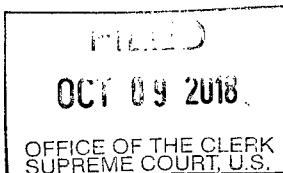


CASE NO.

18-7876

In The
UNITED STATES
SUPREME COURT



REQUEST FOR
WRIT OF CERTIORARI

To the Sixth Circuit Court of Appeals

In Pro Se
Jordie L. Callahan #59109-060
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ENTITLED PREFERENCE
28 U.S.C. § 2255 DENIAL

QUESTION(S) PRESENTED

Whether a Mentally Deficient Defendant is Entitled to a Competency Hearing or Mental Evaluation to Determine if the Defendant is in Fact Capable of Assisting Counsel in His/Her Own Defense

Whether a Mentally Deficient Defendant is Entitled to Effective Assistance of Counsel in All Stages of the Criminal Proceedings

Whether a Mentally Deficient Defendant Received Due Process When Counsel Failed to Request a Mental Evaluation, or Competency Hearing

Whether a Mentally Deficient Defendant has a Sixth Amendment Right to Effective Assistance of Counsel on Direct Appeal

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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

The opinion of the United States court of appeals for the Sixth Circuit appears at Appendix A, dated July 10, 2018. This opinion has not yet been reported.

JURISDICTION

The United States court of Appeals for the Sixth Circuit decide my case on July 10, 2018.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violation of Sixth Amendment right to Effective assistance of counsel.

Violation of Fifth Amendment right of due process of law.

Violation of Title 18 U.S.C. § 4241

STATEMENT OF THE CASE

Petitioner was arrested and charged in a conspiracy, with co-defendant Jessica Hunt, in violation of 18 U.S.C. §371; holding a cognitively impaired woman and her young child (identified as S.E. and B.E.) in a condition of forced labor, in violation of 18 U.S.C. § 1589(a) and (d); and acquiring hydrocodone by deception, in violation of 18 U.S.C. § 843(a)(3) and (d)(1). The district court before arraignment appointed counsel. In 2014, a jury convicted petitioner and his co-defendant of the foregoing charges.

Notably, petitioner has a serious mental deficiency dating back to his early childhood. (See attached confidential mental health records) Court appointed counsel never requested from the district court a mental evaluation or a competency hearing to determine whether his client was competent enough to stand trial or assist in his own defense. Neither his trial counsel, nor his appeal counsel raised any issue regarding whether their client was mentally ill. Petitioner is incompetent to adequately submit the issue in his 28 U.S.C. § 2255 motion. Therefore, the issue was not submitted.

STATEMENT OF FACT

In 2013, the grand jury returned an indictment charging Petitioner (Jordie L. Callahan) with conspiracy in violation of 18 U.S.C. §371; holding a cognitively impaired woman and her young child in a condition of forced labor, in violation of 18 U.S.C. §1589(a) and (d)(1); and acquiring hydrocodone by

deception, in violation of 18 U.S.C. §843(a)(3) and (d)(1).

Upon arraignment, petitioner was appointed counsel who failed to address, or present to the court that his client suffers from a serious mental deficiency. His client's mental deficiency history can be traced back to his early childhood. (See Attached Appendix-A) Petitioner has been diagnosed with the following: MMR; PTSD; Borderline Intellectual functioning; Depressive Disorder; Schizoaffective Disorder; Bipolar Affective Disorder; and Illiteracy. Counsel never submitted to the district court, a request to have a mental evaluation, or competency hearing to determine whether his client understood the ramifications of the alleged actions he took in the charged crimes, or whether he was competent enough to assist in his own defense.

In July 2014, petitioner was convicted by jury along with his co-defendant Jessica Hunt. The jury also found, via special verdict forms, that the forced-labor violations included the offense of kidnapping or attempted under 18 U.S.C. § 1589(d). The Court of Appeals affirmed his conviction. United States v. Callahan, 801 F.3d 606 (6th Cir. 2015).

Subsequently, petitioner filed a § 2255, piggy backing on his co-defendant's counseled motion. The district court construed this claim as challenging the failure to call the same witnesses indentified by Hunt-Stackhouse and S.E.'s mother. The district court rejected Callahan's claim that his counsel was ineffective for sleeping during trial because Callahan failed to provide any proof beyond his conclusory allegations. The district court

denied Callahan a Certificate of Appealability. ("COA"). Callahan now submits his request for writ of certiorari to the Supreme Court based on issue's not presented to the Sixth Circuit Court of Appeals by appellant counsel, and the conduct of his trial counsel's failure to request a mental evaluation for his client prior to trial.

Question One

Whether a Mentally Deficient Defendant is Entitled to a Competency Hearing or Mental Evaluation to Determine if the Defendant is in Fact Capable of Assisting Counsel in His/Her Own Defense

This Court has held that a "defendant's due-process right to a fair trial is violated by a court's failure to hold a competency hearing where there is a bona-fide doubt as to a defendant's competency. Pate v. Robinson, 383 U.S. 375, 385-86 (1966). In determining whether a competency hearing is required, a district court should consider "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." Drope v. Missouri, 420 U.S. 162, 180 (1975).

The facts regarding petitioner's request are simple. His court appointed counsel was aware that his client's I.Q. was/is 70 or below and he (counsel) did nothing to ensure that his client receive a mental evaluation to determine if he was able to assist him in a strategy, or defense prior to trial. See attached Social Security Administration Office of Disability Adjudication and Review Documents.

The findings of fact and conclusion of law from the Social

Security Administration determined that claimant (Petitioner):

1. The claimant has not engaged in substantial gainful activity since October 27, 2004, the date of the prior application (20 CFR 416.920(b) and 416.971 et seq.).

2. The claimant has the following severe impairment(s): borderline intellectual functioning/mild mental retardation, schizoaffective disorder, and personality disorder (20 CFR 416.920(c)).

3. The severity of the claimant's borderline intellectual functioning/mild mental retardation, schizoaffective disorder, and personality disorder meets the criteria of section(s) 12.05C of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d)).

In making this finding, the administration considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of CFR 416.929 and SSRs 96-4p and 96-7p. The administration also considered opinion evidence in accordance with the requirements of 20 CFR 416.927 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

The record indicates the petitioner has significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. Specifically, the petitioner has demonstrated evidence of a valid verbal, performance, or full scale IQ of 60 through 70, as well as a physical or mental impairment imposing additional and significant work-related limitation of function.

When administered the Wechsler Adult Intelligence Scale-III on March 10, 2005, the petitioner obtained a Verbal IQ of 73, a Performance IQ of 67, and a Full scale IQ of 67. The petitioner's

Full scale IQ score places him in the deficient range of intellectual functioning for individuals his age. Joseph Konieczny, Ph.D., opined that, based on available background information, as well as information gathered during the testing and interview session, the petitioner suffers from diagnosis of borderline intellectual functioning. The examiner noted a school evaluation from July 2002 documenting achievement test scores indicative of reading at a first grade level, spelling at a second grade level, and arithmetic at a third grade level. The examiner noted the current results on the Wechsler Memory Scale III were "reflective of his overall level of intellectual functioning as determine by WAIS-III."

The record not introduced to the district court, further notes that, petitioner was administered the Wechsler Intelligence Scale for Children, 3d Ed., in October 1996, the petitioner obtained a Verbal IQ of 73, a Performance IQ of 69, and a Full scale IQ of 69. Marilyn Hawkins, Ph.D., opined the petitioner would likely exhibit difficulty with interpreting social interactions, completing tasks within a set time, and attempting tasks he perceives as difficult.

Petitioner, mental history is marked with assessment's that indicate that petitioner's insight and judgment abilities are "quite poor," and he required assistance with most life decisions including financial, housing, and medical. Therefore, why did counsel choose not to have his client mentally evaluated prior to trial. Counsel's actions, or decision not to have his client

mentally evaluated, has prejudiced the petitioner in a number of ways, and as it stands, the issue regarding his mental competency has been ignored by trial counsel and appellant counsel. Placing petitioner in the position where he does not have a legal leg to stand on. Therefore, petitioner was denied his right of due process of law in violation of the United States Constitution, and was he entitled to a Competency hearing or Mental Evaluation.

Question Two

Whether a Mentally Deficient Defendant is Entitled to Effective Assistance of Counsel in all Stages of the Criminal Proceedings

To be competent to stand trial or proceed to sentencing, a criminal defendant must possess (1) a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and (2) "a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402 (1960); see also 18 U.S.C. § 4241(a); United States v. Washington, 271 F. App'x 485, 490 (6th Cir. 2008) (applying the Dusky standard when evaluating defendant's competency to proceed to sentencing).

In this case, the defendant was represented by counsel, and he expressed to counsel that he did not understand what was going on, and he informed counsel that he has mental issues that need to be addressed. Counsel failed to adhere to his client's position regarding the mental issues he complained to his counsel about.

Counsel failed to request a mental evaluation to determine whether his client was competent enough to proceed to trial, or

whether his client had a reasonable degree of rational understanding, as well as a factual understanding of the proceedings against him. Id. 362 U.S. at 402.

Counsel failed to place the government's case to a true adversarial testing regarding whether his client fully understood the proceedings against him, which petitioner contends that he did not, and still does not have a factual understanding against him. See United States v. Cronin, 466 U.S. 648, 658 (1984).

Question Three

Whether a Mentally Deficient Defendant Receives Due Process When Counsel Fails to Request a Mental Evaluation, or Competency Hearing Prior to Proceeding to Trial

Under 18 U.S.C. § 4241, the district court has not only the prerogative, but the duty, to inquire into a defendant's competency whenever there is reasonable cause to believe that the defendant is incompetent to stand trial. In determining whether there was "reasonable cause" to doubt the defendant's competency, the court look to "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." Drope v. Missouri, 420 U.S. 162, 180 (1975). The petitioner is out of the Sixth Circuit court of Appeals and no issue regarding petitioner's mental health issue were ever presented. Not even in the district court level, except at petitioner's sentencing hearing. The record indicates that he received a two level reduction based on his mental health history.

The Sixth Circuit in Miller, 531 F.3d at 350, considering

trial counsel's failure to raise competency issue. Should the district court sua sponte order a competency hearing on the basis of the pre-bail report, which explained that petitioner was under mental health care supervision, and that he was receiving Social Security Income based on his mental deficiencies.

Question Four

Whether a Mentally Deficient Defendant has a Sixth Amendment Right to Effective Assistance of Counsel on Direct Appeal

The Sixth Amendment of the United States Constitution guarantee the right to counsel at all critical stages of a felony proceeding and that has been well established, and there is general agreement amongst the Court's that this time frame extends from the moment judicial proceedings are initiated up until the direct appeal. McNeil v. Wisconsin, 501 U.S. 171, 175 (1991); and the right to counsel applies at all critical stages. Rothgery v. Gillespie Cnty., 554 U.S. 191, 212 (2008), and through the defendants first appeal of right. Evitt v. Lucy, 469 U.S. 387, 396 (1985); Ross v. Moffitt, 417 U.S. 600, 607 (1974).

As noted by the attached mental history record, petitioner has not received any type of review from either the district court or the court of appeals regarding his mental history. Petitioner has explained to this writer, that he does not understand why he is in prison. Petitioner does not have a rational understanding, or factual understanding of the proceedings against him as required by the Dusky Court. 362 U.S.

In Pate v. Robinson, 383 U.S. 375, 385-86 (1966), the Supreme Court states that a defendant's due-process right to a fair trial is violated by a court's failure to hold a competency hearing where there is a bona-fide doubt as to a defendant's competency.

at 402.

THEREFORE, based on the foregoing, petitioner is requesting a writ of certiorari to the Sixth Circuit court of Appeals, with orders that this case be remanded back to the district court for a mental evaluation to determine whether he was competent enough to assist his attorney in his defense.

REASON FOR GRANTING WRIT

A circuit conflict exists on the issues, that warrant this Court's review because the issue is fundamentally premised on whether defendant's with mental deficiencies are entitled to effective assistance of counsel prior to trial, or whether the defendant with such mental deficiencies are entitled to a mental evaluation to determine if he is capable of assisting in his defense, or whether he is competent to stand trial. This issue is of specific legal importance regarding when the court system fails to provide, (including court appointed counsel) fails to move the court for a mental evaluation for their client to determine if capable of understanding the consequences of his actions.

This case would be the best vehicle for this Court's review because petitioner was found guilty in trial, while represented by court appointed counsel that failed to request for a mental evaluation or competency examination. Petitioner asserts below that this ineffective assistance of counsel claim regarding counsel's failure to make a request for his client to be, or receive a mental evaluation, or competency examination, can


become an increasing problem for a class of defendant's with such a claim.

Further review is warranted.

CONCLUSION

WHEREFORE, premised on the foregoing facts presented in this request, based on petitioner mental deficiencies, this matter should be remanded back to the district court for purposes of a mental evaluation to determine whether petitioner was able to assist his attorney in his defense.

Respectfully submitted,



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