No. _____

19-6316

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ORIGINAL

JAMES MATTHEW SHELTON — PETITIONER
(Your Name)

FILED
OCT 01 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

JAMES MATTHEW SHELTON Reg#. 32700-057
(Your Name)
F.C.C. BUTNER LOW
P.O. BOX 999
(Address)

BUTNER, NORTH CAROLINA 25709-0999
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

DENYING CERTIFICATE OF APPEALABILITY AS TO WHETHER THE LOWER COURT;

(1) ERRS DENYING SHELTON'S HABEAS CLAIM ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL PER ERRONEOUSLY MOVING FOR EVALUATION OF HIS COMPETENCY TO STAND TRIAL, & FURTHER;

(2) ABUSES ITS' DISCRETION DENYING HIM AN EVIDENTIARY HEARING ON THE PRECEDING CLAIM...

DOES THE SIXTH CIRCUIT'S DECISION CONTRAVENE THE STATUTE & AUTHORITY GOVERNING CERTIFICATE OF APPEALABILITY?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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None

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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is United States v. Shelton,

[x] reported at 2018 U.S. Dist. LEXIS 207510 (E.D.Ky. Dec. 28, 2018)

[ ] 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[ ] is unpublished.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[ ] is unpublished.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

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was APRIL 4, 2019.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JULY 3, 2019, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 2255(b)
See Appendix A - 6

18 U.S.C. 3006A(e)(1)

Upon request. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex part application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States Magistrate if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

18 U.S.C. § 4241(a)

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and the consequences of the proceedings against him or to assist properly in his defense.

18 U.S.C. § 4242(a)

Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rule of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatrict or psychological examination of the defendant be conducted, and that a psychiatrict or psychological report be filed with the court.

STATEMENT OF THE CASE

On January 10, 2017 the district court, after denying motion for downward variance joined by the government seeking 168 months - sentenced Petitioner Shelton at the top of the 210 - 262 month guideline range to be followed by the statutory maximum lifetime of supervised release imposed on grounds, chiefly, of the court's express concern regarding Petitioner's mental health detailed through findings stemming from evaluation of his competency to stand trial; apparently diagnosing issues of his said as exhibited by:

> "[T]he type of person that commits some serious offenses throughout the country, against the school, against individuals...very immature, willing to act out... history of suicidal idoliztion..." (Sentencing Transcript Doc #:58 at 212; Quoted also at Appellant's Opening Brief, Case: 19-5025, Doc #: 5-1, Page 58)

A timely notice of appeal followed on January 23, 2017 with appointment of appellate counsel preparing and filing Petitioner's Opening Brief in the Sixth Circuit Court of Appeals - on November 1, 2017, nevertheless, affirming the district court's judgment (immaterial to this matter).

On July 24, 2018 Petitioner, pro se, filed his Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 raising therein and inter alia; ineffective assistance on part of counsel's impromptu motion at Initial Appearance & Arraignment held February 8, 2016 for evaluation of Shelton's competency to stand trial.

Presented in support thereof, namely, is Petitioner's Sworn Affidavit (Appendix E) attesting to counsel's neglect consulting

and/or addressing subject of his competency or overall state-of-mind; informing him, rather, and (erroneously) only after the fact of said evaluation's purported use aiding his defense at sentencing.

In a nutshell; consequent counsel's performance shown deficient through an unreasonable failure interviewing Shelton as well as truthfully apprising him concerning the evaluation's scope coupled with counsel's evident misapprehension of 18 U.S.C. § 4241 / § 4242 and relevant authority fixing an extremely high bar to an incompetency determination - Shelton argues the involuntary and completely inappropriate subjection to examination absent legitimate cause (given his mental state a far cry from incompetent) proving prejudicial under Strickland where; relied extensively upon, the impugning findings substantially factor in the district court's denial of downward variance and ultimate sentence imposed.

On November 2, 2018 nevertheless, the magistrate recommends denial of Petitioner's motion (Appendix C), to include evidentiary hearing as to the ineffective claim in question despite uncontested supporting affidavit, further recommending no certificate of appealability be issued. These of which adopted and incorporated over Petitioner's objections on December 10, 2019 by the district court (Appendix B), reconsideration under subsequent Rule 59(e) denied on December 28, 2018.

Pro se, yet, Petitioner files a timely Notice of Appeal on January 8, 2019 preceding an Opening Appellate brief submitted February 12, 2019, seeking first and foremost certification of

the grounds therein pursuant 28 U.S.C. § 2253(c)(2) - denied April 4, 2019, (Appendix A) however.

Construed as "Petition for Rehearing" of the Circuit court's above-stated Order denying certificate of appealability, Shelton then moves for reconsideration arguing in support, misapplication of the requisite "substantial showing of the denial of constitutional right" established where reasonable jurists can be said as finding the district court's assessment of an underlying claim "wrong" or "debatable" in the very least. Before the panel, nonetheless, Petitioner's Motion for Reconsideration is concluded as not overlooking or misapprehending any point of law or fact cited therein in denying application for Certificate of Appealability on July 3, 2019 (Appendix D).

REASONS FOR GRANTING THE PETITION

Countless American's live plagued by mental illness through no fault of their own. Amongst them, grappling with what is an inherent stigma surrounding their respective conditions as it were[1], the few and most extreme cases resulting in innocent bloodshed misrepresent and further stigmatize the majority of sufferer's proving to otherwise perpetuate a cycle of violence, where; discouraged, embarrassed, ashamed, or simply having nowhere else to turn, the problems only fester to the point of forcing individuals into the next Breaking News headlines.

Statistics, if not plain logic all but guarantee the next criminal defendant's as the above-described majority. Thus, given the exposure of these individual's to the criminal justice system as the potential first-ever opportunity at addressing their condition's; greater responsibility is vital on part of court's, federal and state, toeing-the-line between providing just punishment for violations of law - distinguished from penalization of an accused's particular disorder(s) on account of horrific acts perpetrated by a few.

Unfortunately for criminal defendant's such as Petitioner Shelton, the undue stereotype of those affected by mental impairments suggesting an entire class of our society posing an imminent threat to the public-at-large prevails in the consciousness of many, to include those instrumental in the administration of justice; most pertinently, both judges and

defense attorney's the latter of which being the case despite professional standards imposed on performance, the particular failings of Petitioner's counsel and the analysis applicable thereto leading to said conclusion constituting the framework requisite for Certificate of Appealability (COA) issuance.

Governing COA; 28 U.S.C. § 2253(c)(2) requires the "substantial showing of the denial of a constitutional right" shown further, where "reasonable jurists could debate whether (or, for that matter, agree) that the petition should have been resolved in a different manner" or "that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 43, 484 (2000)(quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

It bears special emphasis that the threshold question of debatability is one decided, moreover, WITHOUT "full consideration of the factual or legal bases adduced in support of the claims." Which, as a matter of fact, statute expressly "forbids". Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

In short, evaluating whether a COA issues requires "a preliminary, though not definitive, consideration of the [legal] framework" id., at 338 applicable to the claim in question which in this case where petitioner seeks certification of whether the district court errs denying his habeas claim alleging ineffective assistance on trial counsel's part by the erroneous evaluation conducted determining Shelton's competency, brings about the well known analysis announced in Strickland v. Washington consisting of two prongs; (1) deficient performance

falling outside an objective standard of reasonableness causing thereby; (2) prejudice to the defense, reasonable probability, otherwise, absent counsels error the outcome of the proceeding would have been different.

To that end as the court aptly notes; "[P]sychiatry has come to play [a pivotal role] in criminal proceedings" Ake v. Oklahoma, 470 U.S. 68, 79 (1985) hence, defense attorney's, although clearly lacking expertise in legitimately evaluating a client's psychological state[2] must, nonetheless, possess a thorough understanding of the legal options to be exercised under those circumstances - knowledge Petitioner's attorney lacks, premising his "substantial showing of the denial of a constitutional right", the Sixth Amendment right to effective assistance of counsel.[3]

Competent representation of an accused predicates itself on a defense attorney's appraisal of not only the particular facts relating to the case at hand, but the law.[4] And for starters in that regard; "It is well-established that some degree of mental illness cannot be equated with incompetence to stand trial." United States v. Vamos, 797 F.3d 1146, 1150 (2d Cir. 1986), cert. denied, 479 U.S. 1036 (1987).

Perhaps counter-intuitive; the bloodiest most appalling and horrific of acts too commonly perpetrated this day in age do not, necessarily in and of themselves impugn the competency of the assailants. Rather, a criminal defendant competent to stand trial is one with a "sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational

understanding" and "a rational as well as factual understanding of the proceedings" Dusky v. United States, 362 U.S. 402, 402 (1960).

Thus; "[T]he bar of incompetency is high" United States v. Miller, 531 F.3d 340, 350 (6th Cir.2008) so much so that even beginning such an inquiry requires evidence raising a "bona fide doubt" Pate v. Robinson, 383 U.S. 375, 378 (1966) that not the mere presence alone, but consequent a "mental disease or defect," the defendant is either completely "unable to understand the nature and consequences of the proceedings" or "to assist properly in [the] defense." United States v. Garza, 751 F.3d 1130, 1134 (9th Cir.2014)(citation omitted) implying "a clear connection between that disease or defect and some failure by the defendant to understand the proceedings or assist in [their] own defense." Id., at 1135.

On the flip-side, while the most atrocious of acts against humanity do not call an accuseds' competence into question, one suffering from the most pronounced of psychiatric conditions is also not automatically presumed incompetent or even eligible for the inquiry[5]; absent a discernible tie between their severe mental deficit and an inability comprehending the charges against them and/or aiding in defense of them. Furthermore, only substantiating the high bar, were a psychotic, totally mentally deranged defendant purportedly unable to comprehend the charge(s) or assist - an incompetency determination would even then be inappropriate...[6]

Suffice it to say; a (competent) attorney seeking evaluation

of a client's competency to stand trial aware of the preceding authority would avoid doing so, and especially but on the merest indication of some history of psychiatric treatment or diagnosis[7] which would, in turn, jam court's in light of much of the population fitting the criteria, not to mention, moreover, also proceeding this route absent bona fide doubt constituting a "grievously misguided effort to employ a mental health expert in [a] clients defense" "so flawed as to be 'the sort of serious blunder that will singlehandedly support a Strickland claim.'" United States v. Laureys, 866 F.3d 432, 439-40 (D.C. Cir.2017)(quoting United States v. Hurt, 527 F.3d 1347, 1356, 381 U.S. App. D.C. 259 (D.C. Cir.2008).

Referring more particularly to Petitioner's attorney ordering examination of his competency citing Shelton's; "long history of mental health issues dating back to his early teenage years."[8] (Appendix C at 4) for grounds doing so being at complete odds with what authority prescribes as evidence raising a "bona fide doubt" of incompetency necessary, counsel's so called justification amounts to little more than a "naked suggestion", Jordan v. Wainwright, 457 F.2d 338, 339 (5th Cir.1972) in other words "constructive doubt" deKaplanay v. Enomoto, 540 F.2d 975, 982-83 (9th Cir.1976) obviously insufficient meeting the "high bar" for establishing a bona fide doubt. See Clark v. Arnold, 769 F.3d 711, 729 (9th Cir.2014)(quoting Dickey-O'Brien v. Yates, 588 Fed. Appx. 705 (9th Cir.2014) arising from a total failure to research and understand applicable authority on the competency subject.

At this point it is worth noting when subjecting the performance of attorney's to the instant inquiry, precedent reminds us that a defense attorney is a person too; thus as susceptible to mistakes as the next person hence the "'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." Harrington v. Richter, 562 U.S. 86, 104 (2011)(quoting Strickland, 466 U.S. at 689).

Nevertheless, said presumption of counsel in this case moving for evaluation "for tactical reasons" is more appropriately classified as resulting from "sheer neglect" Yarborough v. Gentry, 540 U.S. 1, 8 (2003)(per curiam) considering the decision seeking to address Petitioner's issues by way of 18 U.S.C. § § 4241 4242 being one that simply "cannot be explained convincingly as resulting from a sound trial strategy" Eze v. Senkowski, 321 F.3d 110, 112 (2d Cir.2002) in light of the availability of a more viable alternative the undertaking of reasonable investigation would have been sure to otherwise reveal. See Ramonez v. Berghuis, 490 F.3d 482, 488 (6th Cir.2007)("A purportedly strtegic decision is not objecively resonble when the ttorney has failed to investigate his options and make a reasonable choice between them.").

Not to be confused; counsel's concerns regarding Petitioner Shelton's mental health are certainly not unfounded. Hence, the effort addressing them in and of itself is by no means the challenged issue; rather, the manner by which he does so: whereas moving under § § 4241 & 4242 (as he does) "the court appoints

a psychiatrist who examines the accused and reports to the court." This expert, moreover, is "expected to be neutral and detached." United States v. Bass, 477 F.2d 723, 725 (9th Cir.1973).

While alternatively; "18 U.S.C. § 3006A allows for government-paid, defense-only [psychiatric] reports if the defendant qualifies for in forma pauperis status." United States v. Graham-Wright, 715 F.3d 598, 603 (6th Cir.2013). The "§3006A expert fills a different role." The services under which supplied "'necessary to an adequate defense;" distinctive from a § § 4241 4242 expert on account of being a "partisan witness," whose "conclusions need not be reported in advance of trial to the court or to the prosecution." Bass, 477 F.2d 723 at 725 (quoting United States v. Theriault, 440 F.3d 13, 15 (5th Cir.1971); see also United States v. Phillips, 1990 U.S. APP. LEXIS 11259 (6th Cir.1990).

As it so happens, "report[ing] in advance of trial to the court" Id, of Shelton's psychological report findings is precisely what any competent attorney would have avoided at any cost; counsel's deficient performance leading to this, nevertheless, leads to prejudice at sentencing where - relying heavily on this report[9] (produced by a non-partisan adversarial party), the district court rejects both the defense and government's joint motion for downward variance seeking 168 months imprisonment due largely to the lower court's construal of these findings in accordance with the prevailing stereotype discussed earlier - imposing as a result thereby, 262 months

imprisonment.[10] See Spencer v. Booker, 254 F.Appx. 520, 525 (6th Cir.2007)("Where ineffective assistance at sentencing is asserted, prejudice is established if the movant demonstrates that his sentence was increased by the deficient performance of his attorney." (citing Glover v. United States, 531 U.S. 198, 200 (2001)).

All in all, the question of whether the Sixth Circuit errs denying Shelton's COA as to the district court's denial of his Habeas claim alleging ineffective assistance per improperly moving for evaluation of his competency to stand trial contravening statute and Supreme Court precedent[11] is answered in the affirmative, through the foregoing, plainly illustrating the antithesis of the Appeal Court's assertion that:

> "Shelton does not argue that counsel's motion for a competency evaluation was somehow frivolous... and no reasonable jurists could debate the district court's determination that trial counsel's decision to move for competency hearing was within the wide range of reasonable professional assistance" (Appendix A at 3)

Wherefore, it is through the combination of this very court's stressing of the "mental health of our citizenary, no less than its physical health, [as] a public good of transcendant importance" Jaffee v. Redmond, 518 U.S. 1, 11 (1996) alongside the fundamental understanding of our law "punish[ing] people for what they do, not who they are." The "[d]ispensing [of] punishment on the basis of[] immutable characteristic[s]" Buck v. Davis, 13 S.Ct. 759, 8 (2016) like mental health woes, otherwise "inescapable aspects of human existence" United States v. Johnson, 979 F.2d 396, 401 (6th Cir.1992) "flatly

contraven[ing]" the basic premise of our criminal justice system Buck, 137 S.Ct. at 778 - it is incumbent upon this court granting certiorari so as to not only foster nationwide uniformity regarding treatment of individuals similarly situated as Petitioner[12], but most important and above all, to avoid a grave disservice to the "public end" Jaffee, 518 U.S. at 10-13 inadvertently fueling the country's mental health crisis through the illusion of neutralizing threats to public safety via incarceration, that of which in reality, only drastically reduces the likelihood of those affected seeking the professional assistance they need.[13]

* * *

Pertaining to the second question this petition poses: A district court abuses its discretion when it "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." See Hall v. Liberty Life Assurance Co. of Boston, 595 F.3d 20, 25 (6th Cir.2010)(quoting Geier v. Sundquist, 372 F.3d 784, 789-90 (6th Cir.2004)).

Applied accordingly in the context of the district court's denial of Petitioner an evidentiary hearing; sought and denied for COA - reasonable jurists could surely debate the district court's decision as an abuse-of-discretion given the following:

(1)

"In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable a applicant to prove the petition's factual allegation, which, if true, would entitle the applicant to federal habeas relief."

Schriro v. Landrigan, 550 U.S. 465, 474 (2007).

While attorney's generally have the authority managing most aspects of a defendant's case without approval see Taylor v. Illinois, 484 U.S. 400, 417-18 (1988), certain decisions such as whether to submit to a competency evaluation cannot be made for the defendant by a surrogate. See Florida v. Nixon, 543 U.S. 175, 187 (2004).

Furthermore; "In assessing claims of ineffective assistance of counsel, the Supreme Court has repeatedly emphasized the importance of pretrial consultation between attorney and client." Hunt v. Mitchell, 261 F.3d 583 (6th Cir.2001); see also Geder v. United States, 425 U.S. 80, 88-89 (1976).

To both ends, Petitioner's allegation of counsel failing to consult him regarding subjection to psychiatric evaluation through his sworn and uncontested affidavit, most definitely constitutes unreasonably deficient performance in light of the preceding authority; see also Rickman v. Bell, 131 F.3d 1150, 1154-55 ("Indicia of objective unreasonableness include the violation of 'certain basic duties' inherent in the representation of a criminal defendant, among them a "duty of loyalty' to the client, from which derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments...")(quoting Strickland, 466 U.S. at 688) thus, if proven true, would establish grounds for entitlement to relief; reasonable jurist could debate the district court's denial of evidentiary hearing

as an abuse-of-discretion.

(2)

Sixth Circuit authority holds that; (A petitioner is entitled to evidentiary hearing when the only evidence in record is an affidavit supporting petitioner's claims, concluding that "the government must present evidence in support of its position," and that is "unverified" and mere contradictory "responses [are] plainly inadequate." Peavy v. United States, 31 F.3d 1341, 1346 (6th Cir.1996); see also Valentine v. United States, 488 F.3d 325, 334 (6th Cir.2007).

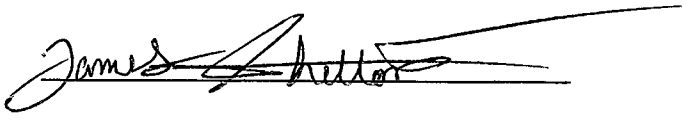
Straightforwrdly, where Shelton indeed presents sworn affidavit attesting to "purported occurrences outside the courtroom and upon which the record could, therefore, cast no real light" Machibroda v. United States, 368 U.S. 48, 494-95 (1962) that the government fails to adequately contest, reasonable jurists could debate the district court's evidentiary hearing denial as an abuse-of-discretion.

In short, the Sixth Circuit's denial of COA in spite of the preceding, in addition to "the motion and the files and the record" NOT "conclusively show[ing] that the prisoner is entitled to no relief" 28 U.S.C. § 2255(b) contravenes Supreme Court authority and statute governing COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 1, 2019

E N D N O T E S

1. Confidentiality of Mental Health Records, 1 Health L. Prac. Guide § 17:30 (2010)

2. Odle v. Woodford, 238 F.3d 1084, 1088-89 (9th Cir.2001)(A defense attorney "is not a trained mental health professional); see also United States v. Allen, 665 Fed. Appx. 533 (6th Cir.2016)(Evidence not put forth attorney "qualified to make a mental health determination.")

3. The Sixth Amendment guarantees the provision not simply of counsel, but of "the Assistance of Counsel for [the accused's] defence." U.S. Const. Amend. VI.

4. Hinton v. Alabama, 134 S.Ct. 1081, 1089 (2014)(Counsel's "ignorance of a point of law that is fundamental to his [client's] case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance.")(per curiam).

5. Medina v. Singletary, 59 F.3d 1095, 1107 (11th Cir.1995)("Not every manifestation of mental illness demonstrates incompetence to stand trial, rather, the evidence must indicate a present inability to assist counsel or understand the charges.")(quotation marks and alterations omitted).

6. United States v. Widi, 684 F.3d 216, 221 (1st Cir.2012)("A defendant may have serious mental illness while still being able to understand the proceedings and rationally assist his counsel.")(quoting United States v. Kenney, 56 F.3d 36, 44 (1st Cir.2014)) - i.e, Boag v. Raines, 769 F.2d 1341 (9th Cir.1984)(Five suicide attempts, repeated head trauma, alcoholism, diagnosed with "sociopathic personality disturbance/anti-social reaction" - STILL COMPETENT); United States v. Coleman, 871 F.3d 470 (6th Cir.2017)(Bizarre statements made over course of multiple hearings and trial, "combative" and "confrontational" - STILL COMPETENT).

7. Hernandez-Hernandez v. United States, 904 F.2d 758, 761 (1st Cir.1990)("To find 'reasonable cause' here [absent bona fide doubt] would come close to requiring district court's to order competency [evaluations] sua sponte in every case where a defendant has some history of psychiatric treatment and, even vaguely, mentions [a] problem."); see also Hawks v. Peyton, 370 F.2d 123 (4th Cir.1966)(An examination is not to be granted ex mero motu; and an order for such an examination is not a perfunctory or ministerial act.), cert. denied, 387 U.S. 925 (1967).

8. Petitioner's mental health woes come as little surprise given the trauma of not only witnessing brutal physical abuse inflicted upon his mother as young child by an alcohol & drug addicted father; but enduring such treatment himself as well.

9. United States v. A.R., 38 F.3d 699, 704 (3d Cir.1994)(Discussing competency evaluation findings becoming a problem when "used for something apart from, and with more dire potential consequences than, the competency determination.")(quoting Estelle v. Smith, 451 U.S. 454, 469 (1981).

10. While imposing the 262 month sentence to be followed with lifetime supervised release, the district court threatens upward departure on apparent basis of Petitioner's mental health.

11. Hutto v. Davis, 454 U.S. 370, 375 (1982)("[A] precedent of [the Supreme] court must be followed by the lower federal court no matter how misguided the judges of those courts may think it to be."); see also Hicks v. Miranda, 422 U.S. 332, 344 (1975); Rodiriquez de Quijas v. Shearson/Am. Exp., Inc., 490 U.S. 477, 484 (1989)

12. Ruth Bader Ginsburg & Peter W. Huber, The Intercircuit Committee, 100 Harv. L. Rev. 1417, 1424-25 (1987)("Uniformity promotes the twin goals of equity and judicial integrity - - similar treatment of similar litigants secures equity, while it also inspires confidence in the legal system, a confidence crucial to the effective exercise of judicial power.")(citation omitted).

13. "Once in prison,... the probability of the patient's mental health improving diminishes significantly and a stigma certainly attaches after the... sentence is served.

While... incarceration would serve the 'public end' of neutralizing the threat posed... the price paid in achieving that neutralization may often be that many [defendant's] will not seek the professional help they need to regain their mental and emotional health." United States v. Hayes, 227 F.3d 578, 585 (6th Cir.2000)