

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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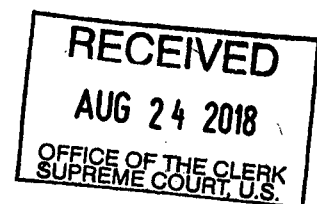
Jimmy D. Wooten – PETITIONER

vs.

State of Arkansas – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
ARKANSAS SUPREME COURT  
PETITION FOR WRIT OF CERTIORARI

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**QUESTION(S) PRESENTED**

- I. DID THE ARKANSAS SUPREME COURT VIOLATE DUE PROCESS BY DENYING MENTALLY HANDICAPPED PETITIONER OPPORTUNITY TO LITIGATE INSANITY AT TIME OF TRIAL?**
- II. SHOULD ONE WHO IS MENTALLY HANDICAPPED BE HELD TO THE SAME DILIGENCE STANDARD AS THOSE WHO LACK THE HANDICAP (SHOULD THE LACK OF MENTAL CAPABILITY EXCUSE LACK OF DILIGENCE)?**

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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### CASES

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*Wooten v. State*, 2018 Ark. 198 (31 May 2018)

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**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

## **JURISDICTION**

The date on which the highest court decided my case was 31 May 2018. A copy of that decision appears at Appendix A.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const., Amdmt. V: No person shall be held to answer for a capital, or otherwise infamous crime, ... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

U.S. Const. Amdmt. VI: In all criminal prosecutions, the accused shall enjoy the right to ... have compulsory process for obtaining witnesses in his favor.

U.S. Const. Amdmt. XIV: No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## **STATEMENT OF THE CASE**

In 1995, Petitioner was convicted of capital murder, criminal attempt to commit capital murder, and aggravated assault, and sentenced to death by lethal injection, thirty years, and six years, respectively.

In 2011, Petitioner's death sentence was vacated and he was resentenced to life without parole. In the process, it was discovered that Petitioner was insane at the time of the offense.

In 2018, upon himself discovering the new evidence, Petitioner filed in the Arkansas Supreme Court a petition to reinvest jurisdiction in the trial court to entertain a motion for error coram nobis. The Court denied the petition based on an erroneous standard, violating Petitioner's right to due process.

This petition is timely made and brought before this court.

## REASONS FOR GRANTING THE PETITION

### **I. DID THE ARKANSAS SUPREME COURT VIOLATE DUE PROCESS BY DENYING MENTALLY HANDICAPPED PETITIONER OPPORTUNITY TO LITIGATE INSANITY AT TIME OF TRIAL?**

In 1995, Petitioner, Jimmy Don Wooten, was convicted by jury trial of capital murder, criminal attempt to commit capital murder, and aggravated assault, and sentenced to death by lethal injection, thirty years imprisonment, and six years imprisonment, respectively. Petitioner's defense was complete denial and mistaken identify. In the penalty phase, defense counsel presented a very limited look at Petitioner's special education classes throughout high school and lack of a criminal record. No part of Petitioner's childhood or familial life or mental difficulties outside of education was made available by defense.

In 2006, for the first time, Petitioner was subjected to two separate forensic psychiatric evaluations, as part of his effort to seek relief from the death penalty. While the results of these evaluations were not the direct cause for the Arkansas Supreme Court to grant a motion to recall its mandate, it did play a role in determining resentencing by the trial court to life without possibility of parole. See, *Wooten v. State*, 370 S.W.3d 475 (Ark. 2010). Resentencing occurred in 2011.

As a result of efforts by local attorney Alvin Schay and three Assistant Federal Defenders from the Federal Community Defender's Office for the Eastern District of Pennsylvania ("Penn Counsel"), to obtain the psychiatric evaluations, Petitioner discovered new evidence.

In the first evaluation, Dr. Robert Fox opined that, "at the time of the offense, trial and sentencing, and throughout his adult life, [Petitioner] was suffering from Post-Traumatic Stress Disorder with Dissociative Features (DSM-IV-TR 309.81)." Dr. Fox further opined that, "at the

time of the offense [Petitioner's] capacity to conform his conduct to the requirements of law and to appreciate the criminality of his conduct was *significantly impaired*, and [Petitioner] committed this offense under severe mental and extreme emotional disturbance. Additionally, [Petitioner] had a *diminished capacity* to form the mental state necessary for a murder conviction in Arkansas, *due to his mental disease or defect*. Neither could he be said to have had the mental state necessary for the great risk aggravating factoring to apply.” [Emphasis added] The psychiatrist described how a tragic childhood of brutal abuse caused this disorder and explained the condition as “a dissociative mental state involving irrational thinking and perceptions, and a break with reality.” Also opined was that Petitioner suffered *organic brain damage*.

In the second separate evaluation, Dr. Daniel Grant opined that Petitioner “was profoundly traumatized in his developmental years. [Petitioner's] formative years were dominated by extreme physical, emotional and psychological abuse, as well as neglect. ... [Petitioner] is a *severely impaired* individual who suffers from organic brain damage and Post-traumatic stress disorder with *dissociative features*. These are highly mitigating circumstances, and would have not only provided significant mitigating evidence, but also could have been used by the defense counsel at trial to present *a strong mental health defense case at the guilt phase*.” [Emphasis added] Dr. Grant's report discusses further that Petitioner's neuropsychological deficits/organic brain damage and psychological impairments “are consistent with his history of childhood trauma.”

Petitioner was an abused and neglected child. His father was an extremely volatile and explosive man who brutalized Petitioner, his siblings and his mother. His father drank, and neglected his children's emotional, material and developmental needs; mistreating his family; did not work; and used family resources to buy liquor for himself. Petitioner was subjected to

traumatic abuse. His father regularly beat him during his formative and adolescent years for any conduct which, at that instant, bothered his father or was deemed inappropriate or annoying by his father.

Because there was no consistency in what behaviors angered his father, Petitioner could not anticipate what would precipitate a beating or what he could do to avoid being beaten. The sheer brutality of his father's routine beatings of his children with belts, buckles, extension cords, sticks, or other objects that were available is shocking. He would intentionally trip the children, *then whip them when they fell down*. He would grab the children by their legs trying to break them by twisting, swing them around while holding their feet, then would let them go.

Petitioner's father would routinely punch and kick him, his siblings and his mother until they were bruised and bloodied. Once, attacking Petitioner with a knife, his father stabbed his hands when he put them up to defend himself, and his father sliced open Petitioner's forehead, leaving scars visible more than forty years later, then told Petitioner that if he told anyone, including, his mother, then his father *would kill him while he slept*.

Petitioner routinely saw his father beat and abuse his siblings and mother on a daily basis. Petitioner suffered more abuse than his siblings. He was the youngest, and was unusually small and weak. When in school, Petitioner experienced much difficulty concentrating, unable to do well because while in class he was mentally preoccupied with what was possibly going on in his home and what was possibly waiting for him there.

Dr. Grant's evaluation report went on to state that the Petitioner "suffers from several cognitive deficits, including difficulties in memory, concept formation, problem solving, processing of information and abstract reasoning. ... The test results overall reflect *impaired*

*neurocognitive functioning and the presence of cognitive deficits.* These test findings of organic brain damage are consistent with [Petitioner's] records and accounts of his life that go back to his childhood. The problems ... continue to adversely affect [Petitioner's] mental health functioning." [Emphasis added]

Dissociation, noted above, is a mechanism employed for dealing with the stress and anxiety of extreme abuse. As a child, Petitioner began to believe that the violence and humiliation visited upon him happened to someone else. He began to dissociate as a result of pain, humiliation, abuse and their effects on his mental state. Petitioner felt it was like "looking in a mirror at another person," or at times, "like watching himself being abused." Dissociation was a technique used by his subconscious, described as "sitting on the outside looking in." Losing track of time is an effect of dissociation. The dissociation event is a well-documented survival response in people who are subjected to chronic and severe psychological and physical abuse, and can be triggered by either internal or external stimuli. Petitioner was easy prey to images, smells, tones, familiar looking or threatening individuals, television programs, body language and other things that could cause flashbacks and a dissociate state.

Dr. Grant opined that Petitioner's "life history and mental health impairments demonstrate that when he committed this offense he had a diminished capacity and suffered from a dissociate state. His dissociative state *significantly impaired his capacity to appreciate the consequences of his actions to the requirements of law*, and he lacked the capacity to form the level of intent required for the aggravating circumstance of knowingly placing others in great risk of death." [Emphasis added] Dr. Grant further noted that, the testing he administered to Petitioner and all other aspects of his evaluation "were available prior to and at the time of the proceedings resulting in [Petitioner's] conviction and sentence, and could have been

administered by a qualified defense expert. The results of my evaluation demonstrate highly dysfunctional history, cognitive defects, PTSD and history of dissociation. All of the psychological mitigating factors discussed here could have been presented to the jury and the information here *could have been presented at the guilt phase as defense evidence.*” [Emphasis added]

Although these tests and opinions were written in late 2006, Petitioner did not obtain them from his court appointed attorneys until 2011, when he was resentenced to life without parole, yet even then lacked the capacity to appreciate their significance as new evidence of diminished capacity at the time of the offense. It wasn’t until late 2017, after Petitioner approached a writ writer, that he discovered the significance of the reports. A rather crude petition, and later an impudent response, was made and filed by Petitioner in March/April 2018. In his petition to reinvest jurisdiction in the trial court to entertain a motion for error coram nobis<sup>1</sup>, filed in the Arkansas Supreme Court (“ASC”), Petitioner claimed he “suffers mental disease and/or defect and ... had trial court known of said mental condition and the lack of necessary mens rea, the rendition of the life without parole judgment<sup>2</sup> would have been prevented.” Effectively, Petitioner was attempting to state a clam of insanity at time of the incident and at time of trial, one of the four categories the ASC requires to grant relief.

The ASC denied Petitioner’s petition suggesting that he was making an ineffective assistance of counsel argument, and that he had not been diligent in bringing his claim (discussed below in Question II). In his petition, Petitioner wrote that the fact he was suffering from mental defect “was unknown and hidden at trial due to incompetent and ineffective assistance of counsel

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<sup>1</sup> Error coram nobis is the vehicle used to challenge a conviction based on new evidence not available at time of trial that would have resulted in a different outcome. To entertain the motion, the Arkansas Supreme Court must grant reinvestment of jurisdiction to the trial court, thus, in essence, acts as a gatekeeper to filing of erroneous postconviction motions.

<sup>2</sup> Petitioner was actually sentenced to death, but had been resentenced in 2011 to life without parole.

... ." Petitioner lays blame for his not knowing of his mental disorder on his counsel. There is no claim that trial counsel was ineffective for not discovering Petitioner's mental defect either through investigation or psychiatric testing. In fact, this mention of counsel falls under Petitioner's "Insanity at Trial" claim heading.

In her dissent, ASC Justice, Josephine Hart, notes that a plain reading of Petitioner's petition reveals that the majority's characterization of his argument is "wholly inaccurate," and that his argument is that "he was insane and suffered from a mental disease of defect at the time of trial, not that his trial counsel was ineffective." Justice Hart noted that Petitioner's argument "is a perfectly cognizable basis for error coram nobis relief," calling the majority's first basis for denying the petition "inapplicable."

Petitioner's ability to comprehend the intricacies of establishing a proper argument is nonexistent. He blindly accepted what was produced by a writ writer as an acceptable and complete petition sufficient to obtain relief. Even today, where this document is being produced by a different assistant, Petitioner (himself) is unable to convey but a rudimentary impression of the necessary requirements of a legal argument; also quite convoluted and inarticulate.

Nevertheless, the new evidence calls into question Petitioner's sanity, both at time of the offense and at trial. It was, therefore, a properly made claim that meets the basis for error coram nobis relief. See, *Howard v. State*, 403 S.W.3d 38 (error coram nobis relief available for one of four grounds: (1) insanity at the time of trial, ...).

The question here is whether there is a due process violation in denying relief from a severely mentally handicapped petitioner. Based on the new evidence, three separate evaluating physicians determined the same mental defect, none of which declared Petitioner sane. The ASC

appears to have completely ignored these facts, choosing instead to focus on a perceived technical error in Petitioner's claim as a whole, rather than observing the thrust of his argument: insanity.

Can an insane person make a viable claim of insanity? According to the ASC, he is held to the same degree of comprehension and aptitude as one who is sane. Does this meet the threshold for due process?

This court recently reiterated in *McWilliams v. Dunn*, that when a defendant's sanity is likely to be a significant issue at trial, "the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and evaluation of the defense," *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985), but that Ake's requirements are not limited to just an "examination"; "[r]ather, it requires the State to provide the defense with 'access to a competent psychiatrist who will conduct an appropriate [1] examination and assist in [2] evaluation, [3] preparation, and [4] presentation of the defense,'" 137 S.Ct. 1790, 1800 (2017). If the notion is that due process requires such action to guarantee a fair trial to a defendant when the issue is raised before trial, what, then, does due process require when the issue is discovered after trial? Certainly, the Court recognizes that, here, when all three separate psychiatrists opine that Petitioner's condition was a significant issue that should have been presented at his guilt phase of the trial, and may have prevented a finding of guilty to capital murder, those findings warrant review by the trial court.

The petition for reinvesting jurisdiction, if granted, would not have been the end of the test of whether the outcome of the trial would have been different in light of the new evidence. It would have been the beginning; to be argued in the trial court. The petition was only to show a



possibility; to be tested in the lower court. Petitioner's new evidence, that repeatedly showing mental defect at time of the crime and at trial, should have been recognized by the ASC as sufficient to pass jurisdiction to the trial court and begin the error coram nobis process. Granting the petition is not an admission by the ASC that relief should be granted, it is simply a recognition that the new evidence raises a cognizable question that needs to be explored and properly adjudicated by the trial court. Therefore, the ASC erred by denying Petitioner's petition to reinvest jurisdiction in the trial court to entertain a motion for error coram nobis relief, violating Petitioner's Fourteenth Amendment right to due process.

**II. SHOULD ONE WHO IS MENTALLY HANDICAPPED BE HELD TO THE SAME DILIGENCE STANDARD AS THOSE WHO LACK THE HANDICAP (SHOULD THE LACK OF MENTAL CAPABILITY EXCUSE LACK OF DILIGENCE)?**

In its opinion, the ASC majority held that Petitioner had not been diligent in pursuing his claims. It is not exactly clear as to what claims the ASC was referring to as the majority only appeared to recognize a nonexistent claim of ineffective assistance of counsel. The only claim Petitioner had made was one that he'd only obtained access to in 2011, and even then, over the next six years, did not comprehend that it was new evidence unavailable at trial. Petitioner lacks the capacity to understand the significance of the new evidence. It was only through chance, being discovered by a third-party, did it come to light. Once discovered, Petitioner wasted no time seeking relief; albeit poorly articulated.

As the ASC dissenting Justice, Josephine Hart, stated, "[t]he State has no interest whatsoever in continuing to hold individuals in prison when some fact extrinsic to the record would have kept those individuals from being placed in prison in the first place. Reinvesting

jurisdiction in the trial court to consider the writ of error coram nobis is the only way to address this situation. Accordingly, the majority's second basis for denying [Petitioner's] petition is inapplicable as well." *Wooten v. State, supra*, at

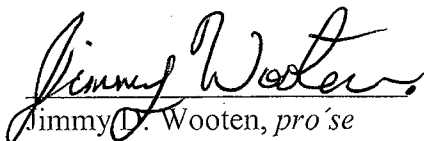
Interestingly, there is no set allotment of time defined by the ASC, or by State statute, to quantify a diligence standard. Understandably, the ASC expects or desires issues of this type to be raised as soon as or soon after they are discovered for the obvious purpose of finality. Which is a sound policy, assuming that the petitioner is mentally capable of doing so. But, what of those few who are not? Should they be held to the same standard or should the courts take into consideration what the facts state as to one's capacity to pursue relief on their own, lacking comprehension of the value of the evidence with respect to the law, much less the law itself?

Diminished capacity requires diminished stringency in evaluating whether one meets—what appears to be—an undefined standard. There is no rationale to do otherwise, especially wherein the certainty of the outcome of the guilt phase of trial is brought in to question in light of new evidence of Petitioner's sanity at the time of the offense.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Jimmy D. Wooten, *pro se*

Date: 8/16/18