No. 18-9597

IN THE SUPREME COURT OF THE UNITED STATES

JOSE BERRUM JR.,
Petitioner

ORIGINAL

vs.

UNITED STATES OF AMERICA
Respondent

ON APPEAL FROM THE March 15, 2018 ADVERSE DECISION HAD IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

Pro se Litigant

Jose Berrum Jr.
Reg. No. 74977-380
Forrest City Correctional
Complex/Medium
P.O. Box 3000
Forrest City Arkansas
72336

QUESTIONS PRESENTED

1. May This Court Grant Certificate Of Appealability Or Overturn Conviction Where The Fifth Circuit Court Of Appeals Sanctioned District Court's Misapplication of Strickland v. Washington.

TABLE OF CONTENT

	Page
Question Presented	I
Table Of Content	II
Table Of Authorities	III
Opinions Below	1
Jurisdiction	2
Relevant Constitutional Amendments and Statutes	3
Statement of Facts	4
Consideration Governing Review on Certiorari- Sup. Ct. R.10.	11
Argument I	13
Conclusion	19

Appendix

A-Findings reached by the United States District Court.

B-Findings Reached by The United States Court of Appeals

C-Findings reached Denying En Banc Hearing.

D- Constitutional provisions and Statutory provisions.

TABLE OF AUTHORITIES

Barefoot v. Estelle, 463 U.S. 880, 884 (1993)

Bouchillon v. Collins, 907 F.2d 589 (5th Cir. 1990)

Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir. 19970

Burger v. Kemp, 483 U.S. 776, 794 (1987)

Chemical Waste Mgmt. Inc. v. Hunt, 504 U.S. 334, 339 (1992)

Cook v. Lynaugh, 821 F.2d 1072, 1078 (5th Cir. 1987)

Cooper v. Oklahoma, 517 U.S. 348, 363 (1996)

Darden v. Wainwright, 477 U.S. 168, 186 (1986)

Dove v. United States, 423 U.S. 325, 325 (1976)

Durham v. United States, 401 U.S. 481, 483 (1971)

Gaines v. Hopper, 575 F.2d 1147 (5th Cir. 1978)

Gray v. Lucas, 677 F.2d 1086, 1993 (5th Cir. 1982)

Hanna v. Plumer, 380 U.S. 460, 463 (1965)

Lokos v. Capps, 625 F.2d 1258, 1261 (5th Cir. 1980)

McMann, 397 at 771,

Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)

Miller v. Dretke, 420 F.3d 356 (5th Cir. 2005)

Pate v. Robinson, 386 U.S. 375 (1966)

Ransom v. Johnson, 126 F.3d 716, 723 (5th Cir. 1997)

Rummel v. Estelle, 590 F.2d 103 (5th Cir. 1997)

Slack v. McDaniel, 529 U.S. 473, 483 (2000)

Strickland v. Washington, 466 U.S. 668 (1984)

United States v. Chatman, 300 App. D.C. 97 F.2d 1446, 1454 (D.C. 1993)

United States v. Doering, 909 F.2d 392, 394 (9th Cir. 1990)

Wiggins v. Smith, 539 U.S. 510

William v. Taylor, 529 U.S. at 396

Wilson v. Schnettler, 365 U.S. 381, 383 (1961)

STATUTES

18 U.S.C. 922(g)

18 U.S.C. 4241

28 U.S.C. 1291

28 U.S.C. 1254

28 U.S.C. 2255

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 B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits 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 _____ 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 February 22, 2019.

[ ] 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: April 16, 2019., and a copy of the order denying rehearing appears at Appendix C.

[ ] 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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).

RELEVANT CONSTITUTIONAL AMENDMENTS AND STATUTES

Sixth Amendment of the United States Constitution. See Appx D.

Fifth Amendment of the United States Constitution. See Appx D.

28 U.S.C. section 2255. See Appx. D.

18 U.S.C. section 4241. See Appx. D.

18 U.S.C. 922(g). See Appx. D.

28 U.S.C. 1291. See Appx. D.

28 U.S.C. 1254. See Appx. D.

STATEMENT OF FACTS

1.) The matter before the Court clearly originates from a tragic incident (A drug transaction gone bad) where the Petitioner is robbed and shot at close range with a shotgun. The incident resulted in the amputation of the Petitioner's left arm. See Presentence Investigation

2.) Medical records obtained by the Petitioner while serving his term of imprisonment) reveals that while undergoing treatment at the University Medical Center Brackenridge, a Dr. Alejandro Moreno, diagnosed the Petitioner as suffering from the Post Traumatic Stress Disorder,(PTSD) See Petitioner's 2255 Motion (Pet. 2255 Mot.) exhibit.

3.) The symptoms included flashbacks to and "frequent nightmares about the ordeal of the Petitioner being hit with the shotgun blast. Al so, suffering chronic insomnia, considerabl anxiety, intrusive thoughts images, depression, rage and marked paranoia, acquired fixation and reliance on weapons for a feeling of personal security and safety. See PSR.

4.) Prior to the infliction of such an horrendous injury, the Petitioner had no criminal incidents involving firearms. See PSR.

5.) However, following his recovery from extensive surgeries and the eventual release from the Medical Center, the Petitioner fell into a pattern of unlawfully possessing firearms, He was arrested on three seperate occasions for such violations. See Docket 1.

6.) On June 21, 2016, by Indictment the United States Government sought prosecution on the three Counts for "Unlawful Possession Of a Firearm by a Felon," 18 U.S.C. 922(g). See PSR pg. 3.

7.) Jurisdiction was established in the Western District Of Texas, Austin Division pursuant to 18 U.S.C. 3231, where offense were in violation of the laws of the United States Of America. See Indictment.

8.) Counsel William H. Ibbotson, was appointed by the District Court to represent the Petitioner regarding the charges placed against him. See Docket.

9.) Upon meeting counsel Ibbotson, the Petitioner initially informed counsel about his circumstances relating to the loss of a limb and that he did not believe himself to be mentally fit for trial. See Petitioner's Affidavit (Pet. Aff.) Page 2-3.

10.) The Petitioner emphasized that he suffered from PTSD and wanted a mental evaluation because he had not been and was not in his right state of mind. Pet. Aff. pg.2-3.

11.) However, instead of ascertaining informative facts about the Petitioner's medical background counsel Ibbotson sought a plea agreement from the Government, that would allow the Petitioner to be sentenced at the low end of the sentencing range he faced. Government's Plea Agreement(Gov. Pl Agr.)

12.) At no point of the proceedings had in the District Court did counsel Ibbotson, present record or evidence that would show that he investigated circumstances relating to legal competency or the mental ailment (PTSD) that the Petitioner informed him of. See District Court Record.(Dis. Crt. Rec.)

13.) However, upon the urging of his fiancee, other family members and counsel Ibootson, on August 4, 2016, the Petitioner entered a plea of guilt. The Rearraignment Hearing was staged for the judge to simultaneously, accept five individual pleas, that involved different cases and neither of the four other defendants were a codefendant of the Petitioner and their circumstances, ranged from conspiracy to immigration violations. See Rearraignment.

14.) The Judge accepting the Petitioner's plea of guilt, was not made aware of his mental deficiency. See Re-arrain.

15.) Further, in attempting to avoid an harsher penalty, during the plea colloquy the Petitioner offered that he was not suffering any mental ailment. See Re-arraign.

16.) Sentencing was held on October 21, 2016, where counsel Ibbotson, pointed out to the Court that the Petitioner "has suffered and I think being shot,-losing the arm, has been a factor in his proclivity to take care of--to take care in the of having firearms in his possession." (quote) Sentencing Transcript (Sent. Trans.) page- 12

17.) It can only be presumed that Ibbotson's suggestion of counseling of the Petitioner, was based on what the Petitioner made him aware of and what was contained in the PSR (paragraph 61), which were the avenues of record that would cause such a suggestion as counsel made no effort to investigate what would mitigate those concerns. PSR Mental and Emotional Health. page 19.

18. The Petitioner was sentenced on Count One for a term of 100 months and on Count Three for a term of 100 to run concurrently. See Sent. Trans.

19.) Though no Appeal was taken in the instant case, On October 2, 2017, the Petitioner submitted to the District Court a 28 U.S.C. 2255 motion, requesting the Court to vacate, set aside and to correcthis sentence. See Petitioner's 2255 Motion (Pet. 2255Mot.)

20.) In layman terms "Summary Argument touched the cornerstone of the intentions of the Petitioner in bringing his claims and it clarifies the questions now before this Court. See Pet. 2255 Mot. pg. 6.

21.) However, the Petitioner's claims were based on the "Ineffective Assistance ," of counsel Ibbotson, mainly for failure to investigate the Petitioner's mental health, failing to seek a determination on mental competency and failure to mitigate the Petitioner's mental ailment. See Pet. Mot 2255 entirety.

22.) The Government in it's "Response," moved for the District Co-

urt to seal it's "Response Inopposition to Motion to Vacate, Set Aside, or Correct Sentence." See Governments Motion to seal. (Gov. Mot. Sealed)

23.) The Government in it's "Sealed Response," specifically, cited to cases that supported afinding for the Petitioner See Gov. Mot. Sealed pg. 9-10, but it further asserted that because the Petitioner "does not say what additional investigation would have revealed, or how it would result in a more lenient sentence," he fails to provide the Court with any basis for concluding that counsel, by further investigating Berrum's mental condition, could have brought to bear at sentencing any additional mitigating evidence. See Gov. Mot. Sealed pg. 14.

24.) The District Court Agreed in it's "Order," denying relief, in stating that "The Court determines Berrum has not shown prejudice with respect to his attorney's failure to investigate." See District Court Order (Dist. Crt. Ord.) page 6. March 15, 2018, Court Order. App. A.

25.) Where the District Court was silent on whether a Certificate Of Appealabilty, should issue, the Petitioner sought reddress in the Fif th Circuit Court Of Appeals for the United States. asserting the federal question, "Should Certificate Of Appealability Issue When Findings are Contradicted by the Record and the Government failed 'Summarlity,' To Meet It's Burden." See Appeal from Final Judgment In The United States District Court, Western District Of Texas, Austin Division. (Apeal 2255 denial)

26.) The argument was that because counsel Ibbotson failed to per-

form the deminimus of an investigation, the court's position that "the Petitioner is unable to adequately show his mental state at the time of entering the plea of guilt," was misplaced, where but for counsel Ibbot son's failure to follow proper procedures, the matter is settled prior to the Plea Hearing. ("The record of the Court does not substantiate counsel's reasoning, when dealing with a mental patient.") Appeal 2255 denial pg 16. ("The Blame should be placed at counsel's door step).

27.) Circuit Judge James C. Ho, found, "Berrum Hernandez argues that his defense counsel was ineffective for (1) failing to investigate and ask the trial court to order an evaluation of Berrum Hernandez's men tal competency; and (2) failing to seek leniency at sentencing based on his mental health issues. He has failed to make the requisite showing as to these claims. Accordingly, Berrum Hernandez's motion for a COA is **DENIED.**" See Appendix-B.

28.) The Petitioner then sought reconsideration, in Motion for Hearing En Banc, from the "Adverse Decision of February 22, 2019, Denying the Issuance of a Certificate Of Appealability." See Case No. 18-50277.

29.) The Questions Presented was "whether the panel's findings adhere to Circuit and Supreme Court Precedent on the matter of an incompetent's right not to stand trial or be convicted. (2) Whether the Panel's findings were in compliance with Circuit and Supreme Court Precedent governing a counsel's failure to investigate a client's mental health; (3) Whether Certificate of Appealability should have issued where the District Court blatantly disregarded counsel's acts and omissions occuring

30.) On April 16, 2019, a three judge panel which included judge Ho, denied Petition for Rehearing En Banc. See April 16, 2019, Court Order. Appx. C.

31.) The matter is now ripe for a ruling of this Honorable Court.

CONSIDERATION GOVERNING REVIEW ON CERTIORARI

SUPREME COURT RULE 10.33

Congress has expressly delineated the discretionary nature of petitions for writ of certiorari and mandamus presented to the Supreme Court. 28 U.S.C. section 1254 (2000) (Stating that"[c]ases in the Courts of Appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil or criminal case.") (emphasis added); 28 U.S.C. section 1651(a) (2000) (Stating that "[t]he Supreme Court and all Courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.") (emphasis added); see Durham v. United States, 401 U.S. 481, 483, 91 S. Ct. 858, 28 L.Ed 2d 200 n.* (1971) (observing that "appeals [to circuit courts of appeals] are a matter of right while [the Supreme Court's] decisions on certiorari [and Mandamus] petitions are wholly discretionary.") overruled on other grounds. Dove v. United States, 423 U.S. 325, 325, 96 S.Ct. 579, 4 L.Ed 2d 531 (1976) Accordingly, the Court concludes that Supreme Court Rule 10 and 20.1 are entirely "consistent with Acts of Congress." 28 U.S.C. 2071.

However, the Supreme Court will be more favorably diposed to grant certiorari to review the decision of a state court of last resort or a United States Court of appeals if the decision purports to resolve an important question of federal law in a way that conclicts with and, therefore, purports to unsettled matters previously decided by the Supreme. Sup. Ct. R. 10(c); see e.g. Hanna v. Plumer, 380 U.S. 460, 463, 85 S.Ct. 1136, 14 L.Ed. 2d 8 (1965) (Court granted certiorari because of the threat

to the goal of uniformity posed by the decision below.") The conflict must be substantial and the application of the precedent to the case at bar must be clear. See e.g., Chemical Waste Mgmt. Inc. v. Hunt, 504 U. S. 334, 339, 112 S.Ct. 2009, 119 L.Ed. 2d 121 (1992) (certiorari granted because of the "importance of the federal question and the likelihood that it had been decided in a way conflicting with applicable decisions" of the Court); Wilson v. Schnettler, 365 U.S. 381, 383, 81 S.Ct. 632, 5 L.Ed 2d 620, reh'g denied, 365 U.S. 890 (1961) (substantial conflict required).

The claims presented below meets such criteria and should be granted review by this Honorable Court.

MAY THIS COURT GRANT CERTIFICATE OF APPEALABILITY OR OVERTURN CONVICTION WHERE THE FIFTH CIRCUIT COURT OF APPEALS SANCTIONED DISTRICT COURT'S MISAPPLICATION OF STRICKLAND V. WASHINGTON.

The Supreme Court has established the legal principles that governs claims of ineffective assitance of counsel in Strickland v. Washington, 466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct. 2052 (1984). An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense. Id., at 687, 80 L.Ed 2d 674, 104 S.Ct. 2052. To establish deficient performance, a petitioner must demonstarate that counsel's representation "fell below an objective standard of reasonableness." Id., at 688, 80 L.Ed. 2d 674, 104 S.Ct. 2052. This Court has declined to articulate specific guidelines for appropriate attorney conduct and instead have emphasized that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing pro fessional norms." Ibid.

The instant case involves "a defendant upon introduction, making counsel aware that he suffers from Post Traumatic Stress Disorder (PTSD), a mental ailment and his belief that he needed a mental evaluation," (pre-trial) and counsel's failure to conduct an investigation regarding the Petitioner's mental health. Cutting staight to the chase, on collateral review, the lower Courts precluded evaluation of counsel's duty to investigate the background of the Petitioner's mental health. See Williams v. Taylor, 529 U.S. at 396, 146 L. Ed 2d 389, 120 S.Ct. 14

95. Also see Wiggins v. Smith, 539 U.S. 510, 156 L. Ed. 2d 471 ("as in Strickland ... counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary.) As the Fifth Circuit has held, "The Sixth amendment requires counsel to make a reasonable investigation of defendants case or to make a reasonable decision that a particular investigation is unnecessary." Ransom v. Johnson, 126 F.3d 716, 723 (5th Cir. 1997). Further, finding that reasonableness of an investigation depends in large part on the information supplied by the defendant. See Ransom, 126 F. 3d at 723. Counsel should, at the minimum, interview potential witnes ses and independently investigate the facts and circumstances of the case. Bryant v. Scott, 28 F.3d 1411, 1415 (5th Cir. 1994). In the instant case the lower court's were more inclined to examine what the Petitioner was able to prove with regards to his Rearraignment and Sentencing Hearing, no finding was reached as to what counsel's decision not to investigate was based upon or reasonableness of that strategic choice, as the omission infers that no consideration was given to counsel's reasoning to forsake his duty which were governed by 1 ABA Standards for Criminal Justice 4-4.1, commentary, p 4-55 (2d ed. 1982)(" The Lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the Court at sentencing... Investigation is essesential to fulfillment of the se functions.") The scope of counsel's representation was unreasonable in light of what counsel actually discovered when the Presentencing Investigation Report came back. Apparently, the Probation Officer substantiated at Paragraph 61, a brief take on the Petitioner's mental Health

among other things specifically, detailing the traumatic event that resulted in his left arm being shot, eventually amputated, and being diagnosed with PTSD (suffering from paranoia). The paragraph in the report also listed five (5) different medications the Petitioner was ingesting . The Probation Officer's PSR, is the only record of court, (rudimentary knowledge) that counsel can claim he referenced (post conviction.) It should be noted that the Petitioner's fixation to possess weapons for a feeling of safety is not something hard to believe, understanding the significants' of the fact that the problem was acquired traumatically is important. The Supreme Court has stated; "Our Constitution 'jealously' guard[s] an incompetent criminal defendant's right not to stand trial or be convicted. Cooper v. Oklahoma, 517 U.S. 348, 363 (1996). In conjunction, Constitutional Due Process mandates that an accused person may only be convicted while legally competent. Pate v. Robinson, 386 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 2d 815 (1966) One of the most noteable drawbacks of the Petitioner in this case, is that his injury resonably caused him to suffer from paranoia, whether such an episode would be triggered in a Court House full of law enforcement and law abiding citizens is highly questionable and his calmness and compliance, may be reasonably obtained, where he is convinced by counsel that he is receiving a favorable plea agreement. Yet, the lower courts have done a disservice to the medical community, when basing it's determination on laymans' terms as it related to PTSD. In Bouchillon v. Collin, 907 F.2d 589 (5th Cir. 1990) a psychologist testified that Bouchillon, actually was not competent to plead guilty (he also suffered PTSD) asserting Bouchillon's episodes of numbing and blackouts during which he

cannot be expected to exercise judgment or reason, "would not necessarily be obvious to the layman." Id. at 593. The lower court's in the subject matter ignored the fact that PTSD has been determined to be a malady warranting a 'medical Professional's eye. Thus, competency (when pertaining to known PTSD patient) encompasses, 'psychologist and psychiatrist.' Include Miller v. Dretke, 420 F.3d 356 (5th Cir. 2005) (failure to develope or present tetsimony from several physicians who had treated Miller) Now, in this instance, a report and testimony by a Dr. Alejandro Moreno, pertaining to the Petitioner s mental health, was foreclosed by counsel Ibbotson's uninformed decision not to investigate, when such a report may reveal factors that all officers of the court are unable to discern by laymans' observation. It is wrong for the lower courts to attack "what the writer had gleaned from the documents the Petitioner's family was able to obtain regarding his mental health." Much has been precluded omitting the take given by a physician and that of counsel's reason for making his strategic decision. See Strickland, id. at 690-691, 80 L.Ed 2d 674, 104 S.Ct. 2052. No consideration was given to counsel's decision to forsake his Duty. Yet, the Fifth Circuit and the Supreme Court have stated; that when assessing the reasonableness of an attorney's investigation, a court must consider the quantum of evidence already known to the attorney, and whether the known evidence would lead a reasonable attorney to investigate further." To establish that an attorney was ineffective for failure to investigate, a petitioner must allege with specificity what the investigation would have revealed and how it would have changed the outcome of the trial." Miller v. Dretke, 420 F.3d 356, 361 (5th Cir. 2005) When a

decision not to investigate is involved, the inquiry becomes whether the facts of the case indicate counsel's failure to investigate was within the range of competence demanded of attorney's in criminal cases Cook v. Lynaugh, 821 F.2d 1072, 1078 (5th Cir. 1987) (quoting McMann, 397 U.S. at 771). This matter is distinguishable from the Court's precedents regarding "limited," investigation into mitigation evidence. Contrary to Strickland, supra, at 699, 80 L.Ed 2d 674. 104 S.Ct. 2052, there are no grounds for an assumption "that during proceedings in the District Court (particularly pre-trial) counsel could reasonably surmise the extent of the mental problems his client complained of having or even that (for purposes of sentencing) character, psychological and psychiatric evidence would be of no help." Counsel's conduct is opposite to that found in cases such as: Burger v. Kemp, 483 U.S. 776, 794, 97 L.Ed 2d 638, 107 S.Ct. 2052 (1987) (concluding counsel's limited investigation was reasonable because he interviewed all witnesses brought to his attention, discovering little that was helpful and much that was harmful); also see Darden v. Wain Wright, 477 U.S. 168, 186, 91 L.Ed 2d 144, 106 S.Ct. 2464 (1986) (concluding that counsel engaged in extensive preparation and that the decision to present a mitigation case would have resulted in the jury hearing evidence that the Petitioner had been convicted of violent crimes and spent much of his life in jail). The contentions in the subject matter, has always been that any reasonably competent attorney would have realized that pursuing information pertaining to the Petitioner's mental health, was necessary to make an informed choice regarding Petitioner's competency to enter a plea of guilt.

APELLATE COURT DID NOT REVIEW THE DISTRICT COURTS FINDINGS REGARDING COUNSEL'S FAILURE TO INVESTIGATE.

It can only be inferred that Judge Ho., in making his decision on whether to grant the Petitioner a COA, found the District Court to be correct in it's findings, as judge Ho's, opinion was limited to citing to standards governing the issuance of a COA, making reference to the Petitioner's claims and concluding that the Petitioner has failed to make a requisite showing. Citing Miller-El v. Cockrell, 537 U.S. 322 336 (2003) See Appndx. Furthemore, where En Banc Hearing was denied three Judge Panel, used a multiple choice document and checked the Box denying what it construed to be a "Motion For Reconsideration." See Appx. Though as presented to the Fifth Circuit Court Of Appeals, the Petitioner maintained that a COA should issue because the Appellate Panel overlooked the fact that counsel made no effort to ascertained record of the Appellant's mental condition, and that the fact that counsel never spoke with medical physician was never assessed. Citing Gray v. Lucas, 677 F.2d 1086, 1093 (5th Cir. 1982) (citing Rummel v. Estelle 590 F.2d 103 (5th Cir. 1997); Gaines v. Hopper, 575 F.2d 1147 (5th Cir 1978). Pet. Mot. En Banc Hrg. Pg. 7. In conjunction with counsel's error "not to investigate (first prong) the Petitioner also asserted how he had been prejudiced (second prong) by counsel's omission, in two ways. First, that "Constitutional Due Process mandates that an accused person may only be convicted while legally competent. (which had not be en adequately substantiated under his circumstances) Citing Pate,, 383 U.S. 375 (1966); Lokos v. Capps, 625 F.2d 1258, 1261 (5th Cir. 1980) and second, but for counsel's failure to investigate, he is not denied counsel that would appropriately move the Court for lenity, pursuant to U.S.

S.G. 5K2.13, also citing United States v. Chatman, 300 App. D.C. 97 F. 2d 1446, 1454 (D.C. Cir, 1993). Both prongs of Strickland, were met, "Cause and prejudice," was transparent and where relief had not been granted, the COA should have issued. See United States v. Doering, 909 F.2d 392, 394 (9th Cir. 1990) (finding that "a defendant's mental and emotional condition is ... relevant to a sentencing determination...) Also see Slack v. McDaniel, 529 U.S. 473, 483 (2000); Barefoot v. Estelle, 463 U.S. 880, 884 (1983). Miller-El v. Cockrell, 537 U.S. 322 (2003) ("When the District Court has rejected the Petitioner's claims, to satisfy 28 U.S.C. 2253, the Petitioner must demonstrate that reasonable jurist would find the District Court's assessment of the constitutional claims debatable or wrong.") The Government had no lawful explanation as to why the Appellant's legal circumstances did not warrant inquiry or investigation, This point should be inferred because the record is absent Ibbotson's affidavit . It was unfair for the Districk Court to absolve counsel Ibbotson's error and turn a blind eye to the prejudice that actually ensued. Ibbotson was not counsel guaranteed by the Sixth Amendment of the Constitution. It's not far fetched to believe that a person that has been violently left with one arm is mentally disturbed in some way, regardless, that we frown upon him carrying firearms and possessing narcotics, compassion and attention must be given to those circumstances, lawful presentation to the District Court must encompass psychiatrist and psychologist's framework.

CONCLUSION

Wherefore,

The Petitioner duly prays, that the Court finds COA should issue and use it's supervisory powers to instruct the lower courts to imple-

ment the proper application of Strickland, (in it's entirety) or in the alternative, vacate, set aside or correct this sentence.

Respectfully submitted.

DECLARATION

I, Jose Berrum Jr. duly swear under the penalty of perjury that the aforementioned is true and correct to the best of my knowledge and the laws of the United States of America. Sworn pursuant to 28 U.S.C. section 1746.

5-31-19
Date

Jose Berrum Jr.
Reg. No. 74977-380
Forrest City Correctional
Complex/Medium
P.O. Box 3000
Forrest City Arkansas
72336