

19-6592

No. _____

Supreme Court, U.S.
FILED

SEP 09 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MONIR A. GEORGE — PETITIONER *pro se*
(Your Name)

vs.

DANA Metzger, Warden, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Third Circuit (18-3198)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MONIR A. GEORGE # 618980 - JT Vice
(Your Name)

1181 Paddock Rd.
(Address)

SMYRNA, DE. 19977-9679
(City, State, Zip Code)

None
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

ONE: whether a Certified Mentally ILL Defendant is Capable To Waive His Right For a Jury Trial?

Two: who Can Advocate For The Mentally ILL defendant To get a Jury Trial? The Defendant's Family and Friends Requested a Jury Trial, but the Defense Counsel Ignored Their Pleas.

Three: whether The Trial Lawyer violated the Defendant's Constitutional Right To Remain Silent? She Admitted that He is Guilty But Mentally ILL.
This Turned out To Be False Admission After the Arrest of the Fire Arm expert For Falsifying official Records and He could not Identify the source of the strange Bullet.

Four: whether it is a Conflict of Interest To deny a Certificate of Appealability (C.O.A.) By the same District Court that may Have Committed an error, or issued a debatable Order?
who and where this error can be corrected if the 3rd circuit Refused To entertain such an Appeal.

LIST OF PARTIES

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

[X] 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:

- 1) DANA Metzger, Warden, JTICC
1181 Paddock Rd, Smyrna, DE 19977-9679
- 2) Delaware Attorney General
820 N. French St, 7th Fl.
Wilmington, DE 19801
- 3) U.S. Attorney General
Dept. of Justice
950 Penn Ave, Room 5614
N.W. Washington, D.C. 20530-0001

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>Third circuit Court of Appeal (orders and petitions)</i>
APPENDIX B	<i>U.S. District Court of Delaware (Orders and Motions)</i>
APPENDIX C	<i>Delaware supreme Court order</i>
APPENDIX D	<i>New Castle County superior Court order</i>
APPENDIX E	<i>George's power of Attorney and 3 Affidavits For Ms. K. VAN Amerongen Esq., DR. E. MIKHAIL, and MR. B. O'DONNELL ESQ.</i>
APPENDIX F	<i>Copy of 1.09 Waiver of Jury Trial From BenchBook For U.S. Dist Court Judges</i>

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BRECHT V. ABRAHAMSON, 507 U.S. 619, 629-30 (1993)	8
DAVIS V. STATE, 809 A.2d 565, 572 n.32 (Del. 2002)	3, 7
FOWLER V. STATE (Case # 442, 2012), 2017 WL 4381384	5
HOLM V. U.S., 524 U.S. 236, 248, 118 S.Ct. 1969 (1998)	9, 10
REYNOLDS V. NORRIS (86 F.3d 796, 802 (8th Cir. 1996))	7
ROE V. FLORES-ORTEGA, 528 U.S. 470 (2000)	11
SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)	9, 10
STATE V. CARL RONE, CR. I.D. NO 1805001031	4
STATE V. ROBINSON (2018 Del. Super. Lexis 185, 2018 WL 2085066)	4, 5
STICKLAND V. WASH., 466 U.S. 668 (1984)	3, 11
U.S. V. BOOKER, 684 F.3d 421, 429 (3d Cir. 2012)	8

STATUTES AND RULES

- 28 U.S.C. § 2254
- 28 U.S.C. § 2253(c)(2)
- 5th, 6th, and 14th Amend, U.S. Const.

OTHER CASES

U.S. V. COCHRAN, 770 F.2d 850, 851 (9th Cir 1985)	3
U.S. V. DUARTE-HIGAREDA, 113 F.3d 1000, 1003 (9th Cir. 1997)	8
U.S. V. RODRIGUEZ, 888 F.2d 519, 527 (7th Cir 1989)	7
WASHINGTON V. REQUENCO, 548 U.S. 212, 218-19 (2006)	8

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. *sur petition for rehearing 18-3198 (6-26-2019)
Case # 18-3198 entry of judgement, dated 4-8-19*

The opinion of the United States district court appears at Appendix B to the petition and is 1

☐ reported at _____; or,

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

☒ is unpublished. *15-303-LPS on 3-14-18 and 9-21-2018*

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is *DELAWARE SUPREME COURT*

☒ reported at *2015 WL 1000 228 (Del. Mar. 6, 2015)*; or,

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

☐ is unpublished.

The opinion of the *Delaware, new Castle County Superior* court appears at Appendix D to the petition and is

☐ reported at _____; or,

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

☒ is unpublished. *ID # 0805035299 on May 15th, 2014*

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 8, 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: June 26, 2019, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 March 6, 2015.
A copy of that decision appears at Appendix C.

☐ 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

- 1) Trial Lawyer violated the petitioner's Constitution Right to Competent Representation, Strickland v. Washington, 466 U.S. 668 (1984)
- 2) 6th Amend. The Accused shall enjoy the Right to a public Trial by an Impartial jury, and to have compulsory process for obtaining witnesses in his favor
- 3) U.S. Const. Amend 5, no person to be a witness against himself, nor be deprived of Life, Liberty, or property without due process of Law
- 4) 14th Amend. Right to a Fair Trial, due process, and equal protection.
- 5) The Trial Lawyer violated the Defendant's Const. Right (5th Amend.) by Admitting He is Guilty but Mentally Ill.
- 6) Invalid waiver of a Right to Trial by jury was in violation of U.S. v. Cochran, 770 F.2d 850, 851 (9th Cir 1985) cited with favor in Davis v. State, 809 A.2d 565, 572 n. 32 (Del. 2002)
- 7) A valid waiver is not presumed from a silent record, see U.S. v. Lee 539 F.2d 606, 609 (6th Cir. 1976)

STATEMENT OF THE CASE

- 1) The petitioner MONIR A. GEORGE was very sick and wanted to commit suicide in the middle of the Egyptian Community, but he failed.
 - 2) The victim MR. MALAK Michael Hasa Fight with another community member few weeks before his death, and his assailant was present at this community gathering.
 - 3) The prosecutor was aware of that, and other favorable facts and witnesses (e.g. MR. Sami Nassim), and the prosecutor excluded ALL from the trial, violating MR. George constitutional right to obtain witnesses in his favor (6th U.S. Const. Amend)
 - 4) The prosecutor quickly developed a theory that MR. George is the shooter inspite ALL other facts that concluded otherwise.
 - 5) The prosecutor (Joseph S. Grubb) misconduct was documented in other cases and recently was sanctioned by the Delaware superior and Supreme Courts, see (HN 11, by Hon Judge Rocanelli), 2018 Del. super LEXIS 185, 2018 WL 2085066 - In state V. Robinson
 - 6) The prosecutor Relied on (3) Corrupt expert witnesses e.g.
 - a) Carl Rowe, Fire Arm expert, who was Fined and ARRESTED.
 - b) DR. Richard T. CALLERY, who ALSO got Fined.
 - c) DR. Stephen Mechanick, who changes his opinion FOR the highest bidderMR. Carl Rowe, The state Fire Arm expert was Later suspended, and then arrested for falsifying official records on May 3, 2018 (see State V. Carl Rowe, Ch. I.D. No. 1805001031)
- This Fire Arm expert testified at the petitioner's trial

and He Could not Identify the source of the strange Bullet (Exhibit #79), which was not connected to the petitioner in any way, shape or form, and neither the prosecutor nor the defense attorney investigated the source of this strange bullet, violating the petitioner's Constitutional Right to a Fair Trial and Equal protection.

7) In Reprimanding MR. GRUBB in other cases/Misconduct, the Delaware Superior Court stated at (HN11, 2018 Del. Super Lexis 185, 2018 WL 2085066 - State V. Robinson) that "the duty of a prosecutor is to seek justice, not merely convictions, because he represents all the people including the defendant who is being tried, it is his duty to see that the state's case is presented with earnestness and vigor, but it is equally his duty to see that justice be done, by giving the defendant a Fair and Impartial Trial."

8) Later because of the misconduct, and the arrest of the Fire Arm expert in other cases, the Delaware Supreme Court overturned (Fowler V. State - 442, 2012) vacated his conviction, and ordered a new trial, see (2017 WL 4381384) decided 8-27-18. The credibility of the Fire Arm expert was tarnished and became a concern to the Delaware Chief Justice Stine, as he opined on 8-27-2018 for Fowler V. State.

9) Not only the petitioner's trial was tainted by corrupt witnesses, and a prosecutor's misconduct, but also the trial lawyer violated the petitioner's Constitutional Right to Competent Representation by admitting he is guilty but Mentally

ILL IN VIOLATION OF HIS 5th Amend. Constitution Right

- 10) It is True that MR. GEORGE WAS SICK, but HE did NOT SHOOT or KILL MR. MALIK, MR. GEORGE TRIED only TO KILL HIMSELF, and ~~no~~ one else.
- 11) MR. GEORGE WAS Hospitalized at THE Delaware psychiatric Center (DPC) FOR over 10 Months, HE WAS Incompetent, unable TO Take care OF His Affair, and HE signed a power of Attorney on July 18, 2008 (8 pages) FOR OTHERS TO HELP HIM (Copy at Appendix E).
- 12) WHEN THE Trial Attorney approached MR. GEORGE TO sign a Jury Trial waiver, HE did NOT understand, and HE Requested a Meeting with His Family and Friends TO HELP HIM understand and Decide. THIS Meeting WAS NEVER Held, and the waiver WAS USED by deception.
- 13) NOT ONLY THE Trial Attorney deceived the petitioner, but ALSO SHE MISLED the Courts BY Her Affidavit of Oct. 10, 2013, Copy at (Appendix E)
- 14) IN Her Affidavit of 10-10-13, SHE did NOT explain why MR. GEORGE needed a Meeting with His Family and Friends? that WAS BECAUSE His sickness, and unable TO understand the waiver, or the Attributes of a Jury Trial.
- 15) NOT ONLY that Meeting WAS NEVER Materialized, but also SHE CLEVERLY Omitted THE ANSWERS OF His Friends, who Told Her CLEARLY NO TO a JURY Trial. see Attached Affidavit OF DR. ENIL MIKHAIL OF Oct 1st, 2010 (Appendix E)
- 16) THE Appeal Counsel MR. BERNARD J. O'DONOVAN in His Affidavit OF Sept. 13, 2013 stated that the waiver OF a Jury Trial WAS Legally Inadequate (see Attached copy at Appendix E)

- 17) The U.S. District Court of Delaware WAS ALSO deceived by the Incomplete Affidavit of the Trial Counsel, she omitted the Request of My people To a Jury Trial. With Absence of this vital Information the District Court ERRED in it's decision To dismiss the Application for A writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and denied the Relief on Sept. 21st, 2018, Copy Attached (Appendix B).
- 18) ON 5-5-2015 the petitioner Filed a Motion For an Evidentiary Hearing. This WAS DENIED on 2-18-16. AN Evidentiary Hearing would HAVE cleared ALL the Facts and the deception of the Trial Counsel.
- 19) With ALL the Facts Available, the District Court would HAVE avoided the Error of 9-21-2018 To Dismiss A writ of Habeas Corpus Filed on 4-04-2015
- 20) MR George was very sick, and did NOT understand the Attributes of a Jury Trial, His Family and Friends wanted a Jury Trial, but the Trial Counsel was in a Hurry and Requested a Bench Trial.
- 21) The Trial Court Conducted a Brief Colloquy that did not comply with Delaware Mandate in DAVIS V. State, 809 A.2d 565 (Del. 2002), nor U.S. V. Rodriguez, 888 F. 2d 519, 527 (7th cir 1989), or 1.09 section of the benchbook under Waiver of Jury Trial (Copy Attached at Appendix F).
- Thus with a defective Colloquy, the Record does NOT Establish that George Intelligently waived His Right to Trial by a Jury.
- 22) A Mentally Ill defendant is NOT Capable To waive His Constitutional Right to A Jury Trial, and that was the First question presented Here in this petition.
- 23) In Reynolds V. Norris, 86 F.3d 796, 802 (8th cir 1996), Due process WAS Violated because Trial Judge Failed To Make new

Competency determination after the judge became aware of the petitioner's serious Mental Illness.

- 24) In U.S. v. Duarte - Higuera, 113 F.3d 1000, 1003 (9th Cir 1997) Failure to determine if defendant voluntarily, knowingly, and intelligently waived jury trial was structural error requiring reversal
- 25) structural error "necessarily renders a Criminal Trial fundamentally unfair or unreliable vehicle for determining guilt or innocence" (Brecht v. Abrahamson, 507 U.S. 619, 629-30 (1993), also Wash. v. Recuenco, 548 U.S. 212, 218-19 (2006), and U.S. v. Booker, 684 F.3d 421, 429 (3d Cir 2012). Ineffective waiver of a Constitutional Right constitute a structural defect requiring reversal
- 26) who can advocate for the mentally ill defendant to get a jury trial? IF his loved one requested a jury trial, and the trial counsel ignored their request, and cleverly she omitted that from her Oct. 10, 2013 Affidavit (see copy at Appendix E)
- 27) The Affidavit of Dr. Emil Mikhail of Oct. 1st, 2010, clearly stated no none jury trial (see copy at Appendix E)
- 28) The third question presented that the trial lawyer violated the defendant's Constitutional Right to Remain Silent. Her Admission constituted a violation to competent representation as stated at #9 supra
- 29) The U.S. Dist. Court of Delaware was deceived by the trial Attorney's Incomplete and Misleading Affidavit of Oct. 10, 2013, and also did not take in consideration the Appeal Attorney's Affidavit of Sept. 13, 2013, where he stated that the waiver of a jury trial was legally inadequate (see attached copy at

Appendix E), All that led the district court to make an error on its decision of Sept. 21st, 2018 (Appendix E).

30) An Evidentiary Hearing would have made all the facts clear to the court and the final decision would have been different.
31) The petitioner have demonstrated that a reasonable jurist would find the District Court's Assessment of the constitutional claims debatable or wrong (Slack v. McDANIEL, 529 U.S. 473, 484 (2000))

32) It is a conflict of interest when a district court who have committed an error to deny issuing a Certificate of Appealability (COA)

33) A (c.o.a) is appropriate, so that a higher court may entertain an Appeal per 28 U.S.C. § 2253(c)(2), see also Slack v. McDANIEL, 529 U.S. 473, 484 (2000), Also Hoh v. U.S. 524 U.S. 236, 248, 141 L. Ed. 2d 242, 118 S.Ct. 1469 (1998).

34) The United States Supreme Court has the power to settle the records straight once and for all, that a (COA) should be issued to settle the conflicts among jurists is therefore necessary to secure and maintain uniformity of the courts decisions and avoid conflict of interests

35) The United States Supreme Court has the power to Advocate for the Mentally ill for equal protection under the law, and to speak for those who can't speak for themselves

REASONS FOR GRANTING THE PETITION

- 1) The U.S. Supreme Court Has The power necessary To secure and Maintain Uniformity of the Courts Decision, see SLACK V. MCDANIEL, 529 U.S. 473, 484, ALSO HALL V. U.S. 524 U.S. 236, 248, 141 L. Ed. 2d 242, 118 S. Ct. 1969 (1998), and 28 U.S.C. § 2253 (c) (2).
- 2) A prose Indigent Inmate Has a Limited Resources and Help To present His Case with Full Legal Reference and Knowledge To present Arguable Merits In Facts and Law.
- 3) Granting this petition will Answer the Four questions presented in this petition, it may ALSO Grant Appointment of Counsel, who is better equipped To present the Case than a prose Amateur Litigant.
- 4) The claims presented are Factually and Legally Meritorious, But ALSO Complex To AN Amateur To present in Legal Form.
- 5) The U.S. Supreme Court Has the power To Advocate For the Mentally ILL Constitution Rights.
- 6) The petitioner Allegations IF proven, clearly would establish a Constitutional violation To a Mentally ILL citizen that should be equally protected under The Law.
- 7) The District Court was deceived by AN Incomplete and Inaccurate Affidavit From the Trial Attorney, and that deception Led To an erroneous Decision By the Court. AN Evidentiary Hearing would Have stopped that ERROR.
- 8) For The Interest of Justice, only the U.S. Supreme Court Has the power To settle the (4) questions presented in this petition.

- 9) The Loss of a Right To a Jury Trial is no Less protected than The Loss of a Right To Appeal, where prejudice is presumed under ROE V. FLORES - ORTEGA, 528 U.S. 470 (2000)
- 10) The Courts Below Abused its discretion by Indulging speculations and undue weight upon non-existent facts and a silent records
- 11) The Actual prejudice under STICKLAND V. WASH. 466 U.S. 668 (1984), can only be corrected by the U.S. Supreme Court.
- 12) The U.S. Supreme Court can order a new trial by a jury, and reverse the Delaware Court's ruling against MONIE H. GEORGE because his trial lawyer violated his constitutional right to competent representation, and pursue an equal protection and to seek the source of the strange bullet and failure to secure a jury trial for a mentally ill defendant
- 13) The Facts are Clear
- a) MR. GEORGE WAS MENTALLY ILL.
 - b) MR. GEORGE WAS NOT CAPABLE TO CHOOSE OR WAIVE A JURY TRIAL.
 - c) THE REQUEST FOR A JURY TRIAL BY HIS LOVED ONE WAS IGNORED BY THE TRIAL LAWYER (see DR. MCKHAIL Affidavit - Appendix E)
 - d) THE U.S. DISTRICT COURT ABUSED ITS DISCRETION TO DENY AN EVIDENTIARY HEARING, WHICH WOULD HAVE HELPED THE COURT TO MAKE THE RIGHT DECISION WHEN ALL THE FACTS BECAME CLEAR.
 - e) THE INCOMPLETE INFO. AVAILABLE TO THE DISTRICT COURT LED TO THE ERROR AND THE PETITION DISMISSAL.
 - f) DENYING THE (COA) IS A CONFLICT OF INTEREST THAT CAN BE CORRECTED BY THE U.S. SUPREME COURT.
 - g) THE U.S. SUPREME COURT IS THE ONLY AVENUE TO SETTLE ALL QUESTIONS RAISED IN THIS PETITION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Monir A. George

Date: Aug - 29th, 2019