19-7964

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Varis R. Aizupitis — PETITIONER
(Your Name)

vs.

State of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Varis R. Aizupitis
(Your Name)

JTVCC #00330969, 1181 Paddock Rd.
(Address)

Smyrna, DE 19977
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

I. Whether the release of confidential materials by defense counsel creates a structural defect in a criminal process where the release is contrary to the defendant's explicit and implicit strategic intentions.

II. Whether the State of Delaware is nullifying the US Constitutional authority of the federal judiciary in refusing to address established Constitutional precedents.

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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INDEX TO THE APPENDICES

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 _____ 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[ ] is unpublished.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 _____ to the petition and is

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[ ] is unpublished.

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

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

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[X] is unpublished.

The opinion of the Superior Court court appears at Appendix B to the petition and is

[X] reported at 2019 Del. Super. 92, ; 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[ ] is unpublished.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 _____.

[ ] 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).

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

The date on which the highest state court decided my case was 11/21/2019. A copy of that decision appears at Appendix A.

[ ] 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 PROVISIONS INVOLVED

United States Constitution, Amendment V: self-incrimination clause

> "No person shall ... be compelled in any criminal case to be a witness against himself."

United States Constitution, Amendment V: due process clause

> "No person shall ... be deprived of life, liberty, or property without due process of laws."

United States Constitution, Amendment VI: assistance of counsel

> "In all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence."

United States Constitution, Amendment XIV: due process clause

> "Section 1. ... No State ... shall deprive any person of life, liberty, or property without due process of law."

United States Constitution, Amendment XIV: equal protection clause

> "Section 1. ... No State shall ... deny to any person within its jurisdiction the equal protection of its laws."

TABLE OF AUTHORITIES

Cases – Circuit Court

Cases – State Court

Constitutional Provision invoked

Federal statute

State statutes

State rules

STATEMENT OF FACTS

1) July 4, 1995: The petitioner / defendant, Varis R. Aizupitis, is arrested for the shooting death of Elizabeth Henderson, the defendant's landlady.

2) Trial counselors marshalled an insanity defense based on the medically-unanimous diagnosis of the defendant's paranoid-schizophrenia.

3) February 13, 1996: The jury in Delaware's Superior Court returned a verdict of "guilty but mentally ill" (per 11 Del. C. 408) on both charges of "Intentional Murder" (11 Del. C. 636 (a) (1)) and "Possession of Deadly Weapon during Commission of a Felony." (11 Del. C. 1447A) By statute these verdicts require treatment at Delaware Psychiatric Center (then known as Delware State Hospital.)

4) July 22, 1997: Delaware's Supreme Court rejects the appeal-of-right filed by the public defender. (699 A.2d 1092, Del. Supr., 1997)

5) February 16 1999: Appointed counsel (J. Capone) files for post-conviction relief under De. Superior Court Rule 61.

   a) October 4 1999: Delaware's Superior Court stays the Rule 61 process based on Counsel's request for incompetency inquiry.

   b) January 28, 2002: Superior Court holds an office conference to maintain the stay, which is widely interpreted as a "finding" of incompetency.

c) September 29, 2003: Superior Court aborts the first (and only) competency hearing, maintaining the status quo (i.e. the process will be stayed because of the defendant's putative incompetency.)

d) September 6, 2007: Superior Court rejects the defendant's pro se state *Habeas Corpus* petition challenging the finding of incompetency as lacking necessary Due Process. (*Certiorari* denied. 552 US 1200, 128 S.Ct. 1273, 170 L.Ed.2d 95, 2008)

e) April 27, 2015: Superior Court orders the defendant transferred from Delaware Psychiatric Center to general prison population.

f) June 2, 2015: Superior Court lifts the incompetency stay on the Rule 61 process.

6) September 20, 2016: Superior Court grants defendant pro se status.

7) April 6, 2018: Superior Court accepts defendant's pro se Rule 61 Motion of June 27, 2016.

8) February 19, 2019: Superior Court denies the Rule 61 Motion.

9) November 27, 2019: Delaware's Supreme Court rejects the defendant's pro se appeal of the February 19 Denial.

REASONS FOR GRANTING OF THE PETITION

I. The release of confidential materials creates a structural error in the trial process.

The confidential relationship between a defendant and trial counsel is structurally important to criminal justice in these United States of America. Any release of confidential materials by an attorney should consider the questions, whether a) the defendant has given informed consent to the release, and b) whether the defense attorneys have provided the defendant with vigorous advocacy of the defendant's stated interests.

In the first month after his arrest, the defendant provided the defense attorneys with approximately 15,000 words of autobiographical writings. A few months later, long before the need for cross-discovery or a finalized witness list, defense counselor Oberly informed that the autobiographical writings had already been turned over to the prosecution.

The defendant had every reason to expect the highest degree of confidentiality. Defense counselor Jennings coached the defendant on how to guard the writings' protected status. These confidential materials provided the state with the rawest, unedited considerations of the defendant.

For a defense attorney to release such confidential materials, is tantamount to the defense attorneys compelling a defendant to testify. Such a release of confidential materials is in direct contempt of the defendant's Fifth Amendment right to remain silent.

This Petition asks the Court to recognize the release of confidential materials by a defense attorney as a "critical stage" under US v. Cronic. [1] A "critical stage" is defined to be one which holds "significant consequences for the accused." (*Cronic,* 656-7) The Court explains therein that at such points, the trial of a criminal defendant can lose "its character as a confrontation between adversaries [and therefore] the constitutional guarantee [of counsel] is violated." (*Cronic,* 656-7) The *critical stage* analysis would require not only the defense attorneys but also the prosecution attorneys to attend to the structural requirements for confidential attorney/client communications.

The Court distinguishes "structural" errors as not subject to *harmless error* analysis in Sullivan v. Louisiana. [2] Structural error "affect[s] the framework within which the trial proceeds," as distinguished from a lapse or a flaw that is "simply an error in the trial process itself." (U.S. v. Gonzalez-Lopez, [3] quoting Arizona v.

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[1] *United States v. Cronic,* 466 US 648, at 659, 104 S.Ct. 2039, 80 L.Ed. 2d 257 (1984)
[2] *Sullivan v. Louisiana,* 508 US 275 at 281, 113 S.Ct. 2078, 124 L.Ed.2d 2078 (1993)
[3] *US v. Gonzalez-Lopez,* 548 US 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)

Fulminante [4]) "Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called 'structural'; when present, such an error is not subject to harmless-error review." [5]

A release of confidential materials should be considered structural because it fundamentally changes the relationship of the accused to counsel. As the Court has stated in Faretta v. California, [6] the relationship of an attorney can become so perverted as to take on the quality that the law "contrives" against the defendant. (*Faretta*, 422 US 834) The Court has often affirmed "the fundamental principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." (Weaver v. Massachusetts [7] citing Faretta) The release of confidential materials should be a highly protected strategic decision, not a commonplace tactical decision.

Weaver identifies the need for recognizing a structural defect in the trial process, when the effects are pernicious in a way that are too difficult to measure with normal 'cause and prejudice' analysis. That surely applies when the prosecution is allowed to base its case on not only the recollections, but the exact wording of the defendant's privileged attorney/client communications.

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[4] *Arizona v. Fulminante,* 499 US 279 at 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)
[5] *McCoy v. Louisiana,* 200 L.Ed.2d 821 at 833 (1993)
[6] *Faretta v. California,* 422 US 806 at 834, 95 S.Ct. 2525, 45 L.Ed.2d 262 (1993)
[7] *Weaver v. Massachusetts,* 582 US ___, 137 S.Ct. 1899, 198 L.Ed.2d 420 (1993)

Trial counsel surrendered confidential materials prematurely, without giving any weight to: a) the defendant's strategic authority; b) alternative paths forward; or c) the vigorous advocacy required of counsel. There was no informed consent to releasing the confidential materials. In fact, the defendant did not express any explicit consent to release confidential materials. Nor could he have implicitly waived the confidentiality-protections by agreeing to an insanity defense, because the trial counselors used misinformation to persuade the defendant to acquiesce in their chosen trial strategy. Nor was there any relevant court order in place when the confidential materials were released. (There was a court order for cross-discovery later.) Nor was there any strategic discussion or tactical consideration about whether the counselors' preferred expert witness was so important as to warrant the putative cross-discovery. Wiggins v. Smith [8] distinguishes strategic decision-making and "post hoc rationalization" and so should the Court in this case.

There are important reasons to ask whether defense counselors provided the defendant any meaningful advocacy. Each of the counselors are lifelong prosecutors, having spent in total almost a century as prosecutors. Both of the counselors has won elected office, and in 1995, might have worried what a "Willie

[8] *Wiggins v. Smith,* 539 US 510 at 526, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)

Horton" ad would like, whenever they sought elected office. While the defendant disputed consistently and resolutely the specific intent of murder required for a 1st degree murder conviction, the defense counselors blithely conceded that element of guilt. The defendant's specific requests for information about self-defense and lesser-included offense statutes was met with misinformation.

Even giving the defense attorneys the benefit of every doubt, their conduct was reprehensible. They would like to rely on Delaware Uniform Rules of Evidence Rule 705 (a), which states, "The [testifying] expert may ... be required to disclose the underlying facts or data on cross-examination." But such a reliance ignores the fact that the witness list was completely within their authority, and could have been altered to protect the defendant's confidential communications. Moreover, the necessity of expert testimony was based on their (and their alone) rejection of lesser-included charges as a defense. They were able to extract fantastical fees by manipulating the process. As Delaware's Professional Conduct Rules state (Rule 1.4, note 7) "A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person." Even if their decision was fully justified as a tactical decision, nothing can justify the

defense attorneys refusal "to consult with defendant on important decisions and to keep the defendant informed" about important developments in the case. [9]

This Petition asks the Court to recognize the fundamental importance of the confidentiality of attorney/client communications, and rebuke the cavalier treatment of the Fifth and Sixth Amendment protections.

[9] *Strickland v. Washington*, 466 US 668, 104 S.Ct. 2052 at 2065, 80 L.Ed.2d 674 (1984)

II. The contempt of the Delaware judiciary for federal Constitutional decisions implies the nullification of federal oversight of the civil rights of persons within the borders of the United States of America.

The civil rights of citizens and other residents of the United States of America may not be abrogated by state law. Specifically, the Fourteenth Amendment of the United States Constitution requires each and every state to adhere to the "due process" of law, which is to say, that a person under state law cannot have his or her liberty-interest rights impinged upon in a way that is unlawful. Among the factors that determine the lawfulness of a legal impingement of a person's liberty-interest rights is the guarantees of the U.S. Constitution. The guarantees of the U.S. Constitution are integrated practically into the jurisprudence by the opinions of the U.S. Supreme Court.

This petition asks the Court to consider whether the courts of Delaware have unlawfully rejected the authority of the U.S. Constitution. In the Denial opinion of February 19, 2019, the Delaware court does not acknowledge the authority of precedential law. It scorns to discuss the case before it in regard to the issues properly raised. The Denial was affirmed without analysis by Delaware's Supreme Court. Delaware famously promotes its courts of equity, which have, by design, no precedential law. Such courts do not acknowledge the authority of previous

opinions to dictate future analysis. Is Delaware to slide into a world of courts without jurisprudence?

II.a. Was the Denial scornful of federal Constitutional precedents regarding the disposition of questions concerning the competency to stand trial of a criminal defendant?

The Superior Court Denial of the defendant's Rule 61 Motion for post-conviction relief does not discuss the precedential law requiring, if there exists a serious doubt to a defendant's competency to stand trial, formal evaluation and adjudication of that competency question. The issue was clearly raised, and the precedential law is unambiguous.

In Pate v. Robinson, [1] the Court rejects the notion that either the putatively normal behavior of Robinson, or the casual opinion of the reviewing doctor, could eliminate the need for formal evaluation and adjudication of the competency questions that had been raised in that case. The Constitutional Due Process right of a criminal defendant to be immune from prosecution if unable to assist in his or her own defense has been established by numerous cases since, including Drope v.

[1] *Pate v. Robinson*, 383 US 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966)

Missouri. [2] The Third Circuit follows *Pate* in Jermyn v. Horn, [3] stating, "Due Process requires the trial court to inquire sua sponte as to the defendant's competence in every case in which there is reason to doubt the defendant's competence to stand trial." The Third Circuit comments on the federal statutes requiring "a record-based judicial determination of competence in every case in which there is reason to doubt the defendant's competence to stand trial. ... The Due Process Clause ... requires no less." (US v. Haywood) [4]

The defendant's Rule 61 Motion makes clear that there was ample reason to doubt the defendant's competency to stand trial. So, the reviewing court was obligated, either a) to show some other (as yet unknown) competing principle of Constitutional law, or b) to conclude that there was no serious doubt as to the defendant's competence before and during the trial, or c) to invalidate the trial verdict. Instead, it adopts a version of jurisprudence that does not correlate with the Constitution of the United States, requiring the defendant to show *prejudice*, as though competency were a mere technical (and not a structural) Due Process violation. As the Circuit Court comments on *Pate v. Robinson* and *Drope v. Missouri,* "A defendant presenting [credible] evidence of incompetency would

[2] *Drope v. Missouri,* 420 US 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975)
[3] *Jermyn v. Horn,* 266 F.3d 257 at 283 (CA3 2000)
[4] *US v. Haywood,* 155 F.3d 674 at 680 (CA3 1998)

presumably be prejudiced by either the trial court's failure to grant a competency hearing or his counsel's failure to request one." [5]

The reviewing court bases its denial of the Rule 61 Motion on evidence that does not amount to a formal evaluation and adjudication of the incompetency questions raised at trial. Nor does it claim that the question of competency was somehow not serious enough to raise Constitutional Due Process issues. The Denial seems to reject the entire body of jurisprudence governing questions of defendant competency.

The evidence of serious doubt (about the defendant's competence to stand trial) is overwhelming. 1) The formal evaluation closest in time to the trial found the defendant incompetent. [6] 2) Trial counsel felt obligated to bring to the trial court's attention "an issue ... relevant to competency." [7] 3) Trial counsel went on to say, "A lot [of what the defendant says] is not rational at all, and I think what happens is that a process of logic just breaks down." [8] 4) The concerns of trial counsel were so serious as to warrant excluding the defendant from periods of live testimony, and re-arranged witness testimony to manage his symptoms. 5) The

[5] *Hull v. Kyler*, 190 F.3d 88, at 105-106 (CA3 1999), cited on page 8 of the defendant's Rule 61 Motion of 6/27/16.
[6] Criminal docket, entry 149, 8/3/2000.
[7] Trial transcript, page 115, 2/12/96.
[8] Ibid, 116.

reviewing psychiatrist was not asked to ascertain the defendant's competency formally. When asked directly to comment on the defendant's competency during trial, he responded, "the Defendant may very well have been incompetent to stand trial." [9] 6) During trial, the reviewing psychiatrist informed the trial court and counsel regarding the question of incompetency, "But at times, [his competency] can become questionable, particularly in regard to becoming delusional about the courtroom protocol. And it's hard for me to judge ..." [10] 7) Most remarkably, the State held the defendant incompetent to assist in his own defense for over fifteen (15) years, effectively denying the defendant access to the courts from 1999 until 2015.

The issue of the defendant's incompetency to stand trial was raised in a substantial way at trial. Once raised, the trial court had the responsibility of formally adjudicating the defendant's competency. The defendant's Rule 61 Motions (both the pro se Motion of 2016 and the counsel-filed Motion of 1999) raised the issue of the defendant's competency to stand trial. Rather than correlating the claim for post-conviction relief to existing Constitutional norms of jurisprudence, the reviewing court scorned all precedential law. The Delaware

[9] Reported in the 1999 Rule 61 Motion by Mr. J. Capone, Esq., and affirmed by affidavit for that Motion, by Dr. Raskin.
[10] Trial transcript, pp. 239-240, 2/7/1996.

Supreme Court approved the Denial without comment. The Delaware courts cite no case law which could support a Denial of post-conviction relief based on the lack-of-prejudice standard concerning the incompetency of a defendant to stand trial; in fact, precedential law rejects that standard. Nor do the Delaware courts in any way reject the factual claims that the issue of incompetency was a serious concern for trial court and counsel. One must conclude that the Delaware courts have relied on the likelihood that their contemptuous, unconstitutional behavior would be free of any and all federal oversight. The Court must render an opinion to uphold the rule of law.

II.b Was the Denial scornful of Due Process guarantees under the 14th Amendment, given that the State delayed post-conviction relief proceedings for over fifteen (15) years?

The foundational precedents for evaluating the Constitutional validity of state post-conviction relief processes is Evitts v. Lucey, [1] which imposes the requirement of Due Process protections and derives from the 14th Amendment guarantee: "In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution–and, in particular, in accord with the Due Process Clause." (*Evitts . Lucey*, 479 US 401)

Within the Third Circuit Court of Appeals jurisdiction, *Evitts v. Lucey* has been applied to delays in post-conviction relief proceedings, most recently in US v. James. [2] *James* requires the application of Barker v. Wingo [3] delay factors within the Due Process Clause (not the Speedy Trial Clause.) This analysis had been left ambiguous in cases like Burkett v. Cunningham [4] until the Court decided Betterman v. Montana. [5]

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[1] *Evitts v. Lucey*, 469 US 715, 92 S.Ct. 830, 83 L.Ed.2d 821 (1985)
[2] *US v. James*, 712 F.Appx. 154, 2017 LEXIS 18568 (CA3 2017)
[3] *Barker v. Wingo*, 407 US 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)
[4] *Burkett v. Cunningham*, 826 F.2d 1208 (CA3 1987)
[5] *Betterman v. Montana*, 578 US __, 136 S.Ct. 1609, 194 L.Ed.2d 723, 2016 US LEXIS 3349 (2016)

In order to reach the fantastical result that "the time between the filing of the Original [Rule 61] Motion [in Delaware's Superior Court] and resolution is twenty (20) years" AND "orderly" AND "not attributable to the State or the Court ignoring procedural safeguards." (Superior Court Denial, February 19, 2019, page 10) the Denial must scorn all the defendant's references to *US v. James*. Instead, the Denial substitutes its own interpretation of *Burkett v. Cunningham*.

The scorn for any federal oversight of Constitutional guarantees permeates the Denial. The Denying Court (in oral arguments) rejects the notion that the appointed counsel (in 1996) waived the defendant's federal *habeas corpus* rights.

The Denying Court refuses to address the objections the defendant raised (from 1996 until he was granted *pro se* status) to appointed counsel's authority. Counsel expressed contempt for the defendant's interest in advancing certain issues for post-conviction review, but Counsel stated his interest to be delaying the Rule 61 process in order to prolong psychiatric treatment.

The Denying Court refuses to address the lack of compelling state interest for the incompetency inquiry. Insofar as the appointed counsel was acting in good faith in asking for the delay for reason of incompetency, the jurisprudence of a post-conviction competency inquiry should address the Court's precepts Ryan v.

Gonzales [6] and Matthews v. Eldridge. [7] *Ryan v. Gonzales* rejects the notion that competency to stand trial is a requirement for a represented defendant during post-conviction process. *Matthews* states the requirement that the infringement of a liberty interest, such as timely post-conviction review, or federal *habeas corpus* review, requires Due Process analysis, especially the existence of a valid "state interest."

The Denial rejects the necessity for a finding of incompetency to occur within the context of adversarial testing. In order to ignore this necessity, the Denial needs to scorn the clear precedents of McNeil v. Patuxent Institute Director [8] and Jackson v. Indiana. [9] These require a delay because of incompetency to be meaningfully related to treatment, to be regularly reviewed, and to place no burdens on the defendant for his own competency. The Denial does not make any claims that the delay was related to his treatment, or that the delay was reviewed by the courts, or that the delay was not because of requirements on the defendant. In fact, the Denial implies that the delay was exclusively the responsibility of the defendant.

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[6] *Ryan v. Gonzales,* 568 US 57, 133 S.Ct. 696, 184 L.Ed.2d 528 (2013)
[7] *Matthews v. Eldridge,* 424 US 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)
[8] *McNeil v. Patuxent Istitute Director,* 407 US 245, 92 S.Ct. 2083, 32 L.Ed.2d 719 (1972)
[9] *Jackson v. Indiana,* 406 US 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)

This petition concludes with the following list. First, the defendant's liberty interest (in having a timely filing of post-conviction relief motion preserve issues for federal *habeas corpus* review) was waived by appointed counsel while the defendant objected to that same counsel's representation. Second, the defendant's liberty interest in having the counsel's file "Original Motion" decided in a timely manner was denied for reason of competency, contrary the holding in *Ryan v. Gonzales*. Third, the defendant's liberty interest in avoiding the stigma and delays from a finding of incompetency during post-conviction relief was denied without the necessary hearing of evidence or the effective representation of the defendant, contrary to the holdings of *Matthews v. Eldridge* and Medina v. California. [10] Fourth, the defendant's liberty interest in overcoming the stay of proceeding for reason of incompetency was denied contrary to the holding of *Jackson v. Indiana* and *McNeil v. Patuxent*. Fifth, the Delaware courts have refused to acknowledge the precedential law of *US v. James* and *Burkett v. Cunningham* concerning delays.

[10] *Medina v. California*, 505 US 437, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992) At 505 US 451, the Court affirms the California statute which affords the "reasonable opportunity" to have a question of incompetency decided. This Petition argues that a meeting, kept secret from the defendant, unknown to any of his trusted family, with no testimony heard, and no transcript kept, and most especially, with the defendant's only "representation" by a counselor whose stated purpose was to delay and avoid the resolution of the defendant's post-conviction claims, and to whom the defendant had objected to in writing.

CONCLUSION

Wherefore,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Varis R. Aizupitis

Date: 3/2/2020