

19-5780  
No. \_\_\_\_\_

IN THE  
Supreme Court of the United States

MARVIN ROBINSON,

PETITIONER

FILED

AUG 13 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

V.

STATE OF LOUISIANA,

RESPONDENT

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
U.S. CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

---

**PETITION FOR WRIT OF CERTIORARI**

---

*Marvin Robinson*  
Marvin Robinson, pro se  
#110190 – MPWY – Pine 3  
Louisiana State Penitentiary  
Angola, LA 70712

## QUESTIONS PRESENTED

**Whether Petitioner's trial counsel was constitutionally ineffective under the Sixth Amendment to the United States Constitution? and Whether Petitioner was denied due process of law and a fair trial under the Fourteenth Amendment?**

## **PARTIES TO THE PROCEEDING**

The petitioner is MARVIN ROBINSON, the defendant and defendant-appellant in the courts below. The respondent is the State of Louisiana, the plaintiff and plaintiff-appellee in the courts below.

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	4
ARGUMENT.....	5
CONCLUSION.....	21
CERTIFICATE OF SERVICE.....	22

## APPENDICES

APPENDIX A: Marvin Robinson v. Darrel Vannoy, Warden, U.S.D.C. No. 2:15-CV-5066; U.S. District Court of Appeal for the Eastern District of Louisiana

APPENDIX B: Marvin Robinson v. Darrel Vannoy, Warden, 18-31298; U.S. Circuit Court of Appeals, Fifth Circuit

## TABLE OF AUTHORITIES

### U.S. CONSTITUTION:

U.S. Const. Amend. VI.....	1, 4, 5, 21
U.S. Const. Amend. XIV.....	1, 2, 4, 5, 6, 21

### FEDERAL CASES:

Bruce v. Estelle, 536 F.2d 1051 (5th Cir. 1976).....	11
Droepe v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103.....	5, 7, 8, 19
Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed. 824 (1960).....	5, 8, 19
Evitts v. Lucey, 469 U.S. 387, 394, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).....	6
McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970).....	6
Medina v. California, 505 U.S. 437, 112 S.Ct. 2572, 120 L.Ed.2d 353, (1992).....	7
Padilla v. Kentucky, 559 U.S. 356, 366, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) .	7
Pate v. Robinson, 383 U.S. at 387, 86 S.Ct., at 843 15 L.Ed. 2d at 823...	5, 8, 17, 19
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)....	
.....	4,5, 7, 12, 19, 21

### LOUISIANA CASES:

State ex rel Seals v. State, 831 So.2d 828, (La. 10/25/02).....	17
State v. Bennett, 345 So.2d 1129 (La. 1977).....	6, 9, 14, 15, 20
State v. Nomey, So.2d 157 (La. 1993).....	8, 17
State v. Robinson, 09-371 (La.App. 5 Cir. 3/23/10); 39 So.3d 692, 704.....	2
State v. Robinson, 102 So.3d 922, 927, 12-22 (La. App. 5 Cir. 2012).....	11
State v. Snyder, 750 So.2d 832, 98-1078(La. 4/14/99).....	8, 17
State v. Taylor, Sup. 1970, 254 La. 1051, 229 So.2d 95(1970).....	10
Succession of Forman, In re, 37 So.3d 1081, (La.App. 3 Cir. 2010).....	10, 19

### CODE:

28 U.S.C. § 2254(d)(1) & (d)(2).....	13, 21
LSA-C.Cr.P. art. 641.....	8
LSA-C.Cr.P. art. 782(A).....	2
LSA-R.S. 14:62.....	2

**OTHER SOURCES:**

PDR, 58 Ed., P. 2443.....	9, 19
PDR, 58 Ed., P. 2674.....	9
PDR, 58 Ed., P. 2676.....	10
The Merck Manual, 19th Ed., Sec. 12, Psychiatric Disorders, 162 Mood Disorders, Bipolar Disorders, P. 1548.....	10
The Merck Manual, 19th Ed., Sec. 12, Psychiatric Disorders, 164 Schizophrenia and Related Disorders, P. 1559.....	11
Webster's New International Dictionary, 2nd Ed., page 2235.....	10

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, MARVIN ROBINSON, respectfully petitions for a writ of certiorari to the United States Fifth Circuit Court of Appeal in No. 18-31298; USDC No. 2:15-CV-5066.

### **OPINIONS BELOW**

The judgment of the United States Fifth Circuit Court of Appeal was entered on July 25, 2019; the judgment of the U.S. District Court for the Eastern District of Louisiana was entered on December 11, 2018.

### **JURISDICTIONAL STATEMENT**

This Court's jurisdiction is pursuant to 28 U.S.C § 1257(a).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to ... to have the Assistance of Counsel for his defence." U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. 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 its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

Article 782(A) of the Louisiana Code of Criminal Procedure provides, in pertinent part: "Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict." La. C.Cr.P. art. 782(A).

#### STATEMENT OF THE CASE

Petitioner was charged with simple burglary of a vehicle, a violation of LSA-R.S. 14:62. On August 21, 2008 the Petitioner was found guilty as charged. On October 17, 2008, the trial court imposed a sentence of eleven years at hard labor. The State filed a habitual offender bill of information, and on December 12, 2008, the trial court found Petitioner to be a third felony offender, and sentenced Petitioner to life at hard labor without benefit of parole, probation, or suspension of sentence. Petitioner's counsel filed Motion for Appeal on the same date.

In his first appeal, the state appeal court vacated Petitioner's conviction, habitual offender adjudication, and sentence, finding that the trial court failed to make a determination of Petitioner's competency, and the case was remanded for a new trial. *State v. Robinson*, 09-371 (La.App. 5 Cir. 3/23/10); 39 So.3d 692, 704. The State appealed, arguing for a *nunc pro tunc* hearing instead, and the Louisiana

Supreme Court granted in part,

On remand, on February 16, 2011, the trial court retroactively found that Petitioner was competent to stand trial and could assist his counsel during trial. Petitioner filed for appeal, which was denied October 16, 2012. Petitioner sought writ of certiorari to the Louisiana Supreme Court, which was denied without opinion on April 12, 2013.

On the date of June 24, 2013, Petitioner timely filed for post conviction relief (hereinafter "PCR"), and submitted his prior medical mental health records, The Twenty-Fourth Judicial District Court, Parish of Jefferson, denied PCR relief on July 31, 2014. The Louisiana State Penitentiary did not receive the denial until August 11, 2014. On August 13, 2014, Petitioner submitted notice of intent to seek writs to the state appeal court, and on August 25, 2014, submitted a writ of review into the state court of appeal. 2014, the state court of appeal, Fifth Circuit, denied writ of review. October 22, 2014, Petitioner sought writs in the Louisiana Supreme Court. On August 28, 2015, the Louisiana Supreme Court denied certiorari.

On October 1, 2015, Petitioner sought Writ of Habeas Corpus in the U.S. Court of Appeal for the Eastern District of Louisiana, in Docket Number 2:15-cv-05066. The Court of Appeal denied Petitioner's writ with prejudice and denial of a COA on December 11, 2018. (Appendix 'A')

On January 24, 2019, Petitioner filed in the U.S. Court of Appeal, Fifth Circuit, for a COA, in Docket Number 18-31298. On July 25, 2019, the U.S. Fifth Circuit Court of Appeal denied Petitioner COA. (Appendix 'B')

Petitioner now timely seeks relief through this Honorable Court.

#### **REASONS FOR GRANTING THE PETITION**

The State Courts' denial that counsel's failure to submit Mental Health Records was not deficient performance and prejudicial; Petitioner's Mental History is irrelevant; Counsel was not ineffective for failing to argue for continuance; Counsel's failure to determine whether petitioner had the ability to consult with a lawyer or had a rational understanding of the proceedings, and that Petitioner only provided conclusory allegations, resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States in *Strickland v. Washington*, and/or in an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

Petitioner's constitutional rights to Effective Assistance of Counsel guaranteed by the Sixth Amendment, as well as his Fourteenth Amendment rights to due process of law and a fair trial have been violated, and this Honorable Court should Reverse and Vacate Petitioner's conviction and sentence.

## ARGUMENT

Petitioner contends that his Sixth and Fourteenth Amendment rights were violated due to ineffective assistance of counsel. Counsel failed to obtain or submit petitioner's mental health records which shows that petitioner suffered from schizophrenia and bipolar disorder, and failed to determine whether Petitioner had ability to consult with his lawyer, or had rational understanding of proceedings. Also, Petitioner's new counsel at a *nunc pro tunc* hearing failed to argue for a continuance so he could prepare. As a result, Petitioner was deprived of his constitutional rights to effective assistance of counsel at a *nunc pro tunc* hearing, depriving him of his rights to a meaningful determination of competency, with adequate anticipatory protective procedures. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Pate v. Robinson*, 383 U.S., at 387, 86 S.Ct., at 843; *Drope v. Missouri*, 420 U.S. 162, 183, 95 S.Ct. 896, 909, 43 L.Ed.2d 103 (1975); *Dusky v. United States*, 362 U.S. 402, 403, 80 S.Ct. 788, 789, 4 L.Ed. 824 (1960).

The district court, on July 31, 2014, denied Petitioner's claims that counsel failed to submit Petitioner's mental health records and failed to request a continuance for the sanity hearing, so that counsel could prepare, ruling, in pertinent part, that:

Petitioner argues that counsel was ineffective for failing to investigate his mental health records, and had he done so, petitioner would have been found incompetent to proceed. As the State points out in its response, the Fifth Circuit reviewed a similar claim on direct appeal, and pointed out that at the sanity hearing Dr. Salcedo noted that mental health records, "were not particularly relevant to his inquiry as to whether defendant met *Bennett*<sup>1</sup> criteria," as the defendant was being evaluated on his "present ability to meet the *Bennett* criteria." The Fifth Circuit noted that competency is determined whether defendant presently lacks the capacity to understand the proceedings against him or assist in his defense. Thus, petitioner's mental history is irrelevant as to whether he was competent to proceed. The court finds no merit to this claim, no deficiency in counsel's performance, and no prejudice resulting.

\*\*\*

As previously stated, the health records are irrelevant as to the competency hearing. Petitioner fails to prove how these health records would have affected the outcome of the sanity hearing, trial, or conviction. Petitioner fails to prove any deficiency in counsel's actions, or any prejudice resulting.

The right to "assistance of counsel" encompasses the right to effective "assistance of counsel," *see, e.g., McMann v. Richardson*, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), and applies to the states as a component of the right to "Due Process of Law" secured by the Fourteenth Amendment to the United States Constitution. *See Evitts v. Lucey*, 469 U.S. 387, 394, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

In order to prove conviction in violation of the right to effective assistance of counsel, Petitioner must satisfy both prongs of the two-part test articulated in

---

<sup>1</sup> *State v. Bennett*, 345 So.2d 1129 (La. 1977).

***Strickland***. As to the first prong, to determine whether an attorney's conduct was deficient, “[t]he court must... determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Strickland*, 466 *supra*, at 690.

As to the second prong, to establish that he was “prejudiced” by his attorney’s constitutionally deficient performance, Petitioner must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) (quoting *Strickland*, 466 U.S. *supra*, at 694). A “reasonable probability” in this context is one that “undermine[s] confidence in the outcome.” *Id.*

A criminal defendant has a constitutional right not to be tried while legally incompetent. *Medina v. California*, 505 U.S. 437, 449, 112 S.Ct. 2572, 2579, 120 L.Ed.2d 353, 365-66 (1992) (quoting *Drope v. Missouri*, 420 U.S. *supra*, at 173, 95 S.Ct., *supra*, at 904). It is axiomatic that, “a person whose mental condition is such, that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel and to assist in preparing his defense may not be subjected to trial.” *Drope v. Missouri*, 420 U.S. *supra*, at 171, 95 S.Ct. *supra*, at 903. This standard of mental incompetency serves to protect the

constitutional guarantees of due process and a fair trial and prohibits the conviction of someone who is mentally incompetent. *Pate v. Robinson, supra*; *Dusky v. United States, supra*, (per curiam); *Drope v. Missouri*, 420 U.S. *supra*, at 171, 95 S.Ct. *supra*, at 903. See also *State v. Snyder*, 750 So.2d 832, 98-1078(La. 4/14/99), *rehearing denied, on remand* 2000 WL 35631882, *affirmed*, 874 So.2d 739, 1998-1078 (La. 4/14/04), *rehearing denied, certiorari granted, vacated* 125 S.Ct. 2956, 545 U.S. 1137, 162 L.Ed.2d 884, *on remand* 942 So.2d 484, 1998-1078 (La. 9/6/06), *rehearing denied, certiorari granted* 127 S.Ct. 3004, 551 U.S. 1144, 168 L.Ed.2d 726, *reversed* 128 S.Ct. 1203, 552 U.S. 472, 170 L.Ed.2d 175, *on remand* 982 So.2d 763, 1998-1078 (La. 4/30/08); *State v. Nomey*, So.2d 157 (La. 1993).

The United States Supreme Court holds that:

“[I]t is not enough for the District Judge to find that the ‘defendant [is] oriented to time and place and [has] some recollection of events,’ but that ‘the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.’”

*Dusky v. United States, supra*.

This standard is also codified and can be found in Louisiana’s statutory jurisprudence at La. C.Cr.P. art. 641 which provides:

“...mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense.”

Id.

The State of Louisiana also refers to this standard, in part, as the "Bennett" criteria. See *State v. Bennett, supra*.

Petitioner, Marvin Robinson, has a history of mental health disorders. Petitioner obtained his medical records from West Jefferson Mental Health Clinic ("WJMHC"), under the treatment of Dr. Bergeron, during the year of 2002-03. The WJMHC medical report also shows that Petitioner was treated at Charity Hospital in New Orleans (CHNO). Petitioner, was treated for schizophrenia, bipolar I disorder, suicidal & homicidal ideas, depression & memory problems, and acute psychosis. The report also says that Marvin had been hearing voices. The WJMHC report also shows that Marvin was treated with Haldol & Vistaril, and Zyprexa.

Zyprexa is indicated for the treatment of schizophrenia... and bipolar I disorder. (See PDR 58 Ed., 2004). Haldol is indicated for the treatment of schizophrenic patients who require prolonged parenteral antipsychotic therapy. (See PDR, 58 Ed., P. 2443)(Emphasis added). Vistaril is indicated for symptomatic relief of insomnia and tension associated with psychoneurosis and as an adjunct in organic disease states in which insomnia is manifested. (See PDR, 58 Ed., P. 2674). Vistaril (hydroxyzine hydrochloride) is an intramuscular solution

useful in treating the following types of patients when intramuscular administration is indicated:

1. The acutely disturbed or hysterical patient.
2. The acute or chronic alcoholic with anxiety withdrawal symptoms or delirium tremens.
3. As pre - and postoperative and pre- and postpartum adjunctive medication to permit reduction in narcotic dosage, allay anxiety and control emesis.

(See PDR, 58 Ed., P. 2676).

Bipolar disorders are characterized by episodes of mania and depression, which may alternate, although many patients have predominance of one or the other. Exact cause is unknown, but heredity, changes in the level of brain neurotransmitters, and psychosocial factors may be involved. Diagnosis is based on history. Treatment consists of mood-stabilizing drugs, sometimes with psychotherapy. (See *The Merck Manual, 19th Ed.*, Sec. 12, Psychiatric Disorders, 162 Mood Disorders, Bipolar Disorders, P. 1548).

"Although people with bipolar disorders can sometimes function, they can get worse. Dr. McDonald explained that mood psychiatric disorders run in families and they are not curable, only treatable." See *Succession of Forman, In re*, 37 So.3d 1081, 1084, 2009-1455 (La.App. 3 Cir. 2010). (Emphasis added).

Schizophrenia is "a well-known form of insanity. (See Webster's New International Dictionary, 2nd Ed., page 2235)." *State v. Taylor*, Sup. 1970, 254 La.

1051, 229 So.2d 95(1970). Schizophrenia may be so severe as to have rendered petitioner incompetent. *Bruce v. Estelle*, 536 F.2d 1051 (5th Cir. 1976).

Schizophrenia is characterized by psychosis (loss of contact with reality), hallucinations (false perceptions), delusions (false beliefs), disorganized speech and behavior, flattened affect (restricted range of emotions), cognitive deficits (impaired reasoning and problem solving), and occupational and social dysfunction. The cause is unknown, but evidence for a genetic component is strong. Symptoms usually begin in adolescence or early adulthood. One or more episodes of symptoms must last greater than or equal to 6 months before the diagnosis is made. Treatment consists of drug therapy, psychotherapy, and rehabilitation. (See *The Merck Manual, 19th Ed.*, Sec. 12, Psychiatric Disorders, 164 Schizophrenia and Related Disorders, P. 1559).

The lower Courts recognized, (in Petitioner Robinson's case), that defense "... failed to offer any evidence that reflects he has a history of mental illness during the previous evaluation, trial, or the *nunc pro tunc* hearing." See *State v. Robinson*, 102 So.3d 922, 927, 12-22 (La. App. 5 Cir. 2012), *cert den.* 111 So.3d 1017, 2012-2434 (La. 2013). However, after all Petitioner's counsels, (pre-trial, trial and *nunc pro tunc* counsels), failed to proffer the 2002-03 WJMHC mental health records, Petitioner proceeded pro-se, on PCR, and submitted his 2002-03

WJMHC mental health records. But the state court held that Petitioner "has only provided conclusory allegations in both his APCR and the current writ application without any evidence or facts to support any of these claims, and therefore relator has failed to demonstrate the requisite prejudice required under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)." Id. The state's appeal court has overlooked or ignored Petitioner's 2002-03 WJMHC mental health records, or did not find them "relevant".

Attorney James (Jim) Williams, enrolled as counsel on record on February 14, 2011, represented Petitioner at a February 16, 2011 *nunc pro tunc* hearing. Attorney Williams had just signed on as attorney of record and had not adequately reviewed Petitioner's case and did not have, or submit, Petitioner's 2002-03 WJMHC mental health records. Mr. Williams requested a continuance so he could acquire the necessary records in this case. The Court denied his request. Instead of arguing the need for a continuance, Mr. Williams withdrew his Motion for Continuance.

On July 31, 2014, the district court denied Petitioner's PCR claim that counsel (Mr. Williams) was ineffective for failing to argue for a continuance so he could prepare for the *nunc pro tunc* hearing.

Petitioner was prejudiced by counsel's inability to prepare for the *nunc pro*

*nunc* hearing. Counsel, Jim Williams, did not talk to the Petitioner's treating psychiatrist at West Jefferson Mental Health Clinic, Dr. Bergeron, or the treating psychiatrist at Charity Hospital in New Orleans, did not subpoena them and did not introduce their medical reports of major, prolonged and incurable mental health defects to the court.

The unprepared Counsel then allowed a "critical" misinterpretation in the case to develop. A misinterpretation of Dr. Salcedo's testimony developed in regards to whether a "major" psychiatric disorders, such as Petitioner's schizophrenia and bipolar I disorder, and whether the less serious "minor" mental disorders, such as Petitioner's jail house medical treatment, for sleep anxiety and drug withdrawal, would be relevant at the *nunc pro tunc* hearing.

The district court's denial, based on medical mental health records being irrelevant, is an objectively unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States or an objectively unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d)(1) & (d)(2).

Petitioner respectfully directs this Honorable Court's attention, to the record. Dr. Salcedo answered questions directed to two different considerations of mental illnesses. One described "major" psychiatric disorders, and the other concerned

"minor" psychiatric disorders. The first line of questioning, is by the State, where

Dr. Salcedo mentions "major" psychiatric disorders, and is as follows:

BY MS. GORMAN:

Q. Dr. Salcedo, did you have the opportunity to evaluate Mr. Marvin Robinson in reference to several docket numbers, including docket number 05-2673?

A. Yes.

\*\*\*

Q. And what was your -- what were your findings from that evaluation?

A. The evaluation which took place on May the 14th, 2008, failed to reveal evidence that Mr. Robinson was showing any signs or symptoms of suffering from any major psychiatric disorder. And that is essentially the predicate -- a lot -- a lot of times people miss the fact that a defendant can be, or can have a lack of knowledge regarding questions involving the *Bennett* criteria for competency to proceed, they might not know their legal rights all the way, you know, or specifically, or they may-- may lack knowledge about certain things; but the first predicate has to be that they are suffering from a psychiatric disorder, which causes the impairment, okay, so it's not lack of knowledge, alone, but there has to be the presence of a major psychiatric illness, schizophrenia, bipolar disorder with psychotic features, significant mental retardation, something which causes the defendant to be unable to understand the *Bennett* criteria for competency to proceed...

The above shows that: Dr. Salcedo, testified that schizophrenia, and bipolar disorder with psychotic features would be considered "**major psychiatric illness**".

The above also shows that, Dr. Salcedo, basically establishes that schizophrenia, and bipolar disorder with psychotic features would be "something which causes the defendant to be unable to understand the *Bennett* criteria for competency to

proceed. The above further shows that Dr. Salcedo does not say that mental health treatment for schizophrenia and bipolar I disorder would be "irrelevant".

The second line of questioning, is by Petitioner's counsel. Dr. Salcedo then testified about Petitioner's treatment at the Jefferson Parish Jail, where he received treatment for "minor" psychiatric disorders, for sleep insomnia, or sleep anxiety, and poly substance abuse.

BY MR. WILLIAMS:

Q. Okay. Alright. Now, at the time that you interviewed Mr. Robinson, do you know if he was on any kind of medication?

A. No, again, that's something that would have clearly been noted in the report.

Q. Alright. And did you recommend any medication for him as the result of your interview, any problems like, for example, problems sleeping at night?

A. I don't know if he reported that he was having problems sleeping. That would not be considered evidence of a major psychiatric disorder, and, you know, when we are conducting sanity commission examinations, we usually restrict the evaluation process to items relating to the defendant's ability to meet the *Bennett* criteria for competency to proceed. . .

\*\*\*

Q. Okay. Now you indicated that he acknowledged a history of poly substance abuse. Did you have any reason to believe that that might have caused any kind of psychiatric illness, that substance abuse?

A. No, generally by time a sanity commission is requested, a defendant has been incarcerated for -- what would be considered for the purposes of your question, a significant period of time.... But, no, I mean he would have by then detoxified and, you know, by the time we saw him, I'm sure you can identify from the record when he was arrested, and there would have been a significant period of time where

he would have been cleared from any effects of substances or detoxification.

Q. Let me ask you this. Before interviewing a person as a result of an appointment, do you review the records from the Correctional Center regarding new medication they might be on, or anything like-- or any treatment for any reason, while they were confined, before you interview them?

A. Well, as it turns out, Dr. Richoux happens to be the jail psychiatrist as well, and he does these evaluations with me; and so he's familiar with the patients who are receiving psychiatric treatment at least. They're receiving medical treatment by the regular physician at the hospital, who's not a psychiatrist. That's most of the time completely irrelevant to many psychiatric concerns. . . .

\* \* \*

Q. Well let's assume, for purposes of my questioning, that he was in fact given some sort of medication to help him sleep. Would that have been something that, had you known at the time of your examination on May 14th, you think might have affected your findings?

A. Not really, I mean, it's very, very, common for inmates at the jail to have sleep difficulties. . . So, you know, insomnia or difficulties with sleep, would not constitute a major psychiatric disorder, which would ordinarily impair an individual in terms of their capacity to meet the *Bennet* criteria.

Clearly, this second line of questioning is where Dr. Salcedo specifically addresses mental health treatment given at the parish jail for "minor" mental health illnesses, for sleep insomnia and poly substance abuse. This is clearly where Dr. Salcedo mentions the "irrelevance" of prior mental health records.

Petitioner's *nunc pro tunc* hearing counsel, (Mr. Williams), did not clear up this **critical misunderstanding**, which resulted in a finding of competency at the *nunc pro tunc* hearing, and in which the district court relied upon to deny Post

## Conviction Relief.

The *Pate* Court have stated: "...we have previously emphasized the difficulty of retrospectively determining an accused's competence to stand trial." (citation omitted). "The jury would not be able to observe the subject of their inquiry, and expert witnesses would have to testify solely from information contained in the printed record." *Pate v. Robinson*, 383 U.S. *supra*, at 387, 15 L.Ed. 2d *supra*, at 823. Petitioner argued in the state courts that he should have been granted a new trial instead of a *nunc pro tunc* hearing. Defendant would be entitled to a new trial if defendant was incompetent or a meaningful inquiry was impossible. See, *State v. Snyder*, 750 So.2d *supra*, at 832; *State v. Nomey*, *supra*; *State ex rel Seals v. State*, 831 So.2d 828, 2000-2738 (La. 10/25/02), *appeal after new trial*, 83 So.3d 285, 09-1089 (La.App. 5 Cir. 12/29/11), *writ denied* 99 So.3d 53, 2012-0293 (La. 10/26/12).

In Petitioner Robinson's instant case, as shown herein, Dr. Salcedo had a vague memory of Petitioner's evaluation and did not even testify from the printed record. He didn't have the record with him.

Attorney Jim Williams asked Dr. Salcedo: "Do you have an independent recollection of your interview from May 14th, 2008 with Mr. Robinson? Dr. Salcedo answered: "I recognize him visually, as I sit here. I can't tell you that I

remember the interview process itself, in detail, but I recognize him as he sits here."

Mr. Williams asked Dr. Salcedo, "Do you have your notes from your interview of Mr. Robinson?" Dr. Salcedo answered "Not with me. I-- I wasn't aware that this had been set for today, but--."

Mr. Williams further asked Dr. Salcedo: "Now, do you recall in your interview with Mr. Robinson, that he had indicated that he had received prior mental health treatment from a facility in Marrero? Dr. Salcedo answered "I don't believe that -- that he told us that, you know, he may -- he may have received that treatment, but I would have mentioned something like that in the report, if he had shared that with us."

Petitioner was significantly prejudiced by counsel's deficient performance for failing to show that the major psychiatric illnesses of schizophrenia and bipolar I disorder was not limited to the time of treatment, but was conditions that extended to the time of trial and thereafter. Counsel was "unprepared". Dr. Salcedo testified that "the evaluation which took place on May the 14th, 2008, failed to reveal evidence that Mr. Robinson was showing any signs or symptoms of suffering from any major psychiatric disorder". But Dr. Salcedo did not testify from his notes or did not refer to Petitioner's 2002-03, WJPMHC mental health

records when he testified about "major" and "minor" psychiatric disorders. Dr. Salcedo was unaware, at that time, or did not testify that Petitioner had schizophrenia and bipolar I disorders. He did not have Petitioner's 2002-03, WJPMHC mental health records and defense counsel did not submit them or refer to them.

People with bipolar disorders can get worse. Bipolar - mood psychiatric disorders ... are not curable. See *Succession of Forman, In re*, 37 So.3d *supra*, at 1084. Also, Petitioner's schizophrenic conditions was one that is considered "prolonged", as indicated by the treatment of "Haldol". See PDR, 58 Ed., P. 2443. This was necessary to point out because Petitioner's trial was held August 21, 2008, and Petitioner's last treatment for schizophrenia and bipolar I disorder was August 5, 2003, about five (5) years earlier.

Petitioner was prejudiced by being deprived of his rights to a meaningful determination of competency, with adequate anticipatory protective procedures, at the time of the *nunc pro tunc* hearing, due to counsel's errors. *Strickland v. Washington, supra*; *Pate v. Robinson*, 383 U.S., at 387, 86 S.Ct., at 843; *Drope v. Missouri*, 420 U.S., at 183, 95 S.Ct., at 909; *Dusky v. United States*, 362 U.S., at 403, 80 S.Ct. at 789. As a result of counsels' being "unprepared" and failing to present Petitioner's mental health records from WJPMHC, the trial court did not

properly ascertain whether a *nunc pro tunc* finding remained possible, or whether the *nunc pro tunc* hearing was "meaningful". The state trial court, without adequate advocacy from counsel, merely relied upon Dr. Salcedo's vague memory, and misinterpreted Dr. Salcedo's testimony in regards to "irrelevant" prior mental health treatment history at the parish jail.

If it were not for counsel's (Jim Williams') errors, the result of the *nunc pro tunc* hearing would have been different. Counsel should have pointed out, at the *nunc pro tunc* hearing, that Dr. Salcedo had just previously stated that schizophrenia, and bipolar disorder would be considered "major psychiatric illness". Counsel should have pointed out that Dr. Salcedo, had just previously stated that schizophrenia and bipolar disorder would be "something which causes the defendant to be unable to understand the *Bennett* criteria for competency to proceed. Counsel should have then submitted Petitioner's WJMHC medical records showing that Petitioner suffers from schizophrenia, and bipolar disorder.

Considering the above, the state courts' denial, holding that: counsels' failure to submit mental health records was not deficient performance and prejudicial; Petitioner's mental history is irrelevant; new counsel was not ineffective for failing to argue for a continuance; failure to determine whether Petitioner had ability to consult with his lawyer, or had rational understanding of proceedings; and that

petitioner has only provided conclusory allegations, resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States in *Strickland v. Washington*, and/or resulted in an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. 2254(d)(1) & (d)(2).

## CONCLUSION

Petitioner's Sixth Amendment Rights to the effective assistance of counsel and his Fourteenth Amendment Rights to due process of law and a fair trial were violated, and this Honorable Court should Reverse the decision of the U.S. Fifth Circuit Court of Appeals, and order that Petitioner be afforded a new trial.

Respectfully Submitted, this 12<sup>th</sup> day of August, 2019

  
Marvin Robinson, pro se  
#110190, MPWY, Pine 3  
Louisiana State Penitentiary  
Angola, LA 70712