

No.

(Phone Number)

$$\frac{2}{A}$$

### QUESTION(S) PRESENTED

- ① why would the petitioner except a stipulated facts trial per. plea agreement to the Worst Case scenario without trying at trial if he was in his right mind?
- ② why would the petitioner not be granted an appeal to the motion of "Fitness to proceed" by his lawyer if it was in his best interest to do so? After judge denied motion!
- ③ why would the trial judge except evidence "Knife found on petitioner as evidence of the murder if it had nothing to do w/ the crime (case)?
- ④ why would the district Attorney in Lane Co. jail present a Knife as evidence to the case to find petitioner guilty when the Knife has no sufficance to the case?
- ⑤ why didnt the district attorney have forensics prove the Knife presented as the murder weapon or petitioners lawyer to show the Knife found on petitioner has nothing to do with the case, but was used as evidence to convict petitioner? (Appendix A)
- ⑥ why didnt the courts see this was never a murder case, and enough hard facts prove this question! The no evidence of weapon and an eye witness proves the mutual fight between two men, wasnt one sided.

## LIST OF PARTIES

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

[X] 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:

~~Brigite~~ Brigitte Amesberry  
Canby and Graber, Circuit judges (Ninth Circuit)  
Judge Billings (Lane Co.) ~~paid~~ Dist. of Oregon  
Pendleton

## Questions Presented Continued....

- ⑦ Why did the court/Jack billings judge at time in Lane Co. continued to proceed w/ the stipulated facts trial after petitioner stated he "didn't know half of what was going on in the plea agreement negotiations?"  
Per. Pg. 13 sec. 22 of Lane Co. transcripts Appendix A
- ⑧ Why did his lawyer at the time Elizabeth Baker continued to proceed w/ negotiations that were set up as worst case scenario when he stated he didn't understand what he was signing? As stated per court transcripts (sec. 22) Pg. 13 Appendix A
- ⑨ ~~10~~ Why would petitioner agree to a life sentence the worst case scenario in exchange for a few misdemeanor charges dismissed it don't constitute a reasonable plea bargain or agreement?
- ⑩ Why would of Duke Manning the only real eye witness to the case of describe it as one sided as the County DA described in Stipulated facts trial, when Duke Manning actually said the opposite when interviewed by police at the scene of the crime as a mutual fight between two guys? (Appendix A)
- ⑪ Why didn't trial counsel continue to seek her mental competency agreement after first denial by judge

yet file a federal Due process motion that would of forced the state to look at his mental competency issues!

being (12) why did Elizabeth deny the petitioner a release date of 25 yrs. as presented by the DA. by filing a motion saying his ~~will~~ to proceed, yet a few months later allowed him to sign a worse offer. ~~the worst of~~ 25 to life? (Appendix A)

• (13) why did the DA in Lane County ~~Swartz~~ David Swartz say at trial that the witness Duke Manning indentified the petitioner, yet could not in the photo line up? (Appendix A)

(14) why didnt Counsel in Canty continue to appeal mental defense after motion was denied, and

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Dist. of Oregon  
Pendleton

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## TABLE OF AUTHORITIES CITED

### CASES

Brenner v. Nooth 283  
ORE. App. 868 (2017)

Docken v. Myrick 287  
ORE. App. 260 (2017)

OAR + chapter 291

### PAGE NUMBER

pg. 2 of  
supplemental  
Report provided  
Incident # 09-71063

### STATUTES AND RULES

Free Intoxication defense  
which eliminates intent charge also.  
Besides the original fact is was never a murder.

### OTHER



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 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 E to the petition and is

- ☒ reported at August 22, 2018. through United States District Court (Oregon); 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 \_\_\_\_\_.

☐ 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 August 22, 2018.  
A copy of that decision appears at Appendix 6.

☐ 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

OAR + chapter 291

Brenner v. Nooth, 283  
Ore. App. 868 (2017)

Docken v. Myrick 287  
Ore. App. 260 (2017)

14<sup>TH</sup> Amendment "Due Process" Unfit to proceed at that time

## STATEMENT OF THE CASE

First and Foremost, this case was NEVER A murder was never tried by a jury, yet I signed the worst case scenerio for a murder charge w/out even trying to go to trial. The reason being I was in a mentally bad spot during my county jail stay and poor judgement by my counsel in county who represented me! What nobody ever got to hear was while in eugene County Oregon I was attending college for almost a year and paid taxes worked 2 jobs, donate my time on thursdays at a homeless feeding shelter! I was dressed for the river to fish, the day this crime accured, when my ex roommate wasnt home, which resulted in me going to the park momentarily to burn off some time, until he arrived back, as he lived close by to the park! At which point I was confronted by a homeless man that had been drinking, etc. As the witness statement says at the time by "duke Manning" he watched us grappling and tussling w/ eachother, which is directly opposite of what the DA proposed the the stipulated facts by trial judge who excepted the evidence of this being one-sided as fact which isnt. The DA also provided evidence at the stipulated facts trial that the Knife found on me was the Knife that stabbed the victim which wasnt, so the only real evidence provided to the judge at my stipulated facts trial can be proved invalid and untrue! Making evidence provided void @ stipulated facts trial useless. This case was ~~never~~ malicious, premeditated, intentional, or a murder by any means but a completely Spontaneous event, that lead to a single stab wound to the victims chest, not multiple wounds but one! Anyone who sets out to intentional kill is unlikely gonna stab someone 1X as a result. Theres so many hard facts that proves this was never a intentional crime that I believe this case deserves its day in Court as youll see in the papers provided in this packet, the details will prove legal negligience, confusion in what I thought was happening, the proof of a mutal fight Also that I wasnt even completely <sup>clean</sup> sober myself that day along w/ victim. I signed a deal that was a worst case scenerio for me in exchange for a few misdeamer charges being dropped which dont constitute any kind of a rational deal or sensible one at that,

## REASONS FOR GRANTING THE PETITION

The evidence @ stipulated facts trial is proven false or irrelevant to case, the deal provided is by far a reasonable deal to client by any means! The most important fact that this was never a murder. I clearly explained to judge at stipulated facts trial I didnt understand 1/2 of what was going on, yet was ignored and pushed thru regardless. The star witness clearly told police at the time, it was mutual tussling and grappling by two men, NOT the one sided Act the DA presented to the judge at the stipulated facts trial in County jail, Lane County. Toxicology report proves victim is under the influence of Alcohol + drugs and has served violence disturbances in that park, no job, homeless and up to no good. Forensic proves the Knife found on me also has nothing to do w/ case, yet DA used it as evidence presented at my stipulated facts trial. A 25 yr. deal was offered to my lawyer, yet she wouldnt let me take it cause she said as a ethics clause, she cant cause she dont think Im in my so right mind, being the reason after of why she filed a fitness Motion, yet shortly later allowed me to take a worse Case Scenerio deal the MAX on Murder of 25 to Life. This case deserves a trial and enough hard facts prove this was never a murder. Please judge Im not asking for any favors only my God given day in a courtroom w/ a jury of my peers. PLEASE I BEG YOU!

Respectfully Lloyd Austin

Lloyd Austin

E. Austin  
3-15-19

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lloyd E. Austin IV

Date: 3-15-19