No. 19-6627

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ANDRE WILLIAMSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDRE WILLIAMSON
REG# 85709-012
(Your Name)

UNITED STATES PENITENTIARY
(Address)

P.O. BOX 7000
FLORENCE, COLORADO 81226
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Will the Supreme Court just step aside or now step in for the current and future generation of mental health defendants that desperately need this court's re-affirmation of its two Legendary and Landmark decisions: Boykin v. Alabama, 395 U.S. 238 (1969) and Strickland v. Washington, 466 U.S. 668 (1984) in the interests of national importance, justice, equality and fundamental fairness involving mentally challenged defendants incarcerated in America like this petitioner sentenced to 300 months imprisonment who was medicated when induced to sign a plea agreement and was heavily sedated at the Rule 11 Guilty Plea Hearing from five-powerful psychotropic prescription medications known to cause haziness and to fog the mind, and lower courts resorting to less than constitutionally sufficient plea colloquies that later becomes under challenge by Strickland and Boykin standards that the lower courts are rejecting in lieu of a "fair and just reason" standard like the one created by the Ninth Circuit Court of Appeals in United States v. Garcia, 401 F.3d 1008, 1011 (9th Cir. 2005) ?

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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:

RELATED CASES

N/A

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[✓] is unpublished.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 F 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

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

The date on which the United States Court of Appeals decided my case was November 6, 2018.

[X] 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 _____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including 60 Days (date) on September 6, 2019 (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

* U.S. CONST. AMEND. 5
* U.S. CONST. AMEND 6
* U.S. CONST. AMEND 8

* 18 U.S.C. §371
* 18 U.S.C. §2113(a)
* 18 U.S.C. §924(c)(1)(A)(ii)
* 28 U.S.C. §1254(1)
* 28 U.S.C. §2255

STATEMENT OF THE CASE

On March 28, 2008, the petitioner Andre Williamson was charged via complaint with bank robbery and using a firearm during a crime of violence. 18 U.S.C. §2113(a) and 18 U.S.C. §924(c). On April 4, 2008 (a week later) the petitioner was charged by indictment with conspiracy to commit bank robbery (18 U.S.C. §371), bank robbery (§2113(a)) and using a firearm during a crime of violence (§924(C)), involving a March 27, 2008 bank robbery in Yorba Linda, California.

A year later, on March 27, 2009, the petitioner, upon the advice of his court appointed counsel, Sonia Chahin, signed a plea agreement (while the petitioner was under the influence of Topamax, Resperdal, Zoloft and Amatripolene) to plead guilty to Counts One (§371) and Three (§924(c)) of the indictment. On April 13, 2009, the petitioner appeared before the district court in a Rule 11 guilty plea proceeding in which the petitioner was heavily sedated from five psychotropic prescription medications (Topamax, Resperdal, Zoloft. Amatripolene and Benzapine) and counsel for petitioner did not make it known to the court the mental health history of petitioner or there were up to five different psychotropic medications in his system at the time. The District Court did not satisfy the advisement and questionaire required in Rule 11(b)(1) of the Federal Rules of Criminal Procedure when it accepted the petitioner's guilty plea to counts one and three of the indictment in this case. Sentencing was scheduled for June 22, 2019. The U.S. Probation Office began preparation of the Presentence Report ("PSR") in this case. However, the district court was never made aware by defense counsel (Sonia Chahin) or by government counsel (Jeff Mitchell) before or during the Rule 11 Proceeding about the petitioner's long history of mental illness, or that he was under the influence of various powerful anti-psychotic medications at the Rule 11 Hearing, which government counsel Mitchell later denied having any knowledge about petitioner's longstanding mental health condition before or when the Rule 11 proceeding was conducted on April 13, 2009.

Statement of the case (cont'd)

Such denials were cast in doubt at the August 17, 2010 "Motion To Withdraw Plea Hearing " in which the district court stated:

> " I had no idea [this man] was taking this variety of anti-psychtoic drugs at the time he pled guilty. Certainly I would have inquired. I've had similar situations where I've inquired at great length because I have to be assured that guilty plea is freely and voluntarily made, knowingly made and if he's hearing things, then that doesn't fly. I realize that, you know, these sorts of things can be abused by manipulative defendants, but even knowing that, there is enough here in [his] history, which seems to be undisputed, that is of concern. I mean if he just came here and cold said, Yeah, I said everything under oath but that morning I woke up and I had a converstaion, you know, with Babe Ruth or something, you know, then I might wonder; but unless I'm not reading the presentence report correctly somebody at MDC with some sort of training prescribed some powerful medications to this man. I had no idea about it."

SEE APPENDIX B, PAGE 16 n. 2-17.

The denial by government counsel is also suspect for the reason that the plea agreement in this case occurred over a year after the petitioner was housed at MDC between petitioner's counsel Sonia Chahin and government counsel Mr. Mitchell on March 27, 2009. The petitioner was prescribed the powerful psychotropic medications just a little over a week after being at MDC on April 8, 2008, when examined by staff psychiatrist Dr. John Leonard, who diagnosed petitioner as paranoid Schrizophrenic. Dr. Leonard noted that due to petitioner's significant mental health illness which started in his teens, he prescribed various medications for petitioner to take while at MDC, including an anti-psychotic and two anti-depressants. One of those medications prescribed by the psychiatrist (Topamax) is known to interfer with a person's ability to think clearly. Therefore, it is this case facts alone that render suspect the government's counsel's denial to the court that he [AUSA Jeff Mitchell] had ANY knowledge of the petitioner's longstanding mental condition or that he (petitioner) was taking anti-psychotic and anti-depressant medications "before or at the time the April 13, 2009 Rule 11 Proceeding when the district court

suggested that government counsel had advanced knowledge. See Appendix E at 5 (November 15, 2020 Motion Hearing to Withdraw Guilty Plea Transcript). The record thus revealed that another MDC los Angeles employee name Laura Kirsch, a psychological intern met with the petitioner approximately ten-times in 2009, for a half-hour to an hour per meeting, in which government counsel collected records of those 2009 meetings and filed them with the court on May 13, 2010 to support its opposition memorandum for the petitioner's motion to withdraw guilty plea .

Becayse sentencing had been set for June 22, 2009, the PSR in this case was filed on June 2, 2009, which revealed that the petitioner suffered from an extremely traumatic childhood and he had a very extensive history of mental illness summarized verbatim from the PSR:

> [He] was hospitalized for 90 days at age 15 in a State Mental health facility located in Camarillo, California. During the year thereafter, Williamson was kept in the mental health unit while confined at the [California Youth Authority]. While in his twenties, Williamson received mental health treatment, including admissions to the Los Angeles General Hospital, and outpatient treatment at West Central Mental Health Clinic. He was diagnosed as suffering from Schizphrenia and Bi-Polar Disorder.

PSR at 20.

The petitioner Williamson served a federal prison sentence from 1987 to 2003, in which he received mental health treatment that consisted of being prescribed anti-psychotic medications and continued to do so beyond his release in 2003, with multiple different forensic psychologists and psychiatrists until his arrest in this case on March 27, 2008. Id. From the petitioner's twenties to his forties he has been prescribed Topamax, Risperdal, Benzapine, Amatripolene and Zoloft. When the petitioner fails to take his medications his conditions worsens substantially and dramatically. As noted, only after one week of his Arrest and detention at MDC Los Angeles, involving this case, the petitioner was seen by staff psychiatrists and was prescribed anti-psychotic and anti-depressant medications.

Statement of the case (cont'd)

The petitioner did not return to court for sentencing in this case until March 8, 2010, because of his mental health conditions were being evaluated at MDC and petitioner was not in good mental shape to be sentenced, but at the March 8, 2010 sentencing proceeding, the petitioner gave the district court a letter he had prepared informing the Judge the he (petitioner) did not knowingly, intelligently or voluntarily plead guilty due to his sedation during the Rule 11 proceeding from 5 different extremely powerful psychotropic medications in his system, which included Topamax, Risperdal, Zoloft, Amatripolene and Benzapine. Based on this, the district court concluded that it could "not in good conscience go forward with sentencing in this case." [1]

On May 4, 2010, defense counsel Mark Chambers filed a Motion to Withdraw guilty plea and supporting declaration by the petitioner confirming that the various psychotropic medications in his system during the April 13, 2009 Rule 11 proceedings prevented him from knowingly, voluntarily and intelligently understanding the guilty plea proceedings.

1 Attorney Sonia Chahin who represented petitioner Williamson when he signed the March 27, 2009 Plea Agreement to counts one and three; and at the April 13, 2009 Rule 11 Guilty plea proceeding was replaced by Attorney Mark Chambers who filed the May 4, 2010 Motion to Withdraw petitioner's guilty plea

Statement of the case (cont'd)

The Petitioner Andre Williamson is a mental health prisoner and is lesser tha a layman to the law, but did successfully manage to inform attorney Mark Chambers that the May 4, 2009 plea agreement and the April 13, 2009 guilty plea were not knowing, voluntary or intelligently done, in which the well established Boykin and Strickland decisions gave legitimacy and further exploration by the district court that the record reflects how the precedential weight of both landmark rulings by the Supreme Court required the withdrawal of petitioner's guilty plea, but instead employing a "fair and just reason" standard for requesting withdrawal of the guilty plea.

On August 17, 2010 , the petitioner testified under oath at a motion hearing to withdraw his guilty plea. Id. Appendix B. The petitioner's testimony supported his claim of being under the influence of various powerful anti-psychotic prescription medications when he signed the plea agreement with his counsel present and when he pled guilty with his counsel present and neither occasion did counsel ever mention petitioner's mental health history or the fact that he was taking anti-psychotic medications. In which the petitioner testified that the combined effect of Topamax, Risperdal, Zoloft, Amatripolene and Benzapine affected his ability to understand the context or content of the plea agreement. Id. at 7. With regard to the April 13, 2009 Rule 11 hearing, he testified that he was "in a haze." "I was in a daze. I was like a radio with the battery that is low on power, and my receptiveness and my perception, it wasn't there. It was off." Id. at 18-19. Therefore, the petitioner's testimony substantiated that he did not understand what was happening that day. Id. In March and April of 2009, the petitioner confirmed for the record that his mental diagnosos was "bi-polar, maniac depressive and schrizophrenic." Id. Even at a subsequent motion hearing to withdraw guilty plea, on November 9, 2010 (Appendix C), the district court acknowledged having located a case in the Third Circuit called United States v. Lessner, 498 F.3d 185 (3rd Cir. 2007), that "unlike this case, the defense counsel at the time of the guilty plea informed the court that the defendant was being cared for by

no less than three psychiatrists at the time." Id. at 8, n. 1-8. The district court stated, "what I'm extracting from that case (Lessner) is there, the Judge had the ability to make the finding because the court of appeals said a district court commits reversible error by accepting a defendant's guilty plea without creating a record to show that the plea was knowing and voluntary, and the case that's cited there is actually a Supreme Court case, Boykin v. Alabama, 395 U.S. 238, 242-43." Id. at 9. The district court acknowledged that Boykin had to be considered because "clearly the petitioner had mental health issues." "He has at some point, for some time was confined in a mental health ward at some prison. He had been taking medications and seeing mental health professionals." The court was distressed over the central issue, "now that I know what I should have known earlier, am I going to find that the plea was knowing and voluntary, seems to be a potential problem for the court with that because I would never have the ability to ask the questions that I should have asked, as apparantly the judge did in the Lessner case." Id. Appendix C, at 8.

The district court judge then stated that, "the procedural question in his mind" was that, can he now do today what should have been done back at the plea hearing and satisfy Rule 11 ? Judge Wilson stated, "I'm inclined to think I can't." See Id. at 9. In which defense counsel, Mr. Chambers stated for the record that he felt that the court was indeed correct. In acknowledging same, Judge Wilson further explained: "I guess it means one of two things, if the withdrawal of the guilty plea is allowed, then the defendant can have a trial, or he can make an effort to plead guilty again, if that's his desire; and it may not really matter who's at fault here, you know, at the plea hearing. In this case, frankly, I don't think I was informed, or if I was informed, I don't think I was informed as fully as I ought to

have been either by the government or by Ms. Chahin. And let's assume I was, then I was deficient because clearly had there been something before me, I should have done what the Court in Lessner did. So I mean either way you come to the same result, although I do believe that I wasn't informed." Id. n. 9-22.

Judge Wilson then asked defense counsel Mark Chambers was [Williamson] taking medications at the time of the plea, in which attorney Chambers replied affirmatively, "yes, the four different kinds of medications that Williamson had testified to. Id. at 10. Judge Wilson tried to rationalize with himself over the fact that even though he did ask Williamson whether [he] was taking any medications which impaired his ability to think clearly and he said no, "the question could have been asked more clearly." Judge Wilson then stated that his inclination was to grant the motion for Williamson to withdraw his guilty plea, but would give the government an opportunity to revisit the question and submit a post-hearing brief of some kind, then he would make an ultimate ruling. Id. n. 7-19. That ultimate ruling was the denial of Petitioner Williamson's Motion to withdraw his guilty plea. See Appendiz F, Judge Wilson's 15-page opinion.

The March 23, 2011 Order by Judge Wilson emphasized that Petitioner's counsel Mr. Mark Chambers had asserted two basis for Williamson's motion to withdraw his guilty plea which were (1) the district court failed to advise [Williamson] consistent with the requirements of Federal Rules of Criminal Procedure 11, and (2) the plea was involuntary because of Williamson's medical history and the effects of his medications. These pleading deficiencies by Attorney Mark Chambers were what the government essentially came to challenge and what Judge Wilson ultimately came to rely upon in holding that Williamson's April 13, 2009, guilty plea complied with the requirements of Rule 11. Id. The Petitioner filed his 18 U.S.C. §2255 Motion on September 23, 2014, in

which was denied by the district court almost three-years later on July 14, 2017. The Court of Appeals refusal to deal with a mental health prisoner's plea for Justice, denied the certificate on November 6, 2018. See Appendix A. This Writ of Certiorari follows. Due to Petitioner's mental health status and his inability to understand court procedures the Petition for Writ of Certiorari was rejected on several occasions and petitioner granted an extension of time until November 6, 2019, in which he has obtained assistance from another Inmate in preparation and filing of this petition.

REASONS FOR GRANTING THE PETITION

Mental Health defendants in America like the Petitioner Andre Williamson truly do not have the Constitutional protections articulated by the Supreme Court in Boykins v. Alabama, 395 U.S. 238 (1969), where thousands of Mental Health guilty pleas are not being measured by the Boykin standards that have been quietly replaced with a "fair and just reason" standard like the one created in United States v. Garcia, 401 F.3d 1008, 1011 (9th Cir. 2005) when courts today are faced with Mental Health defendants involuntary guilty pleas and Boykin factors. The Petitioner Andre Williamson pray that the Supreme Court grant certiorari in this case not just for him individually or respectively, but for the hundred thousand of serious Mentally ill defendants like him who was induced to plead guilty while sedated from powerful psychotropic medications in their system at the time of entering guilty pleas. The Sixth Amendment right to counsel must also exist for Mental Health defendants in order for the Constitution to protect the fundamental right to fairness since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled; and just because that person who is present at [trial] alongside the defendant is an attorney is not itself enough to satisfy the Sixth Amendment. An accused is constitutionally entitled to be assisted by an attorney who plays the role necessary to ensure that the [proceedings] are fair. Therefore, the right to counsel for Mental Health defendants should not be a different standard, but should require the effective assistance of counsel like the kind well established in Strickland v. Washington, 466 U.S. 668 (1984), in which the Petitioner Andre Williamson request the Supreme Court today to step in and re-affirm the Strickland standard for Mental Health defendants like him who can establish both Boykin and Strickland standards. See Attachment G .

McCarthy v. United States, 394 U.S. 559, 560 (1969) involved the procedure that must be followed under Rule 11 of the Federal Rules of Criminal Procedure before a United States District Court may accept a guilty plea and the remedy for a failure to follow that procedure. Judge Wilson repeatedly stressed that he was deprived of the right to follow that procedure in Andre Williamson case and nothing he tried was able to cure the error, although he ultimately denied Petitioner Williamson's Motion to Withdraw Guilty Plea. See Attachment F. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats is the perfect cover-up of unconstitutionality. But, the question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal constitutional standards. Boykin, 395 U.S. at 243. Because Petitioner Williamson's counsel Sonia Chahin knew of his longstanding mental health history before petitioner signed the plea agreement and before the Rule 11 Proceedings, as well as knowing he had five-different powerful anti-psychotic medications in his system on both occasions and did nothing but just stand alongside the petitioner was ineffective assistance of counsel. The Appendices A-G herein establish over and beyond that petitioner Williamson was indeed sedated from psychotropic prescription medications during both instances that rendered him incompetent to plead guilty. See Sandgathe v. Maass, 314 F.3d 371, 379 (9th Cir. 2002). Competence is defined as the ability to understand the proceedings and to assist counsel in preparing a defense. See Dusky v. United States, 362 U.S. 402 (1960). See also Godinez v. Moran, 509 U.S. 389,(1993). The petitioner Williamson submitted to the Ninth Circuit Court of Appeals in his COA and during 4 Mental Health Hearings to Withdraw his guilty plea that the combined effect of Topamax, Risperdal, Zoloft, Amatripolene and Benzapine rendered him incompetent that clearly affected his ability to understand the content or context of either the plea agreement or Rule 11 proceedings, and his attorney Sonia Chahin who later testified against Petitioner,

should not have allowed him to sign a plea or attend Rule 11 Proceedings while heavily sedated from psychotropic drugs. She should not have been allowed to funish testimony for the government at the motion to withdraw guilty plea hearings, in evaluating whether petitioner had set forth enough to warrant withdrawal of his guilty plea on voluntariness grounds. Sasser v. United States, 452 F.2d 1104. 1106 (9th Cir. 1972). The petitioner's testimony made enough showing in and of itself, beyond dispute, that he was Docile at best and substantially prone to suggestions put to him by counsel at the signing of the plea agreement and by the district court judge at the Rule 11 Hearing where Judge Wilson asked petitioner had he taken any medications which could affect his ability to think clearly. Counsel for the petitioner was standing right alongside the petitioner when Judge Wilson asked him about medications, and not once did counsel, Sonia Chahin step up and at least inform Judge Wilson that perhaps the petitioner did not understand that question clearly or was confused by the question, because at that present moment when Judge Wilson asked the question, the petitoner was under the influence of Topamax, Risperdal, Zoloft, Amatripolene and Benzapine. See Attachment B.

Under Strickland, the petitioner showed that his counsel's performance was both deficient and prejudicial, and despite her testimony that she felt petitioner was not affected by the combination of medications in his system at both the signing of the plea agreement and the Rule Hearing cannot be taken as conclusively showing that petitioner was not entitled to no relief. Her testimony was evidentiary, but it was not conclusive. Lopez v. United States, 439 F.2d 997, 1000 (9th Cir. 1971)(reversing and remanding for evidentiary hearing). Under these circumstances the petitioner did not voluntarily and understandingly enter his plea of guilty. See Attachment G. Therefore, denied due process of law and effective assistance of counsel because the record is inadequate to show that while petitioner had five psychtropic drugs in his system when he pled guilty that he voluntarily, knowingly and intelligently did so. Boykin, 395 U.S. at 245.

The petitioner contended before the district court that he would not have accepted

a guilty plea to 18 U.S.C. §924(c)(1)(A)(ii) in connection with his 18 U.S.C. §371 offense because he did not use, carry or brandish a firearm during count one (the conspiracy) or count two (§2113(a)), in which both offenses were somehow the predicates to the §924(c) offense although count two was dismissed and count one stood, and is an determinative issue petitioner stressed to the court. Counsel was constitutionally ineffective whose representation of him during signing a plea agreement and at the Rule 11 Hearing while taking five psychotropic medications fell below an objective standard of reasonableness and consequently prejudiced him as a result. Strickland, 466 U.S. at 688, 692, because the court sentenced petitioner to 25 years imprisonment for the §924 (c) conviction based on §371. The petitioner would have rather gambled on a trial rather that have been induced to plead guilty while sedated by extremely powerful prescription medications for his mental health conditions.

The Petitioner Andre Williamson is a diagnosed paranoid Schizophrenic with Bi-Polar, Attention Deficit Disorder ("ADD") and Hyperactivity. Topamax is prescribed to treat the petitioner's uncontrolled mood swings. Risperdal is prescribed to treat his Auditory Hallucinations. Zoloft for depression, Amatripolene for Insomnia and Benzapine prescribed to treat his Dimensia.

At each of the petitioner's Motion To Withdraw his Guilty Plea held on June 14, 2010, August 17 2010 (Appendix B), November 9, 2010 (Appendix C) and March 15, 2011 (Appendix D), there was NO adverse findings made by the district court suggesting that petitioner was NOT under psychotropic medications when he (1) signed the March 27, 2009 Plea Agreement and (2) at the April 13, 2009 Rule 11 Hearing in which the district court accepted petitioner's guilty plea. The five anti-psychotic prescription medications that the petitioner was taking at the above times are known to cloud one's perception. Also, at the above four-hearings, not once did the district court inquire about the dosage amount of each psychotropic drug prescribed to petitioner causing him to have had a foggy perception, or inquire how is it when all five-anti psychotic drugs are combined have an affect on someone signing a plea agreement or standing before a judge pleading guilty.

See Sanders v. United States, 373 U.S. 1, 20 (1963)("That the judge may have thought that petitioner acted with intelligence and understanding in responding to the judge's inquiries CANNOT conclusively show, as the statue requires, that there is no merit in his present claim."); Lopez, 439 F.2d at 1000; Sanders, 373 U.S. at 20.

Therefore, despite the testimony that the district court welcomed from Dr. John Leonard (a staff psychiatrist at MDC Los Angeles), Laura Kirsch (an intern psychiatrist at MDC Los Angeles), Sonia Chahin (petitioner's first counsel who represented him at the signing of the plea agreement and at the Rule 11 guilty plea hearing), including Judge Wilson having thought petitioner Williamson acted with intelligence and understanding CANNOT be taken as conclusively showing petitioner's guilty plea was entered without any affects of the powerful medications in his system at the time. See Appendix E.

Rule 11(b)(3) of the Federal rules of Criminal Procedure must adhere to the Due Process Clause of our Federal Constitution, requiring the district court, before entering judgment on a guilty plea, MUST determine that there is a factual basis for the plea. As can be seen, the instant Rule 11 Guilty Plea Hearing in this case on April 13, 2009, was so brief that even the district court (Judge Wilson) failed to comply with the key requirements of Rule 11(b). See Appendix G, at 5-6. Judge Wilson asked the prosecutor to review in open court various parts of petitioner's plea agreement. Id. at 6. When the prosecutor was completed, oddly Judge Wilson did not advise petitioner Williamson about ANY of what the prosecutor covered, nor asked petitioner if he UNDERSTOOD any of those things. Instead, Judge Wilson made the following exchange on record with the petitioner:

THE COURT: "At pages 5,6, and 7 of the Plea Agreement; have you read that section?
Williamson: Yes. "
Id. at 13.

Judge Wilson then asked for Attorney Chahin's assurances that she had discussed the factual basis with petitioner. Id. at 14. However, without discussing the factual basis of the plea agreement upon the record, Judge Wilson accepted pages 5,6, and 7 of the plea

In violation of Boykin, the District Court judge delegated to the Prosecutor the mandatory task of advising Petitioner of most of the things set out in Rule 11(b)(1) and did nothing to ensure on record that Petitioner Williamson understood the things that the prosecutor addressed. Id. Judge Wilson did not explain to Petitioner, at least in Layman terms (plain language), the nature of the charges to which he was pleading, nor did Judge Wilson tell Petitioner (who was on 5 psychotropic medications) that his statements were being made under penalty of perjury. Most astounding about the Rule 11 proceeding (Appendix G) is that there was no specific discussion of the factual basis for the guilty plea on record, other than a very brief affirmation of the factual basis that was set out in the March 27, 2009, plea agreement. The Rule 11 errors were in violation of Boykin and Strickland in the most obvious manners, but because Petitioner is a Mental Health defendant, his third court appointed Attorney Mark chambers changed sides and went along with the government and Judge Wilson's position that a challenge to the knowing, voluntary and intelligent entered guilty plea only encompassed whether Petitioner gave a "fair and just reason" for withdrawl. United States v. Garcia, 401 F.3d 1008, 1011 (9th Cir. 2005).

As a review of the transcript of Petitioner's guilty plea hearing shows (Appendix G), Judge Wilson never inquired whether Petitioner understood any of the various things set out in Rule 11(b)(1)(B) of the Federal Rules of Criminal Procedure (F.R.Crim.P.), including such key things as the nature of the charges to which he was pleading guilty to, or the applicable penalties. The errors were pervasive and apparent when considering the Supreme Court's opinion in McCarthy v. United States, 394 U.S. 459 (1969). In McCarthy, the Court "rejected the government's contention that Rule 11 can be complied with although the District Judge does not personally inquire whether the Defendant understood the nature of the charges." Id. at 467. Judge Wilson did not ensure or determine at the Rule 11 hearing (Appendix G) that Petitioner understood anything listed in Rule (b)(1). Based on McCarthy this was reversible error.

In United States v. Pena, 314 F.3d 1152 (9th Cir. 2003), the Ninth Circuit stated: Federal Rule of Criminal Procedure 11 obliges the trial court to engage the defendant in a colloquy at the time the plea is entered for the purpose of establishing a complete record of the constituttionally required determinations that the defendant is acting voluntarily, with an understanding of the charges which have been leveled at him, and upon a factual basis which supports his conviction. Id. at 1155. Thus: "[it] is incumbent upon a district judge accepting a guilty plea to make the minor investment of time and effort necessary to set forth the meaning of the charges and to demonstrate on the record that the defendant understands "at the time"... [T]he trial judge should not [accept a defendant's] plea until his understanding is manifest... [Accordingly, the] trial judge is required to engage in a colloquy with the defendant and elicit responses from him which demonstrate, on the record, that the accused does so understand." United States v. Kamer, 781 F.2d 1380, 1385 (9th Cir. 1986)(emphasis added); See also, United States v. Smith, 60 F.3d 595, 598 (9th Cir. 1995)(same); United States v. Bruce, 976 F.2d 552, 560 (9th Cir. 1992)(emphasizing that Rule 11 requires "informing the defendant and determining that he understands").

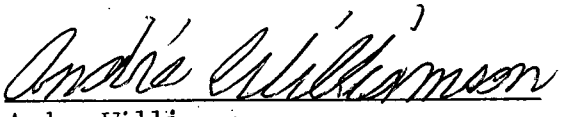
These cases are legion in which dictate reversible error, even plain error, based on a district court's failure to comply with the requirements of Ruel 11(b). See, e.g., United States v. Benz, 472 F.3d 657, 661 (9th Cir. 2006).

Therefore, Petitioner contends that the fair and just reason standard in United States v. Garcia, 401 F.3d 1008, 1011 (9th Cir. 2005) is simply insufficient to comport with the standards articulated by the Supreme Court in Strickland, Boykin and McCarthy.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Andre Williamson
REG# 85709-012
Date: OCTOBER 31, 2019