

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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May 12 2022

S.C. SUPREME COURT

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Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

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CHARLES LAMB,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001166

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

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ATTORNEY FOR PETITIONER

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## **ISSUE PRESENTED**

Whether plea counsel provided ineffective assistance of counsel when he failed to fully investigate Petitioner's competency to stand trial and seek a second mental health evaluation where plea counsel was aware of Petitioner's extensive mental health problems and where there was evidence Petitioner was incompetent at the time of his guilty plea?

## STATEMENT

During the June 2017 term, the Richland County Grand Jury indicted Petitioner for criminal sexual conduct in the first degree, kidnapping, and strong-armed robbery. App. 124 – 132. On December 7, 2018, Petitioner pled guilty before the Honorable Deandrea G. Benjamin. App. 1. Robert Louis Bank represented Petitioner. Id. Daniel R. Goldberg represented the state. Id.

Judge Benjamin accepted Petitioner’s guilty plea as voluntarily, knowingly, and intelligently made. App. 16, l. 19 – 17, l. 7. Pursuant to the negotiated agreement with the state, Petitioner was sentenced to twenty-four years’ imprisonment for kidnapping, twenty-four years’ imprisonment for criminal sexual conduct in the first degree, and fifteen years’ imprisonment for strong-armed robbery, to run concurrently. App. 6, ll. 17 – 19; App. 20, l. 23 – 21, l. 5.

On October 9, 2019, Petitioner filed an application for post-conviction relief (PCR) App. 26 – 32. On February 4, 2020, the state filed its return. App. 33 – 39. Petitioner filed an amended PCR application on April 6, 2021, where he argued, inter alia, his guilty plea was involuntary because his mental health problems prevented him understanding his rights such that he was “not capable of giving up his rights and entering a voluntary guilty plea.” App. 40 – 42.

On June 17, 2021, Petitioner’s PCR hearing proceeded before the Honorable George M. McFaddin, Jr. App. 43. Ola A. Johnson represented Petitioner. Id. Michael D. Davidson represented the state. Id.

An order denying Petitioner relief was filed on September 21, 2021. App. 104 – 123. The PCR court explained that plea counsel had reservations about Petitioner’s mental health and hired a forensic psychologist who found that Petitioner was competent. App. 121 – 122. Accordingly, the PCR court determined plea counsel did not provide ineffective assistance of counsel because

the mental competency reports done for Petitioner prior to the guilty plea supported a finding that Petitioner was competent to plead guilty. Id.

This petition follows.

## ARGUMENT

Plea counsel provided ineffective assistance of counsel when he failed to fully investigate Petitioner's competency to stand trial and seek a second mental health evaluation where plea counsel was aware of Petitioner's extensive mental health problems and where there was evidence Petitioner was incompetent at the time of his guilty plea.

### **Relevant Facts**

During the afternoon of March 17, 2017, at Richland Memorial Hospital in Richland County, Petitioner allegedly followed the complaining witness into a bathroom. App. 7, l. 3 – 9, l. 13. While in the bathroom, the complaining witness alleged that Petitioner “sexually assaulted” her and rummaged through her purse, but “was unable to find anything to take.” Id.

A second woman came into the bathroom and saw Petitioner leaving. Id. The complaining witness instructed the woman to get help. Id. The second woman then left the bathroom and got help for the complaining witness. Id. Petitioner was seen both entering and leaving the bathroom on surveillance footage<sup>1</sup> from a camera in the hospital. Id.

After the alleged incident, the responding officers made a photo ID line up to show to the complaining witness. Id. She identified Petitioner as the person who followed her into the restroom. Id. Petitioner was detained at the Lexington Medical Center the next day. Id. Petitioner allegedly waived his Miranda<sup>2</sup> rights and admitted he was the man in the surveillance video at Richland Memorial Hospital. Id. DNA was collected and “a partial YSDR profile matched [Petitioner].” Id. Petitioner was then arrested and charged with the current crimes. Id.

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<sup>1</sup> The officers that reviewed the surveillance footage recognized Petitioner as having been at the hospital before and that Petitioner was on trespass notice. App. 8, ll. 13 – 23.

<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

During the guilty plea hearing, plea counsel explained his misgivings about the condition of Petitioner's mental health. App. 4, ll. 12 – 23. Petitioner also showed signs of incapacity due to his mental health problems during the guilty plea hearing. Petitioner was confused regarding the negotiated sentence and needed the sentence explained to him repeatedly. App. 13, l. 20 – 15, l. 9. Additionally, when the plea court asked Petitioner how old he was, he had trouble recollecting his own age. The following back and forth occurred between Petitioner and the plea court during the guilty plea hearing:

Q. Okay. All right, and how old are you, sir?

A. I'm...

Q. Are you forty-seven?

A. My birthday [redacted]. I done forgot all that. I think I'm fifty, fifty years old.

Q. You'll be ---

A. That make me fifty, fifty-one or fifty-two, one, one out of the, one out of the two.

App. 6, ll. 1 – 8.

At Petitioner's PCR hearing, plea counsel admitted Petitioner struggled with his mental health his entire life. App. 74, l. 21 – 75, l. 18. Plea counsel explained that he obtained a copy of Petitioner's old file from the Richland County Public Defender's office from 2002 where Petitioner "was found competent by an evaluator." Id. Plea counsel further explained that he retained a private psychologist, Dr. McKee, who conducted an evaluation on August 15, 2017. Id. McKee's report stated Petitioner was competent. Id.

Petitioner testified at the PCR hearing as well. Petitioner wanted to withdraw his guilty plea. App. 51, l. 1 – 52, l. 4. He suffered from a lengthy history of mental health problems. App. 59, l. 13 – 63, l. 5. Petitioner was diagnosed with paranoid schizophrenia and received payments

from the Social Security Administration for it. Id. Petitioner was the victim of a police brutality incident where he was “sexually raped.” Id. He went to the Columbia Area Mental Health Center where he received treatment and was prescribed sleeping medicine to help him “cope” after being raped. Id. Petitioner was also treated at “Just Care” in the “Bryan Center” and was incompetent to stand trial while he was treated there. Id. Accordingly, Petitioner could not voluntarily plead guilty while he suffered from those mental health problems.

### **Discussion**

Plea counsel provided ineffective assistance of counsel when he failed to obtain a second evaluation to determine if Petitioner was competent to stand trial because plea counsel was aware of the extensive mental health problems that Petitioner suffered from “his entire life.” App. 4, ll. 13 – 23; App. 74, l. 21 – 75, l. 14. Moreover, Petitioner showed signs he was incompetent at the time of his guilty plea such that plea counsel should not have let the guilty plea proceed. App. 6, ll. 1 – 8; App. 13, l. 20 – 15, l. 9.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687. The two-part test adopted in Strickland also “applies to challenges to guilty pleas based on ineffective assistance of counsel.” Hill v. Lockhart, 474 U.S. 52, 58 (1985). However, “[p]lea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements.” Stalk v. State, 383 S.C. 559, 561, 681 S.E.2d 592, 593 (2009).

In order to find that Petitioner's plea counsel was ineffective for failing to fully investigate his mental capacity, Petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of Petitioner's case. See Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 50–51 (2004). To show “prejudice within the context of counsel's failure to fully investigate the petitioner's mental capacity, ‘the [Petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.’” Matthews, 358 S.C. at 459, 596 S.E.2d at 50 (alterations by court) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)).

Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Jeter, 308 S.C. at 232, 417 S.E.2d at 595. “The test of competency to enter a plea is the same as required to stand trial.” Matthews, 358 S.C. at 458 – 459, 596 S.E. 2d at 51. “The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” Id.

In this case, plea counsel should have further investigated into whether Petitioner was competent to plead guilty because plea counsel was aware that Petitioner suffered from extensive mental health problems. App. 4, ll. 13 – 23; App. 59, l. 13 – 63, l. 5; App. 74, l. 21 – 75, l. 14. Plea counsel hired a single psychologist, Dr. McKee, who determined Petitioner was competent to stand trial, but plea counsel should have gotten a second opinion. App. 4, ll. 13 – 23.

Plea counsel admitted during the plea hearing that he had concerns about Petitioner’s mental health. App. 4, ll. 13 – 23. Plea counsel also opined on Petitioner’s mental health problems during the PCR hearing. Specifically, plea counsel stated that Petitioner, “has struggled with mental health his entire life.” App. 74, l. 21 – 75, l. 14. The support for plea counsel’s

determination that Petitioner was competent to plead guilty was slim. Plea counsel relied on a nearly two decades old evaluation from the Department of Mental Health and the single psychologist he hired, McKee, to determine Petitioner was competent. Id.

Petitioner's mental health history was a tragic one. He was the victim of a police brutality incident where "the police jumped on [him]" and "[s]exually harassed [him] brutally bad... and sexually raped [him]." Id. As a result, Petitioner was injured both "mentally and physically." Id. Moreover, Petitioner suffered from paranoid schizophrenia and was treated at the Columbia Area Mental Health Center where he was prescribed sleeping medication to "help [him] cope with being... raped." App. 74, l. 21 – 75, l. 14; App. 59, l. 13 – 63, l. 5; Cf. Lee v. State, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (2011) (finding "[p]lea counsel could not be deficient if she had no indication of [Petitioner's] mental status").

Petitioner explained that there were periods of time in the past where he was incompetent to stand trial. App. 62, l. 23 – 63, l. 5. Furthermore, Petitioner showed signs of incompetence at the guilty plea hearing. Petitioner could not remember his own age during the guilty plea hearing and expressed confusion regarding the negotiated sentence. App. 6, ll. 1 – 8; App. 13, l. 20 – 15, l. 9. Plea counsel should not have let someone in that diminished state plead guilty without getting a second opinion as to his competency.

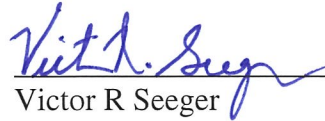
Despite plea counsel's concerns and Petitioner displaying his lack of competency at the plea hearing, plea counsel never sought a second mental health evaluation to ensure Petitioner was competent to stand trial. Based on the testimony at both the plea hearing and the PCR hearing regarding Petitioner's diagnoses and extensive mental health problems, Petitioner established by a preponderance of the evidence that he was incompetent at the time he entered his guilty plea.

Consequently, plea counsel provided deficient performance for failing to have Petitioner undergo a second competency evaluation. Matthews, 358 S.C. at 460, 596 S.E.2d at 51.

As to prejudice, plea counsel failed to fully explore and investigate Petitioner's incompetence because he relied on a nearly two decades old evaluation from 2002 and McKee's report that Petitioner was competent. App. 4, ll. 13 – 23; App. 74, l. 21 – 75, l. 14. Plea counsel's failure to have Petitioner undergo a second competency evaluation prejudiced Petitioner because "there was a reasonable probability that Petitioner was incompetent at the time of his guilty plea." See Matthews, 358 S.C. at 460, 596 S.E.2d at 51. Therefore, the PCR court erred in finding that plea counsel provided effective assistance of counsel.

**CONCLUSION**

By reason of the foregoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.



Victor R Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 12<sup>th</sup> day of May, 2022.

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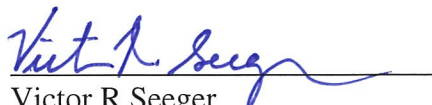
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Counsel for Charles Lamb states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on June 17, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Charles Lamb.

Respectfully Submitted,



Victor R Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 12<sup>th</sup> day of May, 2022.

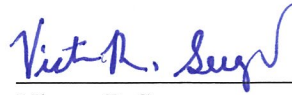
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his 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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ATTORNEY FOR PETITIONER

This 12<sup>th</sup> day of May, 2022.