitioner immediately fled the scene and went to his mother's because he *knew* he needed to turn himself in. Further, as

evidenced by Solicitor's presentation, Petitioner hid the gun in grass and weeds. Therefore, there is ample evidence to support the PCR court's decision to deny the Petitioner's motion for funding to retain an expert.

**II. The PCR court did not abuse its discretion in denying a motion for continuance to allow Petitioner to retain a mental health expert in order to evaluate his mental condition, where prior to making its determination, the post-conviction relief court heard testimony from both Petitioner and Counsel regarding the Petitioner's mental condition.**

Petitioner asserts the PCR court abused its discretion in denying Petitioner's motion for continuance to allow him to retain a mental examination in an effort to evaluate his mental condition. However, this argument is without merit as there is ample evidence in the transcript to show that the post-conviction relief court did not abuse its discretion in making its ruling.

"The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record." Bridwell v. Bridwell, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983). In the instant case, the PCR court stated, "What I'm proposing, maybe, we'll proceed with the hearing. And then after Mr. Howle (Counsel) testifies based on what comes into the record, and at that point I may or may not grant you a continuance. And we could continue the hearing if an evaluation is warranted and have the evaluation and we'll re-convene the hearing in March." (App. p. 101 lines 15-20). The PCR court further stated, "based on what's in the testimony, and, you know, whether there's any mental issues at all and whether an evaluation would be helpful. And if I determine an evaluation would be helpful, I may grant you, you know, a continuance at least part way through it to have one. If there's no issue at all of an evaluation, then I may not." (App. p. 102 lines 6-12).

In the instant case, both Petitioner and Counsel testified during the PCR hearing. Petitioner testified he informed the plea judge that he did not have any previous mental illnesses. (App. p. 6 lines 13-14). Furthermore, Counsel testified he consulted with Dr. Lakin prior to Petitioner entering his guilty plea. (App. p. 128 lines 12-18). Counsel testified Dr. Lakin felt as though Petitioner's situation was a heat of passion and not a temporary insanity. (App. p. 128 lines 19-24). Counsel further testified Dr. Lakin did not feel as though she could take the stand and testify that Petitioner suffered from temporary insanity. (App. p. 128 line 13—p. 129 line 4). Furthermore, Counsel testified that in Dr. Lakin's opinion Judge James (sentencing judge) would not have benefited from having a written psychological report to review prior to sentencing. (App. p. 131 line 16—p. 132 line 1). Under Petitioner's version of events, he shot victim after his daughter claimed victim sexually assaulted her. He then drove to his mother's house to turn himself in. This behavior demonstrates knowledge of legal from right from wrong and signals a lack of a viable insanity defense as does the lack of mental health history and a claim of an extremely short interval of insanity. Therefore, the PCR court did not abuse his discretion, because he allowed testimony to be heard on the issue prior to denying the Petitioner's motion for continuance.

**CONCLUSION**

For the foregoing reasons, the State submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

DANIEL GOURLEY  
Assistant Attorney General  
Bar No. 100934

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

May 15, 2013

STATE OF SOUTH CAROLINA  
SUPREME COURT

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Certiorari to Sumter County  
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge  
Case No. 2010-CP-43-0709  
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GEORGE R. LINDSEY, JR.,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PROOF OF SERVICE**

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I, Lauren Meara, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 15<sup>th</sup> day of May, 2013.

Lauren Meara  
LAUREN MEARA  
Legal Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737



ALAN WILSON  
ATTORNEY GENERAL

May 15, 2013

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MAY 15 2013

**S.C. Supreme Court**

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: George R. Lindsey, Jr. v. State of South Carolina**  
**Appellate Case No. 2012-209533**  
**Lower Court Case No. 2010-CP-43-0709**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above case.

Sincerely,

Daniel Gourley  
Assistant Attorney General  
S.C. Bar No. 100934

DG/lm  
Enclosures

cc: Susan B. Hackett, Esquire  
Trisha Allen, Victim Services



ALAN WILSON  
ATTORNEY GENERAL

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S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: George R. Lindsey, Jr. v. State of South Carolina**  
**Appellate Case No. 2012-209533**  
**Lower Court Case No. 2010-CP-43-0709**

Dear Mr. Shearouse:

After reviewing the above mentioned case, I will be representing the State in this appeal. Please note me as counsel of record for the State and forward all future correspondence regarding this case directly to me.

Sincerely,

Daniel Gourley  
Assistant Attorney General  
S.C. Bar No. 100934

DG/lm

cc: Susan B. Hackett, Esquire  
Trisha Allen, Victim Services