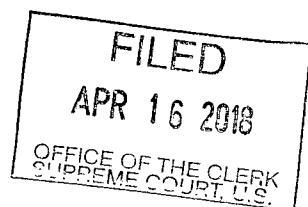


18-7504 ORIGINAL
No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Raphael R. Hamilton — PETITIONER
(Your Name)

vs.

Robert Patten, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raphael R. Hamilton
(Your Name)

6888 East 133rd Road
(Address)

Holdenville, Oklahoma. 74848-9033.
(City, State, Zip Code)

c/o (405)379-6400
(Phone Number)

QUESTION(S) PRESENTED

(1) WHETHER THE TENTH CIRCUIT COURT OF APPEALS ERRED BY NOT REVERSING THE TRIAL COURTS ORDER DENYING PETITIONER HIS RIGHT TO WITHDRAWAL OF THE GUILTY PLEA?

PETITIONER SAYS "YES".

(2) DID THE CIRCUIT COURT ABUSE ITS DISCRETION BY NOT FINDING THAT PETITIONER WAS ENTITLED TO WITHDRAWAL OF GUILTY PLEA AND ERRED BY DISMISSING HIS APPEAL? PETITIONER SAYS "YES".

(3) WERE THE RIGHTS OF PETITIONER VIOALTED UNDER THE TEN DAY RULE TO WITHDRAW GUILTY PLEA WHENEVER STATE ACTORS CHOOSE NOT TO FOLLOW STATE STATUTORY LAW? PETITIONER SAYS "YES".

(4) WHETHER A STATUTE THAT PLACES DUTIES ON PUBLIC OFFICIALS AND ESTABLISHES RIGHTS OF DEFENDANTS WITH THE INTENT TO DENY RELIEF TO SAID DEFENDANTS UNDER THE STATUTES WHENEVER POSSIBLE VIOLATES DUE PROCESS?

(5) WHETHER A JURISDICTIONAL ISSUE IS OR IS NOT SUBJECT TO WAIVER, AND WHETHER A JURISDICTIONAL ISSUE CAN BE RAISED AT ANY TIME?

(6) WHETHER A PETITIONER WHO WAS COERCED INOT TAKING GUILTY PLEA CAN LATER WITHDRAW HIS GUILTY PLEA AND ASSERT REASONS TO PROCEED TO TRIAL?

PETITIONER SAYS "YES".

(7) WHETHER OR NOT THERE IS A SET STANDARD OF TIME FOR A PETITIONER TO CONTEM- PLATE AND THINK OVER HIS GUILTY PLEA?

PETITIONER SAYS "YES".

(8) WHETHER PETITIONERS COMPETENCY SHOULD HAVE BEEN CALLED INTO QUESTION BECAUSE PETITIONER WAS NOT TAKING HIS REQUIRED MEDICATION THUS RENDERING GUILTY PLEA UNKNOWING, UNVOLUNTARY, AND UNINTELLIGENTLY ENTERED?

PETITIONER SAYS "YES".

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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TABLE OF AUTHORITIES CITED

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Ruelas v.Wolfenbarger, 580 F.3d 403,408 (2009)

Stumpf v.Mitchell, 367 F.3d 594 (2004)

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 Tenth Circuit Appellate Court # 17-5038; 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 _____ to the petition and is

~~[]~~ reported at U.S. Dist. Northern(OKLA) #14-CV-270-CVE-PJC; 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 January 26, 2018.

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 July 15, 2013.
O.C.C.A.
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

UNITED STATES CONSTITUTIONAL AMENDMENT V

UNITED STATES CONSTITUTIONAL AMENDMENT VI

UNITED STATES CONSTITUTIONAL AMENDMENT XIV

OKLAHOMA CONSTITUTIONAL ARTICLE 2, §7

OKLAHOMA CONSTITUTIONAL ARTICLE 2, §9

OKLAHOMA CONSTITUTIONAL ARTICLE 2, §15

OKLAHOMA CONSTITUTIONAL ARTICLE 2, §19

OKLAHOMA CONSTITUTIONAL ARTICLE 2, §20

OKLAHOMA STATUTORY TITLE 22 O.S.2011, §517

OKLAHOMA STATUTORY TITLE 22 O.S.2011, §1051

OKLAHOMA STATUTORY TITLE 22 O.S.2011, §1175.5 et seq.

STATEMENT OF THE CASE

An Information was filed in Tulsa County Fourteenth Judicial District Court in said reflective Criminal Felony Docket Case Number CF-2011-2923 on January 4, 2011, for violating Title 21 O.S. §701.7 Murder In The First Degree (Count 1), and Robbery With A Weapon for violating Title 21 O.S. §801 (Count 2).

Preliminary Hearing was had on September 29, 2011, and November 4, 2011 to which Petitioner was then Ordered bound over for Jury Trial by Honorable Judge Deborrah Ludi Leitch.

On or about May 14-16, 2012 Petitioner pled guilty to Murder In The First Degree, and the State of Oklahoma dismissed the Robbery With A Weapon charge in accordance with the plea bargain contractual agreement.

On July 11, 2012. Petitioner was formally sentenced to Life Without The Possibility Of Parole.

Within the ten day time constraints the Petitioner requested to withdraw his plea of guilty, and on August 13, 2012, a hearing was conducted on the Petitioner's Application To Withdraw Guilty Plea to which was ultimately denied by the Trial Court.

On March 8, 2013, Petitioner filed a Brief into the jurisdiction of the Oklahoma Court of Criminal Appeals raising 1 propositional error.

REASONS FOR GRANTING THE PETITION

Petitioner submits that the Court's erred, and should have substituted its own judgement in favor of Petitioner on the merits and facts presented throughout his appeals. Moreover, Petitioner submits that the ten day jurisdictional nature for withdrawal of guilty plea was factually met but was not adequately respected by the Trial Court, by the Oklahoma Court of Criminal Appeals, the Western District Court of Oklahoma, and the Tenth Circuit Court of Appeals panels. Petitioner further submits viable questions of whether the actions and non actions of government officials and other officers of the Courts failed in carrying out their duties should not be attributed to the Petitioner for purposes of determining his legal rights in order to be allowed withdrawal of his guilty plea, is an important matter that necessitate this Honorable Courts review. Petitioner submits the coercion, the failure to allow him contemplation time, and the petitioners competency has been overwhelmingly shown and argued throughout his appellate process, thereby preserving the issues for adequate review, and it must be surmised that the Defendants rights can not be properly said to have been protected, and it was an abuse of discretion for not allowing Petitioner to withdraw his guilty plea. Petitioners contentions stand on their own accord where the plea was coerced, not fully contemplated, and done while Petitioner was not receiving his psychotropic medications for competency, therefore his plea was unknowing, involuntary, and unintelligently entered, thus having no force of waiver effect. Petitioner finally supplants that the issues constitute a *prima facie* case of proven abuse of discretion for all the Court's to blatantly disobey the applicable statutes and not cognizantly recognizing and invoking judicially created procedural roadblocks unconstitutionally against the Petitioner for the operation of the statute is of major significant concern to the justice of American Jurisprudence.

Because of the ten day rule continues to be an active statutory tilte that is continually bypassed and ignored that was in fact passed by the legislature of Oklahoma, and because questions of whether issues are waived or not waived by a guilty plea continues to contest the Court systems again and again, and because the question of erroneous and faulty legal advice, coerced confessions, and mental competency make a plea involuntary, this such case and referenced cause of action gives this Honorable Court the final opportunity to resolve multiple legal questions on a constitutional magnitude pertaining to guilty pleas in the State of Oklahoma.

"No respectable interest of the state is served by its concealment of information which is material, generously conceived, to the case, including, but not limited just to, all possible defenses." *Giles v. Maryland*, 386 U.S.66, 98, 87 S.Ct.793,809, 17 L.Ed.2d 737,758 (1967). A prosecutor is required to recognize any information which may potentially support a defense. *Brady v. Maryland*, 373 U.S.83, 83 S.Ct.1194, 10 L.Ed.2d 215 (1963), United States Constitutional Amendment XIV.

The competency of the Petitioner is a complete defense to any charge. The Court and the prosecution was placed on Direct Notice to which established Petitioners defense. Therefore, the Trial Judge should not have allowed the Petitioner to plead guilty where there was an issue relating to the competency in which was called into question, and before any plea was accepted by the Trial Court.

Because of the Due Process violations, the Court's should have been compelled to a full and total reversal of the conviction that has amounted to a fraud upon the Courts, to which legally justifies and warrants relief. *Demjanjuk v. Petrovski*, 10 F.3d 338 (1993).

By statutory law, it is the government whom bears the burden for negating petitioners claims for withdrawal of the guilty plea for any reason and an injection of want to proceed to trial. Oklahoma Statutory Title 22 O.S.2011, 517. (Oklahoma Criminal Procedure). The same rule is required by the United States Constitution to which "a defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with Due Process." *Barker v. Wingo*, 407 U.S.514, 92 S.Ct.2182, 33 L.Ed.2d 101 (1972).

If a court goes beyond its jurisdictional boundaries, as it did when it accepted a guilty plea to a case that legally could no longer be prosecuted, the extrajurisdictional actions are supposed to be overturned in the best interest of justice because of the complexity and sensitivity of competency issues.

The Trial Court had the discretion to GRANT a withdrawal of a plea even when the motion is made after sentencing. *McLoud v. State*, 485 P.2d 480 (Okla. Cr.). "When first made after sentencing, a motion to withdraw a guilty plea addresses itself to the sound discretion of the trial court." Allowing Petitioner to withdrawal therefore was fully within the control and power and mandated jurists duty of the trial judge. Ordering a continuance of a case due to the Petitioners competency being called into question was not only

within the said referenced trial judges discretion, but arguendo it was mandatory. The Oklahoma Court of Criminal Appeals therefore should have intervened and protected Petitioners Due Process rights to a full and fair impartial trial.

In any event, the Oklahoma Court of Criminal Appeals, the Western District of Oklahoma, and the Tenth Circuit Court's should have validly found an abuse of discretion by the trial judge for not ordering a continuance when the competency question became an issue. The traditional meaning of the term "abuse of discretion" involves the idea of choice, of an exercise of the will, of a determination made between two competing considerations. In order to have an 'abuse' in reaching such a determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgement but defiance thereof, not the exercise of reason but rather of passion or bias. *Arizona v. Washington*, 434 U.S.497,509-510, 98 S.Ct.824, 54 L.Ed.2d 717 (1978). It is not grossly violative of fact and logic to allow withdrawal of the plea where a complete and total defense existed, but Petitioner lacked the legal skill and knowledge and education and understanding of the law to successfully pursue such claims on his own during collateral attack and appeals without the effective assistance and guidance of competent counsel. Therefore, all the Court's thus clearly and unconstitutionally committed errors that did not pass constitutional muster.

Petitioner also submits contentions that these very questions should be held to have been previously answered by controlling case law and authority, and the Courts of Appeals panels got it factually, legally, and unjustifiably wrong. In *Blackledge v.Perry*, 417 U.S.21, 94 S.Ct.2098, 40 L.Ed.2d 628 (1974), the Court held that a defendant had a right, although he had pled guilty, to claim on appeal that the trial court was without jurisdiction.

"A criminal defendant may appeal from an unconstitutional guilty plea or plea of nolo contendere only where the claim on appeal implicates the very authority of the State to bring the defendant to trial in the first instance, that is, where the right of the government to prosecute the defendant is challenged. Such rights are never waived by a plea of guilty or nolo contendere where the claim sought to be appealed involves only the capacity of the State to prove defendants factual guilt.

The instant ruling finding the guilty plea to be a waiver is directly contrary to clearly established authority issued by both the Oklahoma Supreme

Court and the United States Supreme Court. It should therefore be overturned. A guilty plea may waive many issues, but not the authority and mandatory duties of the Trial Court.

In McCarthy v. United States, 394 U.S.459, 89 S.Ct.1166, 22 L.Ed.2d 418 (1969), Boykin v. Alabama, 395 U.S.238, 89 S.Ct.1709, 23 L.Ed.2d 274 (1969), Godinez v. Moran, 509 U.S.389, 113 S.Ct.2680, 125 L.Ed.2d 321 (1993) and many other cases, this Honorable Court ruled that a guilty plea, to be constitutional, must be voluntary. Since the Petitioners competency was called into question, it must be held that the Petitioners plea of guilty was involuntary, unknowing, and unintelligently entered into thus voiding it. Under Boykin v. Alabama, *supra*, it is error to accept a guilty plea "without an affirmative showing that it was intelligent and voluntary."

Guilty pleas "not only must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Ruelas v. Wolfenbarger*, 580 F.3d 403,408 (2009)(quoting *Brady v. United States*, 397 U.S.742,748 (1970)). Petitioner, when he was forced under coercion and undue pressures to plead guilty, did not do so voluntary, due to the logical fact, that he was not on his required psychotropic medication, to which would have established a duly cognizable defense to the alleged charges, that warranted a continuance by the trial court. Therefore, his plea was not a "knowing" plea, and thus not "voluntary," or "intelligently" entered, and henceforth cannot serve as a basis for anything being waived. It was an abuse of discretion not to allow withdrawal of such a plea.

With the known facts of Petitioners previously existing mental health conditions at the time of the plea, the Trial Court should dutifully and constitutionally continued the proceedings and went beyond their jurisdictional scope to which it should be concluded that 'the entry of the plea could not be "done with petitioners sufficient awareness" of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S.742, 25 L.Ed.2d 747, 90 S.Ct.1463, as is required for a voluntary plea. as the Court held in *Stumpf v. Mitchell*, 367 F.3d 594 (2004): "The proper standard of review in this case, then turns on whether the record of the State Court proceedings surrounding Stumpf's guilty plea "leaves doubt as to whether the plea was in fact intelligent and voluntary." *Dunn*, 877 F.2d @ 1277 (citing *Roddy v. Black*, 576 F.2d 1380,1384 (1975)). If the record does leave doubt as to whether the plea was voluntary, intelligent, and knowing, and the defendant argues that it was not, the State bears the burden of proving the con-

trary. Id. (citing Boykin, 395 U.S. @ 243, 89 S.Ct.1709)."

Therefore, the Oklahoma Court of Criminal Appeals, The United States Northern District of Oklahoma, and the Tenth Circuit Court of Appeals clearly and unconstitutionally erred when they did not conclude the summary finding of an abuse of discretion.

These errors violated the Petitioners rights under the United States Constitution V, VI, XIV, as well as the Oklahoma Constitutional Article 2, §§§§ 7,9,15,19,20 to which relief is thus justifiably warranted.

CONCLUSION

Wherefore, premises considered, Petitioner moves this Honorable Court to GRANT his Writ of Certiorari, to determine the multiple complex difficult

The petition for a writ of certiorari should be granted.

continued on other
continuation page

Respectfully submitted,



Raphael R. Hamilton

Date: April 16, 2018

CONCLUSION

questions presented herein and throughout the entire appellate proceedings, to determine that the trial Judge abused his discretion for not allowing Petitioner to withdraw his guilty plea, to determine that the trial Court Judge abused his discretion when as sitting jurist he did not intervene on Petitioners behalf and restore his rights to a fair trial and then to order a continuance because of the competency issue, to reverse the Court's of Appeals rulings, and to remand the case back to the Court for a new trial, or for further proceedings as this Honorable Court deems just and right in the best interest of justice due to the proven injustices and miscarriages of justice.

IT IS SO PRAYED.