

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

William O'Brien — PETITIONER
(Your Name)

vs.

UNITED States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED States Court of Appeals for the Third Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William O'Brien #71915-066
(Your Name)

Federal Correctional Institution - Hazelton
P.O. Box 5,000
(Address)

BRUCETON Mills, WV 26525
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Should (a) *Iowa v. Tovar* (2004) (the Sixth Amendment safeguard to an accused who faces incarceration; the right to counsel at all critical stages of the criminal process) and the cases that it is based on:

(b) *Mickens v. Taylor* (2002) (we have "presumed" [prejudicial] effect where assistance of counsel has been denied entirely or during a critical stage of the proceeding");

(c) *United States v. Cronin* (1984) (automatic reversal is required where there has been a complete denial of counsel at a critical stage of the criminal proceedings);

(d) *Gideon v. Wainwright* (1963) (right to an attorney);

BE OVERTURNED?

2. How can "unlawfully prescribed" medication, by a physician, be the "but-for-cause" of death when the medications were not ingested by the deceased? or the medication involved is not a controlled substance?

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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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CASES

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OTHER

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 2018 U.S. App. LEXIS 16419 No. 16-3814; 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☒ is unpublished.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 G to the petition and is

☒ reported at 2015 U.S. DIST. LEXIS 156999; 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 _____ to the petition and is

☐ reported at _____; or,

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

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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 JUNE 19, 2018 6/19/18

☐ 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: JULY 12, 2018 7/12/18, and a copy of the order denying rehearing appears at Appendix F ~~not appended~~

☐ 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

SIXTH AMENDMENT RIGHT TO COUNSEL, AFTER RIGHT TO COUNSEL ATTACHED. DENIAL OF COUNSEL, AT AN ADMITTED "CRITICAL STAGE" OF PROCEEDINGS IS A STRUCTURAL ERROR AND PREJUDICE NEED NOT BE SHOWN.

THE SUPREME COURT REVIEWS Appellate Court decisions AND WHEN CLEARLY IN ERROR, CORRECTS OBVIOUS ERROR.

A "but-for-cause" OF DEATH MUST SHOW THE DRUG DISTRIBUTED WAS TAKEN BY THE DECEASED; AND - NON-NARCOTIC DRUGS, RESPONSIBLE FOR THE DEATH, ARE NOT INCLUDED IN 28 U.S.C. 841. A NON-NARCOTIC drug THAT CAUSES death IS NOT COVERED BY 28 U.S.C. 841
NON-NARCOTIC BEING A NON-CONTROLLED SUBSTANCE.

STATEMENT OF THE CASE

O'Brien was denied a right to counsel at a critical stage of the criminal process - see *IOWA v TOVAR* (2004)

Original counsel, MARTIN, had a severe conflict unknown to O'BRIEN - see App "D". Martin was replaced by atty PAGANO, who was disqualified on 10/8/15. No counsel was appointed.

The government requested counsel be appointed prior to the "Ferreta" hearing, on 11/3/15, no less than 9 times. see App "B" p 5 L 4-7; p 6 L 6-7 & 10-11 & 17-18 & 23-24; p 8 L 3-4 & 13-15; p 10 L 19-21; p 11 L 14-16. This equates to UNCONSTITUTIONAL prejudice - see *U.S. v Cronin* (1984)

The government stated "this is obviously a critical stage..." App "B" p 6-7 L 25-2. The Supreme Court, in *MICKENS v Taylor* (2002) PRESUMED PRESUDICIAL EFFECT WHERE ASSISTANCE OF COUNSEL HAS BEEN DENIED ENTIRELY DURING A CRITICAL STAGE OF THE PROCEEDING. ALSO "RIGHT TO COUNSEL" - see *U.S. v WADE* (1967)

"Attachment of Counsel" had occurred prior to the 11/3/15 hearing. The accused then has a "right to counsel" at any critical stage.

This Sixth Amendment Violation does NOT NEED a showing of prejudice and is not subject to harmless-error analysis. - see *U.S. v Gonzalez-Lopez* (2006)

Despite an oral objection, App "B" p 65 L 7-23 AND it being noted on the docket, App "C" #217, and 3 written motions - see App 6 - see App "C" #223, 250, 308, 331; THE APPELLATE COURT found "Because this issue was not raised before the district court... App "A" p 7 THIS ISSUE WAS RAISED 13 TIMES! THE ERROR to Appoint COUNSEL IS OBVIOUS UNDER CURRENT LAW! - see *BELL v Cone* (2002);

STATEMENT OF THE CASE

MICKENS v. TAYLOR (2002); U.S. v. Gonzalez-Lopez (2006);
IOWA v. TOWNE (2004).

O'BRIEN ASKS REVERSAL AND IMMEDIATE RELEASE

ENNIS, a patient of O'Brien's, overdosed on oxycodone, methadone, and Flexeril. Dr. Hood, pathology, stated "probably 5 or 6" oxycodone.
- App "E" p 306 L11-12 O'Brien had prescribed #120 oxycodone 3 days prior. Only ONE was missing from the bottle. the bottle had 119/120 - see trial exhibit 1816. The oxycodone "DISTRIBUTED" by O'Brien was not the "But-for" cause of death.

9 times Hood stated that "ALL THREE DRUGS" were responsible for the death. Flexeril is a non-controlled substance, a muscle relaxer.
App "E" p 285 L14-19 & 20-23; p 292 L8-14; p 299 L8-14; p 301 L13-15; p 302 L3-7; p 304 L12-17; p 312 L14-19; p 317 L5-10.

Most importantly "No Two Drugs" are to blame - App E p 304 L12-17
SINCE FLEXERIL IS TO BLAME and Flexeril is non-narcotic / not controlled substance per BURRAGE v. U.S. (2014): a "controlled substance" distributed by defendant was NOT an independent cause of death.
O'Brien asks reversal and a new trial. The government never proved the elements of the charged crime.

REASONS FOR GRANTING THE PETITION


- ① The trial court denied O'BRIEN's Sixth Amendment Right to counsel, AFTER COUNSEL ATTACKED, AT A CRITICAL STAGE OF the Proceedings. This was despite the admonishments of the Prosecutor (Government), who clearly had reviewed this situation with the Appellant Review Attorneys for the prosecution, who AGREED THAT COUNSEL MUST BE PROVIDED BEFORE A Pro Se Colloquy! (Ferretta Henning)
- ② With the opioid EPIDEMIC AMONG US IN the United States, the Government has TARGETED Physicians AND pharmacists. PLEASE, CONSIDER these EGREGIOUS CHARGES AND PUNISHMENTS WHEN THE PATIENT DIDN'T TAKE THE MEDICINES PRESCRIBED, NOR the CAUSE OF DEATH BE ATTRIBUTED TO THOSE ^(CONTROLLED) NARCOTIC MEDICINES. A NOW ^(COMMON) -NARCOTIC MUSCLE RELAXER, IN UNISON WITH OTHER MEDICATIONS (All GROSSLY OVERDOSED BY the patient) WAS the BLAME. THIS IS A NATIONAL HEALTH CRISIS ISSUE. PHYSICIANS ARE TRYING TO HELP/TREAT PATIENTS.

CONCLUSION

BECAUSE OF THE NATURE OF THIS CASE, THE OBVIOUS APPELLATE ERROR,
AND CLEAR CASE LAW - THIS CASE HAS NATIONAL SIGNIFICANCE

The petition for a writ of certiorari should be granted. IF NOT, A REVERSAL AND
REMAND TO THE THIRD CIRCUIT!

Respectfully submitted,



Date: _____

SEPTEMBER 11, 2018