

No. 8:15-cv-00378(RBK)

IN THE
SUPREME COURT OF THE UNITED STATES

Robert E. Clayburne — PETITIONER
(Your Name)

State of Nebraska ^{vs.}
~~State of~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court of Nebraska
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert E. Clayburne
(Your Name)

P.O. Box 900
(Address)

Tecumseh NE 68450
(City, State, Zip Code)

(Phone Number)

1. Was Petitioner entitled to a Certificate of Appealability On the issue of ineffective assistance of counsel/mental incompetence QUESTION(S) PRESENTED and procedural Bar issue

2. Was the Petitioner Denied his 14th amendment right to Effective assistance of Counsel for his defense in the State Criminal proceedings when Defense Counsel failed to investigate his mental problems for competency when Counsel was on notice before and at the petitioner's plea hearing that the petitioner suffered from severe mental problems.

3. Was the Petitioner Mentally incompetent or legally incompetent to stand trial based on his bipolar disorder and depressive disorder that rendered him mentally disabled in the Criminal proceedings. And was he deprived of his 14th amendment right not to be convicted and sentence in such condition of mental incompetency. And is this issue procedurally barred.

4. Was the Petitioner Denied Effective assistance of Counsel under the 6th and 14th amendment to the Constitution in the Criminal proceedings when Counsel failed to file a motion to suppress evidence of an unlawful search and unlawful arrest based on a ~~warrantless~~ warrantless search & seizure in the Criminal proceedings.

5. ~~Was~~ Was the Petitioner Denied his 14th amendment right to ~~an~~ a voluntary, intelligent made plea when his Counsel allowed him to plead no contest with a severe mental illness resulting in a mental disability in the Criminal proceedings.

6. Was the Petitioner Denied his right to Effective assistance of Counsel for his defense under the 14th amendment when Counsel failed to investigate and present an insanity defense based on the evidence of the petitioner's mental illness in the Criminal proceedings.

7. Did the State Court & Prosecution & Defense Attorney Deprive the Petitioner of his 14th amendment right to due process when they failed to hold a full and fair Competency hearing before finding that the Petitioner was competent in his criminal proceedings in the face of his mental disability and illness. (8) Is the petitioner entitled to a new trial on these issues.

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:

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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 8th Circuit 17-2843; 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 United States Federal District Court - Nebraska 8:15-CV-00378 ROK; 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 D to the petition and is

☐ reported at Nebraska Court of Appeals NO. A-14-1077; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the District Court of Nebraska court appears at Appendix D to the petition and is

☐ reported at CR-12-600; 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 Dec 7, 2017.

☐ 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: Feb 5, 2018, 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 _____ (date) on _____ (date) in Application No. 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, 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 _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In all criminal proceedings the accused shall enjoy the right to have the effective assistance of counsel for his defense. US Constitutional Amend 6th

7. No State shall deprive life, liberty, or property without due process of law. U.S. Constitution Amend. 14th

A defendant has a constitutional right not to be subject to a trial while mentally incompetent. U.S. Constitutional Amend. 14th Due process clause.

When an attorney has a defendant with obvious mental health issues such as a mental illness, or when he is impaired in such a way such as a mental disability that he cannot contribute to his defense, the attorney has a duty to investigate these problems and bring them to the attention of the court. Indiana v. Edwards, 554 U.S. 164 (2008).

8. Any evidence that was used at trial that you have a good reason to believe should not have been used may be a basis for ineffective assistance of counsel for failure to make necessary pretrial motions because attorneys have a duty to make pretrial motions, particular motion to suppress evidence, when an adequate foundation for the motion exists. Lucas v. United States, 469 U.S. 38, 41 n. 4 (1984).

9. A petitioner is entitled to relief if the state court decision was contrary to clearly established federal law, as announced in a U.S. Supreme Court ruling. U.S.C. 2254 (c)(1).

10. A petitioner is entitled to relief if the state court decision was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. U.S.C. 2254 d(2)

11. Where a petitioner makes out a prima facie case under Strickland, state court summary denial of IAC claim without evidentiary hearing amounts to an unreasonable determination of the facts. Nunes v. Mueller, 350 F.3d 1045, 1054 (9th Cir. 2003)

STATEMENT OF THE CASE

The Court of Appeals of the 8th Circuit in this case denied the petitioner request for Certificate of Appealability, dismissed his appeal and deferred to the State & Federal Courts ruling that the petitioner right to effective assistance of Counsel was not ~~denied~~ denied before entering his plea and at the of his plea even though his counsel (1) received information that the petitioner suffered from past and present mental illness that rendered him mentally disabled, (2) The Attorney failed to make an independent investigation or evaluation into his competency to ensure the petitioner was competent to make a voluntary, intelligent plea after the the trial court found him competent to plea without substantial evidence and a competency hearing and (3) failed to file a motion to suppress unlawful entry and unlawful arrest ^{a result of} as an unreasonable warrantless search & seizure absent exigent circumstances and consent from the petitioner.

The facts underlying the Sixth amendment claims are set forth in the judgments and orders Below. Petitioner was charged with assault in Second degree and use of a weapons of a felony. Petitioner pled ~~guilty~~ no contest on May 23 2012. Before he pled there was mention of his manic depressions to counsels paralled through an interview form sent to counsel, and there was reference to his mental illness and current mental disability at the plea. The judge, counsel, and State did not properly investigate and evaluate his competency. The Petitioner was sentence to 25-35 years in prison.

On State appeal from his post-conviction on the claim of ineffective assistance of counsel. The Court of Appeals for Nebraska denied an evidentiary hearing and relief noting that plea counsel does not have to request an evaluation or competency hearing at every sign of mental illness. State Court act contrary to clearly established Federal law when it reached a different result from Strickland v. Washington/Thomas v. Lockhart. 8th Circuit ruling that failing to investigate mental problems or competency when counsel no about them constitute deficient performance resulting in prejudice in plea constituting ineffective assistance of counsel under Strickland v. Washington by the Supreme Court of the United States, 28 U.S.C. 2254 d(1), making the State Court and Federal Court application of Strickland v. Washington unreasonable. Entitling him to relief but denying him the writ of habeas corpus.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert E. Clayborne

Date: Feb 27, 2018