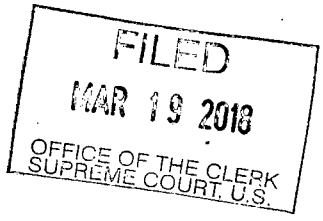
IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM 2018

NO. 18-7738



ROBERT DAVIS - PETITIONER

-against-

THE PEOPLE OF THE STATE OF NEW YORK - RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

ROBERT DAVIS, #81C0288, PRO SE, PRISONER
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QUESTIONS PRESENTED

Did the State's highest court fail to lawfully review the questions of law in Petitioner's application prior to denying him permission to appeal his claim of ineffective assistance of appellate counsel? "YES"

Did the State's appellate court fail to lawfully review questions of law and fact in denying Petitioner's claim of ineffective assistance of appellate counsel? "YES"

Was Petitioner denied ineffective assistance of appellate counsel during his appeal before the State's appellate court? "YES"

PARTIES

ROBERT DAVIS, #81C0288, is the Petitioner and prisoner incarcerated at Green Haven Correctional Facility, State of New York, P.O. Box 4000 - 594 ROUTE 216, Stormville, New York 12582-4000.

The People of the State of New York: William J. Fitzpatrick, is the Respondent and District Attorney of Onondaga County, State of New York, 505 South State Street, 4th Floor, Syracuse, New York 13202.

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STATUTES

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DECISIONS BELOW

The decision of the New York State Court of Appeals is unreported. A copy is attached as Appendix A to this petition (A-1). The order of the New York State Appellate Court is not reported. A copy is attached as Appendix B to this petition (A-2).

JURISDICTION

The decision of the New York State Court of Appeals was entered on December 21,2017. A copy of that order is attached as Appendix B to this petition (A-1). Jurisdiction is conferred by Title 28 U.S.C., section 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VI to the United States Constitution, which provides:

> 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.

This case also involves Amendment XIV to the United States Constitution, which provides:

> SECTION 1. 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 immunites 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.

STATEMENT OF THE CASE

Under the Laws of New York State, Petitioner had a right to appeal his criminal conviction in 1981. More importantly, Petitioner had a Federal and State Constitutional right to the effective assistance of appellate counsel during his appeal of such conviction. However, Petitioner did not receive such effective assistance because his assigned appellate counsel unlawfully conspired with the Respondent's attorney in transcribing their Briefs with words that were not the exact, official transcribed words of...

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..... the trial court record. In committing such unlawful acts, Petitioner's appellate counsel cause the impact of one of this court's rulings (Miranda v. Arizona) to be ignored by the State's appellate court justices. Such appellate justices even mouth the same unlawfully transcribed words in their decision to deny Petitioner's appeal:

> "..I don't feel like doing MUCH MORE. such a statement does not rise to the level of a request to stop the interview.."
> (see Appendix C [A-3]; also, People v. Davis, 459 N.Y.S.2d 178)

The official transcribed words of the trial court record were: "I don't feel like doing to much, ANYMORE". (see Appendix D [A-5]). However, both the Respondent's attorney and Petitioner's appellate counsel unlawfully transcribed their Briefs with words outside the official trial court record (see Appendix E, A-7 & Appendix F, A-10). What's even worse, the Respondent's attorney unlawfully went one step further by giving perjured testimony to the appellate court justices that his "summary reflects the best opinion of the author of the Brief as to the actual content of the Tape (see Appendix F, A-11), when in fact, is was not. The Respondent's Brief use the words, "I don't feel like doin' too MUCH MORE" (A-10). But, the actual transcribed words of the court record and confession Tape was "I don't feel like doing too much ANYMORE" (A-5). Such a statement is clearly tailored to this court's Miranda Ruling of "in any manner" and "at any time" during questioning, the accuse wishes to remain silent, the interrogation must cease (384 U.S. 436, 474, 86 S.Ct. 1602 [1966]). Both court officers (appellate counsel & Respondent) together recognized the constitutional magnitude of Petitioner's actual statement, which is why they unlawfully conspired to weaken it and secure Petitioner's conviction. (continue)

Also, Petitioner's appellate counsel raised another issue of Petitioner being incompetent to stand trial (A-8). Unfortunately, such counselor also lessen the constitutional impact of such issue by failing to raise ineffective trial attorney, i.e., a trial attorney who knowingly and unlawfully allowed an incompetent Petitioner to stand trial (see A-17 to 20).

In the State of New York, the highest court resurrected the ancient Writ of Error Coram Nobis as an avenue for criminal defendants to attack the issues of being denied effective assistance of appellate counsel. In 2017, Petitioner filed such a Writ. However, the appellate court denied such Writ without any valid reasons or lawful justification to the issue of Petitioner being denied effective assistance of appellate counsel (A-2). Even worse, when Petitioner tried to seek permission to appeal to the State's highest court, one judge of such court denied Petitioner's application without also mentioning any valid reason for the obvious "question of law" Petitioner presented (A-1). Thereby, violating Petitioner's due process and equal protection under the State and Federal Constitutions. Therefore, New York States' highest court being the court of last resort, plus, unlawfully ignoring the constitutional issue of Petitioner's ineffective counsel claim, and the "explicit mandatory language" of the State constitution regarding questions of law -- Petitioner now seeks the review of this court.

BASIS FOR FEDERAL JURISDICTION

This State court case raises questions regarding interpretations of the Sixth Amendment, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution; as well as, Equal Protection of such Amendment. Such Federal questions arose due to the rulings of this court....

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..... regarding "ineffective assistance of appellate counsel" and "explicit mandatory language of statutes". Such rulings are the basis for Federal jurisdiction of this petition under Title 28 U.S.C.A., section 1257.

REASONS FOR GRANTING THE WRIT

The issues presented in this petition are novel and of great public importance because they affect the operation of the judicial system in all 50 States; as well as the legal representation of criminal defendants (slash) Military Veterans hampered by combat stress (i.e., Post-Traumatic Stress Disorder: "PTSD"). Such criminal defendants being American Citizens, and believing in the guarantees that they will receive effective assistance of counsel during every stage of their criminal proceedings, will sadly realize such is not always probable.

Where prestigious officers of the court (i.e., attorneys) sometimes possess unprofessional hidden, human feelings of hatred, its not always guaranteed a specific criminal defendant will receive such effective assistance under this Nations Constitution. Petitioner is such an example of the shocking extremities of what such court officers will stoop to in securing criminal convictions on appeal; as well as, violate criminal defendant's Sixth and Fourteenth Amendment Rights to the United States Constitution. A constitution Petitioner risk his life for during the Vietnam War in 1968-69; and a constitution he swore to defend against all enemies, foreign and domestic .....(S.H.M.G.).

A. NEW YORK STATE'S COURT OF LAST RESORT FAILED TO LAWFULLY REVIEW QUESTIONS OF LAW IN PETITIONER'S APPLICATION PRIOR TO DENYING HIM PERMISSION TO APPEAL HIS CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Under the New York State legal system, Petitioner had a right to appeal his conviction (N.Y. Criminal Procedure Law, sections 450.10 & 450.30; ....

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..... People v. Harris, 85 N.Y.2d 794, 628 N.Y.S.2d 939 [1995]; People v. Yavru-sakuk, 98 N.Y.2d 56, 745 N.Y.S.2d 787 [2002]). Also, under this court's ruling, and the Federal and New York State Constitutions, Petitioner had a right to effective assistance of appellate counsel during such appeal (see Anders v. California, 386 U.S. 738, 744, 87 S.Ct. 1396 [1967]; U.S.C.A., Const., Amend. 6th & 14th; People v. Stultz, 2 N.Y.3d 277,282, 778 N.Y.S.2d 431 [2004], N.Y.S. Const., Article 1 section 6). Furthermore, such appellate counsel's responsibility was to assist the court in reviewing the case by advancing Petitioners' contentions to the fullest extent that the record permits (U.S.C.A., Const., Amend., 6th & 14th; N.Y.S. Civil Practice Law & Rules, Rule 5526; People v. Crawford, 71 A.D. 38, 421 N.Y.S.2d 485 [1979]; also, "the court of Petitioner's appellate tribunal"). Unfortunately, such did not happen during Petitioner's appellate review.

In 1943 New York State's highest court (hereinafter: "Court of Appeals") recognized and employed the common law Writ of Error Coram Nobis (hereinafter: "the Writ") (see People v. Bachert, 69 N.Y.2d 593,598, 516 N.Y.S.2d 623 [1987]). Additionally, such court of appeals enlarged the purview of the Writ to include issues on appeal to afford criminal defendants a legal remedy in those cases in which no other avenue of judicial relief appears available (People v. Bachert, supra, N.Y.2d, at 598). One of those avenues being a "claim of ineffective assistance of appellate counsel". Plus, such court was aware that claims of ineffective assistance of appellate counsel was reviewable under "common law" (People v. Bachert, supra, N.Y.2d, at 598).

More importantly, claims of ineffective assistance of appellate counsel [the court noted] was just another recognition of the exceptional availability of the Writ to fill yet another interstice of the "Law" and human experience ...

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.... (People v. Bachert, supra, N.Y.2d, at 600). Furthermore, in having the power to expand the scope of such Writ, the court concluded that the Writ's natural venue --regarding claims of ineffective appellate counsel-- is in the appellate tribunal where the deficient representation occurred (People v. Bachert, supra, N.Y.2d, at 598 & 600).

After expanding such judicial power, there clearly was no doubt that the court of appeals recognized that claims of ineffective assistance of appellate counsel were "questions of law", expecially where they even invited the New York State Legislators to address problems of allowing criminal defendants a remedy to appeal appellate dismissals of ineffective assistance of appellate counsel claims (People v. Bachert, supra, N.Y.2d, at 600). The New York State Legislators did, indeed, remedied the problem by amending Criminal Procedure Law, section 450.90, which allowed criminal defendants the opportunity to finally seek such permission, i.e., appealing claims of ineffective assistance of appellate counsel (People v. Stultz, supra, N.Y.3d, at 281). After such Legislative Law was established, the court of appeals began its initial ruling with the premise that defendants in criminal cases have a Federal and State Constitutional Right to effective assistance of appellate counsel (People v. Stultz, supra, N.Y.3d, at 282), which is an obvious "question of law" recognized in such court (see People v. Bachert, supra, N.Y.2d, at 600).

More importantly, under the New York State Constitution, the court of appeal's jurisdiction "shall" be limited to the review of "questions of law" (N.Y.S., Const., Article 6 section 3). Such court even enforced such juris--diction [on questions of law] in deciding several ineffective assistance of appellate counsel claims (see People v. Stultz, supra, N.Y.3d 277; People v. Turner, 5 N.Y.3d 476, 806 N.Y.S.2d 154 [2005]; People v.....

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..... D'Alessandro, 13 N.Y.3d 216, 889 N.Y.S.2d 536 [2009]; People v. Syville, 15 N.Y.3d 391, 912 N.Y.S.2d 477[2010]). Moreover, granted such above mention criminal cases permission to appeal in such court. However, when Petitioner filed his application for such judicial permission, the court of appeals unlawfully denied his application! What was baffling about such denial, was the fact that Petitioner's application encompassed similar "questions of law" as the above mention criminal cases (Stultz; Turner; D'Alessandro, supra). Even more baffling, the court of appeals did not "dispute" that Petitioner presented "questions of law" in his application. Nor did such court explain the juris--dictional review process that caused Petitioner to be denied the similar constitutional review that was granted in the above mention criminal cases (see A-1). The court of appeals' denial of Petitioner's application, was simply another unlawful rubber-stamped denial of the appellate courts decision, which also did not dispute the "questions of law" in Petitioner's Writ (A-2).

The New York State Constitution mandates that the court of appeals' jurisdiction "shall" be limited to the review of "questions of law". Such constitution states nothing about jurisdiction review being limited to only popular, over unpopular criminal defendants, as was done to Petitioner (see N.Y.S., Const., Article 6 section 3, paragraph a). Nor are there any black or grey discretionary areas in the jurisdictional review of such constitution to allow the court of appeals an opportunity to unlawfully deny any criminal defendants its due process and equal protections. New York's Constitution of jurisdictional review strictly focuses on "questions of law" only!! Further--more, such constitution's jurisdictional review is written in "explicit mandatory language" (N.Y.S. Const., Article 6 section 3: "shall").

This court ruled that Statutes written in ..... (continue)

..... "explicit mandatory language" (shall, will, must) enjoy protections under the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Hewitt v. Helms, 459 U.S. 460,472, 103 S.Ct. 864 [1983]).

Therefore, this court should find that the State court of appeals unlawfully denied Petitioner permission to appeal obvious "questions of law" without any valid reasons or lawful justification. Even worse, violated his due process and equal protections in doing so (see U.S.C.A., Const., Amend. XIV; N.Y.S., Const., Articles 1 section 6,and Article 1 section 11). Furthermore, this court should direct the State Court of Appeals to annull its previous ruling, which was made outside the lawful mandates of the State Constitution, and to grant Petitioner permission to appeal his ineffective assistance of appellate counsel claim in such court; particularly where it was such court that recognized such claim was a "question of law" (People v. Bachert, supra, N.Y.2d, at 600).

B. NEW YORK STATE'S APPELLATE COURT FAILED TO LAWFULLY REVIEW QUESTIONS OF LAW AND FACT IN DENYING PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

New York State's highest court ruled that the natural venue for coram nobis review of "ineffective assistance of appellate counsel claims" is in the State's appellate tribunal where the deficient representation occurred (People v. Bachert, supra, N.Y.2d, at 600, H.note [3]). Such court also refered to the "Baldi Ruling" in setting the standards for evaluating claims of ineffective assistance of appellate counsel (see People v. Stultz, supra, N.Y.3d, at 278). In Baldi, such court found that the constitutional requirements are met when the trial attorney provides "meaningful representation" (People v. Baldi, 54 N.Y.2d 137, 444 N.Y.S. 2d 893 [1981]). So to , the State's highest court eventually ruled that the "Baldi Ruling" should be applied in setting the standards for.....

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..... ineffective assistance of appellate counsel claims (People v. Stultz, supra, N.Y.3d, at 278). In setting such standards, the court ruled that appellate advocacy is meaningful if it reflects a competent grasp of the "facts", the "law" and "appellate procdures", supported by appropriate authority and argument (see Stultz, supra, N.Y.3d, at 285).

The "Stultz Ruling" being the decree of the State's highest court, there--after, required all lower appellate courts to follow such standard. Yet, in the appellate court where Petitioner brought his claim of ineffective assistance of appellate counsel, such court discriminately refuse to apply the standard of the Stultz Ruling in deciding his deficient appellate counsel claim (see A-2). On the other hand, in another similar criminal case, such appellate court eagerly applied the "Stultz Ruling" in finding that defendant was denied ineffective assistance of appellate counsel; moreover, order the reopening of that defendant's appeal (see People v. Shegog, 23 A.D.3d 1158, 807 N.Y.S.2d 764 [2005]).

Under due process and equal protection of the laws, Petitioner was entitled to the same review standard of the Stultz Ruling that the appellate court gave "Shegog" (supra), especially where such appellate court did not even dispute Petitioner's appellate counsel was ineffective from the evidence and record placed before them. Nor did such court's decision specifically state Petitioner's appellate counsel demonstrated "competent grasp of the facts, the law and appellate procedures" (A-2; Stultz, supra, N.Y.3d, at 285). However, such appellate court went into specific detail of how Shegog's appellate counsel was ineffective (see People v. Shegog, supra, A.D.3d, at 1158).

Legally, such appellate court could not dispute the deficient representation of Petitioner's appellate counselor because his blatant deficiencies are documented all through the court records, which requires no further.....

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..... proof beyond its four corners (People v. Stultz, supra, N.Y.3d, at 285). Yet, such appellate court unlawfully denied Petitioner's Writ, nonetheless, especially knowing there was no "automatic" appeal review (for Petitioner) to the State's court of last resort, as was eventually domonstrated in A-1.

From the time of his arrest in 1978, Petitioner has been continually denied his guarantees under the United States Constitution in all three New York State courts. Plus, being bestowed with the confidence that such will never change, this recent appellate court unlawfully denied Petitioner his constitu--tional protections again (see A-2). It did not matter that the evidence of Petitioner's deficient appellate counsel was overwhelming. State court judgments against Petitioner have always been about "retributions", rather than the law. However, Petitioner has yet to see where "retributions" are transcribed into the Sixth and Fourteenth Amendment to the United States Constitution; nor into the New York State Constitution (i.e., Articles 1 section 6; 1 section 11; 6 section 3). The United States Constitution simply mandates that Petitioner shall enjoy the assistance of counsel and the Due Process and Equal Protections under its decree for which he swore to defend a long time ago with his life.

More importantly, this court even ruled that criminal defendants shall have the effective assistance of appellate counsel (Anders v. California, supra, U.S., at 744; Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 [1983]), which lawfully did not happen during Petitioner's appeal. Evidence in the court record showed Petitioner's appellate counsel unlawfully conspired with the Repsondent's attorney in transcibing their appellate Briefs with words outside of the actual trans--cribed court record. Even unlawfully forced the State appellate Justices to mouth those same unlawful transcriptions in denying Petitioner's .....

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..... appeal:

> "...I don't feel like doing much more. Such statement does not rise to the level of a request to stop the interview..." (A-3; also, People v. Davis, supra, N.Y.S.2d, at 178);

Such conspiracy was committed in order to weaken Petitioner's appeal claim regarding Miranda v. Arizona (supra):

> Appellate Counsel's Brief: "I don't feel like doing MUCH MORE" (A-7);
> Respondent's Brief: "I don't feel like doin' too MUCH MORE" (A-10);
> Official court record: "I don't feel like doing to much, ANYMORE" (A-5)

Such unlawful conspiracy was also needed to lessen the impact of this court's Miranda Ruling of "in any manner" and "at any time" during questioning, the accuse wishes to remain silent, the interrogation must cease (Miranda, supra, U.S., at 474). Petitioner's wishes: "I don't feel like doing to much, ANYMORE", was such a "manner" and "time". Yet, the "questioning" did not "cease" in 1978.

During the 1983 appeal process, both appellate counsel and Respondent must have felt a least one of the State appellate Justices [if not more] would have dissented on the actual transcribed "wishes" of the Petitioner ("ANYMORE", A-5), and thus, a conspired changed was necessary to secure, Petitioner's criminal conviction. However, it was also unlawful under both State and Federal Constitu--tions (U.S.C.A., Const., Amend. 6th & 14th; N.Y.S., Const., Article 1 section 6, Article 1 section 11). What's even worse, appellate Justices unlawfully accepted Respondent's and appellate counsel's perjured transcriptions of the court record (..."MUCH MORE", A-7, A-10, A-11), instead of lawfully reviewing what was actually transcribed in the official trial court record (..."ANYMORE", A-5) before affirming Petitioner's conviction. Even more severe, violated their own prior decree that such court "is bound by the certified record on appeal and does not consider matters contained in a party's Brief which are not properly contained in the record" (Interslate Window Cleaning Co., Inc. v. Morse/Diesel, Inc.,...

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..... 89 A.D.2d 820, 453 N.Y.S.2d 526 [1982]. The matter of "MUCH MORE", was not contained in the certified court record (see A-5). However, appellate Justices unlawfully considered "it" in affirming Petitioner's conviction (A-3).

Therefore, since Petitioner never received his rightful appellate review according to the actual transcriptions of the trial court record; nor effective appellate attorney (People v. Harris, supra, N.Y.2d, at 794; U.S.C.A., Const., Amend. 6th & 14th, N.Y.S., Const., Article 1 section 6), this court should direct the State appellate court to annul their recent decision and reopen Petitioner's appeal and to asign him an attorney that will follow the Law; as well as, State and Federal Constitutions in preparing his Brief.

C. PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DURING HIS APPEAL IN STATE APPELLATE COURT

The State Court of Appeals ruled that defendant's in criminal cases have a Federal and State Constitutional right to effective assistance of appellate counsel. Also, such constitutional rights are met when appellate counsel provides "meaningful representation" (People v. Stultz, supra, N.Y.3d, at 285; Anders v. California, supra, U.S., at 744; also, U.S.C.A., Const., Amend., 6th & 14th; N.Y. S., Const., Article 1 section 6). In other words, such court determined that appellate representation is "meaningful" if it reflects a competent grasp of the facts, the law and appellate procedures, supported by appropriate authority and argument (People v. Stultz, supra, N.Y.3d, at 285).

However, Petitioner did not receive such representation because his appellate counselor clearly did not have a competent grasp of the facts, the law or appellate procedures. First of all, Petitioner's appellate counsel did not have a competent grasp of the facts, law or appellate procedures when he conspired with the Respondent's attorney to unlawfully put words in his Brief that were not identical to the official trial court record. Thereby, failing to assist....

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(PETITION FOR CERTIORARI, CONTINUES, DAVIS V. STATE OF NEW YORK)

.....the appellate court in reviewing the case by advancing Petitioner's conten--tions to the fullest extent that the record permits (People v. Harris, supra, N.Y.2d, at 794; People v. Crawford, N.Y.S.2d, at 485; also,"Petitioner's appellate court"). Thereafter, trashing Petitioner's appeal Brief and causing his conviction to be affirmed. In doing so, appellate attorney violated NEW York State Penal Laws under conspiracy (section 105) and perjury (section 210). Plus, appellate counsel violated the mandatory language New York's then-Judiciary Laws that emcompass the Codes of Professional Responsibility (Title 22 N.Y.C.R.R., see Appendix G, A-12 to 15), and mandates that lawyers "shall" not violate any Disciplinary Rules, such as, engaging in illegal conduct involving dishonesty, or misrepresentation; nor neglecting legal matters entrusted to them; nor prejudice defendant's in the course of representation. Also, such appellate counsel vio--lated laws governing prepriation of appeal Briefs (N.Y.S., Civil Practice Law and Rules, Rule 5526; also, People v. Yavru-sakuk, supra, N.Y.2d 56; U.S.C.A., Const., Amend. 6th & 14th; N.Y.S., Const., Article 1 section 6) by changing what was actually transcribed in the court record, to something else in his Brief.

Secondly, appellate counsel did not have a competent grasp of the facts, law and appellate procedures when he raised the issue that Petitioner "was not competent to proceed to trial"(A-8). Yet, intentionally omitted the obvious issue of Petitioner being denied effective trial attorney, i.e., a trial attorney who unlawfully allowed an incompetent Petitioner to proceed (see A-16 to 20).

Furthermore, after reviewing trial court records and recognizing trial attorney caused incompetent Petitioner to be illegally forced through trial proceedings (A-16 to 20) --along with never making any constitutional objections regarding denial of expert psychiatric testimony/outdated psychiatric examination-- such appellate counsel ineffectiveness caused him to omit researching two ...

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..... pertinent cases from this court's ruling involving incompetent defendant's (see Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788 [1960]; Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 908 [1975].

Also, a review of trial court records by appellate counsel, clearly demonstrated trial attorney basically admitted in open court that he could not adequately represent incompetent Petitioner (see Appendix H, A-17 to 20). What's worse, ignored defense psychiatrist diagnosis that Petitioner was still unable to assist in his own defense; plus, intentionally failed to wait on the completion of such psychiatrist's supplemental report on such matter (A-17,18,21). Even worse, ignored trial judge's offer to halt trial proceedings until such report was completed (A-18 & 19).

What was even more shocking, trial attorney made no objections after his lengthy complaint in open court regarding incompetent Petitioner, but instead assisted Respondent in moving right along with trial proceedings involving the constitutional "Miranda v. Arizona" issue (A-21).

Clearly such ineffectiveness demonstrated to appellate counsel that trial attorney's representation of Petitioner was not "meaningful" under the standard of the States' highest court ruling (People v. Baldi, supra, N.Y.2d 137), specifically where trial attorney also violated then-Judiciary Laws of misrepresentation and prejudicing Petitioner's whole trial proceedings (see Appendix G, A-12 to A-15; also, see A-17 to A-21).

Prior to trial, Petitioner was subjected to approximately two years of psychiatric evaluations and hospitalization. In that time span, some psychiatric evaluations finding him competent, and some finding him incom--petent. But, Petitioner's last and final psychiatric examination, prior to trial, was incompetent (A-17 & A-18).

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In Drope v. Missouri, this court ruled that evidence of a defendant's irrational behavior, suicide attempts, demeanor at trial (etc..), are all relevant in determining whether further inquiry is required (supra, U.S., at 181). Appellate counsel saw such above mention behavior in Petitioner's court records, which is why he raised the issue of him being "incompetent to proceed to trial" (A-8).

More importantly, this court ruled in such situations that the correct course is to suspend trial until such inquiry can be made (Drope, supra, U.S., at 181-182) because it is not enough that defendant is oriented to time and place, and has some recollection of events, the test must be whether defendant has sufficient present ability to consult with his attorney with with a reasonable degree of rational understanding (Dusky v. United States, supra, U.S., at 402).

Appellate counsel also saw in the court record that Petitioner did not consult with trial attorney with a reasonable degree of rational understanding (A-17,A-18,A-19,A-20). Yet still purposely failed to raise "ineffective trial attorney" along with his issue of Petitioner being "incompetent to proceed to trial(A-8). And aside from recognizing trial attorney was ineffective for failing to halt trial proceedings under the Drope and Dusky standards (supra)(A-18 & A-19), appellate counsel also saw where trial attorney did not even take the first steps of preparing any type of defense for Petitioner. For example, trial attorney never investigated Petitioner's turbulent life history; nor did he uncover any of Petitioner's childhood or Military records, especially where it was later discovered Petitioner had psychiatric combat disabilities years prior to his arrest and Conviction (see Appendix I, A-21 to 24; also, see Porter v. McCollum, 558...

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..... U.S. 30, 130 S.Ct. 447, f.notes 4 & 9 [2009].

Nearly every mandate of the Codes of Professional Responsibility was violated in trial attorney's ineffective representation of Petitioner (see A-12 to 15). However, appellate counsel intentionally did nothing about trial attorney's obvious deficiencies after reviewing them in the trial court record (A-17 to 20). Instead, choose to jump on the "band-wagon of ineffec--tiveness" by conspiring with the Respondent in re-writing transcriptions from the trial court record to something else in their appellate Briefs, which, thereafter, unlawfully assisted in securing Petitioner's conviction.

Lawfully, the only "meaningful representation" both trial and appellate attorneys could have ever provided [in their bitter over view of Petitioner] was to withdraw under the then-Codes of Professional Responsibility (see A-13). Yet, they both chose to unlawfully desecrate State and Federal Constitutions in doing nothing at all for Petitioner.

Therefore, this court should find that Petitioner received the HALLMARK of ineffectiveness from his appellate counsel, and then direct the State Appellate Court to annul its order and to reopen Petitioner's appeal (e.g., People v. Shegog, supra); as well as, any other further relief as the court shall deem lawfully just and legally proper.

CONCLUSION

For the foregoing reasons, Petitioner's Writ of Certiorari should be granted in this case.

DATE: MARCH 16, 2018

Respectfully submitted,

Robert Davis

ROBERT DAVIS, #81C0288, PRO SE PRISONER