

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
2007-KA-00814-COA**

PATRICK D. COLEMAN

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLANT

**APPEAL FROM THE CIRCUIT COURT OF
LAUDERDALE COUNTY, MISSISSIPPI**

(Oral Argument Requested)

PREPARED BY:

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of Record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or refusal.

Honorable Lester Williamson
Lauderdale County Circuit Court Judge

E.J. Bilbo Mitchell, Esquire
District Attorney-Lauderdale County, Mississippi
P.O. Box 5163
Meridian, Mississippi 39302-5163

Patrick D. Coleman
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This the 28 day of June, 2010

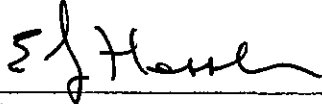

Eric J. Hessler, Attorney for Appellant

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STATEMENT OF ISSUES

The issues in this appeal are as follows;

- (1) Did the trial court err and commit reversible error by failing to hold a competency hearing to determine whether or not the defendant was competent to stand trial?
- (2) Whether or not it is probable that but for the trial counsel's deficient and ineffective performance, the verdict in this matter would have been different?

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STATEMENT OF THE CASE

On March 20, 2008 Patrick Detoya Coleman and Richard Luther Coburn III were indicted for Murder/Manslaughter of Fredrick Lee Pruitt. The indictment alleged the death, which occurred by shooting, happened on November 28, 2007.

On July 5, 2008 attorney Wanda Abioto filed a notice of appearance in this matter, inadvertently referring to the Defendant by the erroneous name of "Brandon Gillon"

On November 24, 2008 Attorney Abioto filed a Motion for Psychiatric Examination and/or Treatment.

On January 14, 2009 this Order for Mental evaluation was granted by the Court.

On March 23, 2009 Attorney Abioto filed a Motion for Continuance stating, among other things, that the Defendant was still awaiting the Court ordered evaluation. The continuance was granted but a handwritten notation was added stating that, "This case is set for trial June 1, 2009, failure of defense counsel to appear at 9:00 am on trial date will be considered by the Court as Direct Criminal Contempt".

No other Motions or correspondence appear in the record until June 2, 2009 where in Attorney Abioto filed the following Motions and/or correspondence;

1. Notice of insanity defense.

2. Reciprocal Discovery request of Defendant, Patrick Coleman
3. Motion for mistrial and reinstatement of Motion for Competency Hearing pursuant to Rule 9.05 of the uniform circuit and County Court Rules.
4. Affidavits of Shundobie Coleman and attorney Wanda Abioto.
5. Five (5) Defense Jury instructions (four (4) of which were withdrawn and one (1) which was refused.

On June 2, 2009, the Jury returned a verdict against the Defendant, finding him guilty of Murder. At no time prior to this trial was a hearing ever held to determine the competency of the defendant to stand trial, despite the courts order granting the mental evaluation of the defendant on this issue.

On June 12, 2009 attorney Abioto filed a Motion for a new trial or in the alternative for Judgment notwithstanding the verdict. This Motion set forth fourteen (14) reasons in support of the Motion.

On August 7, 2009 the Court signed an Order in this case overruling the Motion for a new trial or J.N.O.V. This Appeal follows.

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SUMMARY OF ARGUMENT

The Appellant contends that the trial court erred in not requiring that a hearing be held in regards to the defendant's ability to know the nature and quality of his alleged acts or his ability to know that those alleged acts would have been wrong at the time he committed those acts as well as his competency to stand trial and /or assist in his defense. By failing to hold such a hearing the Trial Court committed reversible error by abusing its discretion.

This abuse of discretion resulted in the substantial rights of the defendant to be detrimentally affected. Additionally, by not conducting such a hearing, the Trial Court ignored the mandatory language Rule 9.06 U.C.C.R., and prevented the defendant from presenting any competing evidence to the ruling of the Court.

Furthermore, the Appellant contends that his Trial Counsel's performance was ineffective for the following reasons:

1. By failing to conduct the necessary and basic pretrial investigation into this matter, nor developing a theory of defense, although many were available.
2. By failing to file any pretrial motions in this matter, although many were applicable.
3. By not preparing the defendant to testify or consult with him about the case.

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**ARGUMENT OF APPELLANT WITH
SUPPORTING AUTHORITIES**

I. Did the trial court err and commit reversible error by failing to hold a competency hearing to determine whether or not the defendant was competent to stand trial?

The well founded standard of review for the admission or exclusion of evidence in Mississippi is abuse of discretion. *Troupe v. McAuley*, 955 So.2d 848, 855 (Miss. 2007) citing *Poole v. Avara*, 908 So.2d 716 (Miss. 2005). A trial Judge, therefore, “enjoys a great deal of discretion as to the relevancy and admissibility of evidence unless the Judge abuses this discretion so as to be prejudicial to the accused, the Court will not reverse this ruling.” *Shaw v. State*, 915 So.2d 442, 445 (Miss 2005) (citing *Jefferson v. State*, 818 So.2d 1099, 1104 (Miss. 2002). Reversal is proper only where such discretion has been abused and a substantial right of the party has been affected. *Johnson v. State*, 666 So.2d 499, 503 (Miss.1995) citing *Green v. State*, 614 So.2d 926, 932 (Miss.1992).

In the case before this Honorable Court, the defendant, Patrick Coleman, by and through his attorney or record Wanda Abioto, filed a Motion for Psychiatric Examination and/or Treatment. This motion was properly filed on November 24, 2008. (*See Record Vol.1, p. 21*) After considering the facts and circumstances set forth in the motion, the Honorable Judge Lester Williamson signed an order granting this motion on the same

day, November 24, 2008, ordering that such an examination be conducted. The purpose of the order was to determine (a) whether or not he (the defendant) had a factual as well as rationale understanding of the nature and object of the legal proceedings against him, and had the ability reasonably to assist his attorney in the preparation of his defense, and (b) to describe his (the defendant's) mental state at the time of the alleged offense(s) with respect to his ability to know the difference between right and wrong in relation to his actions at that time. (*See Record Vol. 1 p. 23*).

On January 14, 2009 a second order for mental evaluation and treatment was granted by the Trial Judge, this time declaring the defendant indigent and ordering that the County of Lauderdale, Mississippi bear the costs of such evaluation. (*See Record Vol. 1, p. 30*). Based on information gleaned from the trial court transcript, it appears the mental evaluation report was received by the court on May 18, 2009, approximately ten days before the June 1 trial date of the defendant. (*See Trial Transcript Vol. 1, p.11, lines 25-27*). It should be noted that at no time prior to the June 1, 2009 trial date does it appear that this report was filed into the record.

On the morning of June 1, 2009 Attorney Abioto appeared in the Chambers of the Honorable Judge Lester Williamson. The matter was called to trial and Attorney Abioto timely requested a continuance of the trial in order that a competency hearing be held in accordance with the Rule 9.06 Uniform Circuit Court Rule as it applies to such hearings. Attorney Abioto specifically asserted the rights of the defendant to have a hearing in such a matter, as well as identified the defendant's mental condition as being a "major part of his defense". (*See Trial Transcript VOL. 1, pp.5-7, line 9*). The trial court refused the continuance, and refused to hold such a hearing. Additionally the court indicated that by

not asking for such a hearing the court considered the issue to have been waived by the defense attorney. (*See Record Vol. 1, pp11-12, lines 29-2*). The court then proceeded to trial without holding a hearing to determine competency. (*See Trial Transcript Vol. 1, p. 11-12, line 13*). Due to the denial of the hearing, at no time during did any witness testify or offer evidence as to the defendant's state of mind or his competency to stand trial, nor was the defendant able to put forth his defense of insanity.

Rule 9.06 of the Uniform Circuit Court Rules, entitled Competence to Stand Trial, states, in pertinent part that;

If before or during trial the court, of its own motion or upon the motion of an attorney, has reasonable grounds to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with 99-13-11 of the Mississippi Code Annotated of 1972.

After examination, the court shall conduct a hearing to determine if the defendant is competent to stand trial. After hearing all the evidence the court, the court shall weigh the evidence and make a determination of whether the defendant is competent to stand trial. If the court finds the defendant is competent to stand trial, then the court shall make the finding a matter of record and the case will then proceed to trial.

Furthermore, Rule 9.06 states:

The defendant's attorney, as the defendant's representative shall not waive any hearing authorized by this rule, but is authorized to consent, on behalf of the defendant, to necessary surgical or medical treatment and procedures.

The plain language of Rule 9.06 makes it quite clear that once a court ordered mental evaluation is completed, the necessity to hold a competency hearing to determine the defendant's competency to stand trial is mandatory and not discretionary. In emphasizing how important this right is to the defendant's

due process rights, the rule strictly prohibits the defendant's own defense attorney from waiving any such hearing, for any reason.

This Honorable Court faced a very similar situation in *Sanders v. State*, 9 So.2d 1132 (Miss. 2009). In *Sanders*, this Court emphasized the mandatory nature of the rule, and stated "In the face of this plain language, it is evident that it would be error not to hold a competency hearing once a trial court orders a psychiatric evaluation to determine competency to stand trial." Furthermore, the court, in refusing to hold an on the record hearing in which the defense could offer competing evidence, also opined that the defense had "waived" that right by failing to ask for it.

The trial courts position on this issue is also clearly erroneous and an abuse of discretion when viewed in the light of the equally clear language which strictly prohibits such waiving of any hearing authorized by the rule, i.e. the on the record competency hearing. The *Sanders* Court further addressed the absolute right of the defendant to offer competing evidence regarding the issue of competency to stand trial in the case of when it distinguished this matter from the case of *Hearn v. State*, 3 So.2d (Miss.2008).

In *Hearn*, the lower court failed to hold an on the record hearing on the issue of competency, and thus violated Rule 9.06 in its strictest sense. This Honorable Court, however, recognized that the purpose of Rule 9.06 was satisfied by the trial testimony of one of the examining physicians and two medical witnesses who testified as to the defendant's competency to stand trial. These witnesses were subject to cross examination and the defense had the ability to

offer competing evidence. The *Hearn's* Court thus held that the failure under such circumstances was not reversible error.

The instant case, however, is identical to *Sanders* in that no hearing was held, and no witness's were called nor evidence offered to establish an on the record finding regarding the issue of competency to stand trial. The Trial Court in fact, abused its discretion and erroneously held that the defendant waived the mandated hearing. This abuse of discretion and the failure to have a hearing such as that mandated by Rule 9.06 U.C.C.R. resulted in a violation of the substantial rights of the defendant to be detrimentally affected and violated the defendant's right to due process and a fair trial. Additionally, by not conducting such a hearing, the Trial Court ignored the mandatory language Rule 9.06 U.C.C.R., violated the defendant's 6th Amendments rights of confrontation of witnesses against him, and prevented the defendant from presenting any competing evidence to the ruling of the Court. Simply put, at the end of the trial it had yet to be effectively established that the defendant was competent to stand trial.

II. Whether or not it is probable that but for the trial counsel's deficient and ineffective performance, the verdict in this matter would have been different?

The standard for ineffective assistance of counsel is well settled law and is set out in *Strickland v. Washington*, 466 U.S. 688 (1984). The *Strickland* test is two pronged. The appellant must first show that the counsel's performance was deficient. The second prong requires the appellant to show that if the attorney's representation was deficient, is there a reasonable probability that but for the deficiency the verdict would have been different?

The Appellant contends that there are numerous occurrences and omissions which support the position that the performance of the trial attorney was deficient. A review of the entire trial transcript reveals a clear lack of preparation and/or trial strategy. The defense attorney in this matter did develop the defense a theory of defense, and if she did, it appears as if such a theory was not apparent or established to the trial judge's satisfaction. In support of this the defendant refers to the denial of defense jury instructions regarding self defense. In denying this defense instruction the trial court stated he did not think "on this record a self defense instruction is justified and I am not going to give it". (*Trial Transcript, Vol.II, p. 290, lines18-20*).

The defense attorney also requested a defense jury instruction regarding the lesser and included charge of manslaughter, which the court also refused to give. In doing so the trial court judge stated, once again "I don't think in this case on this record a manslaughter defense is justified either, and I am not going to give it." (*Trial Transcript, p. 297, lines 12-14*).

The failure of the defense attorney to put forth a theory of defense was also apparent to the prosecuting attorney who tried the case for the State. This much was made quite succinctly during the a colloquy regarding proposed jury instructions. In making the argument against certain proposed defense jury instructions the prosecutor stated ""But from the very beginning, at least I thought, they (the defense) were claiming self defense. Now they are saying it is not an intentional act. I don't know what their defense is to be honest with you, Judge." The failure of the defense to put on a defense theory was obviously most apparent to the jury, who returned a conviction for murder in this matter.

Their was also ineffective assistance of counsel in this matter by trial counsels failure to file any pre-trial motions in this matter, especially one in which defendant, one whom she believed to be in need of a mental examination, gave a confession in this matter. Under such circumstances due diligence and sufficient performance would require such a motion be filed prior to trial. The record reveals no such filing and the confession was admitted in without objection. The failure to file such a motion was compounded by the obvious lack of strategy and preparation.

The lack of preparation and strategy was also made evident during the trial when in response to the colloquy from the trial judge, the defendant made known his choice not to testify, and that this was his choice. When questioned by the judge, Attorney Abioto stated she had counseled the defendant but maintained her belief he was not competent to do so. Defendant Coleman clearly indicated his wish was not to testify in his defense. (*See Trial Transcript, pp.196-199*). Within thirty (30) minutes of this announcement Defendant Coleman announced that he would in fact testify in his defense at trial. (*Trial Transcript, p. 213, lines 21-29*). Defendant Coleman then did take the stand and testify in this matter.

The defendant has attached to this brief a sworn affidavit in this matter in which he attest that his hired attorney spent no more than one (1) hour with him in preparation for this trial. He indicates these meetings took place only during preset court dates and the facts of the case were never discussed. Additionally, Defendant Coleman states his attorney did not inform him of a lesser plea offer to manslaughter or prepare him in any way to testify at trial. He indicated he was only told at the end of his trial that she (his attorney) believed it was necessary for him to do so. Lastly, the defendant stated that at

no time was he aware of any defense strategy, theory or any other elements of the case. (See attached Exhibit I).

Attorney Abioto was clearly unprepared for the trial in this matter and was thus her performance was ineffective and deficient in that no cohesive defense was put forth, nor even developed. The Appellant submits that he first prong of the Strickland test has been met. It logically follows then, that when a defense attorney fails, because of deficient performance, to develop a defense strategy before trial that it is reasonably likely, given the facts of this case, that a different verdict would have been likely. The second prong of the Strickland test has therefore been met. As such the defendant has been prejudiced and this prejudice resulted in his conviction for murder.

CONCLUSION

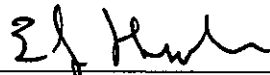
It is clear and uncontested that the defendant did not receive an on the record hearing in regards to his competency to stand trial. This Court's ruling in *Sanders* makes it abundantly clear that Rule 9.06 mandates that such a hearing take place after an order granting a psychiatric examination for such be such and that the defendant be given a chance to offer competing evidence of any such ruling adverse to the defendant. It clear that the defense attorney cannot waive such a hearing, and that a denial of such a hearing is an abuse of discretion, clearly erroneous and thus, reversible error. There was no testimony offered or elicited at trial which would otherwise serve the purpose of Rule 9.06, nor was the defendant offered the opportunity to introduce competing evidence to any such testimony or to confront those witnesses against him.

The denial by the trial court of such a hearing substantially and detrimentally affected the due process rights of the defendant and denied him the right to a fair trial.

Additionally for the aforementioned reasons, the performance of the trial attorney was ineffective as it relates to the performance of the trial attorney. But for this ineffective performance, it is reasonably likely the verdict would have been different. The *Strickland* standard has therefore been met.

For the reasons and arguments cited above, it is respectfully prayed that the conviction of the Appellant, Patrick D. Coleman, should be reversed and the case be remanded to Circuit Court for proceedings consistent with this appeal.

Respectfully submitted this the 23 day of June 2010.



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CERTIFICATE OF SERVICE

I, Eric J. Hessler, Attorney for Appellant, do hereby certify that I have delivered by placing a copy of the Brief for the Appellant to the United States Mail, postage prepaid, addressed to the following individuals:

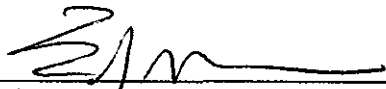
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So certified, this the 28th day of June, 2010

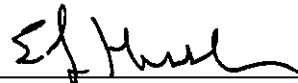
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