

19-6174

No.:

ORIGINAL

In The  
Supreme Court of the United States

FILED  
SEP 27 2019

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SUPREME COURT, U.S.

DAVID ANTHONY LEE,  
(Petitioner)

versus

DARREL VANNOY WARDEN, LOUISIANA STATE PENITENTIARY,  
(Respondent)

Petition for Writ of Certiorari to the United States  
Supreme Court from the Denial of Court of Appeals for the Fifth Circuit

Respectfully submitted,

David Lee

David Lee, Pro Se

DOC #312290

Camp-C Tig.

Louisiana State Penitentiary

Angola, Louisiana 70712-9818

Sept. 9, 2019

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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 appear at Appendix \_\_\_\_\_ to the petition and is

reported at David Lee v. Darrel Vannoy No.2:17-CV-11577; 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[ ] is unpublished.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 David Lee v. Darrel Vannoy USDC No.18-31058; 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[ ] is unpublished.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 State v. David Lee, So. \_\_\_\_\_ or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

The opinion of the Fourth Circuit Court of Appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at, State v. David Lee, So. (La. App. 4 Cir. \_\_\_\_\_); 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[ ] is unpublished.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 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 court:

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 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).

No. \_\_\_\_\_

# **STATEMENT OF ACCOUNT**

(Certified Institutional Equivalent)

I hereby certify that David Lee, inmate number 312290

the Plaintiff herein has the following sums of money on account to his credit at LOUISIANA STATE PENITENTIARY,

Angola, Louisiana 70712, the institution where he is confined:

Prison Drawing Account: \$ 0

Prison Savings Account: \$ 0

A. Cash \$ \_\_\_\_\_

B. Bonds \$ \_\_\_\_\_

I further certify that the average monthly deposits for the preceding six months is \$ 1667.

(The average monthly deposits are to be determined by adding the deposits made during a given month and dividing that total by the number of deposits made during that month. This is repeated for each of the six months. The average from each of the six months are to be added together and the total is to be divided by six)

I further certify that the average monthly balance for the preceding six months is \$ 0.

(The average monthly balance is to be determined by adding each days balance for a given month and dividing that total by the number of days in that month. This is to be repeated for each of the six months. The balance of the six months are to be added together and the total is to be divided by six).

Date Certified

DATE

AUG 05 2019

CERTIFIED

Saundra Rose

Signature of Authorized Officer of Institution

**QUESTIONS PRESENTED**

1. Whether Mr. Lee's conviction was obtained in violation of his Sixth and Fourteenth Amendment rights of the United States Constitution.
2. Whether Fifth Circuit Court of Appeal:
  - (1) 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; or
  - (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

**INTERESTED PARTIES**

1. David Lee, Pro Se Petitioner, Louisiana State Penitentiary, Angola, LA. 70712
2. Darrel Vannoy, Warden, Louisiana State Penitentiary, Angola, LA. 70712
3. Assistant District Attorney, Leon Cannizzaro, Jr., 619 South White St., New Orleans, LA., 70119

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**In The  
Supreme Court of the United States**

No.: \_\_\_\_\_

**DAVID ANTHONY LEE  
(Petitioner)**

**versus**

**DARRELL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,  
(Respondent)**

**Petition for writ of certiorari to the United States Supreme  
Court from the Denial from the Court of Appeals for the Fifth Circuit**

**MEMORANDUM IN SUPPORT**

Petitioner David Lee, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled proceeding on July 22, 2019. In particular, that;

**Claim No. 1** Ineffective Assistance of Counsel when trial counsel guaranteed by the Sixth and Fourteenth Amendment

**Claim No. 2** Trial court failed to determine Plaintiff's "competency" prior to trying him.

**Claim No. 3** Plaintiff was denied his right of meaningful review.

**Claim No. 4** Denied Effective Assistance of Counsel when trial counsel allowed the court to proceed without determination on sanity

**Claim No. 5** Evidence was insufficient for a finding of guilt beyond a reasonable doubt.

**Claim No. 6** Trial court failed to conduct a hearing on the claim of sanity after ordering a Sanity Commission to examine Petitioner

Denying Mr. Lee of his Sixth and Fourteenth Amendment Constitutional Right, supporting his claims that his Conviction was Obtained in Violation of the United States Constitution, Thus warranting Certiorari.

#### JURISDICTION

The judgment of the court of appeals was entered on 7-22-2019, under case no. 2:17-CV11577. Petitioner did not seek rehearing. This Court's certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States constitution Amendment: Fifth; Sixth; Fourteenth and 28 U.S.C. § 2254(d)(1)

The Fifth Circuit Court of Appeals, "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."

#### STATEMENT OF THE CASE

The Plaintiff, David Lee, is presently domiciled at the Louisiana State Penitentiary in the custody of Darrel Vannoy, Warden, under the Department of Corrections follows; February 25,1999, Plaintiff was indicted by an Orleans Parish grand jury on multiple charges, including Aggravated Rape, in violation of LSA-R.S. 14:42.; On March 3, 1999, Plaintiff plead "Not Guilty." The defense then filed a motion to request a Lunacy Hearing raised April 7, 1999...consequently the trial Judge "Sharon K. Hunter" granted the defense motion. Then she notified doctors on April 20, 1999 and set a competency hearing on April 27, 1999. The defense reminded the Judge of the hearing and she stated, "Okay, I'm going to call the Doctors" Trial was then set for the next day, April 28, 1999. the record goes completely off to reflect any further proceedings of any determination on sanity. The trial began on August 12, 1999 and Mr. Lee, Plaintiff was sentenced to life.

The Fourth Circuit Court of Appeals reversed the Plaintiff's conviction and sentence predicated upon (nothing in the record) to show a determination was ever made before the court proceeded to trial.

On 6-27-2003, the Louisiana Supreme Court reversing 4<sup>th</sup> Circuit decision as vacated and remanded the matter back to the district court based on ("Poor state records") of the sanity proceedings...in accordance with (7) questions, under LSA-La. C.Cr.P. art 642: And which the first (4) questions were based ("Poor state of the record"). The face of the order record states; Granted. Because of **Poor State Records A Reviewing Court Cannot Determine**, 1.) When the Defendant attempted to withdraw his motion for the appointment of the sanity commission. 2.) When the district court granted the motion and appointed specific physician to the sanity commission. 3.) When the commission doctors reported to court on Defendant's competency to stand trial and 4.) When the district court conducted hearing on the reports and determined that the Defendant was competent to proceed.

Please be advised that Plaintiff did not argue (7) questions on any of his Post-convictions...only (5) questions was argued because he could not assist in his defense with Inmate who prepared his writ application.

The court on remand 10-22-2004 and 4-13-2005 of Plaintiff's evidentiary hearings...responded contrary and conflictingly to the entire order of the Louisiana Supreme Court 6-27-2003.

Plaintiff's Appellate Counsel reviewed and appealed only the 4-13-2005 ruling transcript because the 10-22-2004 hearing transcript was arbitrarily withheld "twice" from defense side of the evidence and (review and appeal), while the case was unconstitutionally "proceeding" to last result judgments of 4<sup>th</sup> Circuit and Louisiana Supreme Court without the proceedings being stopped for review after the hearing was conducted.

Fourth Circuit eluded the sanity proceedings before trial that was without trial court testimony determination on record...and conducted it's own (competency hearing), using "trial" court incomplete record being without determination and found defendant competent to stand trial without a judgment on the issue of missing and incomplete records, 4-12-2006.

In reviewing that court's decision, the Louisiana Supreme Court addressed an entirely different issue from ones remanded the case back to the District Court based on "Poor state record"...under La. C.Cr.P. art 642 of Factual findings once found by this Louisiana Supreme Court and denied Plaintiff 1-12-2007...contrary and conflictingly to the entire 6-27-2003 order.

Plaintiff filed writ to United States Supreme Court based on the claim, instead of on the issue of "missing and incomplete records" and was denied 10-1-2007.

Thereafter Plaintiff subsequently filed his Application for Post-conviction Relief into the Criminal District Court, Parish of Orleans. Sect. "C", on 6-30-2008 based on new claims of Ineffective Assistance of Counsel, for "Failure to challenge the issue of missing and incomplete records of the sanity proceedings" claim...Due to Plaintiff then inability to read and write and understand the English language that was written his Post-conviction Relief Application was poorly prepared by several other prisoners. He then sought to nullify his application and asked the court to allow him to resubmit it with a new post-conviction as amended and supplement to his post-conviction record based on same claims filed specifically under Ineffective Assistance of Counsel", and on La. Const. Art. 1 § 19, filed on 8-7-2009 received no judgment.

Plaintiff also filed a third (3<sup>rd</sup>) Post-conviction under New Rule of Constitutional Law by the United States Supreme court in Trevino v. Thaler,<sup>1</sup> as defined in Teague<sup>2</sup> because the result was not dictated by precedent existing at time Defendant's conviction became final. Art. 930.8 (A)(2) filed on

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<sup>1</sup> 133 S.Ct.1911, 185 L.Ed.2d 1044 (2013)

<sup>2</sup> 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (U.S. Ill. 1989)

5-9-2014 also received no response or Judgment from Sect. "C" Court and attached with this filing...Plaintiff filed a "Motion For Counsel at the Evidentiary Hearing" and "Motion For Production Of Documents", received no judgment.

Plaintiff has filed several motions for production of documents in support of his Post-conviction into Sect. "C" Court and which only one was granted after mandamus was filed into 4<sup>th</sup> Circuit on 9-16-2015 and Judge Benedict Willard was ordered to render a judgment within (60) days...However, he allowed the minute and law clerks to render the judgment. This was denied 11-5-2015.

Plaintiff appealed to the 4<sup>th</sup> Circuit and Louisiana Supreme Court and was denied 11-20-2015, 1-6-2016, 11-11-2016, 2-3-2016 and 8-14-2017.

Plaintiff thereafter filed his "Federal Habeas Corpus" into Eastern District with Memorandum In Support on 10-23-17, and received Magistrate Judge Joseph C. Wilkinson's Report And Recommendation, July 20, 2018. Plaintiff thereafter filed his "Objection" into Eastern District August 10, 2018 and received Judgment August 23, 2018 and 9-7-2018 under case no. 2:17-CV11577 § A(2) which was rejected.

Plaintiff then after filed his COA in the United States Court of Appeals for the Fifth Circuit 10-10-2018...and was denied 7-22-2019.

## REASON TO GRANT WRIT AND GROUNDS FOR RELIEF

### CLAIM (1)

Denial of a valid constitutional right, where there is no Judgment reviewed by any higher court was ever heard with judgment from the lower state District Court on none of Plaintiff's Post-conviction relief application, filed into Orleans Parish, Criminal District Court of Sect. "C" 6-30-2008, 5-7-2009 and 5-9-2014. Therefore, both Eastern District and Fifth Circuit Court of Appeals erred in not to remand the case to the District Court of Sect. "C" for judgment<sup>1</sup>

Plaintiff asserts that while trying to proceed to last and final judgment on his Post-convictions and on Motion for Production of Documents in support of his Post-conviction without judgments violated his due process right under the Sixth and Fourteenth Amendments to the United States Constitution.

The Fifth Circuit have stated in their decision Plaintiff contends that (1) the trial court violated his due process rights by not determining his competent to stand trial prior to trial; and (2) his counsel provided ineffective assistance because he failed to challenge the missing and incomplete records, and Plaintiff "Abandoned" his remaining claims by failing to brief them adequately.

Plaintiff would like to point out to the Honorable Court his "post-conviction" claims were attached to his habeas corpus, but not presented right so they were not allowed for review was not fair. Also, while in fifth circuit he adequately briefed his claims from his "post-conviction" but they were not allowed for review was also not fair.

Plaintiff asserts that it is complete prejudiced and wrong for the reviewing courts not to remand the case for judgment on the merits of his claims and which he asserted he was not competent "before" trial at crimes charged occurred and during trial court proceedings and which he has furthered asserted

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1 Therefore Plaintiff request would the Honorable Court consider Grant of writ in favor of Plaintiff's because Sect. C have both lost his first two (2) Post-convictions and failed to render judgment on all 3 of his post-conviction. See Magistrate Judge Report and Recommendation. P. 15, fn.52 in support.

the proceedings should have stopped when both trial proceeded and when the "record" failed to reflect determinations on insanity raised April 7, 1999. Nevertheless, the April 27, 1999 incomplete competency hearing record is without any determinations before trial proceeded. Droe v. Missouri, and Pate v. Robinson; La. C.Cr.P. art. 642-647<sup>2</sup>

### **VIOLATION OF HIS DUE PROCESS RIGHTS**

Plaintiff has furthered asserted also he was not competent to assist the Inmate who helped him prepare his federal writs to the federal courts and it is evident he is not competent because all his claims was abandoned...his reason for not listing his claims adequately.

Plaintiff notes these same said denied claims have been fairly presented to state court throughout his post conviction proceedings. He has maintained these claims since his conviction, presenting no new legal theories or new factual claims in his federal application. It is fairly presented and ripe for this Honorable Supreme Court's determination. see Picard v. Connor, 404 U.S. 270, 92 S.Ct. 509, 30 L.Ed.2d 438 (U.S. Mass. 1971); Whitehead v. Johnson, 157 F.3d 384, 387 (5<sup>th</sup> Cir. 1998)

Nevertheless the record serves only state purpose not defense side of the evidence. Plaintiff asserts the Record is inadequate for to present his claims prejudicing him. And the Record in reviewing courts denial is based on a partial presentation of the facts without courts' Records, Plaintiff is doomed to fail in all his attempts to (review and appeal): Mainly, when the Record fails to show whether he was ever found competent to proceed Before the court, proceeded to trial.

Plaintiff was defrauded of his statutory right to plea (Not Guilty and Not Guilty by Reason of Insanity) at the time of trial and defrauded of a constitutional right to challenge the totality of the claim at trial and while on direct appeal due to Poor state of record (issue) of the sanity proceedings. (see

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2 The April 7, 1999 missing pretrial transcript record will show insanity was raised in good faith and it will show the actual event of crimes occurred. The incomplete April 27, 1999 transcript is without any determination on competency "before" the court proceeded to trial. See Exhibit (1) April 27, 1999 competency hearing transcript it is without determination on competency...and this is another showing insanity was raised in good faith.

La. Const. 1974 Art.1 § 19 and La. C.Cr.P. art. 642-647. (This was argued on his Post-conviction). But received no judgments.

Under the circumstances in State v. Lee cases, trial should not have proceeded and proceedings on remand 10-22-2004 and 4-13-2005 should not have proceeded reinstating his life conviction without record testimony determination on competence from the trial judge, the doctors or his counsel. All proceedings was ordered to STAY until that determination was made. See also 6-27-2003 order for new trial that the court responded contrary and conflicting to;

Insanity was raised by defense side of the evidence April 7, 1999...and the motion was "granted" by the trial judge, but it was missing the entire record. And the April 27, 1999 competency hearing transcript is incomplete being without record testimony determination on his competency to proceed or to stand trial Art. 642.

Because the record does not support that trial Judge "Sharon K. Hunter" did in fact find Mr. Lee competent to proceed or to stand trial. Absent proof of that finding. Plaintiff received unfair trial and prejudice last result judgments, mainly, after his convictions and sentence was REVERSED based on the claim and issue of the sanity proceedings being without record testimony determination.

The real question of law in this instant case is. "Whether the trial judge abused her discretion by proceeding to trial without a full report of the sanity claim ruled on by her. April 27, 1999 she stated, "I'm going to call the doctors": A clear indication she found reasonable grounds existed for doubting defendant's competency to proceed?" see (Exhibit-1)

If the record does not support that the judge did find Lee competent to proceed to trial, then it could only be presumed that she didn't. And this presumption would not be in vain, nor could it be accrued to mere inadvertence or isolated incident, given the history of the judge and cases she presided in and around the time of Lee's trial proceedings. See re. Judge Sharon K. Hunter, 823 So.2d 325,

2002-1975-12-8-19-2002 rehearing denied.<sup>3</sup> The charge in case no. 00177 subsection A. alleges that judge Hunter failed to supervise and direct her employees including court reporters and minute clerks and that such failure resulted in a high attrition rate which in turn impacted judge Hunter's ability to (1) ensure that transcripts are provided to the Fourth Circuit Court of Appeals; and (2) to comply timely with the fourth Circuit Court's order directing her to produce transcripts. Hunter, Id.

Once a Motion To Appoint Sanity Commission has been made it takes on a life of its own as nothing further can happen without resolving the issue of the defendant's mental capacity to proceed. The law is clear in this instant case. Article 642 mandates that "**no further steps in the criminal prosecution" shall be taken until the defendant is found to have the mental capacity to proceed.**

Plaintiff further asserts that he was denied to have this argument and Judgment reviewed by a higher court when the court clearly failed to render judgment on his post-conviction in a timely manner see (Exhibit-2, Resubmitted Post-conviction)

Plaintiff being without judgment on his Post-conviction is prejudicing him to receive sound and fair judgment by the highest court while proceeding to final judgment.

### CONCLUSION

For the foregoing reasons Plaintiff ask that this Honorable United States Supreme Court would "grant" this writ, based upon the records provided in support of his claim that his conviction was obtained in violation of the United States Constitution Sixth and Fourteenth Amendments.

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3 See also footnote (3): of former trial judge "Sharon K. Hunter's" case pages 6 where trial judge was ordered to produce records since April 1999 and she failed to do so, prejudicing Lee, and page 8, under Art. 1 § 19: Plaintiff has made known to all courts his case was one of those (29) cases that was proceeding out of Sect. "C" Court to final judgment that had missing and incomplete records and that was guaranteed a new fully recorded trial. Former Trial judge "Sharon K. Hunter" had to step down off the trial court bench in the public's eye for dozens of trial court records was missing and incomplete, and those cases received new trials. However in Lee's case he received no relief

RELIEF

Plaintiff ask the Honorable Court to grant his petition and relief, "remanding the case for judgment on 'all' his Post-convictions and on his Motion for Production of Documents" and on footnote pages 6 and 8 in support of his Post-conviction and if the court cannot produce the complete record and which judgment, conviction after reversed/reinstated and last result judgment is based he be granted a "New Fully Recorded Trial" and give reasons why the court did not render judgments on his Post-convictions within the time limitation. And "if" the writ gets denied Plaintiff ask it be dismissed without prejudice. And any other relief Plaintiff may be entitled.

Respectfully Submitted;

David A. Lee

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