

18-7464 ORIGINAL

No. 2D17-129

LEGAL MAIL
Provided to
Wakulla CI

SEP 21 2018

FOR MAILING

C.G.

CF008283 CFAM

IN THE

FILED

SEP 13 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

LEGAL MAIL
Provided to
Wakulla CI

JAN 03 2019

FOR MAILING

C.G.

CARLTON E. GARY — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARLTON EDWARD GARY
(Your Name)

110 MELALEUCA DRIVE
(Address)

CRAWFORDVILLE, FL 32327
(City, State, Zip Code)

(Phone Number)

RECEIVED

JAN 15 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECEIVED

SEP 19 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

(1)

QUESTION(S) PRESENTED

1). Dr. Merin, had not made contact with a witness to the criminal charges. The credibility of her report would have been considered proper.

2). Can Dr. Merin, get a written letter from a witnesses in a criminal case, for a competency hearing.

3). By law this witness influence making contact with a expert doing his or her report for a level of competence.

4). This hand written letter by Ms. Riggins. referred to a evaluation of the petitioner, that prejudiced his competency hearing.

5). This witness is actions under a violation of due process of law. by contact a expert doing his or her report.

6). It is a due process violation and fundamental error through information in Dr. Merin, report that a fair inference the used of this writer letter in the case that prejudice the outcome.

7). That the expert has been influenced by passion or prejudice.

8). Disprove a fact which was of consequence to the outcome of the action. Fla. Evidence § 401.1 (2004 ed.).

9). By the conclusiveness of the inferences it may afford in reference to the litigated fact.

LIST OF PARTIES

- [X] All parties appear in the caption of the case on the cover page.
- [X] 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:

CLERK OF THE CIRCUIT COURT
OF THE PINELLAS COUNTY, FLORIDA
14250 49th Street North
Clearwater, FL 33762

DISTRICT COURT OF APPEAL
SECOND DISTRICT
P.O. Box 327
LAKELAND, Florida 33802-0327

OFFICE OF THE ATTORNEY GENERAL
CRIMINAL APPEALS DIVISION

John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Decision of State Trial Court
APPENDIX B	Decision of State District Court of Appeal
APPENDIX C	Decision of State Supreme Court Denying Review
APPENDIX D	Order of State Supreme Court Denying Rehearing
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Kilmartin v. State, 848 So.2d 1222 (Fla. 1st DCA 2003)	6
Anders v. California, 386 U.S. 738 (1967)	4
Baan v. Columbia County, 180 So.3d 1133	5
United States v. Frazier, 387 F.3d 1244, 1261 (11th Cir. 2004)	5
Geter v. State, 115 So.3d 375, 385 (Fla. 3d DCA 2012)	5
Miller v. Alabama, 132 S.Ct. 2455 (2012)	5
Apprendi, 530 U.S. at 483	5
Brady v. Maryland, 373 U.S. 83, S.Ct. 1194, 16 L.Ed.2d (1963)	5
Bailey v. State, 760 So.2d 505 (Fla. App. 2nd Dist. 2000)	5
Martinez v. Ryan, 132 S.Ct. 130 (U.S. 2012)	5

STATUTES AND RULES

SECTION 90.951 (3)	5
SECTION 90.502	5
DUE PROCESS SECTION 90.403	5
Fla. R. Civ. P. 1.510 (e)	5
Fla. R. App. P. 9.140 (b)(2)(A)	6
e.g., § 90.403, Fla. Stat. 2008)	6
Rule 3.170 (f)(h) . . . Rule 12.2	5
Rule 3.172 (i)	3

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 _____ 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 United States district 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.

☒ For cases from **state courts**:

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

- ☒ reported at SUPREME COURT + _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the District Court of Appeal court appears at Appendix B to the petition and is

- ☒ reported at Dr. Merin, document; 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 _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11/9/2016.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: December 26, 2017, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 3, 2018 (date) on July 25, 2018 (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

916.12(3)(c)(a) MENTAL COMPETENCE TO PROCEED.

- (3)-in considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's Capacity to.
- (c). Understand the adversarial nature of the legal process.
- (a). The mental illness causing the incompetence.

916.145 Adjudication of incompetency due to mental illness; ruling on the violation § 948.06(1), Fla. Stat, (2002).

violated under the Eighth Amendment also Under the United States Constitution and provisions and laws of Florida constitution and Statutes, § 859.01.

RULE 3.172(4) nolo contendere without express reservation of the right to appeal. But does not impair the right to review by appropriate collateral attack: Supreme Court reviews the record, West's F.S.A. § 921.141(5). Trial are reviewed for harmless error. West's F.S.A. § 921.141(5). RULE 3.172(i) Failure to follow any the procedures in this rule shall not render a plea void absent a showing of prejudice. 3.172(h) Evidence: Exist to prevent juror confusion and to guarantee criminal defendants the right to a fair trial. See, e.g., § 90.403, Fla. Stat. (2008). (excluding relevant but unduly prejudicial or confusing evidence); § 90.802, Fla. Stat. (2008).

STATEMENT OF THE CASE

1. "Hand written letter by Ms. Riggins, referred to the evaluation by Sidney Merin, was a taint to its process. Whom advised Dr. Merin, to contact a witness family member of the victim or victim in the course of an evaluation were improper contact." (Exhibit A-2).

2. "Dr. Merin, biasly interfered with the role of the prosecution when she included involvement "talking to the Ms. Joan C. Riggins" of the offence her report that prejudiced the Claim results of her diagnostic report to have been independent. Takeing Sider. reviewed the record, (386 U.S. 738)?"

3. "Had Dr. Merin, had not made contact with the victim nor any witnesses to the Criminal Charges, the credibility of her report would have been considered proper. But due to influence of Dr. Merin, contact made with Ms. Riggins, by use of a handwritten letter concerning the criminal charges, influenced a taint in her diagnosed opinion when truly considering Mr. Gary, assessment of competence. Defendant cannot get a fair level of competence;" "This is a violation to the Constitutional Rights of the 5th and 14th Amendment, Violation of due process of law." Defense Counsel failed to discover Dr. Merin, report that prejudiceal his competency hearing, also the influence of Ms. Riggins, as well that prejudiced the outcome.

4. Ever, Dr. Merin, reports Consider on October 25, 1997. On pg. 6. Mr. Gary, response to this examination is quite unusual, rarely found among psychotic individuals unless Such individuals are severely disturbed and most frequently hospitalized. Section 90.951(3). See Exhibit B-1.

5. The defendant Gary, and other evidence was withheld also allowed a Claim for ineffective assistance of counsel, See Brady v. Maryland, 373 U.S. 83. S. Ct. 1194. 10 L. Ed. 2d (1963). Bailey v. State, 760 So. 2d 508 (Fla. App. 2nd Dist. 2000).

6. Opinion the expert may express. Baan v. Columbia County, 180 So. 3d 1133. Citing United States v. Frazier, 387 F. 3d 1244, 1261 (11th Cir. 2004).

7. The postconviction Court dismissed her motion as untimely, relying on the Third District decision in Geter v. State, 115 So. 3d 375, 385 (Fla. 3d DCA 2012). See Apprendi, 530 U.S. at 483. Rather, Miller creates a new right to present mitigating circumstances when no such right previously existed. Chambers, 831 N.W. 2d at 336-37; Miller v. Alabama, 132 S. Ct. 2455 (2012):

Section 90.502. Due Process Section 90.403. Fla. R. Civ. P. 1.510(e): ineffective assistance of trial counsel claim See 132 S. Ct. 130, Martinez v. Ryan, (U.S. 2012). Petitioner filing this without an Counsel under Rule 12.2.

STATEMENT OF THE CASE

8. Petitioner claim this influence by Ms. Joan C. Riggins, Sending a hand written letter as a witness, Contact Dr. Sidney Merin, doing her report of competency. And Ms. Riggins, is not a expert Psychologist or Psychiatric. Is a violation of due process of Law.

9. Petitioner Claims defense counsel and trial court or judge Kouzam, error by not notices Ms. Riggins, letter in the report of Dr. Merin, and used this information at a competency hearing. This error constitutes fundamental error may be raised for the first time on appeal. See Kilmartin v. State, 848 So.2d 12-22 (Fla. 1st DCA 2003). Fla. R. App. P. 9.140(b)(2)(A). On records that found petitioner to be Competency. A Constitution right to a fair Competency hearing without influence of a witness.

10. Hearing we review the trial court's findings on questions of fact, the credibility of witnesses, and the weight of the evidence for Competent. Substantial evidence. See, e.g., Hurst v. State, 18 So.3d 975, 993 (Fla. 2009); Green v. State, 975 So.2d 1090, 1100 (Fla. 2008). Outcome of his trial would have been different. See Cox, 189 So. 3d 221. expert's testimony as required by Nelson v. State, 879 So.2d 579, 583 (2004).

REASONS FOR GRANTING THE PETITION

WHEREFORE. Petition pray this Honorable Court grant this PETITION FOR WRIT OF CERTIORARI to this request for relief in this case to be dismissed judgment and Sentence of Charge. To be in the Custody of Suncoast Psychiatric for treatment, Care. For a new trial. See Safrany v. State, 895 So.2d 1145, 1147 (Fla. 2d DCA 2005).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlton E. Nacy

Date: 9/12/2018