19-6460

No. ______________________

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
OCT 23 2019
OFFICE OF THE CLERK

Daniel Paul Copple — PETITIONER
(Your Name)

vs.

Pelicia Hall — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Daniel Paul Copple # 172543
(Your Name)

Unit 30B
(Address)

Parchman, MS 38738
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I.

When a defendant claims mental impairments had prevented him from timely filing his habeas petition, under Schriro v. Landrigan, should the district court have reviewed the state court records prior to denying equitable tolling?

II.

Whether a defendant should be permitted limited discovery and evidentiary hearing to develop evidence of his incompetence prior to court's dismissal, where no mental examination or competence hearing had been held, State was not required to produce institutional mental health records, and State was not asked or required to respond to defendant's declaration of incompetency?

III.

Under the Due Process Clause, can the Court require a pro se defendant to produce evidence of his mental impairments when the Court itself will not permit development of such evidence?

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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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

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

[ ] reported at ________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

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

[ ] reported at ________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ________________________ court appears at Appendix ______ to the petition and is

[ ] reported at ________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was August 5, 2019.

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

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______________ (date) on ______________ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ____________. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ________________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______________ (date) on ______________ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

> "... [N]or shall any State deprive any person of life, liberty, or property, without due process of law."

28 U.S.C. § 2244(d)(1) provides that, "a 1-year period of limitation shall apply to an application for a Writ of Habeas Corpus by a person in custody pursuant to the judgment of a State Court."

STATEMENT OF THE CASE

On Februrary 16, 2011, Copple was arrested and charged with two counts of murder and one count of aggravated assault in the Circuit Court of Lowndes County, Mississippi, after a shooting at a local bar. Police arrived at the scene, found a gun lying in the street, and arrested Copple, who was approximately twenty to thirty feet away from the gun. "Several police officers and investigators testified at Copple's trial. They indicated that Copple's demeanor the night of his arrest varied from calm and laughing to irate and belligerent." Copple v. State, 117 So.3d 651, 654 (Miss. Ct. App. 2013).

Counsel Steven Wallace was appointed to Copple, thereafter Wallace did not seek a mental evaluation or competence hearing, although Wallace felt Copple could well have mental problems and that a mental exam would be proper procedure. See letter of Wallace attached to Habeas. Appendix "F." Wallace admits in this letter to Mississippi Bar that Copple's statements were so strange, even off the wall. Deputy Sheriff Tammy Prescott, Lowndes County Sheriff Department, stated via affidavit that she, "called the jail and was informed that [Copple] could not be transported to the courthouse as he was acting unruly." See affidavit of Prescott attached to Habeas. Appendix "F."

The only defense offered by counsel Wallace was self-defense which under the circumstances was not consistent with the other evidence. Copple, 117 So.3d at 656, para. 5. Counsel outright failed to investigate.

Copple's prior mental health problems to argue insanity and incompetency to stand trial. The facts are set forth in further detail hereinafter. On July 16, 2013, the Mississippi Court of Appeals affirmed. Copple, supra. No rehearing was filed by counsel.

Copple, without counsel, with assistance from multiple inmates filed six Post-Convictions back-to-back. Copple raised the same two claims in all six post convictions and all six were filed after the expiration of the AEDPA'S time limitation. All six post-convictions were denied without an evidentiary hearing in state court. After filing numerous pleadings in state courts, Copple through assistance of another inmate filed a Federal Habeas Corpus on May 14, 2018 under 28 U.S.C. § 2254 claiming insanity at time of the crimes, incompetency to stand trial and ineffective assistance of trial counsel. Copple requested the district court to hold an evidentiary hearing. Appendix "F."

The district court ordered the state to file an answer to the petition and to produce all state court records. The state then filed a motion to dismiss as time barred and submitted only a limited record to support their motion. Appendix "E." The state argued that Copple was not entitled to an evidentiary hearing citing Schriro v. Landrigan, 550 U.S. 465 (2007), that a "paper hearing" was sufficient on the equitable tolling claim. Appendix "E" at part IX, page 13.

Copple timely filed a Traverse based on mental incompetence requesting tolling. Copple asserted that he needed discovery and an evidentiary hearing to develop the evidence of his incompetency because the State courts had not held a mental examination or competency hearing. Appendix "D" at page 9-12. Copple offered all evidence available to him to show that he had mental health problems before, during, and after trial. That he is currently under mental health care, receiving medications. It should be noted that a pro se inmate, like Copple, cannot discover medical records from Department of Corrections without a court order or counsel under MDOC Policies 25-08-H and 25-09-H.

The district court found that "Copple has only alleged mental impairment, and he has not submitted any evidence that his ability to pursue his legal right was hampered by his mental condition." Appendix "B" at page 5. The district court denied equitable tolling without review of the state court records and trial transcripts. The Senior Judge completely disregarded Copple's claim that he needed an evidentiary hearing for further factual development. The district court denied a Certificate of Appealability (COA).

Copple filed for a COA from the Fifth Circuit Court of Appeals, Appendix "C", arguing, inter alia, that the district court abused it's discretion and denied him the right to establish his substantive habeas claim and his claim for equitable tolling by failing to hold evidentiary hearing to develop the facts of his incompetence and on-going mental health issues after his incarceration. Copple argued also that the district court erred in denying tolling without full review of the state records. Appendix "C".

The court of appeals, Judge Dennis setting alone, found that "Copple only offers evidence of his mental state at the time of his trial in 2011, without providing any details about his mental capacity in 2013 and 2014 [while incarcerated] when the statute of limitation on his § 2254 claim was running". Appendix "A" at page 2. Judge Dennis ruled that equitable tolling was not warranted. The court omitted to address Copple's claim for an evidentiary hearing and discovery to permit the development of the factual basis required to prove his incompetency to warrant tolling and habeas relief. The court did not have sufficient records before it to make an informed decision on equitable tolling. Copple filed a Motion for Reconsideration, Appendix "G", which the clerk held to be untimely.

REASONS FOR GRANTING THE PETITION

The sole contested issue is whether Copple, Pro Se, sufficiently alleged in his claim for equitable tolling that his mental incompetence prevented him from timely filing his habeas petition so that he was entitled to an evidentiary hearing to resolve his tolling claim prior to dismissal of his first habeas petition.

A. Equitable tolling of statute of limitation.

The one-year limitation period is not a jurisdiction bar and is subject to equitable tolling in certain instances. Holland v. Florida, 560 U.S. 631, 130 S.Ct. 2549, 2560 (2010). However, a petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing, Holland, 130 S.Ct. at 2562.

B. Equitable tolling for mental incompetence.

All circuits agree that mental incapacity or incompetence may provide a basis for equitable tolling. Fisher v. Johnson, 174 F.3d 710, 715 (5th Cir. 1999); Riva v. Ficco, 615 F.3d 35, 39-40 (1rst Cir. 2010); Nara v. Frank, 264 F.3d 310, 320 (3rd Cir. 2001); Ata v. Scutt, 662 F.3d 736, 741 (6th Cir. 2011); Laws v. Lamarque, 351 F.3d 919, 923-24 (9th Cir. 2003); and Hunter v. Ferrell, 587 F.3d 1304, 1308 (11th Cir. 2009). To obtain equitable tolling on the basis of mental incompetence, a petitioner must demonstrate that (1) he is mentally incompetent, Fn. one, and (2) his mental incompetence caused his failure to comply with statute of limitation. A causal link between the mental condition and untimely filing is required.

It should be noted that Copple cannot locate a Fifth Circuit case where equitable tolling was granted based on incompetence, and the Fifth Circuit did reach a conclusion that is opposite to that reached by numerous other circuits on the same question of law. Riva, Nara, Laws, and Hunter, each allowed development of the evidence once mental illness was established. See also 9 A.L.R. Fed. 2d 343, § 8 (2019); Postconviction Remedies § 25:45 (2019); Stiltner v. Hart, 657 Fed. Appx. 513 (6th Cir. 2016); Davis v. Humphreys, 747 F.3d 497 (7th Cir. 2014); Bills v. Clark, 628 F.3d 1092, 1097 (9th Cir. 2010).

No consensus has been reached by the circuit courts on what specific showing is required to warrant equitable tolling based on a petitioner's mental impediments. This Court has not previously addressed this question. Likewise, this Court has not articulated a general standard for the nature or quantum of evidence necessary to establish incompetency to warrant equitable tolling. These standards are all over the spectrum within each circuit. Compare Ata, 662 F.3d 736, with Stiltner, 657 Fed. Appx. 513, each panel is incosistent in almost every circuit.

C. The requirment for an evidentiary hearing.

This Supreme Court set forth in Schriro v. Landrigan, 550 U.S. 465, 127 S.Ct. 1933 (2007), the standard to determine whether a petitioner is entitled to a hearing on his claim for equitable tolling. In Schriro, this Court addressed the considerations a Federal Court must undertake in deciding whether to grant an evidentiary hearing in connection with a habeas petition. Id, 550 U.S. at 474. The Court began it's analysis by noting that both prior to and following the enactment of AEDPA, the decision to grant an evidentiary hearing is generally left to the sound discretion of district courts. Id. at 473. The court concluded that "a Federal Court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." Id. at 474. But "if the state court record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." Id. Concerned with the potential for frivolous hearings, the court found necessary a review of the state court record to determine if the allegations were refuted. by it." Id at 475.

According to Ata, 662 F.3d at 742, the holding in Schriro, as it is to be applied by a district court in determining whether mental incompetence supports tolling, directs the court to determine if the factual allegations are sufficient to support equitable tolling and to review the state court record in order to establish whether petitioner's assertions are refuted by the record or otherwise without merit, Id.

A district court abuses it's discretion in not holding an evidentiary hearing only if the state court failed to provide a full and fair hearing. Hall v. Quarterman, 534 F.3d 365, 368-69 (5th Cir. 2008) ("To find an abuse of discretion which would entitle [Petitioner] to discovery and an evidentiary hearing to prove his contentions, we would necessarily have to find that the state did not provide him with a full and fair hearing..."). Herein, Copple has **not** had any type hearing in either State of Federal Court, muchless discovery. See 28 U.S.C. § 2254, Rule 8(a) ("The Judge must review the answer and any transcript and records of State-Court proceedings... to determine whether an evidentiary hearing is warranted"). Schriro, 550 U.S. at 473. Thereby, the district court had to review the full state court records prior to denying equitable tolling and evidentiary hearing.

In Brumfield v. Cain, 135 S.Ct. 2269 (2015), writing for the Court, Justice Sotomayor remarked that "it is critical to remember, howerver (sic), that in seeking an evidentiary hearing, Brumfield was not obligated to show that he was intellectually disabled, or even the he would likely be able to prove as much. Rather, Brumfield needed only to raise a reasonable doubt as to his intellectual disability to be entitled to an evidentiary hearing." Id. at 2281, Hn. 7. There, Brumfield, like Copple, had not had the opportunity to develop the record for the purpose of proving an intellectual disability claim. See Panetti v. Quarterman, 551 U.S. 930, 948-952 (2007) (applying § 2254 (d)(1) to conclude that a state court unreasonably applied clearly established Federal law when it failed to provide a prisoner with a competency hearing after he made "a substantial threshold showing insanity"), Liles v. Saffle, 945 F.2d 233, 341 (10th Cir. 1991)(Similar evidence required habeas relief for trial court's failure to order mental evaluation).

D. Whether claim for equitable tolling required an evidentiary hearing.

At the outset, in the lower Courts, the State did not contest that Copple had made a threshold showing of mental impairment. The Court of Appeals found that Copple provided only evidence of his incompetency to stand trial. The district court, however, without review of the State Court record, found that Copple had not submitted <u>any</u> evidence that his ability to pursue his legal rights were hampered by his mental condition.

Copple believes that he did sufficiently set out the specific facts and the causal connection in this case so that he was entitled to a hearing under Schriro.

1. Allegations are sufficiently specific.

The first step in the analysis is to determine whether Copple's factual allegations, accepted as true, show that he is mentally incompetent and that his mental incompetence prevented him from timely filing his petition. Schriro, 550 U.S. at 474. In this case, the factual basis of Copple's equitable tolling argument (incompetence) is the same as the factual basis of his substantive habeas claim (incompetence). Copple's equitable tolling and his substantive habeas claim both rely on a showing that he suffered from a mental condition in 2011 until present that rendered him incompetent to understand legal procedures, to stand trial and/or legally insane. Copple has had no opportunity to develop the facts to support his claims. In his habeas petition, Copple argued that he was denied a fair trial because the state court held no mental exam or competency hearing prior to trial, that the evidence and information before the trial court presented a bona fide doubt as to his competency. Fn. two. Enriquez v. Procunier, 752 F.2d 111, 113 (5th Cir. 1984); United States v. Williams, 819 F.2d 605, 607 (5th Cir. 1987); Reese v. Wainwright, 600 F.2d 1085, 1093 (5th Cir. 1979). The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the trial of an accused be conducted only when he is mentally competent. Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373, 1376 (1996). Hence, the trial and conviction of Copple while he was mentally incompetent constitutes a denial of his due process right to a fair trial. Drope v. Missouri, 420 U.S. 162, 171-72, 95 S.Ct. 896 (1975); Pate v. Robinson, 383 U.S. 375, 378, 86 S.Ct. 836 (1966); Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788 (1960). Indeed, the right not to stand trial while incompetent is sufficiently important to merit protection even if the petitioner has failed to make a timely request for a competency determination. Cooper, 116 S.Ct. at 1377 n.4.

The district court refused to accept (ignored) Copple's allegations as true and did not even assess the evidence offered by Copple. The district court held that he has not submitted any evidence, which is totally false. See evidence showing mental health problems attached to habeas. Appendix "F." The district court's decision can only be explained as wrong, the court was wrong to decide this case before all relevant evidence regarding Copple's mental illness was before the court. Moreover, after Copple made a threshold showing of mental impairment based on the limited evidence available to him without discovery or a hearing. Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 405, 110 S.Ct. 2447 (1990) (a district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence). Here again, the district court and court of appeals did not even assess the evidence. Appendix "A" and "B".

2. Allegations were consistent with record.

The second step in the analysis requires a review of the entire state court record to ensure it does not refute Copple's request for equitable tolling. Schriro, 550 U.S. at 474.

Here again, the district court did not review the state court records as required per Schriro. The district court initially ordered the state to produce the entire state court record with their answer to the petition. However, the State only produced a limited record with their motion to dismiss. See Appendix "E". So the court could not have reviewed the entire state court record prior to denying equitable tolling.

The evidence attached to the habeas Petition and Traverse shows: Counsel Wallace admits that Copple's statements to the police were so strange, even off the wall, that he felt Copple could well have mental problems. Deputy Sheriff Prescott stated that Copple could not be transported to the courthouse for arraignment as he was acting unruly. Friends and family all admit that Copple had previously received mental health treatment and medications prior to his confinement. Copple admits via affidavit that he received mental health medication in the jail while he awaited trial. Furthermore, Copple has sworn to the fact that he is currently under mental health care and receiving medication from the Department of Corrections. Copple also showed to the district court that at a pre-trial hearing held on November 29, 2011, counsel Wallace informed the trial judge that Copple was having serious behavioral issues. Trial Transcript (T.T.) at 14, Line 14-16. Wallace even told the court that he was having trouble communicating with Copple. T.T. at 14, Line 25-28. Later Wallace informed the court a second time about Copple's behavior. T.T. at 26, Line 9-16. Several police officers and investigators testified that Copple's demeanor the night of his arrest varied from calm and laughing to irate and belligerent. Copple, 117 So.3d at 654, para. 4. All of this evidence and/of information was submitted to the district court and should have reasonably raised a bona fide doubt about Copple's mental health and at least alerted the court to the possibility that Copple could indeed be incompetent to warrant an evidentiary hearing. Appendix "F".

The Court of Appeals held that Copple did not produce any evidence showing his incompetence in 2013 or 2014. The Court of Appeals failed to realize that Copple could not produce such evidence when the state produced no records of Copple's mental health problems in 2013 and 2014 while he was incarcerated. Medina v. California, 505 U.S. 437, 456 (1992)(O'Conner, J., concurring) ("The government has no parallel responsibility to gather evidence of a defendant's competence"). Furthermore, Copple provided in his affidavit and declaration that due to his mental impairments he did not understand the AEDPA or the one-year time limitation. Copple stated under oath that another prisoner had prepared all his legal documents because he cannot understand legal procedures due to his mental illness, he cannot read very well. Laws, 351 F.3d at 924 ("ability to file State and Federal Petitions through assistance by another inmate cannot substitute for development of the factual record concerning his mental state"); Stiltner, 657 Fed. Appx. at 525 (Finding that the petitioner had exercised reasonable diligence in pursuing his claims to the extent that he was capable, where petitioner's fellow prisoners made several state and federal filings on his behalf)(multiple citations omitted). While certainly not elaborate, Copple's pro se allegations are specific enough to assert a causal link between his mental incompetence and his untimely petition. Riva, 615 F.3d at 40; Nara, 264 F.3d at 320; Laws, 351 F.3d at 923; Hunter, 587 F.3d at 1309-10. Here, the record contains no information inconsistent with Copple's claim of mental incompetency in the years from his arrest until now. The record indicates a clear history of mental illness prior to his confinement. If anything, the limited record corroborates Copple's allegations of mental incompetence to warrant a hearing under Schriro.

It is not clear whether Copple will meet his burden to demonstrate his entitlement to equitable tolling or whether he will ever prevail on his habeas petition. Yet Copple's claim for equitable tolling alleged sufficient specific facts and allegations of causation to justify further inquiry in an evidentiary hearing. The district court acted contrary to Schriro in falling to develop the existence and extent of Copple's mental illness. Cf. Boothe v. Quarterman, 326 Fed. Appx. 257, 258 (5th Cir. 2009) (discovery and an evidentiary hearing held prior to district court denying equitable tolling based on mental incompetence); Agan v. Dugger, 835 F.2d 1337, 1338-39 (11th Cir. 1988) (Petitioner was entitled to evidentiary hearing on claim of incompetence to stand trial, since no hearing was held in the state court's, such must be completed in federal district court). Other courts have remanded for an evidentiary hearing on equitable tolling where the record contained some evidence of mental illness but no evidence that the mental illness affected the ability to timely present habeas petition. Laws, 351 F.3d at 924-25; Nara, 264 F.3d at 320. In this case, Copple has plainly alleged facts that, if substantiated at an evidentiary hearing, would entitle him to habeas relief.

To satisfy constitutional procedural due process obligations, this case should be remanded with directions for the district court to order a nunc pro tunc mental examination. Fn. three. Bradley v. State, 116 So.3d 1093, 1099 (Miss. Ct. App. 2013) (Carlton, J., dissent) ("The mental examination provides the court with expert medical evidence to assist the court in determining defendant's competency to stand trial"); United States v. Haywood, 155 F.3d 674, 680 (3rd Cir. 1998) (finding that federal competency statute, 18 U.S.C. § 4241, requires a record based judicial determination of competence in every case in which there is reason to doubt the defendant's competence to stand trial). It is axiomatic that "the constitution does not permit trial of an individual who lacks mental competency." Indiana v. Edwards, 554 U.S. 164, 170, 128 S.Ct. 2379 (2008). In this case, the failure of the district court to permit Copple to develop the evidence required to prove his incompetency, seriously prejudiced Copple who thereby lost what was likely his single opportunity for Federal Habeas review. If Copple was indeed found incompetent to stand trial at an evidentiary hearing, then his convictions would be vacated, Cooper, 116 S.Ct. at 1377 n.4. Therein, Copple would be entitled to equitable tolling to correct the injustice.

In fact, this court has recognized the need for flexibility in equitable procedures. "Flexibility... enables court to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct particular injustices." Holland, 560 U.S. at 650; Jones v. United States, 689 F.3d 621, 627 (6th Cir. 2012). See also Jones v. Stephens, 541 Fed. Appx. 499, 503

(5th Cir. 2013) (the statute of limitation must not be applied too harshly because dismissing a first § 2255 motion or habeas petition is a particulary serious matter); Fisher, 174 F.3d at 713 ("We must be cautious not to apply the statute of limitation too harshly.").

In sum, because the district court erroneously failed to review the state court records and transcripts, then failed to permit the development of the incompetency claim at an evedentiary hearing, and because the court of appeals erroneously relied on an overly stringent Pro Se approach requiring Copple to produce evidence which the district court did not permit Copple to discover or develop, no lower court has yet considered the facts of this case to truly determine whether they indeed constitute extraordinary circumstances sufficient to warrant equitable tolling. Copple need not establish that he was incompetent to stand trial to obtain habeas relief, rather he need only establish that the trial court should have ordered a hearing to determine his competency under Lokos v. Capps, 625 F.2d 1258, 1261 (5th Cir. 1980). Here, under the circumstances, the facts should be fully developed and subjected to a hard look to ensure that an incompetent man has not been convicted and sentenced to life without parole.

If an incompetent defendant fails to timely file his habeas petition, does he lose the Constitutional right to be tried only when he is mentally competent under Pate, if he cannot produce evidence to warrant equitable tolling where the Court will not permit him to develop such evidence? No, right to hearing is protected even if untimely requested. Cooper, 116 S.Ct.

at 1377 n.4.

Copple recognizes that certiorari is rarely granted and the record here shows that the district court and Court of Appeals was clearly wrong under Schriro. By seeking Certiorari, Copple seeks for this Court to settle the conflict between the circuits and set a standard on what specific showing is required to warrant equitable tolling based on a mental impediment. This Honorable Court should establish a general standard on the nature and quantum of evidence necessary for entitlement to equitable tolling in this type case. Furthermore, this Court should establish guidlines for the development of mental impairment evidence by a Pro Se defendant prior to dismissal of his first habeas petition. It is apparent that this case presents an issue which is of such broad and fundamental public importance that this Court should articulate uniform standards. See e.g. Davis, 747 F.3d at 500 ("We refrain from articulating a legal standard."). How incompetent is incompetent enough to warrant equitable tolling? How much information is required to show incompetence? See Parker v. State, 273 So.3d 695 (Miss. 2019)(en banc)(Kitchens, PJ., dissenting) (Similar evidence as Copple's raised serious question about sanity at the time of offense); Id at 709, at para. 49 and 50.

In Parker the en banc Mississippi Supreme Court recently held that Parker failed to present "any concrete reason" establishing a mental evaluation was necessary or that Parker had a viable insanity defense. Id. 273 So.3d at 701, para. 20. That court has now adopted a "concrete reason" requirment contrary to the "preliminary showing" standard set by this Court in Ake v. Oklahoma, 470 U.S. 68 (1985). As explained in Ake, a defendant need make only a "Preliminary Showing" that his sanity at the time of the offense is at issue in order to trigger the Constitution Protection of access to a psychiatrist's assistance. Ake, 470 U.S. at 74. The "concrete reason" standard is a more-stringent requirement and is contrary to Ake, this Court should therefor overturn Parker. Brumfeild, 135 S.Ct. 2269, Hn. 7 (only needed reasonable doubt).

It is beyond any reasonable argument that Copple's evidence amounted to a sufficient preliminary showing and a mental evaluation should have been held long before now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David P Copple

Date: October 22, 2019

Footnotes

Footnote: <u>one</u>

"One need not be catatonic, raving or frothing, to be unable to understand the nature of the charges against him and to be unable to relate realisically to the problems of his defense." <u>Lokos</u>, 625 F.2d at 1267.

Footnote: <u>two</u>

Under <u>Pate</u>, a trial court must hold a competency hearing when there is any evidence before the court that objectively creates a bona fide question as to whether the defendant is competent to stand trial. <u>Id</u>. at 385.

Footnote: <u>three</u>

Medical records and psychological examinations made after a criminal trial are not relevant in determing whether a defendant was competent at the time of trial. <u>Profitt</u>, 831 F.2d at 1250; <u>Reese</u>, 600 F.2d at 1093.