

19-5598

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Wade H. Bigelow — PETITIONER
(Your Name)

VS.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court Of Appeals Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

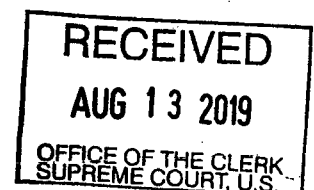
Wade H. Bigelow #38972179
(Your Name)

Federal Medical Center, DAL
(Address)

Post Office Box 15330, Ft Worth, Tx.
(City, State, Zip Code) 76119

(Phone Number)

ORIGINAL



QUESTION(S) PRESENTED

1) Whether the District Court ^{*}"Failed To Rule consistent with the Insanity Defense Reform Act, 18 USC. 17(a)," as it applies to making a ^{*}differentiation between ²"Sanity at the time of the offense" (and) ³"competency to stand trial", entitled as an indigent to a psychiatric evaluation of (MSO), and assistance necessary to prepare an effective defense based on his mental condition.

2) Whether the District Court failed to Rule ^{*}consistent with ^{*}Rule 12.2 of the F.R.C.P., ^{*}§ 4242 by failing to provide a ²second examination by a qualified expert ³to evaluate the the mental ^{*}State of mind ⁴(MSO) of the defendant Bigelow, and ^{11,*}to investigate ⁵and to determine the extent of influencing ⁶factors affecting Bigelow's ⁷rational ability, that was ^{*}caused by the ⁸prescription therapy medication, approximately ⁹twenty (20) each day (see: pg. 18-20, 170, 1233) (lines 21-25)

3) Whether the District Court ¹"abused their Discretion" by ²"Denying Bigelow's Motion to withdraw the guilty Plea", considering defense counsel ³Davis failure to look into Bigelow's progress medical records ⁴"reflecting the medications prescribed for therapy of his Bi-polar and other disabilities.

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S. Court

*Note

* Those mental Health progress review file contained Bigelow's diagnosis, prescriptions used for therapy treatment, adverse reactions, changes of medication, psychotic episodes, doctors opinions for care, Bigelow's responses, and some personal belief and views, all during the period in time of the offense.

* Note: Attention is called to the fact that it is an opinion that those Veteran Administration medical progress review notes, would have changed the outcome, and provided a reasonable doubt of guilt.

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4) Whether the District Court was ^{WB} ~~attaching~~ with, their decisions, allowing defense counsel Davis to show "ineffective assistance," as the record displays, "constitutional violations of due² process, ineffective³ investigation of crucial existing pertinent mental health records, structural errors, fundamental errors, plain errors, ethical errors, ^{WB} ~~constitutional errors~~."

5) Whether the District Court "process discriminates against a class of people that are unable to seek out the answers to the questions and the charges being prosecuted against them." Because of the many different symptoms and labels for them, it appears that the legal system disregards the mentally disabled ignorance of the law.

(S. Ct.)

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:

Missing this
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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.

☐ 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 _____.

☐ 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 _____.
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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Our laws routinely require a defendant's sentence to be based upon what a judge believed an offender "really" did, as opposed to the actual crime of which he was convicted of, or pled guilty to, is nothing less than offensive, let alone unconstitutional. The notion that a defendant's sentence is based upon his "real offense" begs the question; Real according to whom? and according to what standard. In truth, "Real offense" sentencing as embodied in the guidelines, is simply punishment for acts not constitutionally proven. 83

Judge Werliem relies on the "findings" that rest on a mish-mash of data, including blatantly self serving hearsay largely served up by the prosecutor, (Prosecutor Advocates no diminished capacity, (MSD) (without evaluation) pg. 18-20170.144; also (see: ROA 349, pgs. 16-17 of pre sentencing statement, P.S.S.); and 2255 pgs. 56, 64, 81, 82.); and placed in the Presentencing Report, (PSR). It should go without saying that if sentencing policies conflict with safeguards enshrined in the constitution for the protection of the accused, these policies have to yield to the constitutional guarantees.

A fundamental promise of our constitution is that it is not what one "really" does that can be punished, but only that conduct which is proven at trial. The mandate of the United States constitution is simple and direct: "If" the law identifies a fact that warrants deprivation of a defendant's liberty or an increase in that deprivation, such fact must be proven to a jury, or a judge, beyond a reasonable doubt. See: U.S. Constitutional, Art. III, Section 2 cl. 3. The Rule has three essential components: (1) every fact necessary to punishment; (2) proved to a jury; and (3) beyond a reasonable doubt.

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STATEMENT OF THE CASE

Esteemed SIRS,

It is my opinion that this case, prosecuted against a mentally disabled defendant, (See: (Doc. 1-7) pgs. 18-20170, 296 and 297, Social Security disability since April 10, 1978), is itself an extraordinary case. Extraordinary cases require extraordinary COAR, and sometimes extraordinary relief.

This motion will show that there is a conflict existing between the decision of which review is sought, and a decision of another appellate court on the same issues.

There also exists a "conflict" with the existing precedent established by this Honored Supreme Court with "Ake v. Oklahoma,

Although Bigelow is "mentally disabled" and was receiving ongoing therapy treatment, with a multitude (approximately twenty (20) various medications, (See: (Doc. 1-7) pgs. 18-20170, 34) each day from the Veteran Administration clinic in CONROE Texas, his court appointed counsel Neal Davis, defense counsel, for "No Strategic Reason" chose not to request and evaluate those existing progress review notes, or to request and provide those notes for the basis in fact and the courts consideration.

Defense counsel was advised about those V.A. medical progress review notes by Bigelow, and by Gerald E. Harris' psychological Report, (Doc. 1-7) (pg. 18-20170, 299) lines 28-

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(2 copies)
Note

* page, 18-20170.1234, (lines 4-8); Davis UNCONCERNED about list of medications; (lines 9-15) should be evaluated by expert; (lines 16-19) not once has anyone asked Bigelow if he felt like he did wrong.

* (lines 20-23) (Bigelow) never wanted to be involved in NO conspiracy, never had intent.

* page, 18-20170.1233, (lines 21-25), list of medications used, influencing impulsive responses (MSO).

* Doc. 348, pg. 10 (last sentence) The District Court, and 5th D.C.A. Ruled the District Court made their decision of not abusing their discretion. However the Record reflects they didn't base decision on the totality of the circumstances.

* page, 18-20170.320-327, letters to counsel Davis dated from August 22, 2012.

* see (Vol. 2 of 7), page 18-20170.293, Bigelow's evaluation and diagnosis by, Victor R. Scarano, April 1st 2005.

* page, 18-20170.298-303, Bigelow's evaluation and diagnosis by, Gerald Harris, July 2nd 2013.

* Note: See pages 17, 18, 19, of Appellant Brief, May 9th 2018, incorporated herein by this reference there to, (pg. 14, evaluation years after offense.)

Doc. 1-3, pgs. 18-2017D. 87, (lines 20-23) All conclusions were based on Bigelow's then current mental health, instead of Bigelow's Mental State at the time of the offense (MSO).

* Due Process Required consideration of the state of Bigelow's thoughts, acts, and environment, and all contributing facts, medication's, etc. that were actually present at the exact moments in time charged in the offense.

* Note: The Record Reflects Bigelow did not receive the due process consideration

Bigelow never received evaluation of his (MSO)

The records of this case reflects that it would be very likely, that the prosecution was aware of the written arrest report detailing where, why, and when Bigelow was arrested.

* The government Attorney stated that Bigelow claimed the prosecution had withheld exculpatory evidence from the Court and from Bigelow. This is obviously true as the records reflects, an example is seen when the government failed to provide for Bigelow to view and hear the tapes and documents,

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On page *18-20170.1200, lines 7,8, Bigelow explains he had "been on disability since 1978,"

Lines 12,13, Bigelow says, "I've always been treated. I was arrested at my psychiatrist's office."

pg. 18-20170.1201, lines 2-4, Court asked, "have ^{you} taken any kind of medication or pills or narcotic drugs within the last 48 hours?"; line 5, "Yes", line 9, "Antipsychotic and anti-depressions"; line 15, "are you of clear mind this morning?"; line 16, "Pretty much"; (what does pretty much mean?); Court asked, "can you think of any reason" "... why you would not be able to understand what is happening here today?"; line 25, "I don't guess so."; Bigelow guess so, He was influenced by "Zoloff and Haladol," and a guess would suggest uncertain one way or the other, Was his thinking off balance and doubtful?

pg. 18-20170.1202, the court inquired, " (line 14, 15) what do you expect to due during this hearing?" Bigelow replies, "I'm going to quit fighting because I'm tired of fighting"

REASONS FOR GRANTING THE PETITION

* When Wade Bigelow was arrested on May 9th 2012, the warrant was for the arrest of Ray Gore, not Wade Bigelow, and there was no identification anywhere, with Ray Gore's name on it.

* Bigelow was placed under arrest inside the Veteran's Administration clinic, inside his psychiatrist office, while being treated for his mental health disability Bi-Polar psychosis.

* Note: Attention should focus on the argument of the court and the government, "noting that Attorney Neal Davis had been diligent in exploring the facts of the offense and Bigelow's mental state."

* See: September 18th 2015 government Summary Calendar filing, page 2, lines 10-11.

* Bigelow explains that throughout this litigation, the record reflects that the court, and the government, consistently maintain that counsel Davis gave effective assistance of counsel to Bigelow.

* "That exclamation is obviously NOT TRUE."
Any effective competent defense counsel would have requested Bigelow's PROGRESS REVIEW notes, compiled by the medical experts treating Bigelow's mental disabilities, and prescribing various medications as therapy. However, at no time did counsel Davis request, obtain, consider, have evaluated, or submitted those

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progress review files for inclusion with Bigelow's Basis in fact evaluation.

* Those progress review documents were, are, the very evidence that contained information that would have placed a obvious obstruction to Bigelow's ability to form a specific intent at the moments in time of the alleged offense.

* Any "reasonable person" would see the "reasonable doubt" those "progress review files" would suggest, and by law, a reasonable doubt is all the law requires. 72

* The court abused their discretion by denying the motion to withdraw Bigelow's guilty plea, because the decision was based on clearly erroneous assessment of the evidence. The sentence is not supported by the evidence.

Furthermore (Doc. 298) (pg. 18-20170.1171) The court acknowledges they intend to base their decisions on the reports they have received and representations of counsel, the records were incomplete due to the failures of everyone who had failed to consider and review Bigelow's 44

Progress review medical file documenting Bigelow's long time mental health disability. Since Bigelow was actually arrested receiving mental health treatment at the V.A. clinic. The court's exclamation that counsel Davis was unaware of those treatments, and counsel's failure to investigate these files displayed ineffectiveness, prejudiced Bigelow's case against him, denying all Fundamental Fairness.

X conclusion

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negative Counsel
CONCLUSION

The records and evidence clearly reveals that the failure of "counsel" to secure a mental health exam of Bigelow's mental state at the time of offense (MSO), was not the result of any trial tactic or strategy, but rather it was the result of inadvertence or intent.

Upon reaching the "conclusion" that counsel failed to obtain available psychiatric evidence for no strategic reason, then "counsel's performance should reflect that counsel performed deficiently."

A failure to investigate that "is not the result" of any "trial strategy" is "no decision at all." (Harris v. Dugger, 874 F.2d 756, slip op. at 2622, 2629 (11th Cir, 1989).

Bigelow's counsel Neal Davis, "performed deficiently" when for "no reason," he "failed to schedule" an available mental health "examination of Bigelow's (MSO)," as part of an investigation into Bigelow's "mental condition," which was "influenced" by approximately twenty (20) medications.

CONCLUSION
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Any "reasonable person" is able to see that the medical progress records at the V.A. treatment center would have, and does create a solid firm foundation for a reasonable doubt of Bigelow's state of mind mental state at the time of the offense (MSO), and his disability in regard to the specific intent element required for the conspiracy offense. Due to misleading Basis in Fact Record, the Fundamental errors, Due process errors, Constitutional errors, This petition for writ of certiorari should be granted, vacate the sentence of this case.

CONCLUSION

For all of the foregoing reasons, and all of the reasons given prose prior to this, petitioner prays and ask that...
The petition for a writ of certiorari should be granted, and whatever else this court deems fair and just.

Respectfully submitted,

Wade H. Bigelow

Date: Aug 5th, 2019

* c/c Records