

19-8493
No. **19-8493**

2:19-cv-00016 BSM

IN THE

SUPREME COURT OF THE UNITED STATES

CLERK

MARK STINSON 29908-076 Reg#

(Your Name)

vs.

DeWayne Hendrix, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

MARK STINSON Reg# 29908-076

(Your Name)

FPC P.O. BOX 8000

(Address)

Forrest City, AR 72336

(City, State, Zip Code)

(Phone Number)

RECEIVED

MAR 26 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

FILED

MAR 15 2020

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PETITIONER

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QUESTION(S) PRESENTED

1. Can husband and wife be charged with conspiracy, even though the husband (The Petitioner), had been diagnosed with Post Traumatic Stress Disorder [PTSD]?
2. Was the indictment "good or bad"?
3. Can a Federal Judge supersede a defendant after a jury trial?

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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STATUTES AND RULES

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Procedural and Substantive incompetency claim

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

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☒ is unpublished.

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

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☒ is unpublished.

☐ For cases from **state courts**:

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

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☐ is unpublished.

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

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☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Jan. 10, 2020.

☒ No petition for rehearing was timely filed in my case.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

☐ For cases from state courts:

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

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violation of Sixth Amendment Rights
West Key Code 641.3(4)
Violation of Fundamental Element of Due Process
Constitutional Error
Bill of Rights Error
Violation of Competency Test
Violation of Evidentiary Hearing
Violation of Strickland Test
Ineffective Assistance of Counsel
District Court Erred(Misapprehending Statutory Obligations)
Constitutional Rights Violation
Violation of Sua Sponte
Witnesses Intimidation
Violation of Assistance of Counsel
Fair Trial Violation
Violation of Counsel Clause
Denying Access to Exculpatory Testimony
Violation of Compulsory-Process Right
Prosecution Misconduct
Witness Tampering
Violation of the Fact-Finding Process
Miscarriage of Justice
Eluded Judicial Process

STATEMENT OF THE CASE

Petitioner was charged with thirteen counts related to tax fraud: eleven counts related to the failure of his business to pay over employment taxes, and two counts related to helping his son, file a false individual income tax return.

Petitioner and his wife and co-conspirator Jayton Stinson, pleaded guilty to conspiracy to defraud the United States and was sentenced to 12 months in Prison, to be followed by two years of supervised release. She was made jointly and severally liable for the restitution. (R.107, Judgment, Page ID 469-474).

That on November 12, 2016, a bill was returned by a Federal Grand Jury against Mark Stinson and his wife Jayton Stinson, which the Petitioner never received a subpoena or was summoned.

That the Petitioner proceeded to a Jury Trial where he was found guilty and sentenced to 75 months, and which he was superseded after trial, by the Government and The Court. The petitioner appealed the trial decision. Court appointed Mr. Arthur Quinn did not file an appeal on the trial but did file an appeal for the motion to have a new trial, which he did not get approval for the petitioner to file the motion nor did he even ask.

Quinn submitted an appeal on the petitioner's behalf, without the petitioner's knowledge or permission. The violation of The Sixth Amendment Rights created an actual conflict of interest adversely affected The petitioner's Counsel's performance. SEE *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173, 55 L. Ed 2d (1978) *Cuyler v Sullivan* 446 U.S. 335, 64, L.Ed 2d 333 S.Ct. 1708 (1980). Petitioner Stinson, contends that his attorney during his trial was ineff-

fective and in doing so created atmosphere so seriously until a conflict of interest arose between the petitioner and his attorney. SEE U.S. v. Del Muro, 87 F.3d 1078 (9th Cir.1996). We agree, Criminal defendants have a Constitutional Right to counsel, at a new trial hearing. SEE Menefield v. Borg, 881 F.2d 696, (9th Cir.1989) to establish a Sixth Amendment Violation Del Muro must show "an actual conflict of interest adversely affected his lawyer's performance." The trial's determination that an evidentiary hearing was warranted heightened the conflict. SEE West Key code 641.3(4). Petitioner, asserting a conflict of interest claim must establish that an actual conflict of interest existed and that it adversely affected counsel's performance, petitioner contends, Counsel Lack of Experience, in income tax laws and trials. SEE Kemp v. Leggett 635 F.2d 453(5th Cir.1981). The Right to offer testimony of witnesses and to compel their attendance is Fundamental Element of Due Process. Washington v. St. Texas, 388 U.S. 14. Petitioner supplied his trial attorney with the names and address of several witnesses and asked him to issue subpoena for these witnesses but petitioner, court appointed counsel refused to issue subpoena for these witnesses. Due Process Clause forbids a State from convicting a person of a crime beyond a reasonable doubt. Bunkley v. Florida, 538 U.S. 835, 155 L.Ed 2d 1046, 123 S.Ct 2020(2003).

Petitioner, timely made The Court aware of the conflict of Interest between himself and his Attorney Quinn, and moved to fire the attorney but the Court denied allowing petitioner to fire the attorney and petitioner moved a second time to fire the att-

orney again the court refused to allow petitioner to terminate the service of counsel and forced petitioner to continue to trial with the same attorney. SEE *Alberni v. McDaniel*, 458 F.3d 860 (9th Cir.2006). When counsel objects to potentially conflicted representation, the trial court has an opportunity to eliminate the possibility of an impact on counsel's performance through seeking a waiver from the defendant, appointing separate counsel, or taking adequate "steps to ascertain whether the risk [is] too remote to warrant separate counsel." *Holloway*, 435 U.S. at 484, 98 S.Ct. 1173. If the trial court fails to make such an inquiry into the potential conflict, reversal is automatic. SEE *Atley v. Ault*, 21 Supp. 2d 949(S.D. Iowa 1998). When a defendant raises a seemingly substantial complaint before trial regarding the defense attorney's conflict of interest or divided loyalty, the Supreme Court has been absolutely clear that the court must make a thorough inquiry into it *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173(1978). The inquiry should be on the record and must be of the kind to ease the defendant's dissatisfaction, distrust or concern. *Smith* 923 F.2d at 1320. If the trial court fails to make a sufficient inquiry, prejudice is presumed and "Reversal is automatic" *Holloway*, 435 U.S. at 488. "Bad lawyering, regardless of how bad" is insufficient. *Scarp A*, 38 at 13 *Ellis v. U.S.* 313 F.3d 636, 643 (1st Cir.2002) SEE *Strickland*, 466 U.S. at 698, 104 S.Ct at 2070 citing *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657(1984). P

Petitioner request that this court take Judicial Notice to his Military Record and his Military Medical Records. Counsel failure to argue the fact that petitioner, served in The

United States Army where he suffered [PTSD] Post Trumatic Stress Disorder.

Petitioner Stinson, counsel failed to argue and file Motion to the effect that he suffered PTSD and that he could not be charged with any form of conspiracy due to The Symptons and Treatment he have undergone. It was a conflict of interest when the counsel failed to argue PTSD defense on the conspiracy. [Competency Test] SEE Bouchillon v. Collins 907 F.2d 589 (5th Cir 1990). It is undisputed that Stinson suffers from Post-Traumatic Stress Disorder. It is also clear from the Military Records other reports that petitioner Stinson, suffered from this disorder both at the time of his offense and at the time of his trial.

The District Court erred by misapprehending it statutory obligations under title 18 U.S.C. § 424(a). Williams v. Calderon, 48 F. Supp.2d 979 (central District of California 1998). Petitioner (Stinson) claims his Constitutional Rights were violated because he was tried while incompetent. [And That] his due process rights were violated when his trial Attorney failed to request a competency hearing and the trial court failed to Sua Sponte conduct a competency hearing.

Petitioner is pursuing both a procedural and a substantive incompetency claim. A procedural claim asserts that the trial court failed to conduct a competency hearing on it's own initiative in violation of Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966) because, at the time of trial, there was sufficient evidence of petitioner's incompetence to warrant a hering. A Substantive incompetency claim asserts that petitioner's due process Rights were violated because he was tried while incompetent, re-

gardless of whether The Court should have conducted a Pate hearing.
SEE Reynolds v. Cochran, 365 U.S. 533, 5 L.Ed 2d 754, 81 S.Ct. 723
(1961) SEE also U.S. v. Garrett 149 F.3d 1018 (9th Cir.1998)

A recent article states that prosecutors and judges may violate defendants right in several ways by denying them access to exculpatory testimony. SEE generally Laurie L. Levenson, prosecutors are increasingly being admonished or penalized for trying to stop or influence such testimony, National Law Journal (April 5, 2010). Laurie L. Levenson is the David W. Burcham Chair of Ethical Advocacy at Loyola Law School, Los Angeles. She is the author of the Federal Criminal Rules Handbook (2010). SEE People v. Treadway(2010) 182 Cal. App. 4th 562. 106 Cal. Rptr. 3d 99(Conviction reversed because the prosecution interfered with the defendant's ability to call a witness by conditioning his co-defendant's pleas on a blanket restriction not to testify, including for the defense, since this was "governmental interference violative of a defendant's compulsory-process right".); In re Martin (1987) 744p. 2d 374,391,([a]defendant's right to present a defense, including, most importantly, the right to offer the testimony of witnesses, and to compel their attendance, if necessary, is at the very heart of our criminal justice system"). Prosecution misconduct of witness tampering. In the United States, the crime of witness tampering in federal cases is defined by statute at 18 U.S.C.§1512, which defines it as "tampering with a witness, victim, or an informant." The punishment for such an offense is up to 20 years if physical force was used, attempted, or threatened. United States v. Serrano, 406 F.3d 1208,1216(10 Cir.2005)(Prosecutors must not intimidate a witness

who is willing to testify truthfully for the defense); United States v. Crawford, 707 F.2d 447(10Cir.1983). In United States v. Straub, 538F.3d 1147,1156 *1162(9th Cir.2008)(finding prosecution's refusal to grant immunity to defense witness who could have contradicted prosecution's immunized witness was grounds for reversal). Williams v. Woodford, 384 F.3d 567,600(9th Cir.2004) (*the prosecution's refusal to grant use immunity to a defense witness denies the defendant a fair trial, only when (1)the witness's testimony would have been relevant, and (2)the prosecution refused to grant the witness use immunity with the deliberate intention of distorting the fact-finding process."); United States v. Straub, 538 F.3d 1147,1156*1162(9th Cir.2008)(finding prosecution's refusal to grant immunity to defense witness who could have contradicted prosecution's immunized witness was grounds for reversal). Scales was granted immunity, but Corey Young was denied immunity which is grounds for reversal and a serious miscarriage of justice in the government's favor. Moreover, in the State of Tennessee coercion of a witness is a crime in Tennessee and typically involves the use of threats, intimidation or some other form of force or pressure to compel a witness to testify falsely, withhold testimony or elude judicial process. The offense is classified as a Class D Felony.

That the Chancery Court Memphis, TN Judge Joedae Jenkins was an conspirator with the Government, and the Judge personally went to the Staffing company business account (Shelby County School) and illegally seized \$73,000.00, so that the Petitioner could not afford an good attorney, for the Federal case.

REASONS FOR GRANTING THE PETITION

The Petitioner (Stinson), believe if the Counsel would have called witnesses and Medical Professional and held a standard of effective assistance counsel, and argued PTSD during pre-trial and had some experienced in Federal Tax cases and Income Tax Laws. Also, if the prosecutors had not intimidated, cause miscarriage of justice, violation of compulsory-process rights and misconduct, and violated defendant rights to a fair trial.

Finally, if the Trial Court had Sua Sponte conduct a competency hearing and fired the appointed Attorney Quinn, and not superseded the defendant after the trial.

The Petitioner would have not being incarcerated and seeking Habeas Corpus Relief, and read the instruction right to the jury. All are reasons for granting the Petition.

CONCLUSION

The judgment from The Eighth Circuit Appeals Court should be reversed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK STINSON Reg #29908-076

Date: March 15, 2020