

19-8264

Supreme Court, U.S.  
FILED

MAR 23 2020

OFFICE OF THE CLERK

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

Paul M. Gordon — PETITIONER  
(Your Name)

vs.

State of Arkansas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Paul M. Gordon 150634  
(Your Name)

P.O. Box 600  
(Address)

Grady, AR 71644  
(City, State, Zip Code)

N/A  
(Phone Number)

**ORIGINAL**

## QUESTION(S) PRESENTED

### I. Mental Incompetency

The law states that no person with mental disease or defect shall be sentenced for commission of an offence as long as such incapacity endures. Medical records in this case provide proof to mental incompetency at the time of sentencing. Therefore, is it a constitutional violation of due process to had been sentenced while incompetent?

### II. Mental Competency Hearing.

The law states that failure to provide a hearing on mental competency when sufficient doubt exist, deprives a defendant of his due process right to a fair trial. The record in this case shows sufficient doubt did exist and no hearing was held. Therefore, is it a constitutional violation of due process to had been sentenced when that doubt did exist and no hearing was held on the issue?

### III. Conflict Between Court Decisions

Caselaw sets precedence that the Courts must uphold or overrule for due process of law. Caselaw was not upheld or overruled in the appeals of this case. Therefore, is it a constitutional violation of due process to be denied sentence reversal when caselaw has established that requirement?

### IV. Due Process of Law

The United States Constitution states that no person shall be deprived of liberty without due process of law. That process established in law has not been provided in this case and I have been deprived of my liberty. Therefore, Can this Supreme Court of our country correct that miscarriage of justice?

## 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 \_\_\_\_\_ 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.

☒ 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 2019 Ark. 344; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the Hot Spring County, Arkansas, Circuit court appears at Appendix B to the petition and is

☒ reported at Arkansas Circuit Court No. 30CR-10-261; 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).

☒ For cases from state courts:

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

☒ A timely petition for rehearing was thereafter denied on the following date: January 9, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Ark. Code Ann. § 5-2-302 ~ No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or her or to assist effectively in his or her defense shall be tried, convicted, or sentenced for the commission of an offense as long as such incapacity endures.

Ark. Code Ann. § 5-2-309(c) ~ If the finding of the report is contested, the court shall hold a hearing on the issue of the defendant's fitness to proceed.

USCS Const. Amend. 5

Criminal actions-- Provisions concerning-- Due process of law and just compensation  
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



## STATEMENT OF THE CASE

On December 29, 2010, I was arrested while a patient at Levi Hospital, Hot Springs, Arkansas, a mental health facility, charged with three counts of rape with three alleged victims. Due to that removal from mental health treatment before recovery, the illness still existed and became worse, causing a coerced guilty plea on August 4, 2011, and a 105 year sentence.

On August 5, 2011, I was transported to the Arkansas Department of Corrections and put back on mental health treatment. On February 1, 2012, although still battling mental illness, I managed to get a Rule 37 petition filed, which was denied on February 9, 2012, due to untimeliness. On March 28, 2012, the trial court addressed the Rule 37 petition again in a hearing and scheduled an additional hearing on May 15, 2012. At that hearing the court again denied the petition with the order being issued July 13, 2012. It was appealed to the Arkansas Supreme Court and they dismissed it on January 24, 2013 for lack of jurisdiction.

The U.S. District Court was petitioned as an attempt to appeal the Rule 37 ruling but they did not toll the state court proceeding time, denying as untimely on January 16, 2015. The Eight Circuit Court of Appeals granted appealability and then affirmed the district court's denial, issuing their formal mandate on July 19, 2016.

The U.S. Supreme Court was petitioned for certiorari on September 30, 2016, but never docketed the case, or reply with any acknowledgment or explanation about it.

A petition for writ of error coram nobis was filed in the trial court on December 15, 2017, and denied on December 17, 2018, without a hearing. It was appealed to the Arkansas Supreme Court and they affirmed the trial court's decision on November 21, 2019.

The petition for rehearing was denied on January 9, 2020.

## REASONS FOR GRANTING THE PETITION

Reasons for granting the petition should start with the fact that I am in prison for acts that had never taken place. Some made-up humiliating stories got spread around my community that caused me to lose all of my family and friends within days, causing a severe mental breakdown with suicidality, and hospitalization. The police arrested me in the hospital, removing me from treatment for my illness. The illness was never properly treated after the arrest and became worse, which caused a false guilty plea under duress, just a few hours after a suicide attempt. That plea was made at the last minute as an only way to stop being humiliated with false fabricated information in a packed courtroom. It was a situation that I could not face with my illness, and was not going through in the last day, or days, of my life because I was absolutely sure at the time that I would commit suicide at the next opportunity.

The judge was aware of my mental illness when he sentenced me. The same day that he signed the commitment papers I was taken to prison and put on mental health treatment. (p. D44) The law states that an accused cannot be sentenced while suffering from a mental illness, but it happened. (Ark. Code Ann. § 5-2-302) The appeal courts have avoided admitting any error, claiming procedural defaults, or intentionally overlooking the stated applicable laws, such as with Newman v. State, 2014 Ark 7. See Appendix F, pages F5-F6. That caselaw fit my situation and was quoted from extensively in my arguments, but the courts avoided

addressing it altogether. (p. D13-D15, E18, E25-26, E29, E39)

The Federal and State laws are properly established concerning the mental competency issue that I had faced, but my attempts to get the appeal courts to uphold those laws have failed. Prejudice has seemed to overpower justice. The courts have made it obvious that they look at the record to rule according to probable guilt, and not looking at if due process of law was provided. Without due process the record will always show guilt because that is how the State and Courts write it out. They make-up whatever they want to put on record to give the appearance of guilt. In my situation, not only did the police make-up false reports, but even the trial court fabricated false record on appeal without jurisdiction attempting to hide the mental competency issue that existed. See Appendix E, p. E12-E13, E31 par.4; See p. E9-E11 on false reports

I presented eight points on appeal in the Arkansas Supreme Court that each had merit proven by established law and the records contained in the case. (p. E3) That court's opinion avoided addressing the facts that concern those points, and even intentionally made claims that certain facts were different than they are. (e.g., like stating that I likens my situation to a different caselaw than I did, and stating that my motion for mental evaluation records was for a police interview.) That opinion did not uphold law, or change those laws, and could not show how those laws could not apply to my case. Newman v. State, 2014 Ark. 7, explains how my illness requires a sentence reversal through expert testimony and the

Court's ruling. My petition displayed that with supporting exhibits and my appeal brief covered it, but Justice Hudson, whom also ruled on the Newman case, ruled that my petition lacked enough merit to warrant a hearing, when, by law, anytime a petition states a cognizable claim a hearing must be held. Scott v. State, 2017 Ark.199, at 9-10, 520 S.W.3d 262, 268. This is a clear conflict between court decisions, and a show of prejudice from the intentional avoidance. (Compare page A6 to pages D13-D15, E18, E25-E26, E39)

It was not applicable for the Court to refer to the 2009 Newman caselaw. That law concerns the leave of the State's Supreme Court to allow the Circuit Court to entertain his petition for a writ of error coram nobis. It was certainly error for the Court to claim that scoring errors during the mental evaluation was a necessary factor to my pleading when my motion for evaluation records was never granted. Denying me of those records prevented the evidence of the evaluation errors, errors which exceeded those of the Newman case that they were referring to. Due process should allow all relevant records to be produced and a hearing held to present the facts, not keeping records from the appellant and then denying the appeal because they do not have them. The referral to the wrong caselaw, and to evaluation errors that was not allowed to be presented, was an obvious diversion to avoid having to uphold or overrule the 2014 Newman caselaw. (D80-D83) (F5)

There were many violations of the Constitutional right to the due process of law. Please acknowledge them from the record and the following four points :

## I. Mental Incompetency

The conviction of an accused person while he is legally incompetent violates due process. Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L. Ed. 2d 815 This is also in Arkansas law. Jacobs v. State, 294 Ark. 551, 553, 744 S.W. 2d 728, 729 Arkansas State Statute, A.C.A. § 5-2-302 states that no person shall be sentenced for the commission of an offense for as long as any mental disease or defect endures.

The United States Constitution provides due process of law, but as seen from the record of this case, the established laws were not upheld, creating violations and imprisonment of an accused for acts that had never taken place. Mental illness existed from before the time of arrest through the time of sentencing, some of which was documented in medical records and added as exhibits with the appeal petition. See Appendix D

As explained in the petition with supporting documentation, I was hospitalized on mental health treatment when the State Police arrested me. I was mentally ill throughout the court procedure. I never had the capacity to understand the nature and object of the proceedings against me, consult with counsel, or assist in preparing a defense, which is necessary to be considered mentally competent. Drope v. Missouri, 420 U.S. 162, 172, 95 S.Ct. 896, 904

The documented mental incapacity that I suffered from had been ruled to cause incompetency to stand trial. Newman v. State, 2014 Ark. 7 That caselaw has expert testimony included that explains my exact illnesses.

## II. Competency Hearing

When there is substantial evidence that the defendant maybe mentally incompetent to stand trial a competency hearing is required. The failure to provide an adequate hearing deprives a defendant of his due process right to a fair trial. Drope, supra, 420 U.S. at 172, 95 S.Ct. at 904 A State Court's finding of competency to stand trial cannot be presumed correct if the accused "did not receive a full, fair, and adequate hearing" or "was otherwise denied due process of law in the State Court proceeding." Griffin v. Lockhart, 935 F2d 926, 930 (8th Cir. 1991) If there is sufficient doubt about the mental competency of accused, a trial court has a responsibility to order a hearing sua sponte. Drope, supra, 420 U.S. at 181, 95 S.Ct. at 908; Pate, supra, 383 U.S. at 385, 86 S.Ct. at 842

"Trial court commits reversible error when failing to hold a hearing on objections to a mental evaluation performed; applicable statute clearly obligates court to hold hearing, a denial of hearing deprives defendant of opportunity to demonstrate errors in evaluation process." A.C.A. 5-2-305; § 5-2-309(c); Greene v. State 335 Ark. 1, 977 S.W. 2d 192

The law is clear that a mental competency hearing was required to determine if I was fit to proceed to trial. The records of this case show multiple times that sufficient doubt did exist that the court was aware of, and that no hearing was held. See Appendix D, pages D5-D9 My clear objections to the mental evaluation report were kept out of record and then the Supreme Court Opinion claimed that the trial court had considered the issue. (p. A8) Obvious error which the Courts are concealing.

### III. Conflict between court decisions

The Arkansas Supreme Court ruling conflicts with not only State and Federal statutes, but also with the court decisions of every court including its own. Caselaw establishes in every court that any accused that is mentally incompetent cannot be sentenced until it is determined that they are competent to stand trial, and if there is doubt about competency a hearing must be held on the issue. Jacobs, supra, Ar. S. Ct.; Greene, supra, Ar. S. Ct.; Griffin, supra, 8th Cir.; Branscomb v. Norris, 47 F.3d 258, 8th Cir.; Pate, supra, U.S. S. Ct.; Drope, supra, U.S. S. Ct.

My petition explains with supporting exhibits that a mental competency issue existed and a hearing was never held, which the record proves to be true. The appeal courts have ruled that pleading does not have merit without even allowing a hearing on appeal to address it. That decision is clearly conflicting with all other court rulings on the issue of competency to stand trial and all other court rulings on the requirement of a hearing for cognizable claims in an error coram nobis petition. See Appendix D, pages D3-D15; Appendix E, pages E7-E8, E15-E18; Appendix F, pages F2, F3

Another clear conflict between decisions exist with the Newman decision from Newman v. State, 2014 Ark. 7. My exhibited records show that my diagnoses was the exact same as that case, records from before arrest until after sentencing. For the Court to rule that argument to be meritless is undeniable conflict with that Courts own decision, a ruling from the same Associate Justice Hudson.

#### IV. Due Process - USCS Const. Amend. 5

Denying a petition for a writ of error coram nobis without a hearing is denying due process of law. According to Arkansas law a hearing must be held for "consideration of the allegations, and application of principles of law to the findings of fact," Scott v. State, 2017 Ark. 199, at 9-10, 520 S.W.3d 262, 268; Penn v. State, 282 Ark. 571, 577, 670 S.W.2d 426, 429. See also the acknowledgment in the dissenting opinion, appendix A, page A11. (p. E7-EB, F2)

The denial of this hearing prevented the full disclosure of the facts from the record and testimony which would have confirmed the diagnoses of my illness and the debilitating symptoms produced by it. This due process hearing is required in order to consider the allegations and apply principles of law to the findings of fact.

Another due process violation happened when the Courts determined their ruling by looking at the record for signs of probable guilt and looking to the false records they created without jurisdiction, as well as looking to post-plea information. Those due process violations were displayed in the Circuit Court Order and I argued them in my brief. (p. E8-E15) Please review those pleadings with the cited legal authority. The Arkansas Supreme Court response in their opinion stated that "whether or not" it was proper the court did rule by considering those probable guilt records. (p. A5) So the due process laws were not upheld. (p. F4-F5)

The sentencing while incompetent and no competency hearing are also due process violations already in this petition. (Sec. I+II) Other violations can be seen from my brief and the complete record. See Appendix



I ask that this Court review the complete record of this case while going to God in prayer to seek His guidance. He is all-knowing and all-powerful with a purpose for all things. He allowed my mental breakdown and then made three suicide attempts fail unexplainably, except by through His Power. He has restored my mental health and has lead me through the legal procedures for some purpose unknown to me. His thoughts are higher than our thoughts. Thine is the Kingdom and the Power and the Glory forever.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul M. Luden

Date: 03-23-20