

ORIGINAL

No. 18-8473

IN THE
SUPREME COURT OF THE UNITED STATES

Eric LaQuinne Brown -Petitioner

vs.

Mississippi -Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Eric LaQuinne Brown

#K0577, MSP, Unit 30 -D

Parchman, MS 38738

QUESTION(S) PRESENTED

1. Did Brown have a Constitutional right to have a competency hearing before he plead guilty, where Brown was granted two (2) court orders for a mental evaluation :
 - [1] on July 20, 1999 (that the defense filed; and,
 - [2] on November 12, 1999 (that the Prosecutor filed)
2. Does the issue of "being denied a competency hearing" overcome all procedural bars in Mississippi through the except law Smith v. State, 14950 3d 1017, 1031 (¶8)(Miss. 2014)(quoting Rowland v. State, 4250 3d 503, 507 (Miss. 2010))
3. Did Mississippi Uniform Rule Circuit and county Court Practice 9.06 exist before Brown plead guilty in 1999; thus should be applied to Brown's case today.

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:

[1] Thomas Gardner III of Pontotoc Circuit Court

[2] Mississippi Court of Appeals

[3] Mississippi Supreme Court

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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

[] 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[] is unpublished.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 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[] is unpublished.

✓ For cases from **state courts**:

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

[] reported at Brown v. State, 2017-CP-00620-COA; or, 2017-CT-00620-SCT
[] has been designated for publication but is not yet reported; or,
[] in unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at Brown v. State, 2017-CT-00620-SCT; or,
[] has been designated for publication but is not yet reported; or,
[] in 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 the 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 October 31, 2018
A copy of that decision appears at Appendix C

✓ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 4, 2018, 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 the Court is invoked under 28 U. S. C. § 1257(a).

TABLE OF AUTHORITIES

<u>Brown v. State</u> , 198 So. 3d 325 (Miss. Ct. App. 2015)
<u>Droe v. Missouri</u> , 420 U.S. 162, 172, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975)
<u>Goodin v. State</u> 102 So. 3d 1102, 1105, 1118-19 (Miss. 2012)
<u>Manning v. State</u> , 929 So. 2d 885, 898-99 (Miss. 2006).....
<u>Pate v. Robinson</u> , 383 U.S. at 385, 86 S.Ct. 836 (1966)
<u>Rowland v. State</u> , 42 So.3d 503 (Miss. 2010).....
<u>Sanders v. State</u> 9 So. 3d 1132, 1136 (Miss. 2009).....
<u>Shabass v. State</u> , 729 So.2d 813 (Miss. 1998).....
<u>Smith v. State</u> 477 So. 2d 191, 195-96 (Miss. 1985).....
<u>Strickland v. Washington</u> , 466 U.S. 668 ,687-88 (1984).....
<u>Mississippi Rules of Court</u>
Miss. R. App. ¶17.....
Uniform Rules of Circuit and County Practices, 9.06.....
<u>Statutes</u>
§97-3-19(1)(a).....
§97-3-35.....

Statement of The Facts

On January 23, 1999, Appellant Brown was forced to the police station for questioning. Appellant refused to answer any questions and was immediately arrested. On January 26, 1999, the Pontotoc Police obtained an arrest warrant and formally charged the Appellant for murder pursuant to §97-3-19(1)(a), and manslaughter pursuant to §97-3-35.

Appellant Brown's mother-in-law, Ms. Mary Lester, brought Appellant Brown's prescribed psychiatric medication to the Pontotoc County Jail and turned the medication over to the Sheriff, who in turn instructed the jailors to issue Appellant one tablet each night. Ms. Lester also attempted to provide the Sheriff with Appellant's Medicare card from the Social Security Office; however the Sheriff refused to accept the card. It should be noted the Pontotoc County Jail did not have a doctor or nurse on staff in 1999.

On July 14, 1999, Appellant was arraigned. The Honorable Frank A. Russell presided at the hearing, who attempted to examine the Appellant and questioned him, along with Defense Counsel, Mr. James O. Ford, who advised Judge Russell he could not communicate with Appellant due to crying spells and Appellant's speech impediment. Mr. Ford explained he could not understand what Appellant was trying to tell him. Judge Russell questioned Appellant Brown, at which time Appellant Brown started crying and attempted to tell the judge he did not understand the charges, however nothing Appellant Brown said made any sense to the judge or anyone else for that matter. Appellant Brown attempted to answer the judge's questions, but was unsuccessful. Defense counsel informed the judge Appellant Brown was currently being treated for mental disorders and was prescribed psychiatric medications.

Defense counsel also explained how Ms. Lester had attempted to provide the Sheriff with Appellant's Medicare card. Judge Russell instructed defense counsel to have Appellant Brown checked out.

On July 20, 1999, Appellant's defense counsel filed a motion for psychiatric assistance. On this same day, Judge Russell entered an order for a psychological examination, compelling Appellant to undergo an examination at the psychiatric department of the Mississippi State Hospital. The order stated in pertinent part: "The Court has sufficient cause to believe that a psychological report on the defendant would be helpful to the Court in determining what disposition should be made of the above stated case." The order further stated: "psychiatrists include in their report: (1) a psychological analysis of [Brown]; (2) an opinion as to whether [Brown] is mentally capable of standing trial; and (3) whether [Brown] is in need of in-patient hospitalization."¹

On or about August, 1999, Appellant Brown ran out of his prescribed psychiatric medications. As a result, Appellant Brown attempted suicide by cutting his wrist.²

The Sheriff escorted Appellant Brown to Dr. Wing's office one week later, but not until Appellant Brown's mother-in-law, Ms. Lester, provided the Sheriff with Appellant Brown's Medicare card. The Sheriff stated to Ms. Lester that the county was not going to pay for the treatment of a crazy man that wants to kill himself. Dr. Dale L. Wing prescribed a psychotropic anti-depressant, Elavil (Amitriptyline), which Appellant Brown was taking from the beginning.³

¹ See Exhibit 000400-401 (defense motion for psychiatric assistance filed 7/20/99) and Exhibit 000661 (court order for Brown to undergo psychiatric examination by MS State Hospital issued 7/20/99).

² See Exhibit 546-547-548-549 (Dr. Wing's medical report after Brown attempted suicide by cutting his wrist and the prescribed psychiatric medication that was restarted).

³ See Exhibit 546-547-548-549 (Dr. Wing's medical report after Brown attempted suicide by cutting his wrist and the prescribed psychiatric medication that was restarted).

Dr. Wing prescribed Appellant Brown with twenty-five (25) milligrams dose of Elavil daily and increased it to 50 mg. in October.

On October 25, 1999, a staff psychiatrist at the Mississippi State Hospital faxed a request for information to Appellant Brown's defense attorney. At the bottom of the fax the State Hospital warned Attorney Ford of what will happen if the requested information is not received by the hospital, stating: "that no mental evaluation will be scheduled." It appears that the Mississippi State Hospital never received the requested information, and the mental evaluation was not scheduled. Appellant Brown submits that it's clear that defense counsel failed to comply with the court's instructions for a mental evaluation, and failed to comply with information requests from the State Hospital.

Defense counsel and the trial court failed to contact the Social Security Office in an effort to secure information concerning Appellant Brown's mental history, treatment and medications prescribed for treatment.

On November 12, 1999, the State submitted a motion requesting psychiatric evaluation of the Appellant.⁴ It appears the State was under the assumption that Appellant had been evaluated by the State Hospital as the court had ordered. On this same day, Judge Thomas Gardner granted the State's motion and entered an order compelling Appellant Brown to undergo a competency examination, to be performed by Dr. Criss Lott of Jackson, Mississippi. The State prosecutor forwarded all of Appellant Brown's criminal file to Dr. Lott, as well as three (3) statements from the jailors of the Pontotoc County Jail concerning Appellant Brown's bazaar behavior, attempted suicide, and prescribed psychiatric medications.

⁴ See Exhibit 000546-547-549 (Dr. Wing's medical report after Brown attempted suicide by cutting his wrist and the prescribed psychiatric medication that was restarted.

On November 19, 1999, Dr. Lott conducted a one-hour psychological evaluation of Appellant Brown, but without the Social Security disability records and without school records of behavior. Dr. Lott conducted the evaluation without the records of Appellant Brown, and then provided a report of his findings to the State prosecutors. Dr. Lott acknowledged in his report: "that Brown had attempted suicide and Brown was now prescribed Elavil 50 mg. at bed time, and Brown shows symptoms of some mental disease but there's no record of this mental illnesses."⁵ Dr. Lott stated in his report: "It is my opinion Brown is competent." No competency hearing was conducted and no other evaluation was conducted by either the State or defense.

On November 29, 1999, the trial court held a plea hearing.⁶ The trial court asked Appellant Brown if he had any history of mental illness. Appellant Brown replied: "No, sir." The court also asked Appellant Brown if he was under the influence of any drugs and Appellant replied: "No, sir." Appellant Brown submits that he was instructed by defense counsel to answer these questions in the manner in which he answered them, and explicitly instructed by defense counsel to not mention his mental illness history, nor the suicide attempt in the county jail. However, Appellant Brown was on psychotropic medications prescribed to him by Dr. Wing, after Appellant attempted suicide. Appellant Brown submits that the fact of the matter is that he has been under the care and treatment of a psychiatrist/psychologist since 1982, and was receiving a disability check from Social Security due to his mental illness. These records are available for review upon request of the court, however, at no time did the trial court, nor defense counsel request such records.⁷

⁵ See Exhibit 00027-28-29 (court order for Brown to undergo a psychiatric examination by Chris Lott).

⁶ See Exhibit 000282 (Brown did not receive any competency hearing before he plead guilty on 11/29/99).

⁷ See Exhibit 00049-41 (affidavit as to why Brown did not receive the defense court order for psychiatric examination by MS State Hospital on 7/20/99).

The Court of Appeals has rendered a decision which is in conflict with a prior decision of the Mississippi Supreme Court; the C.O.A. has erroneously applied procedural bars (time bar, and successive writ bar, and retroactive bar) to a known denial of a fundamental constitutional right. Appellant's due process rights were violated by defense counsel's failure to ensure a competency hearing was conducted after Appellant was twice court ordered to undergo mental examinations (in which only the prosecutor's side court order was complied to) pursuant to U.R.C.C.C.9.06.

This case should be decided by the Supreme Court because it involves fundamental issues of broad public importance requiring determination by the Supreme Court [REDACTED].

Appellant petitions this Supreme Court to review the Court of Appeals decision to erroneously apply procedural bars to an established fundamental constitutional right in which

Appellant was denied. Appellant request that this Supreme Court to reverse the decision rendered and grants Appellant's Post- Conviction Relief Motion for the following reason(s) listed:

Reasons Certiorari Should be Granted:

Reason One: Whether the Pontotoc Circuit Court's ruling on Brown not having a constitutional right to a competency hearing is contrary the United States' Pate v. Robinson, 383 u.s. 375, 385, 86 S.ct. 836, 15 L.Ed. 2d 815 (1966) and U.R.C.C.C. 9.06.

Appellant contends that this issue (PCR) is procedurally alive and the Pontotoc Circuit Court should have granted the relief sought because "errors affecting fundamental constitutional rights are excepted from the procedural bars of the Uniform Post- Conviction Collateral Relief Act. Rowland v. State, 42 So.3d 503-507 (¶12)(Miss. 2010); Pate v. Robinson, 383 U.S. 375, 385, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966)." [T]he prohibition against trying or convicting an incompetent defendant is fundamental to an adversary system of justice. Drope v. Missouri, 420 U.S. 162, 172, 95.S.Ct. 896, 43 L.Ed.2d 103 (1975). "The constitutional right not to be tried or convicted while incompetent is a component of a defendant's due process right to a fair trial." Id. (citing Pate, Id. at 1033 (¶15) (citing Pate, 383 U.S. at 385, 86 S.Ct. 836).

Despite the fact that the Pontotoc Circuit Court did not apply any "retroactive bar" to Appellant's P.C.R. motion in their April 10th, 2017 order that was signed March 30th, 2017; the Court of Appeals did.

Pontotoc Circuit Court acknowledged Appellant's issue was not procedurally barred, but claims that the merits were reviewed and "finds that it should still be summarily dismissed."

The Court of Appeals did erroneously apply a "retroactive bar" from using Sanders v. State, 9 So.3d 1132-1136 (Miss. 2009) to support Appellant's claim. The C.O.A. stated:

“because Sanders does not apply retroactively.” See Brown v. State, 198 So.3d 325 (¶1)(Miss.Ct.App.2015) (Where the C.O.A. stated that because Brown pleaded guilty in 1999, and Sanders was ruled on in 2009, that Brown could not use Sanders to support his claim).

Appellant contends that the C.O.A. is in error and that Brown’s claim is not support by the case (Sanders) but the violation of U.R.C.C.C.9.06 which this Supreme Court reversed (Sanders), the law within the case.

U.R.C.C.C.9.06 was adopted May 1, 1995 and this Supreme Court first used the plain language of Rule 9.06 to affirm Shabazz v. State, 729 So.2d 813 (Miss. 1998) (where SHabazz was court ordered to undergo two different mental examinations and a competency hearing was conducted after each mental examination was completed and a psychiatrist report was had.) In Brown’s case, he was also court ordered twice to undergo a mental examination and despite Brown did not receive but one court ordered mental exam, from the November 12, 1999 court order, see Exhibit 000400, 00027-28 from Dr. Lott (for the prosecution’s motion). Brown never received any competency hearing and that is a violation of Rule 9.06.

Rule 9.06 and the rule is clear as to what was to accrue after a court ordered mental exam. The Sanders case came after Shabazz, Id. and Brown’s case is distinguished by the fact Shabazz did receive a competency hearing and Brown did not, thus, Shabazz was affirmed and for the same reasons Brown’s case should be reversed.

Brown’s court appointed defense counsel failed to ensure that he received a competency hearing. This retroactive bar does not apply to Brown’s case for three (3) reasons: 1) Brown never asked the court’s to apply a case (Sanders) to his issue, he asked for U.R.C.C.C.9.06 to be enforced; 2) Brown’s new P.C.R. motion is not the same claim from his 2014 P.C.R. motion, Appellant took Justice James advise and filed a new P.C.R. and alleging the same set of facts but

assigning error on the part of his defense counsel rather than the trial court for failing to comply with Rule 9.06, so Appellant could circumvent this erroneously applied retroactive bar, see Brown v. State, 198 So.3d 325 (¶61) (Miss. 2015) the dissenting opinion wrote by Justice James; and 3) It should be argued that the C.O.A. was in error to apply the bar because **Sanders** did not create any new standard, **Sanders** simply articulated what Rule 9.06 plainly provides, which is that when the trial court has reasonable grounds to believe the defendant is incompetent, the trial court shall order a mental evaluation followed by a competency hearing. U.R.C.C.C.9.06.

Reason Two: WHETHER the Court of Appeals failed to entertain the merits of Appellant's ground because they took up issue to erroneously apply procedural bars to a known denial of a fundamental constitutional right contrary to Smith v. State, 477 So.2d 191, 195-96 (Miss. 1985).

The Circuit Court of Pontotoc County and the Court of Appeals has both failed to entertain Brown's new ground found in his new PCR motion. Brown took the advice Justice James that was in her ten-page dissent opinion in Brown v. State, 198 So.3d 325 (¶61) (Miss. 2015). Justice James stated the following in the dissent:

"The majority, relying on the holding in Manning v. State, 929 So.2d 885, 898-99 (¶35)(Miss. 2006), holds that Sanders does not apply retroactive because it announced a procedural rule. The majority concludes that Sander's requiring a competency hearing did not control at the time Brown entered his guilty plea. I disagree. The Mississippi Supreme Court applied the holding in Sanders. Retroactively in a PCR case where the movant was convicted in 1999, see Goodin v. State, 102 So.3d 1102, 1105, 1118-19 (¶¶3, 48-50)(Miss. 2012). The majority distinguishes Goodin from this case by finding that the movant in Goodin claimed ineffective assistance of counsel because the defense attorney failed to ensure that the defendant was afforded a competency hearing, which was required by U.R.C.C.C.9.06. Consequently under the majority's view, Brown could circumvent this retroactive bar, and would be better served by filing a PCR motion alleging the same set of facts, but assigning error on the part of his counsel rather than the trial court for failing to comply with Rule 9.06. I would not hold that Sanders applies retroactively depending on the label of the claim."

However, in **Goodin** the Supreme Court's application of **Sanders** dealt solely with the issues of Goodin's trial counsel's performance under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Supreme Court found that Goodin's attorney was deficient in not following the procedure set forth in Rule 9.06; the Court made no finding as to the trial courts errors in not conducting a competency hearing.

Appellant did what Justice James told him to do, and filed another PCR motion and alleged the same set of facts and assigned the error to the defense counsel and not the trial court this time. However, for reasons I don't understand both Courts declined to address the new ground.

The Courts just applied a procedural bar to the new PCR motion and said it's the same bar as was applied to his old PCR motion, without allowing the appellant any opportunity to an evidentiary hearing on the new ground.

Appellant also enforced this issue in his motion for summary judgment timely filed March 7, 2017, and stamped March 29, 2017, in which the Pontotoc Circuit Court ruled on the actual PCR motion on March 30, 2017. The Pontotoc Circuit Court ruled on Appellant's motion for summary judgment around July 15, 2017, showing Appellant that the Pontotoc Circuit Court did not consider his timely filed motion for summary judgment that should have been granted. See, Exhibit 00052-00057, and 00073 and also Exhibit 000105.

Conclusion

Appellant urges the Court to issue the Writ of Certiorari and reverse Pontotoc Circuit Court's March 30, 2017 judgment and remand Brown's case for a new trial with instructions to receive an adequate psychiatric opinion, with all of the information and history to fully inform the trial court of Brown's mental condition in a competency hearing.