

19-6258

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
NOV 06 2010
OFFICE OF THE CLERK

In re- Tiran R. Casteel — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS
U.S. Court of Appeals Eighth Circuit, and
U.S. District Court in Des Moines, Iowa

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR Extraordinary Writ of Mandamus

Pro-Se: J.R. Casteel Tiran R Casteel #06958-030
(Your Name)
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USP Box 1000
(Address)

Leavenworth, Kansas 66048

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

- #1 Was the Petitioner restored Prior to the November 2009 Trial ?
- #2 Was the Petitioners Due Process of Law violated by being Tried in November 2009,while legally incompetent ?
- #3 Did the District Court ERROR in using a false premise that Petitioner was restored in 2005 in their 2011 Doc 427 Conclusion of,competent to proceed ?
- #4 Did the District Court ERROR in declining a retroactive competency determination regarding petitioners competency to have stood trial in Doc 427,page 10 ?
- #5 Did the Court of Appeals for the Eighth Circuit ERROR in the denial of the Petitioners Direct Appeal 11-3717, 12-2707 on June 21st 2013,see page 10 and 11,using false premise that petitioner was restored in 2005 ?
- #6 Does the U.S.Supreme Court need to decide the questions, for National Importance as both the lower courts decisions were erroneous,when the record shows contrary ?

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:

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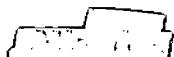
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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fifth Amendment prohibits criminal proceedings against those who are not competent.

18USC4241 Mental Evaluation

STATEMENT OF THE CASE

Petitioner proceeds under a Extraordinary Writ Rule 20,authorized by 28U.S.C. 1651(a). To justify the granting of any such writ, the petitioner must show that the writ will aid in the Courts appellate jurisdiction, and that exceptional circumstances warrant the exercise of this Courts discretionary powers, and relief cannot be obtained in any other form or any other court.

In Petitioners first unrelated case (United States v Casteel No.403-CR-257,2003-2006). In this Fraud case, petitioner had many mental evaluations. In 2004 by Dr D Rogers, evaluation of incompetence, in 2005 by BOP Waseca Mn, evaluation of incompetence. Then in February 2005 petitioner was deemed incompetent by Chief Magistrate Judge Ross Walters. Then in 2005, petitioner was sent to BOP Butner NC for four months of treatment intended to restore competency. BOP Butner Report by Dr Bruce Capehart issued in July 2005, opining there was a substantial probability petitioners competency could be restored through treatment with psychotropic drugs. Petitioner returned to his community and received treatment as recommended, but the change in medication produced no improvement in his condition. In 2006 this case was dismissed pursuant to a plea agreement requiring petitioner to continue mental health treatment. (See; 414-CV-123 Doc 53 & Doc 87 exhibits A-Q, and PSR/PSI).

The actors in this first case were;

- A)Chief Magistrate Judge Ross Walters,
- B)Prosecutor Cliff Wendel, for the later part,
- C)Defendants Attorney James Whalen.

In Petitioners "instant case" (United States v Casteel No.108-CR-53 2008-2012). Petitioner was charged with myriad offenses. The actors in the second case were;

- A)Chief Magistrate Judge Ross Walters,
- B)Prosecutor Cliff Wendel,
- C)Defendants Attorney James Whalen.

Petitioner was represented by James Whalen, who represented him in his first case as well. In **November 2009**, Petitioner was found guilty **by a jury**. To this day the petitioner competency has not been restored. Whalen contacted Dr Dan Rogers requesting an evaluation to establish mitigating factors for sentencing. Dr Rogers instead assessed petitioners competency, opining in his report and addendum, July and November 2010, that petitioner had been incompetent during the trial for which he was about to be sentenced for. Whalen withdrew and attorney Paul Rosenberg was appointed. Then the court granted petitioners request for evaluation to determine if he was competent to proceed. (See; 414-CV-123 Doc 53 exhibits N & O).

Petitioner was Tried in November 2009, then one evaluation was conducted just after trial in 2010 by Dr Rogers, and was again found incompetent. Now the court sends the petitioner in 2011 to BOP MCC Chicago, IL for a mental evaluation. The resulting 2011 Forensic Report by Dr Ron Nieberding erroneously stated, based on a misreading of Dr Capeharts 2005 Report, that the petitioners competency had been restored through treatment at FMC Butner. This statement is false. Dr Nieberding proceeded to opine that petitioner was **presently** competent, which was 2011, not 2009 trial period. The doctor based his conclusion from the BOP Butner Report. And that report was never maintained in either 2003 or 2008 case, it was never introduced in either case. He submitted his final eval to the courts.

In (See; 414-CV-123 Doc 53 exhibit P) is the MCC 2011 Report in "paper form", on p2 shows the doctor used both the Waseca and Butner reports. And on p5 shows he mistated that the petitioner was restored. He failed to conduct a retroactive competency determination back at trial period of 2009, and only states PRESENT DAY competent, coupled with his premise petitioner was restored in 2005. This is the start of the TAINT that has snowballed the entire case to date.

In (See; 414-CV-123 Doc 53 exhibit Q) Yet another evaluation by Dr Dan Rogers, and the conclusion was incompetent again.

In (See; 108-CR-53 Doc 443 1/16/12 Transcripts, p20), states;

(Sniplet Transcript Doc 443 108-cr-53 p20),

4 Now in studying Mr Casteels medical records and his
5 medical history you discovered that TWICE he had been found to
6 be incompetent to stand trial due to mental disorders, isn't
7 that correct?
8 Thats correct..

9 And both those determinations were made within the Federal
10 prison system?
11 Yes..

12 And how recent were those determinations?
13 I believe one was 2004 and the other was 2005..

As seen in the doctors testimony under oath, he now tells the truth. He stated TWICE petitioner was found incompetent, by the Federal System meaning Waseca and Butner and he stated 2004 and 2005 which he noted on p2 of his eval report. He never stated petitioner was ever restored. But in his paper final eval report he already submitted to the court 3 months prior, stated petitioner was restored and he also based his conclusion from the premise of that restoration that's false. And incorrect finding that petitioners competency had been restored during his 2003 criminal case has followed his 2008 criminal case, the appeal which followed, and the current case. (See; 414-CV-123 Doc 52 sealed 2/20/15 72pgs).

The report that indicated Petitioners competency had been restored was in error, and reliance on it has denied Petitioner his Due Process Rights. See; Drole v Missouri 421,US,162,174-175 (1975). However there was nine different reports from five different experts from 2004 through 2006 explaining petitioners incompetency, (DCD 53 at 4-35) (Bates stamp 0001-00032).

The Government relies on the district courts deference given to Dr Nieberdings findings that Petitioner was competent, inferring this applied to petitioner during his pretrial proceedings and trial in November 2009. This argument is factually inaccurate. Dr Nieberding explicitly restricted his conclusions regarding petitioners competency to the "PRESENT" which would have been June 14, 2011. Dr Nieberding made NO findings as to petitioners mental state during his 2009 trial, and NO findings regarding the period for which petitioner was accused of obstruction and tampering while in jail, awaiting trial. Further any deference given to Dr Nieberdings findings must be cautioned considering that in the same report

maintaining petitioners competence, Dr Nieberding erroneously stated petitioners competency had been restored through treatment at FMC Butner. This error would affect Dr Nieberding's findings of competence all together. (See; Appellate Case# 16-3281 2/6/17, Entry ID.4498589).

This proceeding involves an issue of exceptional importance to the Petitioner. He was convicted of federal offenses while he was legally incompetent. To convict him or other citizens while legally incompetent violates due process. Based on prior medical records and a recent finding of incompetence in a prior federal criminal case (2003-2006), petitioners trial attorney had the duty to request a competency evaluation for his 2008 criminal case. The prosecutor had the same duty, as well as the judge Ross Walters, all prior actors, in both cases.

The problem is Petitioners competency had never been restored when he stood trial in 2008 case. Petitioner was never returned to competence, following a history of confirmed incompetence, and any time before, during, or after the inception of his 2008 criminal case and his trial in November 2009. (See; Casteel 2255 Hearing Tr.10-11, 16-17, July 5th 2016).

After Doc 427 10/26/2011 Order

In Doc 427 Order, p8-10 the court relied on Three reasons to order the defendant competent to proceed. They are; Reason One; p8, par 2 **but also by the 2005 competency restoration examination that determined defendants competency had been restored. Nieberding Report at 9,3.** Which is false. Second Reason; p8, par 3 **the Court concerns about the accuracy of some facts**--relied upon by Dr Rogers. The record shows Dr Rogers facts and reports are factual but Dr Nieberding's conclusions are based on false understandings. Third Reason; p9, par 2 **Based on a longer period of evaluation time**---. See 2011 MCC BOP Final Eval Report on p2, Total Eval Time 4hrs, far less than Dr Rogers three eval reports (2004, 2010, 2011), See; 414-CV-123 Doc 53 exhibits.

Mainly Reason One, the premise that petitioner was restored in 2005, is what the court based their conclusion to Order Doc 427 from. See-p9-1- under conclusion.

States; Specifically the Court finds that defendant is competent to proceed with sentencing, but declines to make a retroactive determination regarding defendants competency to have stood trial.

The District Court failed to use or correct the record, when the already submitted Final Eval Report that was submitted to them and was used in Doc 427 by the court, was contrary to what the same doctor testified to after he submitted the report. In order as seen below-

- 1) June 14th 2011 Dr Nieberding submitted a Forensic Report to the United States District Court,
- 2) September 14th 2011 Competency Hearing See Doc 443 held,
- 3) ORDER Doc 427 on 10/26/11 Deeming Petitioner competent to proceed,
- 4) Sentencing 11/22/11 to 319mnths,
- 5) 2012 Tried again,
- 6) Sentenced again in 7/2012 to 63mnths.
- 7) Direct Appeal filed 11-3717 and 12-2707, denied June 21st 2013, see p10 and p11, appeals court relied on word-for-word as did the district court in Doc 427 assuming petitioner was restored.
- 8) 2255 Filed 414CV123 Doc 9 on 6/24/14, p17, see last sentence, states; there was at least one report that competency had been restored. Court is referring to 2011 Final Eval Report in #1 above, then Ground 9 was allowed to proceed.
- 9) Case#414CV123 Doc 89 on 7/15/16 p9 at Foot-Notes states; --no formal medical opinion or subsequent exists that casteel was ever restored to competence four mnths after the 2005 evaluation. Nonetheless, the court of appeals relied on Nieberdings misstatement in ruling on his direct appeal.

(The District Court now admits no restoration exists, and the appeals court did use it to make there conclusion of denial on direct appeal, but the district court is the FIRST to rely on it and use it).

(See;Petition for Second or Successive 2255 in Case#18-2268 6/12/2018.Id#4671662).

Also,See;Appeal Brief of Appellee in Case#11-3717 by the Government, on p25 states; **Although questions of competence were raised during Casteels 2004 wire fraud prosecution,his competence was subsequently restored and there was nothing to alert the court that casteels competence was again in question before his trial in this case.**

Flaw is-The Government assumes Petitioner was Restored.They knew petitioner was not restored from 2003 criminal case,they knew that case 403cr257 was dismissed because of incompetent,they knew there was a plea signed to continue mental health treatment,they knew petitioner had a long history of mental illness,see PSR/PSI,they knew Petitioner was DEEMED incompetent by Federal Judge Ross Walters in 2005.A person just does not change after a history as such.(See; 414CV123 Doc 53 and Doc 87 exhibits).

A District Courts determination that a defendant is competent to stand trial is reviewed for abuse of discretion.United States v DeCoteau 630 F3d 1091,1095 (8th Cir 2011).A District Courts competency determination is a factual finding unless clearly arbitrary or unwarranted or clearly erroneous.The burden rests with the defendant to demonstrate that he was NOT competent to stand trial.United States v Mueller 661 F3d 338,352 (8th Cir 2011).

The record is clear,the District Courts decision to determine petitioner was competent was erroneous and the petitioner holding the burden shows,he was not ever restored,it was stated in error by the courts relying on a final eval report from BOP MCC in 2011.And with all the prior history of mental illness,the court again errored by failing to conduct a retroactive competency determination back in trial time period of 2009.Violating due process in many ways.The district court may base its competency decision on a number of factors,such as expert medical opinions.The court did just that,they relied on the BOP MCC 2011 Final Eval Report as true and factual to make their decision of competent in Doc 427 Order,but failed to review the doctors testimony after that report was submitted.United States v Whittington 586,F3d,613,618 (8th Cir 2009).The district court failed to choose the qualified expert opinion over a competing opinion.

United States v Ghane 593 F3d 775,781 (8th Cir 2010).

The Court admits,"In short,while the court recognizes that retroactive competency determinations can be made in certain circumstances,those circumstances are not present in this case.The allegation that defendant was tried while incompetent must be raised either on appeal or in collateral attack in his conviction,not in a post trial motion made over one year after trial.Thus,the court declines defendants request to make a retroactive determination regarding his competency to have stood trial.See;Doc 427 108CR53 p7.

The court stated;Defendant has identified no reasonable cause that **existed** at that time which would have led the court to conduct such a hearing.

Flaw is-Petitioner was deemed incompetent in 2005 by the same judge on the instant case,same prosecutor, and same attorney all having prior knowledge.

APPLICABLE LAW

The Due Process Clause of the Fifth Amendment prohibits criminal proceedings against those who are not competent.See Drope v Missouri 530 US 162,172 (1975),and Pate v Robinson 388 US 375,378 (1956).Because sentencing is a critical stage in a criminal proceeding.United States v Collins 949,F2d,921,924 (7th Cir 1991),and Gardner v Florida 430 US 349,358 (1977),and United States v Gigante 982 F Supp 140,174 (EDNY 1997).And Wise v Bowersox 136 F3d 1197,1202 (8th Cir 1998),quoting Dusky v United States 362,US 402 (1960).The court may rely on numerous factors including expert medical opinions.United States v Robinson 253 F3d 1065,1067 (8th Cir 2001),and United States v Long Crow 37 F3d 1319,1325 (8th Cir 1994).

Petition for an Extraordinary Writ of Mandamus

The U.S. Supreme Court has superior jurisdiction of this action in the nature of a Mandamus to compel an Inferior Court of the United States to perform a duty owed to the petitioner.28USCA1361.

Mandamus has traditionally issued in response to abuses of judicial power. Thus where a District Judge refuses to take some action he is required to take or takes some action he is not empowered to take, mandamus will lie.Bankers Life & Cas Co v Holland 346,US 379,384 74 SCT 145,98 LEd 106.

And the Supreme Court may issue a writ of mandamus in aid of the appellate jurisdiction that might otherwise be defeated by the unauthorized action of the court below.McClellan v Carland 217 US 268 30,SCT 501,503 54 LEd 762.

The remedy of an mandamus is a drastic one, to be invoked only in extraordinary situations.Bankers Life & Cas Co v Holland (see above).

This writ has been used in Federal Courts to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Will v United States 389 US at 95,88 SCT at 273, quoting Roche v Evaporated Milk Assn 319 US 21,26,63 SCT 938,941,87 LEd 1185.

In the Instant case, the District Court knew, the petitioner was Incompetent, the Prosecutor knew, the defendants attorney knew. Even when the District Court ruled on ORDER Doc 427, stating the defendant was **restored in 2005** was in error, and even when confronted in many ways of this error, they still blatantly ignored the defendants fifth amendment rights of Due Process. Seen in case#414CV123 Doc 89, at foot-notes, now the court admits no such restoration exists. The inferior court is not following the laws.

The Appeals Court was given in Transmittal on direct appeal review 11-3717 and on p10 and p11 they echoed what the inferior court stated in Doc 427. And when confronted in many ways, defendant was blatantly ignored of his rights. Making the US Supreme Court having superior jurisdiction to enforce this matter.

Because the error happened in the District Court level,in Doc 427 ORDER #108CR53, and that Judge continued the assumption of the premise that Casteel was in fact restored,esp;now in Doc 89 #414CV123 on p9,at foot-notes,the District Court Judge states-No formal medical opinion or subsequent finding exists that Casteel was ever restored to competence four months after the 2005 evaluation.

The Court now admits no such finding exists.Thats contrary to the Courts stance seen in Doc 427 #108CR53, and thereafter.The instant case should be reversed back to 10/26/11 and Doc 427 voided, and a new Order issued, that Casteel was in fact tried while legally incompetent violating his fifth amendment of Due Process, and vacate or dismiss the case.

The error continued on "IN" the appeals court,because the alleged premise that Casteel was restored was given to the appeals court for review.And they did make their conclusion from what was sent to them,which was false.Any orders stemming from that court level should be recalled also.

It takes the U.S.Supreme Court to order the lower court known as the U.S.District Court to fix there error.And all the record from 10/26/11 should be wiped clean and a new order issued.

The Record itself,shows Casteel was incompetent **prior to-during-after** his 2009 trial.No matter who failed to act,the burden is on everyone but Casteel,as he was incompetent.He could of claimed insane at time of crime or incompetent to stand trial,but both options were taken from him because he was tried.And he was tried with his son DEVAN,violating his rights as well.

Because both lower courts have dodged the bullet on the factual record of incompetence, the supreme court must hear it.

REASONS FOR GRANTING THE PETITION

Petitioner states, the Federal Judge Ross Walters, the Prosecutor Cliff Wendel, and his own Attorney James Whalen all knew his prior case 403CR257 was dismissed due to incompetence, they knew it overlapped the instant case 108CR53 by the signing of the plea agreement. They all knew the petitioner had a long established history of mental health issues. They all knew the petitioner has Due Process Rights under the fifth amendment. They all failed and a incompetent person was tried. Even after the 2009 trial, when the incompetent issue came to light better, the district court, the government and even my attorney danced around the truth, avoided and ignored the record. Petitioner was DEEMED INCOMPETENT in 2005. After having another three evaluations after the 2009 trial, the court relied on the BOP MCC Report as true but failed to see after that paper report was submitted, the same doctor testified contrary in the competency hearing transcripts p20. Making that report void on its face and within its four corners. But continued to use that report and deem petitioner competent to be sentenced. Which caused him to be tried again in 2012 and sentenced again in 2012. As the years went by filing motions, the district court now admits in 414CV123 Doc 89 p9 at foot notes, that now no such report exists, and sees the appeals court used that false report, but in all reality, the district court used it first and passed it to the appeals court for direct appeal.

Bottom line is; there was never any such restoration prior to 2009 trial, nor during the 2009 trial of the petitioner. Even after trial in 2010 another evaluation showed incompetent. Anything 2 years after trial was not known in 2009. And as seen in my petition, the 2011 BOP MCC Report was void on its face, making ALL reports ever, being incompetent. My fifth amendment rights were violated not once but at least four times. My case shound be vacated.

The Supreme Court of the United States has Superior Jurisdiction over my case, both the District Court and Appeals Court based their decision erroneously many times avoiding and ignoring the record, this is why its National Importance having the Supreme Court decide my questions. The decisions of both lower courts are contrary to set precedent case law under Due Process of the Fifth Amendment regarding trying or sentencing incompetent persons. The importance of my case is to assist others who has been or is being ignored by the courts regarding mental issues and mental history.

In viewing Criminal Case#108CR53, both 2255s 414CV123 and 414CV124, and both direct appeals 11-3717 and 12-2707 and all other filed motions/appeals etc. This issue has been argued, from 2008 to date, in both lower courts. Now clearly district courts admission seen at; 414CV123 Doc 89 7/15/16 on p9, at Foot-Notes, should show the court, what the problem is.

The petition for a Extraordinary Writ should be granted..

Respectfully submitted,

Pro-Se;



Tiran R Casteel BOP#06958-030

Date: 10 - 29 - 2018