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| No. | | |
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| <p style="text-align: center;">IN THE</p> <p style="text-align: center;">SUPREME COURT OF THE UNITED STATES</p> | | |
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| | DANYALE SHARRON TUBBS | — PETITIONER |
| | | |
| vs. | | |
| | PEOPLE OF THE STATE OF MICHIGAN | — RESPONDENT(S) |
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| ON PETITION FOR A WRIT OF CERTIORARI TO | | |
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| | | |
| Michigan Supreme Court | | |
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| PETITION FOR WRIT OF CERTIORARI | | |
| Danyale Sharron Tubbs #292944 | | |
| | | |
| <i>In Pro Se</i> | | |
| Gus Harrison Correctional Facility | | |
| 2727 E. Beecher Rd. | | |
| Adrian, MI. 49221 | | |
| (City, State, Zip Code) | | |

QUESTION(S) PRESENTED

- I. WAS MICHIGAN'S APPLICATION OF *STRICKLAND V WASHINGTON* UNREASONABLE WHERE DEFENSE COUNSEL FAILED TO INVESTIGATE AND PRESENT A COMPETENCY DEFENSE IN LIGHT OF MR. TUBBS' HISTORY OF MENTAL ILLNESS AND HIS BIZARRE BEHAVIOR PRIOR TO TRIAL AND FAILED TO OBJECT TO THE USE OF INACCURATE INFORMATION TO FASHION MR. TUBBS' SENTENCE?

- II. WAS TRIAL COUNSEL'S FAILURE TO OBJECT TO THE USE OF INACCURATE INFORMATION PLAIN ERROR SUFFICIENT TO OVERCOME A PROCEDURAL DEFAULT?

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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

Federal Courts

State Courts

1. The opinion of the Michigan Supreme Court appears at **Appendix A** to the petition and is unpublished.
2. The opinion of the Michigan Court of Appeals appears at **Appendix B** to the petition and is unpublished.
3. The opinion of the Calhoun County Circuit Court appears at **Appendix C** to the petition and is unpublished.

JURISDICTION

Petitioner seeks review of the May 29, 2018, opinion of the Michigan Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1257. As such, this Petition for Writ of Certiorari is being filed within the 90-day period of the final decision from the Michigan Supreme Court denying his delayed Application for Leave to Appeal on May 29, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional Provisions

U.S. Const., Amend. VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, *and to have the Assistance of Counsel for his defense.*" (Emphasis Added)

U.S. Const., Amend. XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State 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."

B. Statutory Provisions

MCL § 330.2020(1) provides:

"A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

STATEMENT OF THE CASE

(“PT” refers to the plea agreement transcripts conducted on December 19, 2013. “PSI” refers to the Presentence Investigation Report. The numbers following the aforementioned cites represent the page numbers to the relevant cite.)

On December 19, 2013, the Calhoun County Circuit Court accepted a guilty plea from Mr. Tubbs (hereinafter Petitioner) for the crimes of robbery armed (**Mich. Comp. Laws 750.529**) and weapons—possession of a firearm during the commission of a felony/felony firearm (**Mich. Comp. Laws 750.227b**). At the plea hearing, Petitioner was represented by attorney Eusebio Solis. After Petitioner was informed of the charges in the Felony Information and the maximum penalty for each charge by the trial court, (PT pgs. 3-5), the court noticing Petitioner’s confused demeanor asked him to raise his right hand as best as he could. (*Id.* pgs. 15-16).

The trial court asked Petitioner if he understood that if his plea was accepted, he would be giving up any claim that his plea was the result of promises or threats, or not his own choice to enter the pleas. (PT pgs. 7, 9-14). Attorney Solis explains the sentence agreement of thirteen years for armed robbery plus two years for felony firearm that he entered with the prosecutor. (*Id.* pgs. 17-21). The court seeing Petitioner’s drowsy demeanor asked him could he hear the agreement that his lawyer explained (*rather than did he understand what his lawyer explained*). (*Id.* pgs. 8, 10-11). The court asked Petitioner to tell in his own words what he did to bring about the charges to which Petitioner responded, “Ah, robbed the Check N Go.” (*Id.* pgs. 10, 14-17).

PRESENTENCE INVESTIGATION REPORT (PSIR)

In Petitioner’s PSIR pg. 1, (Personal History), it is noted that he has a psychiatric and substance abuse history. On July 29, 2011, Petitioner was returned to prison for parole violation.

On July 24, 2012, Petitioner was granted another parole and released with mental health designation (D47). *Id.* pg. 1, Since Petitioner's last PSIR he began receiving mental health services and medication after being diagnosed as schizoaffective disorder and antisocial personality disorder.

During the arrest, Officer Marshall had to repeatedly order the Petitioner to stop running and eventually caught and wrestled him to the ground after pepper spraying him. At the time of the arrest, the Petitioner was described as being giggly and nervous. See PSIR (Agents Description of the Offense pg. 3). Petitioner made no statement to the presentence investigator, but on June 20, 2013, Petitioner stated that "he had blacked out/zoned out." That he "had not been taking [his] medications because he [did not] have no money to purchase them." That he "remember[ed] being pepper sprayed, that's when he came back to his senses. He heard voices telling him to run." See PSIR pg. 4 Defendant's Description of the Offense. While in the Calhoun County Jail, Petitioner was taking the following medications: Depakote, Prolixin, Remron and Artane, and was affected by these medicines during the plea proceedings so much so that his participation was impeded and he could not adequately exercise his right to allocate.

Petitioner now files with this Honorable Court his petition for Writ of Certiorari.

ISSUE I

I. MICHIGAN'S APPLICATION OF *STRICKLAND V WASHINGTON* WAS UNREASONABLE WHERE DEFENSE COUNSEL FAILED TO INVESTIGATE AND PRESENT A COMPETENCY DEFENSE IN LIGHT OF MR. TUBBS'S HISTORY OF MENTAL ILLNESS AND HIS BIZARRE BEHAVIOR PRIOR TO TRIAL AND FAILED TO OBJECT TO THE USE OF INACCURATE INFORMATION TO FASHION MR. TUBBS SENTENCE.

Argument:

The performance prong of the *Strickland* analysis necessarily contemplates counsel's duty to investigate. The prejudice portion of the test is to be judged by the reasonable probability standard, and "is not a sufficiency of evidence test." *Kyles v Whitley*, 514 U.S. 419 (1995).

Where trial counsel has conducted an unreasonable investigation followed by an otherwise reasonable strategic decision (based on limited information), the prejudice inquiry requires courts to determine whether there is a reasonable likelihood of a different outcome, based on both the evidence known to counsel at the time of the relevant decision and the additional new evidence in which competent counsel would have learned. *Hill v Lockhart*, 28 F3d. 832 (1994).

More importantly, the due process clause of the U.S. Const. Am XIV prohibits convicting a legally incompetent defendant. *Pate v Robinson*, 383 U.S. 375; 86 S. Ct. 815 (1966).

The accused's right to counsel encompasses the right to "effective assistance" of counsel. U.S. Const. Amends. VI, XIV; *Powell v. Alabama*, 287 U.S. 45 (1932). The standard for determining whether a defendant has been denied effective assistance of counsel is provided in *Strickland v. Washington*, 466 U.S. 668 (1984), which set out a two-part inquiry to determine whether a counsel's assistance is constitutionally ineffective. First, a defendant must show that counsel's performance was "deficient," involving "errors so serious that counsel was not

functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.*, 466 U.S. at 687. This requires a showing that counsel's conduct "fell below an objective standard of reasonableness," and that the "identified acts and omissions were outside the wide range of professionally competent assistance." *Id.* 466 U.S. at 690. See also, *Wiggins v. Smith*, 539 U.S. 510, 535-536 (2003). Professional norms include the **American Bar Association (ABA) Standards for Criminal Justice**. *Rompilla v. Beard*, 545 U.S. 374, 375, 381 (2005).

Second, if counsel's performance is deficient, a defendant must show that those deficiencies were prejudicial. To make this showing, the defendant must demonstrate that there "is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" *Strickland v. Washington*, supra, 466 U.S. at 692-694. The essential question is "whether better lawyering would have produced a different result." *Ward v. United States*, 995 F.2d 1317, 1321 (6th Cir. 1993). In establishing prejudice, the defendant "need not show that counsel's deficient conduct more likely than not altered the outcome in the case", *Strickland v. Washington*, 466 U.S. at 693, he must instead show that counsel's errors have undermined confidence in the outcome. *Id.* 466 U.S. at 695.

In *Lockhart v. Fretwell*, 506 U.S. 364, 369-370 (1993), this Court observed that "an analysis focusing solely on outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable is defective." Petitioner respectfully submits that trial counsel was constitutionally ineffective where there was evidence that Petitioner was suffering from mental illness and counsel did not investigate whether Petitioner was competent to be tried, convicted or sentenced.

A. Trial Counsel Rendered Deficient Performance by Failing to Reasonably Investigate Petitioner's Competency and Obtain a Criminal Responsibility and Competency Evaluation in Light of Evidence That the State Knew Petitioner Suffered from Mental Illness.

A criminal defendant has a constitutional right to expect "that his attorney will, at all times, support him, never desert him, and will perform with reasonable competence and diligence." *Wiley v Sowders*, 647 F.2d 642, 651 (6th Cir., 1981) cert den 454 US 1091 (1981). "A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." **Michigan Rule of Professional Conduct 1.3.**

Trial counsel has a duty to conduct reasonable pretrial investigations. *Strickland* requires counsel "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, supra, 466 US at 691. "[T]he duty to investigate does not force defense lawyers to scour the globe on the off-chance something will turn up" *Rompilla v. Beard*, supra, 545 U.S. at 383. Attorneys do, however, have a duty to make all reasonable efforts to learn what they can about a case. See *Id.* at 385. "This duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence." *Towns v. Smith*, 395 F.3d 251, 258 (6th Cir. 2005). " *People v. Trakhtenberg*, 493 Mich. 38, 57; 826 N.W.2d 136 (2012), *People v. Armstrong*, 490 Mich. 281, 291-292; 806 N.W.2d 136 (2011).

A purportedly strategic decision is not objectively reasonable 'when the attorney has failed to investigate his [or her] options and make a reasonable choice between them.'" *Id.* quoting *Horton v. Zant*, 941 F.2d 1449, 1462 (11th Cir. 1991), accord inattention or negligence, as opposed to reasoned strategic judgment, is inexcusable. *Wiggins v. Smith*, supra, 539 U.S. at 526 (2003). Strategy cannot be fairly characterized as strategic unless it was a reasonable choice between two legitimate and rational alternatives. See e.g., *Wood v. Allen*, 130 S. Ct. 841, 853 (2010). It must be

borne of deliberation and not happenstance, inattention or neglect. *Id.* (Justices Stevens and Kennedy dissenting).

In this case, the Petitioner had been to prison and the Michigan Department of Corrections had recognized that Petitioner did indeed suffer from mental illness. This information coupled with Petitioner's bizarre behavior throughout the pretrial proceedings should have alerted trial counsel to move the trial court for a competency and criminal responsibility evaluation. Had trial counsel made such a motion under state law, there is a reasonable probability that the trial court would have ordered such an evaluation.

Mich. Comp. Laws § 330.2020(1) provides:

“A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. *The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.*” (Emphasis added).

Mich. Comp. Laws § 330.2024 further provides:

“The issue of incompetence to stand trial may be raised by the defense, court, or prosecution. The time and form of the procedure for raising the issue shall be provided by court rule.”

Mich. Ct. Rules, Rule 6.125(B) provides, in pertinent part:

“The issue of the defendant's competence to stand trial ... may be raised at any time during the proceedings against the defendant... If the competency issue arises during the course of proceedings, the court may adjourn the proceeding or, if the proceeding is defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.”

Petitioner respectfully submits that it is a violation of the Fourteenth Amendment to the United States Constitution for a state court to convict and sentence a mentally incompetent person. See e.g., *Pate v. Robinson*, 383 U.S. 375 (1966), *Drope v. Missouri*, 420 U.S. 162, 180 (1975). In *Drope*, this Court stated:

“The import of our decision in *Pate v Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.”

A defendant is incompetent if he does not have sufficient ability to consult with his attorney rationally. *Dusky v. United States*, 80 S. Ct. 788 (1960). The *Dusky* standard refers to "present ability" and requires more than orientation as to time and place and some recollection of the charged events. The word "understanding" requires some depth of understanding, not merely surface knowledge of the proceedings." *People ex rel Benstein v. McNeill*, 48 N.Y.S.2d 764, 766 (1944). A defendant's inability to communicate effectively with counsel may leave him unable to exercise other rights deemed essential to a fair trial, e.g., choosing to plead guilty, taking the witness stand, exercising allocution at sentencing, and a myriad of smaller decisions concerning the course of his defense. *Cooper v Oklahoma*, 116 S. Ct. 1373 (1996).

Here, Petitioner respectfully submits that the fact of mental illness was easily discoverable by trial counsel with adequate investigation. Petitioner was non-responsive at times, incoherent and acting bizarre at various stages of the trial proceedings. Reasonable counsel would have inquired into his client's mental state based upon the facts of this case.

Had trial counsel formally notified the trial court that Petitioner was demonstrating behavior that is consistent with mental illness the trial court would have been required to determine whether Petitioner was in fact competent enough to proceed. The trial court must render a separate finding of competency when evidence of incompetency is presented. *People v. Belanger*, 73 Mich. App. 438; 252 N.W.2d 472 (1972). Even where a defendant is competent at the beginning of trial, a change in his or her condition may result in him or her becoming incompetent. *People v. Matheson*, 70 Mich. App. 172; 245 N.W.2d 551 (1976). There may be difficulties with determining competency retrospectively, and given those difficulties, the better alternative is to reverse the conviction and remand. *People v. Ponder*, 57 Mich. App. 94, 99; 225 N.W.2d 704 (1983).

More particularly, the cases are unanimous in holding that one may not be sentenced if incompetent. *Saddler v. United States*, 531 F.2d 83, 86 (CA 2, 1976); *Wojtowicz v. United States*, 550 F.2d 786, 790 (2d Cir., 1977) cert den 431 U.S. 972 (1977), *United States v. DeLucas*, 529 F. Supp. 351, 355 (S.D. N.Y. 1981). See also *United States v. Renfro*, 825 F.2d 763 (3rd Cir., 1987) [court considers defendant's claimed incompetency at both trial and sentencing]. If a defendant is incompetent at the time of sentencing, his lack of competency prejudices the right to assist in the proceedings and other meaningful allocution. Lack of competency at sentencing raises "serious question[s] as to whether [the defendant is] able [to] meaningfully exercise his right of allocution or rationally comprehend the nature of the proceedings." *Wojtowicz v. United States*, supra at 790. "[T]he court should not proceed with sentence unless the defendant is mentally competent. Otherwise his right of allocution, *Green v. United States*, 365 U.S. 301 (1961), would be meaningless." *Saddler v. United States*, supra, at 86. "[I]f, after a verdict of guilty but before sentencing, the defendant is found incapable of comprehending the nature and purpose of the

proceedings or of stating reasons why sentence should not be pronounced, sentencing is to be suspended and "the defendant committed."

In *Drope v. Missouri*, *supra*, the United States Supreme Court held that the defendant's due process right to a fair trial was violated by the trial court's failure to suspend trial until the defendant's competence could be determined. Although trial counsel had not made a proper pre-trial motion for a competency hearing and the psychiatric report which had been prepared for trial did not clearly suggest the defendant was incompetent, the *Drope* Court nonetheless found the trial court had a duty to conduct an evaluation of competency based on events during trial such as the attorney's statement concerning the defendant's mental state and the testimony concerning the defendant's bizarre behavior and psychiatric history. The *Drope* Court expressed doubt that the defendant's failure to move for a competency hearing could ever operate to waive his due process rights. 420 U.S. at 176; *see also United States v. Johns*, 728 F.2d 953 (7th Cir., 1984).

It is Petitioner's contention that effective trial counsel would have pursued an affirmative defense consistent with his client's state of mind. As can be seen from Petitioner's PSIR, there was preexisting evidence that Petitioner suffered from mental illness, which was recognized by the state. Thus, there was no strategic value in trial counsel's failure to investigate the Petitioner's current mental state and seek a competency evaluation.

To be competent, it is not enough to find Defendant oriented to time and place and with some recollection of events. Rather, according to the United States Supreme Court in *Dusky v. United States*, 362 U.S. 402 (1960): "[T]he test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he had a rational as well as factual understanding of the proceedings against him. "The law regarding

competency is equally applicable to sentencing, since this is an equally critical stage of the criminal proceedings. *Mempa v. Rhay*, 389 US 128 (1967). Competency is and must be an ongoing concern throughout trial. Even if a defendant is competent at the beginning of trial, the Court must always be alert to a change in the defendant's condition. *People v. Matheson*, supra, 70 Mich. App. at 179-180; *People v. Belanger*, supra, 73 Mich. App. at 448-449.

To sum it all up, it is the Petitioner's position that no reasonable attorney would forego the opportunity to ensure that his/her client is competent where there is evidence to the contrary, prior to advising him/her to plead guilty.

B. Petitioner Was Prejudiced by Counsel's Deficient Performance.

Petitioner was prejudiced by counsel's deficient performance in that he did not knowingly, intelligently and voluntarily waive his Sixth Amendment right to a jury trial and did not receive a full and fair sentencing hearing. Petitioner was not in the sound frame of mind and could not effectively exercise his right to allocution. The denial of the right to allocution is a structural error presumably resulting in prejudice.

There was no objection on this ground at sentencing, but none was required to preserve this allocution issue for appeal, as the issue involves a plain error of law. **Mich. Court Rules, Rule 6.425(D)(2)**. The Michigan Supreme Court has held that the right of allocution by the defendant and his attorney must be strictly enforced and is a responsibility of the trial court. *People v. Berry*, 409 Mich 774, 779; 298 N.W.2d 434 (1980). See also *Green v. United States*, supra.

In the present case, applying the first and second *Drope* factor: When Defendant was arrested and interviewed by the Calhoun County jail staff, he was disoriented and unable to form a complete sentence and the jail staff immediately referred him to the mental health section of the jail. After receiving defendant's complete mental health back-ground they learned that he had a long history of depression, and had been diagnosed with schizophrenia, and anti-social personality disorder and immediately prescribed an injection of Prolixin, 500 mg of Depakote, 30 mg of Remron, and 2 mg of Artane and placed him in an observation cell to be closely monitored. Defendant's condition remained the same throughout his stay in the county jail. During a jail visit interview with his trial counsel defendant was still disoriented, delusional and unable to form words due to the medications and mental instabilities. Trial counsel was made aware of Defendant's mental illness, his being on medications, and the possibility that he might not know exactly what's going on around him. Defense counsel Solis, knowing of Defendant's mental illness, convinced Defendant to waive his preliminary examination though he knew he should have requested that the court order a competency hearing. Furthermore, a plea agreement hearing was held on December 19, 2013, though counsel knew, and the court observed at the hearing that Defendant showed a soporific (or drowsy) demeanor and could barely form a sentence. All that he could do was go along with what the attorney told him and answered "Yes" to every question without really understanding what he was answering to. All that he really wanted to do, because of the effect of the medications that he was on at the time, was return back to his bed in the county jail and go back to sleep. A complete competency hearing would have given the court an update on the degree of seriousness of Defendant's mental condition. Also, whether there was sound reason to believe that Defendant was mentally ill at the time he committed the charged offenses, and that his mental illness was exploited by his co-defendant, and coerced him to commit the

crime. It is Defendant's contention that, it was his trial counsel's responsibility to press for an affirmative defense consistent with his client's state of mind, regardless of Defendant's previous criminal history. Defendant also insist that, based on the facts presented in this case and existing physical evidence, trial counsel was constitutionally ineffective in meeting both prongs of *Strickland*, cause and prejudice, and should be granted relief from judgment consistent with MCR 6.508(d)(3)(b)(ii)(iii). In conclusion, this court should order a competency examination for Defendant to examine whether or not Defendant could have possibly been mentally ill at the time of the instant offense, consistent with *People v Wyte*, 165 Mich. App. 409; 418 NW2d 484 (1988).

The state court decision was an unreasonable application of federal law and the Michigan Supreme Court abused its discretion in denying leave to appeal to vindicate the denial of Petitioner's federally protected rights. Therefore, Petitioner respectfully requests that this Honorable Court grant his petition for a writ of certiorari

ISSUE II

I. TRIAL COUNSEL'S FAILURE TO OBJECT TO THE USE OF INACCURATE INFORMATION WAS PLAIN ERROR SUFFICIENT TO OVERCOME A PROCEDURAL DEFAULT.

Argument:

There is no need to object at sentencing to preserve a challenge to the failure to prepare a legally sufficient presentence investigation report. *People v Hemphill*, 439 Mich. 576; 487 NW2d 152 (1992).

A defendant's constitutional right applies at sentencing as well as at trial because sentencing is a critical stage in the criminal proceeding. *Mempa v Rhay*, 389 U.S. 128; 99 S. Ct. 254; 19 L Ed. 2d. There is no question but that a defendant is entitled as a matter of due process

to be sentenced on the basis of only accurate information. *People v Francisco*, 474 Mich. 82; *People v Malkowski*, 385 Mich. 288. In *Lockridge*, 498 Mich. 364, our Supreme Court held that “the rule from *Apprendi v New Jersey*, 530 U.S. 468; 120 S. Ct. 2348; 147 L Ed 2d (2000), as extended by *Alleyne v United States*, 570 U.S. ___, 133 S. Ct. 2151; 186 L Ed 2d 314 (2013), applies to Michigan’s sentencing guidelines and renders them constitutionally deficient because of the extent to which the guidelines require judicial fact finding beyond the facts admitted by the defendant or found by the jury to score offense variables (OV’s) that mandatorily increases the floor of the guidelines minimum sentence range. Defendant’s case should be remanded to the trial court to determine whether it would have imposed a materially different sentence but for the constitutional error. If the trial court determines that the answer to that question is yes, the court must order resentencing. There is clear evidence to support that such a violation occurred in this case and defendant Tubbs’ sentence was calculated using a guideline minimum sentence range in which the offense variables (OV’s) have been scored on the basis of facts not admitted by the defendant or found beyond a reasonable doubt by the jury. There was no investigation done to consider what state of mind Defendant was in at the time of the offense, especially considering his mental health issues and the level of defendant’s mental illness. As this court knows, on July 29, 2015, the Michigan Supreme Court in *People v Lockridge*, 498 Mich. 358 (2015) concluded that all defendants who can demonstrate that the facts admitted by defendant or found by the jury were insufficient to assess the minimum number of OV points necessary for the defendant’s score to fall in the cell of the sentencing grid under which he or she was sentenced, and whose sentences were not upward departures, can establish a threshold showing of the potential for plain error sufficient to warrant a remand to the trial court for further inquiry. This error is as stated by the Michigan Supreme Court, a violation of his Sixth Amendment right to a jury trial.

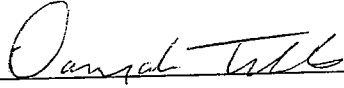
REASONS FOR GRANTING THE PETITION

CERTIORARI IS APPROPRIATE BECAUSE MICHIGAN MISAPPLIED SUPREME COURT PRECEDENT CONCERNING DEFENDANTS' SIXTH AMENDMENT RIGHTS TO EFFECTIVE COUNSEL AT TRIAL AND SENTENCING WHERE PETITIONER'S COUNSEL FAILED TO REQUEST AN EVALUATION AS TO PETITIONER'S MENTAL COMPETENCY TO STAND TRIAL AFTER PETITIONER EXHIBITED AN INABILITY TO UNDERSTAND THE PROCEEDINGS OR ADEQUATELY PARTICIPATE IN HIS DEFENSE.

CONCLUSION

Based on the above issues the petition for a writ of certiorari should be granted.

Respectfully submitted,

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| Danyale Sharron Tubbs #292944 |

Date: , 2018

Aug. 6, 2018