

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Clifton Newman, Circuit Court Judge

RECEIVED

Jun 10 2022

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COURTNEY EARNELL FOLK,

APPELLANT

APPELLATE CASE NO. 2021-001340

ANDERS BRIEF OF APPELLANT

VICTOR R SEEGER
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The plea court erred when it accepted Appellant’s guilty plea as voluntarily entered without ordering a mental competency evaluation for Appellant because Appellant showed substantial evidence of his incompetency at the guilty plea hearing.4

Relevant Facts4

Discussion5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

<u>Boykin v. Alabama</u> , 89 S.Ct. 1709 (1969).....	5
<u>Godinez v. Moran</u> , 113 S.Ct. 2680 (1993).....	7
<u>Jeter v. State</u> , 308 S.C. 230, 417 S.E.2d 594 (1992).....	5
<u>Matthews v. State</u> , 358 S.C. 456, 596 S.E.2d 49 (2004).....	5
<u>Pate v. Robinson</u> , 86 S.Ct. 836 (1966).....	6, 7
<u>Pittman v. State</u> , 337 S.C. 597, 524 S.E.2d 623 (1999).....	5
<u>State v. Jacobs</u> , 393 S.C. 584, 713 S.E.2d 621 (2011).....	3
<u>State v. Nance</u> , 320 S.C. 501, 466 S.E.2d 349 (1996).....	3
<u>State v. Nesbitt</u> , 411 S.C. 194, 768 S.E.2d 67 (2015).....	3
<u>Taylor v. United States</u> , 282 F.2d 16, 23 (C.A.8 th Cir. 1960).....	7

STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred when it accepted Appellant's guilty plea as voluntarily entered without ordering a mental competency evaluation for Appellant because Appellant showed substantial evidence of his incompetency at the guilty plea hearing?

STATEMENT OF THE CASE

During the November 2021 term, the Bamberg County Grand Jury indicted Appellant for petit larceny enhanced and third degree burglary. R. 36 – 43.

On November 1 – 2, 2021, Appellant pled guilty before the Honorable Clifton Newman. R. 1. C. Dave Hayes represented Appellant. Id. David W. Miller represented the state. Id.

Appellant was on probation from a guilty plea to malicious injury to property on May, 20, 2021. R. 4, l. 11 – 5, l. 1. Appellant was sentenced to ten years' imprisonment suspended on five years' probation. Id.

Judge Newman accepted Appellant's guilty plea for petit larceny enhanced. R. 9, ll. 19 – 20. On the next day, November 2, 2021, Judge Newman accepted Appellant's guilty plea to third degree burglary. R. 17, l. 23 – 18, l. 6.

Appellant was sentenced to ten years' imprisonment for petit larceny enhanced, five years' imprisonment for third degree burglary, and his probation was revoked in full. R. 32, l. 19 – 33, l. 1. All his sentences were run concurrently. Id.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Nesbitt, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) (quoting State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). The trial judge’s determinations of competency must have evidentiary support and not be against the preponderance of the evidence. State v. Nance, 320 S.C. 501, 504-505, 466 S.E.2d 349, 351 (1996).

ARGUMENT

The plea court erred when it accepted Appellant's guilty plea as voluntarily entered without ordering a mental competency evaluation for Appellant because Appellant showed substantial evidence of his incompetency at the guilty plea hearing.

Relevant Facts

On July 17, 2021, Appellant allegedly entered the Bamberg–Erhardt High School. R. 5, l. 5 – 6, l. 5. A coach, Robert Williams, for the school arrived around 6:30 A.M. and saw a person inside the school already. Id. That person saw Williams and fled the school. Id. Williams called the police. Id.

The police arrived and searched the school. Id. They eventually accessed the security camera footage. Id. The footage depicted an individual inside the school; however, the individual had a mask on. Id.; R. 11, ll. 22 – 24.

For the enhanced petit larceny charge, on June 15, 2021, Appellant allegedly entered the car of Stephanie Jones and took her purse. R. 6, l. 6 – 7, l. 4. The car was in the parking lot of a “small farm” where Ms. Jones and Appellant worked. Id. A surveillance camera recorded footage of Appellant entering the car and then exiting with the purse in his hand. Id. Jones alleged that \$140, some credit cards, and her driver's license were taken. Id.

During Appellant's guilty plea he disputed some of the facts against him. R. 8, l. 15 – 9, l. 18; R. 9, l. 25 – 13, l. 6. He stated he did not enter the school and was not the person in the school's surveillance video. R. 9, l. 25 – 13, l. 6.

Appellant also made several statements that illustrated his serious mental health problems. R. 8, l. 15 – 9, l. 18. Appellant repeatedly stated he “want[ed] somebody to kill [him].” R. 9, ll. 12

– 14. He also stated that he had attempted suicide in the past by intentionally overdosing but survived. R. 9, ll. 17 – 18.

Judge Newman accepted Appellant’s guilty plea to petit larceny but did not accept Appellant’s guilty plea to third degree burglary on November 1, 2021 and reconvened the plea hearing the next day. R. 9, ll. 19 – 20. On November 2, 2021, the plea court asked Appellant if he entered the school, to which Appellant replied “yes.” R. 15. With no further inquiry the plea court accepted Appellant’s guilty plea to third degree burglary as well. R. 17, l. 23 – 18, l. 6.

During the November 2, 2021, reconvened plea hearing, plea counsel explained Appellant’s extensive history of mental health problems. R. 23, l. 25 – 27, l. 4. Appellant tried to kill himself in multiple ways in the past such that the plea court should have taken his statements about wanting to die more seriously. Id. Appellant tried to kill himself in ways ranging from “jumping out of a moving vehicle... when he was young to having a firearm in his mouth and having to be talked down.” Id. Plea counsel also explained that Appellant may have had issues with depression and kleptomania. Id.

Discussion

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 89 S.Ct. 1709 (1969)). Furthermore, due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). “The test of competency to enter a plea is the same as required to stand trial.” Matthews v. State, 358 S.C. 456, 458 – 59, 596 S.E.2d 49, 51 (2004). “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. A guilty plea entered while incompetent is not a voluntary guilty plea.

The trial, or plea, court has the constitutional duty to institute a competency hearing *sua sponte* if there is substantial evidence before the court that defendant may be incompetent. See Pate v. Robinson, 86 S.Ct. 836 (1966). In Pate, Robinson was convicted of the murder of his common law wife and was sentenced to life imprisonment. Pate, at 837. It was conceded at trial that Robinson shot and killed his wife, but trial counsel claimed that Robinson was insane at the time of the shooting and raised the issue of his incompetence to stand trial. Id. On appeal to the Supreme Court of Illinois, Robinson argued the trial court’s rejection of his contention that he was incompetent to stand trial deprived him of due process of law. Robinson’s conviction was affirmed because “no hearing on mental capacity to stand trial had been requested.” Id.

The U.S. Supreme Court concluded “Robinson was constitutionally entitled to a hearing on the issue of his competence to stand trial.” Id. at 838. On appeal to the Supreme Court, the state argued “Robinson intelligently waived this issue by his failure to request a hearing on his competence at the trial; and further, that on the basis of the evidence before the trial judge no duty rested upon him to order a hearing *sua sponte*.” Id.

Testimony from four witnesses explained that Robinson had a long history of “disturbed behavior.” Id. at 838 – 39. Robinson went to the “Psychopathic Hospital” where it was reported that he heard voices that threatened him and saw hallucinations of animals as well as “a man outside with a pistol aimed at him.” Id. at 839. The hospital report also suspected he was schizophrenic. Id. The four defense witnesses “expressed the opinion that Robinson was insane.” Id. at 841.

The Court determined that the state's insistence Robinson deliberately waived the competence issue by failing to demand a "sanity hearing" as provided by Illinois law was "contradictory" as an incompetent defendant cannot intelligently waive his right to have the court determine his competency. *Id.* at 841 (citing Taylor v. United States, 282 F.2d 16, 23 (C.A.8th Cir. 1960)). Accordingly, the Court held, "Having determined that Robinson's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial, we direct that the writ of habeas corpus must issue and Robinson be discharged, unless the State gives him a new trial within a reasonable time." *Id.* 842.

In this case, the plea court should not have accepted Appellant's guilty plea without affording him a mental health evaluation. The plea court had a "constitutional duty to institute a competency hearing *sua sponte*" because Appellant presented substantial evidence before the court that he was incompetent. See Pate v. Robinson, *supra*.

Appellant exhibited symptoms of serious mental health problems during the hearing. He suffered from drug addiction and potentially kleptomania. R. 23, l. 9 – 27, l. 4. Appellant told the plea court he wanted someone to kill him and tried to commit suicide by overdosing. R. 8, l. 15 – 9, l. 18. While plea counsel failed to request a mental competency evaluation, he also informed the plea court of Appellant's extensive mental health problems. R. 23, l. 9 – 27, l. 4. Appellant attempted to commit suicide multiple times in his past. *Id.* Accordingly, the plea court should not have accepted Appellant's guilty pleas without first ordering that a competency evaluation be conducted to ensure that Appellant was competent to plead guilty. See Godinez v. Moran, 113 S.Ct. 2680, 2687 – 88 (1993) (holding that the standard for competency to plead guilty in the same as proceeding to trial.)

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court vacate his convictions and remand his case to the Bamberg County Court of General Sessions for a new trial.



Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of June, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COURTNEY EARNELL FOLK,

APPELLANT

APPELLATE CASE NO. 2021-001340


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Courtney Earnell Folk states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on November 1 & 2, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Courtney Earnell Folk.

Respectfully Submitted,



Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of June, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Clifton Newman, Circuit Court Judge

RECEIVED

Jun 10 2022

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COURTNEY EARNELL FOLK,

APPELLANT

APPELLATE CASE NO. 2021-001340

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Guilty Plea Hearing dated November 1, 2021;
- (2) Guilty Plea Hearing dated November 2, 2021; and
- (3) Indictments and Sentence Sheets

I certify that this designation contains no matter which is irrelevant to this appeal.



Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 10th day of June, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."



Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 10th day of June, 2022.

RECEIVED

Jun 10 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

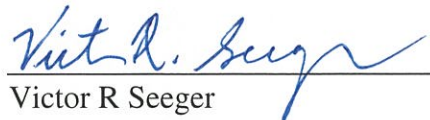
COURTNEY EARNELL FOLK,

APPELLANT

APPELLATE CASE NO. 2021-001340

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Courtney Earnell Folk, #261360, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 10th day of June, 2022.



Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT