IN THE

SUPREME COURT OF THE UNITED STATES

No: 18-8233

CALVIN J. REID,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

Calvin J. Reid, in pro se, respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the Sixth Circuit Court of Appeals final order of denial on his application for a certificate of appealability (COA), and request for en banc hearing entered in case number 18-5432 in that court on December 12, 2018. Appendix-A-1.

The United States court of appeals for the Sixth Circuit has entered a decision in conflict with the decision of another United States court of appeals on the same important matter as to call for an exercise of this Court's supervisory power regarding a question left unanswered in **Marshall v. Rodgers, 569 U.S. 58 (2013).**

QUESTION(S) PRESENTED

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER REGARDING A QUESTION LEFT UNANSWERED IN MARSHALL V. RODGERS, 569 U.S. 58 (2013).

WHETHER THE SIXTH CIRCUIT COURT OF APPEALS HAS MISAPPLIED THE STANDARDS SET FORTH IN MILLER-EL V. COCKRELL, 537 U.S. 322 (2003), AND BUCK V. DAVIS, 137 S.CT. 759 (2017), WHICH ALLOWS DEFENDANTS TO APPEAL ADVERSE § 2255 RULINGS THROUGH CERTIFICATE REGARDING WHETHER A NEW TRIAL MOTION FILED WITHIN THE REQUIRED 14 DAYS AFTER THE JURY VERDICT OF FINDINGS, IS A CRITICAL STAGE WHERE A DEFENDANT MAKES A REQUEST FOR APPOINTMENT OF COUNSEL

WHETHER A DEFENDANT WITH A HISTORY OF MENTAL ILLNESS CAN VALIDLY WAIVE HIS RIGHT TO COUNSEL ABSENT A MENTAL EVALUATION OR COMPETENCY HEARING PURSUANT TO 18 U.S.C. § 4241

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LIST OF PARTIES

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

OPINION BELOW

The Sixth Circuit's denial(s) of petitioner's application for a COA in Appeal No. 18-5432, is contained in the Appendix (A-1). The Sixth Circuit's denial of petitioner's request for panel rehearing en banc request, are contained in the Appendix (A-2).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The Sixth Circuit's final order denying a COA was entered on December 12, 2018.

The district court had jurisdiction over petitioner's original proceedings pursuant to 18 U.S.C. § 3231 and 28 U.S.C. § 2255. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, 18 U.S.C. § 3742, and 28 U.S.C. § 2253.

The United States court of appeals for the Sixth Circuit has entered a decision in conflict with the decision of another United States court of appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power regarding a question left unanswered in Marshall v. Rodgers, 569 U.S. 58 (2013), where this Court expressed no view of whether a timely filed motion for new trial is a critical stage for purposes of the Sixth Amendment principle of re-asserting a defendant's right to appointment of counsel upon request.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

Fifth Amendment:

No person shall ... be deprived of life, liberty, or property, without due process of law ...

Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury .. ., and to be informed of the nature and cause of the accusation ... and to have the Assistance of Counsel for his defence.

28 U.S.C. § 2253(c):

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from---...

(A) the final order in a proceeding under section 2255.

(2) Acertificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right

28 U.S.C. § 2255(a):

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed

in violation of the constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

18 U.S.C. § 4241

Determination of mental competency to stand trial or to undergo postrelease proceedings

(a) Motion to determine competency of defendant. At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, ...the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

STATEMENT OF CASE

This case was commenced by indictment on February 22, 2012. In the Indictment Petitioner was charged with two counts of knowingly transporting a minor in interstate commerce between two states with the intent to engage in sexual activity in violation of 18 U.S.C. §§ 2, 2423(a), and one count for knowingly using a minor female to engage in sexually explicit conduct, for the purpose of producing a visual depiction of the conduct, knowing that the visual depiction would be transported in interstate commerce in violation of 18 U.S.C. §§ 2, 2251(a).

On June 11, 2012, Petitioner was arrested and after a hearing before Magistrate Judge Bryant, was appointed a federal public defender. (ECF No. 6; ECF No. 7; ECF No. 8.) On June 13, 2012, at a detention hearing held before Magistrate Judge Pham, Petitioner testified that he has mental health issues and was not taken medication, and the public defender had made the suggestion that the petitioner receive a mental evaluation, (ECF No. 12.) (Appendix A-4.), and the Petitioner had made his request to proceed pro se.

On June 20, 2012, Petitioner plead not guilty on all counts. (ECF No. 14.) On August 6, 2012, Petitioner made an Oral Motion to Dismiss Counsel and Proceed pro se and on August 7, 2012, Petitioner's federal public defender was allowed to withdraw. (ECF No. 20.) The court then appointed a CJA attorney, Michael Stengal to represent Petitioner, petitioner objected to this appointment. (ECF No. 21; ECF No. 22.) The court held a status

hearing on October 2, 2012, on which the Petitioner submitted written motions to proceed in pro se. (ECF No. 33.) Petitioner was not provided a mental evaluation or competency hearing, the Petitioner was informed of his right to counsel and his right to proceed pro se. Newly appointed counsel was allowed to withdraw. The court then found that Petitioner knowingly and voluntarily waived his right to counsel and granted Petitioner's motion to proceed pro se.

On October 2, 2012, Petitioner, after being allowed to proceed in pro se, he submitted various pro se motions to dismiss the counts in the Indictment (ECF No. 36; ECF No. 37; ECF No. 38.), and prior to commencing trial, Petitioner submitted a motion in limine to suppress certain statements, (ECF No. 51.)

On November 13, 2012, the jury trial commenced. (ECF No. 55.) During the jury selection, the court made an error in the count of the preemptory challenges that Petitioner had used, and the Government supported the court's error in the count which triggered Petitioner's paranoia. From that point on, it was hard for Petitioner to distinguish the difference between whether the Government and the Judge were plotting against him. At the close of the Government's proof, the court granted Petitioner's motion pursuant to Criminal Rule 29(a) and dismissed Count 3 of the Indictment. (ECF No. 60.) On November 15, 2012, Petitioner was convicted of the remaining two count's of knowingly transporting a minor in interstate commerce between two states with the intent to engage in sexual activity in violation of 18 U.S.C. §§ 2,

2423(a). (ECF No. 64; ECF No. 1.) Six (6) days after the jury returned the verdict, Petitioner filed a motion for new trial, pursuant to Federal Rule of Criminal Procedure 33, asking the court for a new trial based on the following reasons: (1) "Defendant was incompetent to represent himself due to his mental condition which became evident during the trial and rendered him ineffective as counsel"; (2) "the government failed to object to Defendant representing himself despite having knowledge of . . . Defendant's mental illness"; (3) "the government was aware of Defendant's mental condiction when they moved for his bond to be denied on June 13, 2012"; (4) "the court had serious questions about Defendant's mental state but failed to raise the issue at a hearing regarding Defendant's Motion to Proceed pro se"; and (5) "the court should have ordered a competency examination and by failing to do so, 'affected the fairness, integrity or public reputation of the judicial proceedings.'" (ECF No. 66.) At the end of this motion, Petitioner made a request for appointment of counsel, which the court completely ignored. Notably, the district court made no mention of Petitioner's request for counsel in his denial of Petitioner's new trial motion. (ECF No. 68.) Against this backdrop, Petitioner seeks this Court's Supervisory power to determine whether a request for counsel in a timely filed motion for new trial is a critical stage in a felony prosecution.

REASON(S) FOR GRANTING THE WRIT

I. The United States court of appeals for the Sixth Circuit has entered a decision in conflict with the Decision of another United States court of appeals on the same Important matter as to call for an exercise of this Court's supervisory power regarding a question left unanswered in Marshall v. Rodgers, 569 U.S. 58 (2013).

The district court and the Sixth Circuit court of Appeals have based their decision to deny Appellant's 28 U.S.C. § 2255 motion on a question left unanswered by this Court in **Marshall v. Rodgers, 569 U.S. 58 (2013)**. Both court's are under the impression that because the Supreme Court never explicitly addressed a criminal defendants ability to re-assert his right to counsel when he filed a motion for new trial, pursuant to Federal Rule of Criminal Procedure 33, or whether a post-trial, preappeal motion for new trial is a "critical stage" of prosecution and the defendant has no right to counsel upon request when he validly waives his right to trial counsel under **Faretta**.

The district court and the Sixth Circuit court of appeals decision is in conflict with the Sixth Amendment safegruards to an accused who faces incarceration, the right to counsel at all critical stages of the criminal process. **Iowa v. Tovar, 541 U.S. 77, 80-81 (2004); United States v. Cronic, 466 U.S. 648, 653-654 (1984); Gideon v. Wainwright, 372 U.S. 335, 344 (1963).**

The district court and the Sixth Circuit court of appeals denied Appellant's motion pursuant to § 2255, under the assumption, that because the Supreme Court expressed no view on the merits of the underlying Sixth Amendment principle that a

"post-appeal, preappeal motion for a new trial is not a critical stage of the prosecution, that he had not made a substantial showing that his appellant counsel was not ineffective for failing to challenge the district court's failure to appoint counsel when he made the request in his motion for new trial.

In light of the circumstances presented in Appellant's motion for new trial, which was filed within 14 days of the jury verdict, the Supreme Court and other Circuit's have found critical stages where an accused is confronting his adversary, requiring the assistance of counsel to ensure a fair adversarial process. A critical stage in the proceeding is thus one where "the accused require[s] aid in coping with legal problems or assistance in meeting his adversary. **United States v. Ash, 413 U.S. 300, 311 (1973); Mempa v. Rhay, 389 U.S. 128 (1967).**

The new trial motion Appellant filed listed Five (5) claims in addition to his request for appointment of counsel. Appellant stated that: (1) Defendant was incompetent to represent himself due to his mental condition, which became evident during trial and rendered him ineffective as counsel; (2) the government failed to object to Defendant representing himself despite having knowledge of Defendant's mental illness; (3) the government was aware of Defendant's mental condition when they moved for his bond to be denied on June 13, 2012; (4) the Court had serious questions about Defendant's mental state but failed to raise the issue at a hearing regarding Defendant's motion to proceed pro se; (5) the court should have ordered a comptency examination and by

failing to do so, "affected the fairness, integrity or public reputation of the judicial proceedings. Appellant made a request for appointment of counsel at the end of this motion, which the district court denied and Appellant counsel never challenged. From the contents of the new trial motion, it appears that he was having problems coping with his legal problems and the district court completely ignored his request for appointment of counsel at this critical stage of the prosecution.

Every federal circuit that has addressed whether a post-trial, pre-appeal motion for new trial constitutes a "critical stage" has concluded that it does. **McAfee v. Thaler, 630 F.3d 383, 393 (5th Cir. 2011); Kitchen v. United States, 227 F.3d 1014, 1019 (7th Cir. 2000); Williams v. Turpin, 87 F.3d 1204, 1210 & n.5 (11th Cir. 1996); Robinson v. Norris, 60 F.3d 457, 460 (8th Cir. 1995); Baker v. Kaiser, 929 F.2d 1495, 1499 (10th Cir. 1991)(quoting Nelson, 415 F.2d at 1157); Menefield v. Borg., 881 F.2d 699 (9th Cir. 1989); Nelson v. Peyton, 415 F.2d 1154, 1157 (4th Cir. 1969).**

The majority of these court's focus on the timing of the motion for new trial. For instance, the Fifth, Seveth and Eighth Circuit's all distinguish between post-trial motions filed prior to an appeal, which the court's consider "not collateral," and thsoe filed after an appeal, which are deemed "collateral," See e.g., **McAfee, 630 F.3d at 393; Kitchen, 227 F.3d at 1019; Robinson, 60 F.3d at 459-60.** In addition to timing, some of these courts focus on the general polices ensuring effective

representation in our adverary system. See, e.g., **Williams, 87 F.3d at 1210.** Neither the Supreme Court nor the Sixth Circuit has delineated all of the critical stages at which a defendant is entitled to the presence of counsel under the Sixth Amendment.

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 at all "critical stages." **Rothgery v. Gillespie Cnty., 554 U.S. 191, 212 (2008),** and through the defendant's first appeal of right. **Evitt v. Lucy, 469 U.S. 387, 396 (1985); Rose v. Moffitt, 417 U.S. 600, 607 (1974).** See also, **United States v. Ash, supra, Mempa v. Rhay, supra.**

The Supreme Court in **Rothgery** stated that "[W]hat makes a 'critical stage' is what shows the need for counsel's presence." Id. **554 U.S. at 212.** Therefore, when the Petitioner in this matter filed his timely motion for new trial, seeking help, claiming that his mental health issues has reared it's "ugly" head. Under those circumstances, would that be considered a critical stage.

II. The Sixth Circuit Misapplies The Standard Set Forth in Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003), and Buck v. Davis, 137 S.Ct. 759, 773-74 (2017), which Allows Defendants To Appeal Adverse § 2255 Rulings Through Certificate Whether a New Trial Motion filed within the Required 14 Days After the Jury Verdict of Findings, is a Critical Stage

When a defendant waives his right to trial counsel and proceeds in pro se to trial, without standby counsel, then makes a motion to re-assert the right to counsel in a motion for new trial, can the defendant re-assert that right. The standard of review can be found in 28 U.S.C. § 2253(c)(2)(1), and to determine whether the district court's assessment of defendant's constitutional claims debatable or wrong, how can that be determined if the defendant is not allowed to appeal the adverse ruling.

The Supreme Court has held that a certificate of appealability (COA) should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. **Barefoot v. Estelle, 463 U.S. 880, 893 (1983).** Noting that a COA is necessary sought in the context in which the petitioner has lost on the merits, the Supreme Court explained, "We do not require petitioner to prove, before the issuance of a COA, that some jurists of reason would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurists of reason might agree, after the COA has been granted and the case has received full consideration, the petitioner will not prevail." Id. **537 U.S. at 338.** In this matter, jurists of reason have already debated whether a motion for new trial timely filed is a critical stage, and all have agreed that it is. Therefore, does petitioner meet the requirements of 28 U.S.C. § 2253(c)(2)(1) for purposes of granting a COA.

III. Whether a Defendant with a History of Mental Illness Can Validly Waive His Right to Counsel Absent a Mental Evaluation or Competency Hearing pursuant to 18 U.S.C. § 4241

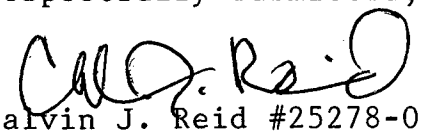
The relation of the "mental competence" standard to the self-representation right, and the scope of the self-representation right. The foundational "self-representation" case, **Faretta v. California, 95 S.Ct. 2525 (1984)**, which held that the Sixth and Fourteenth Amendments include a "constitutional right to proceed without counsel when" a criminal defendant "voluntarily and intelligently elects to do so," **95 S.Ct. 2525.** Now, what if the defendant had previously been diagnosed as a paranoid-schizophrenic, and in the past had been committed to a mental institution on more than one occassion. Is that defendant able to "voluntarily and intelligently" waive his right to counsel in absent a mental evaluation or competency hearing, when there is bona-fide evidence that the defendant has a long history of mental illness. 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. **United States v. White, 887 F.2d 705, 709 (6th Cir. 1989).**

CONCLUSION

Premised on the entire Sixth Circuit court of appeals denial of all the issues presented in Petitioner's 28 U.S.C. § 2255 motion, this United States Supreme Court should grant his request

for writ of certiorari on the questions presented.

Respectfully submitted,



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