No. 19-5319

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

William J. Barnes Jr. — PETITIONER
(Your Name)

vs.

People of The State Of New York — RESPONDENT(S)
District Attorney's Office, 175 Hawley St., Lockport, N.Y. 14094

ON PETITION FOR A WRIT OF CERTIORARI TO

New York State Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William J. Barnes Jr.
(Your Name)

P.O. Box 51, Great Meadow Corr. Facility
Comstock, New York 12821
(Address)

Comstock, New York 12821
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

ONE

Having Found That Significant Grounds Existed to Believe That The Defendant Was an Incapacitated Person, Did The County Court Deprive The Petitioner of his Due Process And Constitutional Right to a Full And Fair Impartial Determination of His Mental Capacity to Stand Trial?

TWO

Having Found That Significant Grounds Existed to Believe That The Defendant Was an Incapacitated Person, Was Defense Counsel Ineffective for Failing to Request Additional Article 730 Exams, a Competency Hearing or Postpone The Trial?

THREE

Is Forcing a Mentally Incompetent Defendant to Stand Trial Considered a 'Structural Error'?

FOUR

Did The County Court Err In Instructing The Jury That Petitioner Could *Walk Free* If They Returned An Insanity Verdict, And There Is No Law In The Court of Appeals Or This Court On The Issue?

FIVE

Did The County Court Err In Instructing The Jury That In Order To Return An Insanity Verdict, They Had To Find Petitioner Was Suffering From a Mental Disease *And* a Mental Defect?

SIX

Did The Appellate Division And Court Of Appeals Err In Denying Petitioner's Motion That Was Based On a Fundamental Constitutional Right To Be Competent To Stand Trial?

SEVEN

Was Appellate Counsel Ineffective For Failing To Raise These Significant And Fundamental Issues That Would Have Resulted In a Reversal?

LIST OF PARTIES

[X] 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:

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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 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.

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

The opinion of the highest state court to review the merits appears at Appendix A 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 Appellate court fourth Department court appears at Appendix C 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).

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

The date on which the highest state court decided my case was March 21, 2019. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: June 10, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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

U.S.C.A. Constitutional Amends. 5, 14, 18; U.S.C.A. §4241

N.Y. McKinney's CPL §730.30(1)(2)(4)

Under New York law, trial judge must order competency hearing when evidence of incompetence creates reasonable basis for believing that defendant is not fit to stand trial. Refusal to hold competency hearing when evidence suggests that such a hearing is necessary is violation not only of State and federal Statues, but of due process as well.

Subjecting an incompetent defendant to a trial is a violation of Constitutional right to due process.

U.S. Const. Amend. 14, §1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

U.S. Constitutional Amend. 6

In all criminal prosecutions, the accused shall enjoy the right to... have the assistance of counsel for his defense.

STATEMENT OF THE CASE

William J. Barnes Jr. was charged with two counts of second degree murder on January 7, 1986 for the shooting deaths of his live in fiancee and her lover after he came home and discovered the pair engaged in sex in his living room, and the man threatened him and lunged for the gun which went off. Two days after his arrest, Mr. Barnes attempted suicide and almost died. While being transported to court, he told the police officers to shoot him, and attempted suicide on several more occasions while awaiting trial.

Mr. Barnes competency to stand trial was immediately a factor, and he was being held completely naked in a jail cell for many months while and during trial with no mattress or bedding, and was prescribed psychotropic medications. Several doctors recommended that he be transferred to a psychiatric hospital, but unbelievably, his own attorney wrote a letter to the judge asking him to deny the commitment [redacted]

Mr. Barnes defense counsel raised the Insanity defense and he was evaluated by several psychiatrists and only two weeks before the trial began, he was again evaluated by psychiatrist Dr. Schutkeker on January 9, 1987 who emphatically determined after an Article 730 exam that Mr. Barnes was psychotic, suicidal and not competent to stand trial and should be committed (emphasis added), [redacted]

The trial judge and defense counsel received Dr. Schutkeker's report and they refused to request any additional §730 exams, commitment proceedings or postpone the trial, and forced the mentally incompetent Mr. Barnes to stand trial. The trial judge had previously warned the defense that he wanted no delays as he was scheduled to leave for his vacation

At the trial, the judge instructed the jury that in order to find Mr. Barnes not guilty by reason of insanity, they had to find that Mr. Barnes was suffering from a mental disease *and* a mental defect 7 times

The judge also instructed the jury that if they returned an insanity verdict, that Mr. Barnes was subject to only ***voluntary*** commitment proceedings (Mr. Barnes could walk away free if he *chose too*)

Mr. Barnes was then convicted on all counts after 2 1/2 hours of deliberation and was sentenced to two consecutive 25 to life terms (50 to life) with no hope of release who was just 23 years old, had no criminal record, and was in College. Upon arrival to prison, Mr. Barnes was immediate remanded to a mental health unit where it was determined that he was suffering from mental illness and could not contribute to his defense in a legal hearing and was committed at the mental health unit for 12 years, not including being committed by a judge to a secure outside Psychiatric Facility.

REASONS FOR GRANTING THE PETITION

There is no law in this Court, the Appellate Division second, third or fourth departments, U.S. Court of Appeals, on the issue of the trial judge instructing the jury that if they returned an insanity verdict, Mr. Barnes would only be subjected to *a **voluntary*** commitment (he could chose to walk free).
This 34 year old case is the one to set law on this serious and significant issue.

There is no law in any of the State appellate Court's, U.S. Court of appeals and this Court on the issue of the trial judge erroneously instructing the jury that in order to find Mr. Barnes legally insane, they would have to find he was suffering from a mental disease ***and*** a mental defect.

Mr. Barnes has filed numerous post conviction motions over the years, and all were denied or not ruled on because of procedural bars. The federal court never ruled on the these issues because his attorney misinterpreted the 1996 AEDPA time limit law, which resulted in Mr. Barnes being time barred when he filed his extremely meritorious §2254 petition.

The writ will be in aid of the court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the court's discretionary powers, and adequate relief cannot be obtained in any other form or from any other court.

Petitioner's denial from the lower courts are in direct conflict with their own law and rulings, abnd rulings from this court. It clear from the psychiatric evidence that the petitioner was not competent to stand trial, and the County Court violated petitioner's constitutional rights to due process and to not be tried while mentally incompetent. Only two weeks before petitioner's trial was to begin, Dr. Schutkeker again examined the Petitioner on January 9, 1987 and his report stated:

> **"As you requested, I examined Mr. Barnes today and found he was again living in the jail nude. It is my impression after today's evaluation is that although he was cooperative, Mr. Barnes is psychotic, depressed, suicidal, confused, not fully rational and in contact with reality and able to understand the proceedings.**
>
> **Mr. Barnes is not competent for trial, and my recommendation is that a hearing be scheduled for additional competency exams and commitment proceedings. I am not prepared to testify at this point, and am troubled with the judge's insistence on not committing Mr. Barnes and expediting his trial".**

This report was received by defense counsel and the trial judge, and neither the defense counsel or the court requested any additional Article 730 exams, commitment proceedings or postponed the trial, or made any attempts to ensure the Petitioner was competent to stand trial. Defense counsel was previously warned by the judge that he wanted no delays as he was leaving for vacation, and forced Dr. Schutkeker to testify under court order totally unprepared.

New York law mandates that competency hearing must be held when there is a 'reasonable ground, evidence or reasonable basis' to conclude that the defendant may be an incapacitated person and may not be competent for trial (see U.S. V. Nicholes, 56 F.3d 403).

"It is fundamental that a conviction of an accused person while he is legally incompetent violated due process * * * and that State procedures must be adequate to protect that right." (see Pate v. Robinson, 383 U.S. 375, 378; Drope v. Missouri, 420 U.S. 162); People v. Armlin, 37 N.Y.2d 167 (1975).

To Safeguard this right the Supreme Court announced in Pate v. Robinson, *supra*, a corollary 'procedural due process right whenever the facts of events presented to the court raise bona fide doubt as to defendant's competency'. In such instances, the trial court must sua sponte conduct an inquiry into defendant's mental capacity. As articulated in People v. Smyth, 3 N.Y. 2d 184, it is the duty of the court to direct him to be examined in these aspects.

The test to be applied has been formulated as follows: Did the trial judge receive information which, objectively considered, should reasonably raised a doubt about petitioner's competency and alerted them to the possibility that the defendant neither understand the proceedings or appreciate their significance, or aid his attorney with a defense? (see People v. Arnold, 113 A.D.2d 101).

"Convicting a defendant when he lacks the capacity to understand the proceedings against him, consult with counsel, and assist in his own defense is a fundamental error. It follows as a corollary that the failure to hold the required competency hearing deprives a defendant of his constitutional right to a fair trial

and renders the conviction void." (see Drope, supra, and Nicks v. U.S., 955 F2d 161 (2nd. Cir. 1992); People v. Galea, 54 A.D.3d 686 (2008).

Defense counsel was also clearly ineffective by not requesting competency exams or requesting to postpone the trial and appellate counsel was ineffective for not raising these issues on appeal (see Medina v. California, 505 U.S. 7; Burt v. Vehtman, 422 F.3d 557). In People v. Sinatra, 89 A.D.2d 913 held: "defense counsel had everything to gain and nothing to lose by making motion for fitness to proceed and cannot be considered as 'mere losing tactics' or unsuccessful trial strategy, but constitutes true ineffective assistance of counsel".

The circumstances that the Court and defense counsel were fully aware of are as follows:

1). Petitioner committed several suicide attempts and was held stark naked in a jail cell for months while awaiting and during trial.

2). Petitioner told the police to shoot him while being transported.

3). Petitioner was prescribed heavy psychotropic drugs while awaiting and during trial.

4). Petitioner was falling asleep and never spoke during the entire trial proceedings. Petitioner's family were aware that the petitioner was not competent to stand trial and repeatedly complained to defense counsel.

5). Two Doctors recommended that petitioner be committed to a psychiatric hospital, and most significantly, Dr. Schutkeker determined the petitioner was psychotic and not competent to stand trial only two weeks before the trial began.

On the erroneous jury instruction issue where the judge told the jury that if they returned an insanity verdict, the petitioner could chose to be committed or walk away free, is a significant and novel issue, and there is no law in this Court, U.S. Court of Appeals and the State Court of Appeals, and all of the Appellate Division's with the exception of the first department (People v. Morales, 62 A.D.2d 946 (1st. Dept. 1978) where a 1978 case was found, and an Alabama and Nevada case from 1975 (Hanes v. State, 56 Ala. App.467 (1975); Kuk v. State, 80 Nev.291).

The Court ruled in those three cases that the judge's statements had an "unfair and chilling impact on the juries assessment of the insanity plea, and the statement was so inflammatory and prejudicial to the insanity defense as to require reversal of defendant's conviction. The effect of the erroneous instruction was to influence the jury to find the defendant guilty of crime charged, lest he go forth a free man". In approving the charge in question, the Supreme court of Nevada noted: "the purpose of the instruction is to inform the jurors that if they find defendant insane and acquit, he will not walk out a free man, but will be confined to medical treatment."

The language of CPL §300.10[3] is mandatory, and must be given verbatim. It states in part that the judge must instruct the jury without elaberation that if the jury returned an insanity verdict, the defendant would be ***involuntarily*** committed (emphasis added).

There are no cases in any of the courts where the judge erroneously instructs the jury that in order to find the defendant insane, they have to find he was suffering from a mental disease ***and*** a mental defect. The correct charge is mental disease ***or*** mental defect.

Based on the several significant errors concerning the Insanity defense and the charge, it is clear that the petitioner had no hope whatsoever of the jury actually returning this verdict, violating his constitutional right to due process and right to present a defense. Petitioner has all the affidavits, reports and trial transcripts to support these claims.

The Petitioner has been wrongly incarcerated for 34 years based on an unfair trial in a small town. This combined with the significant and fundamental constitutional violations that deprived the petitioner of a fair trial, effective assistance of trial and appellate counsel, and the State courts refusing to reverse Petitioner's extremely meritorious motions.

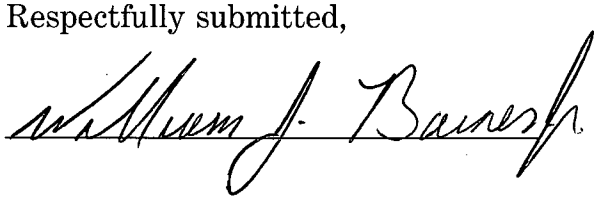
Petitioner's trial is full of other extremely meritorious issues that have also been denied, such as the judge denied all his witnesses from testifying, petitioner was not allowed to testify, the trial judge refused defense counsel's request to record the jury voir dire and not preserving significant errors that occurred, police and prosecutor misconduct coercing witnesses to lie, and so much more.

Petitioner prays you will accept this case to set law and grant justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: ~~June 19, 2019~~ ~~September, 2019~~ July 17, 2019