

21-7228

ORIGINAL

FILED
FEB 17 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Timothy Donald Dingle — PETITIONER
(Your Name)

vs.

Warden of Lieber C.I. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy Donald Dingle 298989
(Your Name)

Lieber C.I. P.O. Box 205
(Address)

Ridgerville S.C. 29472
(City, State, Zip Code)

N/A
(Phone Number)

1 Page

QUESTION(S) PRESENTED

- (1) Did both State Courts and District Court fail to consider or grant a competency hearing or conduct a psychiatric evaluation?
- (2) Did P.C.R. Court, In The Court of Common Pleas For The Third Judicial Circuit, Denied Petitioner a Second P.C.R. hearing when U.S. District Court, District of South Carolina granted an additional twenty (20) days to file his response in opposition to Summary Judgment?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

All parties and related cases or added on additional paper.

1 page

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States Court of Appeals
For the Fourth Circuit No. 21-6326 [9:19-cv-02426-JD] 1-2

United States Court of Appeals
For the Fourth Circuit No. 21-6326 [9:19-cv-02426-JD] 3-4

United States District Court District of South Carolina 5-6-7
[C/A No. 9:19-cv-02426-JD]

In The United States District Court
For The District of South Carolina Beaufort Division 8-9-10-11
C/A No. 9:19-02426-JD-MHC

The Supreme Court of South Carolina [No. 2020-000863] 12-13

In The Court of Common Pleas
For The THIRD JUDICIAL CIRCUIT [2017-CP-43-1575] 14-15-16

STATUTES AND RULES

N/A

OTHER

N/A

11
1 Page

TABLE OF CONTENTS.

A. Federal Courts

e.g. Appendix A - Pages 1 and 2.

United States Court of Appeals
For The Fourth Circuit.

e.g. Appendix A - Pages 3 - And 4.

United States Court of Appeals
For The Fourth Circuit.

e.g. Appendix A - Pages 5 - And 6 - 7

United States District Court,
District of South Carolina.

e.g. Appendix A - Pages - 8 - 9 - 10 - 11

In the United States District Court
For The District of South Carolina
Beaufort Division.

State Courts

e.g. Appendix A - Pages - 12 And 13

The Supreme Court of South Carolina.

e.g. Appendix B - Pages - 14 - 15 - And 16

In the Court of Common Pleas
For The THIRD JUDICIAL CIRCUIT.

TABLE OF CONTENTS

Table of Authorities Cited	1- Page
Opinions Below	1- Page
JURISDICTION	1- Page
Constitutional and Statutory Provisions Involved	1- Page
Statement of the case with Supporting Facts	2- Pages 7- Pages
Reason For Granting the Petition	1- Pages
Petition For Writ of Certiorari	14- Pages
Conclusion	1- Page
Proof of Service	1- Page
ADDED - U.S. District Court of South Carolina [Beaufort] Civil Docket for case No. 9:19-cv-02426-HMH-MHC	5- Pages

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A B to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the THIRD JUDICIAL CIRCUIT court appears at Appendix A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/18/2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Nov-30-2021, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including 40 Days (date) on 11/30/2021 (date) in Application No. A. N/A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 1/4/2021 - 3/10/2021. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 3/10/2021, and a copy of the order denying rehearing appears at Appendix .

An extension of time to file the petition for a writ of certiorari was granted to and including 40 Days (date) on 1/4/2021 (date) in Application No. A. N/A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

It's a Constitutional violation of Petitioner due process rights, to denied the fundamental Protections of due process when his trial Counsel state and Federal Courts neglected their duties and responsibility to ensure that every defendant receives a fair trial.

In State V. Hornsby, 326 S.C. 121, 448 S.E. 2d 869 [1997]. Denial of due process occurs when the defendant in a Criminal trial is denied fundamental fairness essential to the concept of Justice. [Emphasis added]

In State V. Quattlebaum, 338 S.C. 444, 527 S.E. 2d 105 [2000], Every Judge, attorney, Prosecutor, defendant and all citizens of South Carolina have a vital interest in the fair administration of Justice.

The Judiciary bears the ultimate responsibility for maintaining judicial integrity and high standards of professional conduct among the members of the bar, and for protecting and defending the Constitutional rights of the the accused.

In State V. Stanley, 365 S.C. 24, 615 S.E. 2d 485 [2005]. A Judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice.

In State V. White 371 S.C. 439, 639 S.E. 2d 160 [2006]. The Constitution entitles a criminal defendant a fair trial.

STATEMENT OF THE CASE

Petitioner Post Conviction Relief Issues.

Trial Counsel failed to motion the Court to conduct a mental evaluation prior to trial to determine applicant's competency, literacy, and culpability in connection with his alleged criminal conduct.

State v. Blair 275 S.C. 529, 273 S.E. 2d [1981], holding that South Carolina follows the traditional test of McNaughten to determine criminal responsibility for a defendant who has the capacity to distinguish moral or legal right from moral or legal wrong, but because of mental disease or defect lacks sufficient capacity to conform his conduct to the requirement of the law. Here is a copy of Petitioner request for a psychiatric examination. 2 Pages and Certificate of Service. 1 Page. PCR Application was recorded August 21/2017, BY Clerk of Court Sumter County S.C.

Final order of Dismissal, From the Third Judicial Circuit Court was dismissed on April 13th 2020 - Based on Statute of limitation has expired. Here is a copy of that final order of dismissal. Petitioner did file this with the United States District Court District of South Carolina. Here is a copy of Court order on judgments, entered on 5/5/2020. 1 page

Statement of the Case.

On September 4th, 2020 Petitioner received a remittitur from the Supreme Court of South Carolina. Here is the original copy of that remittitur.

Petitioner believes he was denied a Constitution right guaranteed him by the Constitution of the United States. Petitioner was denied the fundamental protections of due process when the lower courts denied the Supreme Court of South Carolina remittitur.

Here are supported facts. On 5/5/2020, the United States District Court District of South Carolina, Petitioner received a letter stating that he was granted an additional twenty (20) days to file his response in opposition to summary judgment here are the original copy of that letter.

On ~~5/~~^{5/} 18/2020 Petitioner response in opposition re 41 Motion for Summary Judgment filed by Petitioner, the additional twenty days was not up. Petitioner was denied his Constitutional rights to a second PCR hearing, Petitioner case should have been call back to PCR Court.

Here are a copy of U.S. District Court, District of South Carolina [Beaufort] Civil Docket for case No-9:19-cv-02426-HMH-MHC.

raised a defense regarding the scope and nature of the above claim [See Attached Exhibit 4 Pages, ground No. 9 and Ft N. 8] that are pending Sub Judice in this State Court, demonstrating that the above requested order is necessary for determining whether or not Petitioner has a Plausible defense and that lack of expert psychiatric assistance would Prejudice Petitioner's defense.

Petitioner's grounds for relief were not knowingly, Voluntarily and intelligently waived in any State Court proceeding and there was Prejudice. Petitioner did not knowingly or understandingly forego the privilege of seeking to vindicate Federal Claims in State Courts whether strategic or tactical or any other reason which can fairly be described as deliberate by-pass of State Procedures. See Johnson v. Zerbst 304 U.S. 458, 464. Coleman v. Thompson 501 U.S. 722. Murray v. Carrier 477 U.S. 478. Fay v. Noia 372 U.S. 391.

Prayer For Relief

Here to. Petitioner supplicate the Honorable court to grant -- order for Psychiatric Examination and Competency hearing or other relief which may be appropriate.

Respectfully

CC: James C. Campbell

Clerk of Court Sumter County
215 North Harbin Street
Sumter, S.C. 29150

Timothy D. Ringle

20f2

Brianna Schill
Assistant Attorney General
P. O. Box 11549
Columbia S.C. 29211-1549

Clerk Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543-0001

Petition For Writ of Certiorari.

Petitioner questions presented are, Did both State Courts and District Court fail to consider or grant a competency hearing or conduct a psychiatric evaluation? [Even upon specific request addressed to both state court's and District Courts.]

Supporting facts will show why a writ of certiorari should be granted. Petitioner argues the defect lies not in the district court's resolution of the merits of the procedural due process claim of deprivation of a competency hearing or retrospective psychiatric evaluation since it never reached those merits, but in its failure to make any ruling on a claim that the record supports which was presented in petitioner's habeas corpus action that asserts this claim which the enclosed records support.

In respondent's reply to response for Motion for Summary Judgment Id. at Pg Ft. N.3

Petitioner has technically exhausted his state remedies. He was tried, convicted by a jury, and sentenced. He filed a direct appeal, which was denied. He filed a PCR action, which was denied. He appealed the denial of PCR, which was denied. Petitioner filed a 2nd PCR action that was conditionally dismissed and then finally dismissed as time barred, improperly successive under state law, and failing to state a claim upon which relief could be granted. As a result, Petitioner has technically exhausted his state remedies. His 2nd PCR is time barred and improperly successive under South Carolina law. And, he cannot show the 2nd PCR Court dismissed his 2nd PCR action on an improper basis.

However, he did not properly exhaust his state remedies, and as a result, most of his federal habeas grounds are procedurally barred. As set forth in Respondent's Return, Petitioner's Grounds **one through three, six, eight through seventeen, part of Ground eighteen, all of Ground nineteen, and all of Ground twenty** are procedurally barred or are not cognizable. In his Response, Petitioner has not shown cause and prejudice or actual innocence to overcome the procedural bar or even attempted to do so. (ECF #47 and 47-1 [attachments]). He has not attempted to show how the grounds that are not cognizable are somehow cognizable on federal habeas review. And, as set forth in Respondent's Return, there is no merit to any of Petitioner's Grounds in this setting. (ECF #40). In his Response, Petitioner has not even attempted to argue how any of his grounds have any merit in this setting. (See ECF #47 and ECF #47-1). His attachments to his Response do not create a genuine issue of material fact either. (ECF #47-1).³ Therefore, because Petitioner's Response has failed to create or point to

³ In fact, Petitioner has not shown there is any merit whatsoever to the allegations raised in his 2nd PCR action, including that counsel was ineffective in failing to have a competency evaluation conducted. Petitioner has not offered any evidence he was not competent to stand trial or insane at the time of the crimes. Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (2004); Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992); Garren v. State, 423 S.C. 1, 813 S.E.2d 704 (2018).

Petitioner could have raised the allegations he raised in his 2nd PCR action in his 1st PCR action. PCR action is time barred under state law and improperly successive. Rule 243(C), SCACR. Court relied on an improper basis in dismissing the 2nd PCR action, because Petitioner's 2nd PCR Petitioner will not be able to properly appeal this ruling because he cannot show the 2nd PCR appeal from the Final Order Dismissal does not expire until today, May 26, 2020. However, the envelope in his attachments to his Response. (See ECF #47-1). As a result, the time for filing not receive written notification of the Final Order of Dismissal until April 24, 2020 according to 2nd PCR dismissed his 2nd PCR application. (See Final Order of Dismissal). And, Petitioner did Order of Dismissal dismissing his 2nd PCR action was not dismissed by the 2nd PCR Court. The ² As previously stated, Petitioner is actually incorrect in his Response. His appeal from the Final

to the Motion for Summary Judgment. (See ECF 47-1).

Judgment in this federal habeas corpus action. Nor do Petitioner's attachments to the Response point to a genuine issue of material fact to overcome Respondent's Motion for Summary this 2nd PCR. (ECF #47 and 47-1 [attachments]). These arguments simply do not create or informs the Court of matters he would have raised on appeal if he had been appointed counsel in time for filing his appeal has not run. (ECF #47 and 47-1 [attachments]).² Petitioner also above, and Petitioner claims or complains that the 2nd PCR Court dismissed his appeal and the informs the Court that his 2nd PCR action was dismissed by Final Order of Dismissal as set forth In his Response to Respondent's Motion for Summary Judgment, Petitioner merely setting. (ECF #47 and 47-1 [attachments]).

not respond to Respondent's arguments that the grounds he asserts do not have any merit in this cause and prejudice or actual innocence. (See ECF #47 and 47-1 [attachments]). Finally, he does grounds are procedurally barred or not cognizable in this setting; and, he does not even argue #47 and 47-1 [attachments]). Petitioner does not respond to the fact most of his federal habeas to Respondent's Motion for Summary Judgment or Return and Memorandum of Law. (See ECF #41) does not create a genuine issue of material fact. In fact, Petitioner does not really respond Petitioner's Response (ECF #47) to Respondent's Motion for Summary Judgment (ECF

REPLY TO PETITIONER'S RESPONSE

[In fact Petitioner has not shown there is any
whatsoever to the allegations raised in his 2nd PCR
action including that counsel was ineffective in
failing to have competent evaluation conducted. Petitioner
has not offered any evidence he was not competent to
stand trial or insane at the time of the crimes.]

Petitioner asserts that these incompetence claims
cannot be supported or either denied without a com-
petency hearing being conducted and expert psychiatric
testimony which in this case Petitioner was unduly
deprived of either.

In James V. Singletary 957 F.2d 1562 [11th Cir 1992]
[Head note 16] It has long been established that the
conviction of an incompetent defendant denies him
or her of due process of law guaranteed in the Fourteenth
Amendment. See Pate v. Robinson 383 U.S. 375, 378, 86
S.Ct 836 838 [1996] [Per curiam opinion summarily
vacating the judgment and remanding to the district
court for a competency hearing]. Federal courts are
bound by state court's failure to hold hearing into com-
petency of defendant to stand trial.

Petitioner requested a retrospective competency hearing
in both state courts and district court. It is sufficient
to find for these purposes the responsibility for the failure
to hold a constitutionally adequate competency hearing.

lies squarely with the Court. Petitioner's due process rights were violated by failure of state and federal courts to provide an opportunity to present evidence, cross examine witness or challenge his competency in any meaningful way.

This Petition for Writ of Certiorari exist under the case ~~involves~~ involves one or more questions of exceptional importance.

Supporting facts will show why a Writ of Certiorari should be granted. Petitioner asserts a true claim for relief from judgment that the state courts had failed to rule on the issue whether Petitioner was deprived of procedural due process by counsel's failure to demand a competency hearing or to conduct a psychiatric evaluation before trial during trial, post trial or anytime whatsoever. The Magistrate Judge had made no findings in regard to this claim in this habeas corpus action and no findings were made with regard to counsel's failure to investigate Petitioner's insanity at the time of the offense.

This issue was incorporated in the Magistrate's Report and Recommendation [Id. at P.6 Ground 7] and [P.13 at the end of Ft 7] which summarily rely on state procedural default where at on

Counsel for failing to prepare and present an adequate defense [Respondent's Grounds Two, Three, Twenty]. ECF No. 16-2 at 8, 111–15.

Ground Three: Ineffective assistance of PCR Counsel for failing to (1) assert Trial Counsel was ineffective for failing to prepare and present an adequate defense, (2) raise issue of State witness being “loaded off beer” at trial, and (3) present the witnesses Trial Counsel should have called [Respondent's Grounds Eight & Twelve]. ECF No. 16-2 at 8, 118.

Ground Four: Ineffective assistance of PCR Appellate Counsel for failing to present issue regarding Trial Counsel's testimony at the PCR hearing that State witness Henry Dingle was “loaded off beer” [Respondent's Ground Thirteen]. ECF No. 16-2 at 9.

Ground Five: Ineffective assistance of Trial Counsel for failing to investigate the crime scene, review the investigative report, and discover information that could have been used to challenge the State witnesses' credibility [Respondent's Grounds Four, Five, Fourteen, Fifteen, Eighteen, & Nineteen]. ECF No. 16-2 at 10, 32–34, 88–98, 37–182.

Ground Six: “The sole basis of [Petitioner]’s conviction was perjured testimony which was knowingly used by the prosecuting authorities in order to obtain a conviction and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him. This conviction was based entirely upon evidence the prosecutor knew was false” [Respondent's Ground Sixteen]. ECF No. 16-2 at 57, 180.

Ground Seven: Ineffective assistance of Trial Counsel for failing to move for a mental evaluation prior to trial to determine Petitioner's competency, literacy, and culpability in connection with his alleged criminal conduct [Respondent's Ground Nine⁶]. ECF No. 16-2 at 65, 162, 170–75.

Ground Eight: Ineffective assistance of Trial Counsel for failing to object to Henry Dingle's testimony [Respondent's Ground One]. ECF No. 16-2 at 119–20.

Ground Nine: Ineffective assistance of Trial Counsel for failing to object to an improper jury charge [Respondent's Ground Seven]. ECF No. 16-2 at 148–51.

II. STANDARDS OF REVIEW

A. Summary Judgment Standard

Summary judgment is appropriate if a party “shows there is no genuine dispute as to any

⁶ This ground corresponds to Respondent's Ground Eleven.

478, 488–97 (1986). Absent a showing of cause, the court is not required to consider actual prejudice. *Turner v. Jabe*, 58 F.3d 924, 931 (4th Cir. 1995). However, if a petitioner demonstrates sufficient cause, he must also show actual prejudice in order to excuse a default. *Murray*, 477 U.S. at 492. To show actual prejudice, the petitioner must demonstrate more than plain error. When a petitioner has failed to comply with state procedural requirements and cannot make the required showing of cause and prejudice, the federal courts generally decline to hear the claim. *Id.* at 496.

III. DISCUSSION

Respondent asserts all of Petitioner’s grounds for relief are defaulted, except for portions of Ground Five (Respondent’s Grounds Four, Five, and part of Ground Eighteen) and Ground Nine (Respondent’s Ground Seven). *See* ECF No. 40 at 32–57. Petitioner has not challenged Respondent’s assertion of default, nor has he claimed cause and prejudice to excuse the default.⁷

⁷ Further, after an independent review of the record, the Court agrees with Respondent’s default analysis. Ground One was preserved at trial and raised on direct appeal. However, it concerns an issue of state evidentiary law and is not cognizable on federal habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.”). To the extent Ground One alleges a related claim of ineffective assistance of counsel, that claim was not presented at PCR. Likewise, Petitioner did not present Ground Two’s allegations of ineffective assistance of Appellate Counsel at PCR. Petitioner’s claims of ineffective assistance of PCR counsel in Ground Three are not cognizable on federal habeas review as independent grounds for relief. *See* 28 U.S.C. § 2254(i) (“The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.”); *Martinez v. Ryan*, 566 U.S. 1, 16 (2012) (section “2254(i) precludes [a habeas petitioner] from relying on the ineffectiveness of his post-conviction attorney as a ‘ground for relief’”). Petitioner’s claim of ineffective assistance of PCR Appellate Counsel in Ground Four is also not a cognizable ground for relief in this action. *See* 28 U.S.C. § 2254(i); *Martinez*, 566 U.S. at 16 (expressly declining to “extend [its holding] to attorney errors in any proceeding beyond the first occasion the State allows a prisoner to raise a claim of ineffective assistance at trial”). The portions of Ground Five not addressed on the merits below were not presented to and considered by the PCR Court. Petitioner’s perjury claims in Ground Six were arguably presented at the PCR evidentiary hearing; however, they were not raised on direct appeal or PCR appeal. Petitioner did not present Ground Seven in his first PCR proceeding. Petitioner did present Ground Seven in his second PCR application, but that application was dismissed by the state courts on adequate and independent state law grounds. Lastly, while Petitioner did discuss Henry Dingle’s trial testimony and his allegation that Henry Dingle was drunk, Petitioner did not raise this particular ineffective

time whatsoever, it has been argued that Petitioner knowingly voluntarily or intelligently, relinquished waived or abandoned any known or unknown Constitutional right to a fundamentally fair procedure in any state or federal court. Petitioner has been prejudiced.

Petitioner did response to Honorable Judge MARY H. Cherry Report and Recommendation. Here is a copy of Petitioner Response. This copy is the same as the one Petitioner mailed to Judge Cherry. on Page 3 of 3 Petitioner ~~did not~~ did asked for appointed Counsel, that Petitioner did not understand ① Exhaustion Page 16, ② Procedural Default / by Pass Page 11. ③ Cause and Actual Prejudice Page 12. And Discussion Page ~~13~~ 13.

Petitioner also needed help from appointed Counsel to get records from social security office. Here are the COPIES of answers Petitioner got from Social Security office. These records would have help Petitioner with his case.

Relief Requested:

Petitioner would ask Honorable Supreme Court of the United States to grant this writ of Certiorari, Petitioner contends that he is entitled to relief as to each of these issues, and any issue that can be reasonably ascribed to these issues and supplicate the Honorable Court to vacate or give Petitioner a new trial in State of South Carolina, City of Sumter or stay the Mandate and remand this case for evidentiary hearing on the issue ~~of~~ of mental incompetence and other relief that the Honorable Supreme Court may deem just and proper in this instance to protect Petitioner rights to procedural due process and prevent fundamental miscarriage of due justice -

Timothy Donald Dingle

Date _____

REASONS FOR GRANTING THE PETITION

Petitioner addressed Reasons Petition For Writ of certiorari should be granted on attach Pages,
Address to Clerk Supreme Court of The United States. 1 First Street N.E. Washington D.C.
20543 - 0001

Petition For Writ of certiorari.
And supporting facts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy Donald Simpson

Date: 2022