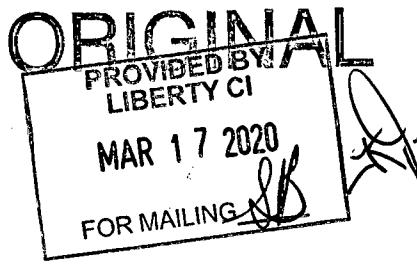


20-5505
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

FILED
FEB 13 2020
OFFICE OF THE CLERK
SUPREME COURT U.S.

KEITH O. JOHNSON - PETITIONER

(Your Name)

Vs.

STATE OF FLORIDA - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL, STATE OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEITH O. JOHNSON DOC NO: 583744

(Your Name)

LIBERTY CORRECTIONAL INSTITUTION
(Address)

11064 N.W. DEMPSEY BARRON RD.

(City, State, Zip Code)

BRISTOL, FLORIDA 32321

QUESTION(S) PRESENTED

CAN, a Defendant pursuant to Florida Rules of Criminal Procedure § 3.210 be proceeded against in a criminal proceeding where a question of Defendant's competency has been raised by Counsel and recognized by the Court, where the Court ordered an expert to evaluate Defendant, yet no hearing for legally establishing Defendant's competency had been held by the Trial Court. Creating a fundamental error in the proceedings resulting in a Manifest Injustice in violation of the Due Process Clause of the Fifth and Fourteenth Amendment of the United States Constitution and Article One, Section Nine of the Florida Constitution. Where a Defendant has a procedural Due Process right to observance of procedures adequate to protect his right not to be tried or convicted while incompetent.

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 subject of this petition is as follows:

- Ashley Moody, Attorney General, PL-01 The Capitol, Tallahassee, Fl 32399
- Judge Charles E. Francis, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe St, Tallahassee, Fl 32399
- Richard A. Greenberg, Defense Attorney, 101 N. Monroe St., Suite 120 (32301), P.O. Box 10507, Tallahassee, Fl 32303
- First District Court of Appeals, 2000 Drayton Drive, Tallahassee, Fl 32399

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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

[NA] 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.

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[] is unpublished.

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

JURISDICTION

[NA] 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).

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

The date on which the highest state court decided my case was December 9, 2019. A copy of that decision appears at Appendix A.

[] 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. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

ARTICLE V

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 of the same offense to be 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.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

ARTICLE XIV

SECTION (1)

All persons born or naturalized in the United State, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

CONSTITUTION OF THE STATE OF FLORIDA

ARTICLE I, SECTION (9)

Due Process:

No person shall be deprived of life, liberty or property without due process of law, or to be twice put in jeopardy or the same offense, or be compelled in any criminal matter to be a witness against oneself.

FLORIDA RULES OF CRIMINAL PROCEDURE

RULE 3.210(a)

Proceedings Barred during Incompetence:

A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent.

(1) A “material stage of a criminal proceeding” shall include two trial case, pre-trial hearings involving questions of fact on which the Defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing hearings on issues regarding a Defendant’s failure to comply with court orders on conditions, other matters where the mental competence of the Defendant is necessary for a just resolution of the issues being considered. The terms “competent,” “competence,” “incompetent,” and “incompetence,” as used in rules 3.210-3.219, shall refer to mental competence or incompetence to proceed at a material stage of a criminal proceeding.

RULE 3.210(b)

MOTION FOR EXAMINATION:

If at any material stage of criminal proceeding, the court of its own motion, or on motion of counsel for the Defendant or for the state, has reasonable ground to believe that the Defendant is not mentally competent to proceed, the court shall immediately enter its order setting a time for a hearing to determine the Defendant’s mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and may order the Defendant to be examined by no more than 3 experts, as needed, prior to the date of the hearing. Attorneys for the State and the Defendant may be present at any examination ordered by the Court.

STATEMENT OF THE CASE

Second Judicial Circuit Court, Leon County, Florida, Case No: 99-4638AF

A. THE PROCEEDINGS BELOW:

(I) December 13, 1999 Office of the State Attorney for Leon County, Florida filed an eight count felony Information charging the Defendant therein:

4 Counts, Fla. Statute 794.011 (3)
1 Count, Fla. Statute 787.01 (3)
1 Count, Fla. Statute 810.02 (2)(b)
1 Count, Fla. Statute 782.04 (1)
1 Count, Fla. Statute 794.011 (2)(A)

(II) On or about June 30, 2000, Court-appointed defense counsel, Richard A. Greenberg filed an unopposed motion for Appointment of Expert to evaluate the Defendant.

(III) On or about July 5, 2000, Judge Charles E. Francis entered an Order to appoint expert Dr. Terrance Leland, Ph.D. to evaluate the Defendant.

(IV) On or about August 24, 2000, Judge Charles E. Francis entered an order granting a "Motion to Certify Defendant's Case as Extraordinary and Unusual.

(V) On or about November 1, 2000, Defendant withdrew his plea of not guilty and upon the advice of Counsel entered a plea of guilty as charged in open court.

(VI) On Oct. 26, 2018, Defendant filed a Post-conviction Relief motion 3.850(m) in the Second Judicial Circuit, Leon County Florida.

(VII) On Dec. 27, 2018, the Second Judicial Circuit Court denied the Oct. 26, 2018 Post-conviction motion for Relief, Per Curiam.

(VIII) On April 4, 2019, Defendant file a motion for an extension time to file an Appeal, to the First District Court of Appeal, Fla. **Case No. 1D19-0182. L.T. 99-4638 AF.**

(IX) On May 1, 2019, an extension of time was granted by the First District Court of Appeal **Case no. 1D19-0182.**

(X) On July 8, 2019, An Initial Brief of Appeal form the Circuit Court of the Second Judicial Circuit, Leon County, Fla. was filed with the First District Court Appeal, **Case No. 1D19-0182. L.T. 99-4638 AF.**

(XI) On Dec. 9, 2019, Fist District Court of Appeal denied, Per Curiam the July 8, 2019 Post-conviction Motion of Appeal. **Case No. 1D19-0182.**

Mandate filed on Jan. 6, 2020.

Defendant, Keith O. Johnson, stipulates to the following:

On December 13, 1999, the Office of the State Attorney for Leo County filed an eight Count Information against Defendant Keith O. Johnson in the Second Judicial Circuit in and for Leon County, Fla. felony division, **Case No.: 99-4638 AF.**

On June 30, 2000 Court appointed defense counsel, Richard A. Greenberg file an unopposed motion for appointment of an expert to evaluate the Defendant

due to his bizarre actions. On July 5, 2000, Judge Charles E. Francis entered an order appointing expert Dr. Terrance Leland, Ph.D. to evaluate the Defendant. On August 24, 2000 Judge Charles Francis entered an order granting a "Motion to Certify" Defendant's case as "Extraordinary and Unusual." No hearing nor independent assessment was ever made a matter of record in the competency of the Defendant to stand trial.

On November 1, 2000, Defendant withdrew his original plea of not guilty and upon the advice of counsel entered a plea of guilty as charged on all counts before the Court. The Court adjudicated the Defendant guilty on all counts and sentenced him to life in prison on counts 1 through 4 and lengthy prison sentences on the remaining counts.

Defendant filed pro se, a post-conviction motion for relief on, October 26, 2018 in the Second Judicial circuit in Leon County, Fla. which was denied, per curiam on December 27, 2018. Defendant then filed a timely notice of Appeal to the First District Court of Appeal of Florida, Case No.: **1D19-0812**. On April 4, 2019, Defendant filed Motion for an extension of time which was granted on May 1, 2019.

On July 8, 2019, Defendant filed an Initial Brief with the First District court of Appeal of Fla. Case No.: **1D19-0182**, L.T. **9904638AF**. On December 9, 2019

the First District court of Appeal denied, per curiam, the July 8, 2019 Motion. The Mandate was filed on January 6, 2020. Opinion not yet published.

REASONS FOR GRANTING PETITION

The Supreme Court should assume discretionary jurisdiction of the instant Petition due to the importance to the public of the question of whether a Manifest Injustice occurred due to Fundamental Error when the Trial Court of the Second Judicial Circuit of Leon County, Florida accepted a Defendant's plea of guilty. Where a foundation for incompetency of the Defendant had been established on motion of defense counsel, Attorney Richard Greenberg, for an evaluation for Defendant, Keith O. Johnson, for competency filed June 30, 2000, due to Defendant's bizarre actions. The Court had ordered an examination of the Defendant by expert Dr Terrance Leland Ph.D., July 5, 2000. However the Court, Judge Charles E. Francis, presiding, failed to hold hearing pursuant to Fla. Rules of Criminal Procedure, Fla. Statute §3.210 (a) to determine if the Defendant was competent to enter a plea at the time of the proceeding.

The issue of "whether the Circuit Court fundamentally erred in failing to hold a competency hearing presents a pure question of law, Subject to de novo review." See A.L.Y v. State, 212 So.3d 399, 402 (Fla. 4th DCA2017). Here, the Record supports Defendant's claim that no competency hearing was held by the Court. "Because the Trial Court-despite setting in Motion the competency evaluation of Aquino, neither conducted a competency hearing nor made an independent competency determination. We conclude the trial court erred in

entering the March 29, 2018 probation revocation order.” Saunders. State, 242 So.3d 1149, 1151 (Fla. 2018). A stipulation by the party, counsel or judge is not sufficient by itself for a valid determination of competency. Indeed, the parties cannot stipulate to a Defendant’s competency, as it is a “legal” determination for a trial court to make [after] consideration of the expert’s testimony or the reports by the psychologists.; See Daugherty v. State, 149 So.2d 672 (Fla. 2nd DCA2014); Shakes v. State, 185 So.2d 679 (Fla. 2nd DCA2016). “A trial court’s acceptance of the parties stipulation was insufficient to satisfy the requirements of Rule 3.210 and the principles of Due Process. A motion collaterally attacking a conviction on the grounds of the Defendant’s competency may not be summarily denied because the Defendant was represented by counsel. See Bishop v. U.S., 350 U.S. (1956).

Defense Counsel’s misadvice about the consequences of the type of plea deal, (open plea of guilty to the Judge), where there was a real possibility of a life sentence due to the offenses charge, coupled with evidentiary hearing fact that defense counsel advised the Defendant that it was in his best interest to plead guilty. Where the then full hearing to decide the Defendant’s competency had not been held it was an egregious violation of the right guaranteed by the Sixth Amendment of the United States Constitution, to effective counsel in any criminal proceeding. A trial attorney’s failure to properly advise a Defendant on the consequence of a plea which results in an ill-advised pleas of guilty has long been

held to constitute a facially sufficient attack upon that conviction. See Williams v. State, 717 So.2d 1067 (Fla. 2nd DC1988).

In; Lasado v. State, (3016-1758)(Fla. 3rd DCA2018). For a finding of incompetency at the time of trial, (or any legal proceeding), the Focus must be on the Defendant's mental state at the time of the proceedings in question. Noticing that a due process violation regarding Defendant's competency generally results in a New Trial because, a "hearing to determine a Defendant's competency at the time he was tried, generally cannot be retroactive." See Pate v. Robinson, 383 U.S. 375 (1966); Tingle v. State, 536 So.2d 202 (Fla. 1988); Fla. Stat. §3.210(a).

The paramount teaching of the Supreme Court in Townsend v. State, 372 U.S. 293 (1963) is the normal procedure for determining disputed facts is by a full hearing. Where movant raises detailed and controversial issues of facts, a full hearing is required. See U.S. v. Miranda, 473 F.2d 1255 (1971)(a 2 NY). Defendant challenged the Court's failure to order a mental evaluation at the time of plea/trial. The Court reversed and remanded for a hearing, holding that the evidence was not so sufficient to conclusively show that he was entitled to no relief. The Record of a criminal proceeding must demonstrate conclusively that a Defendant was competent to stance trial, if a claim of incompetency is to be disposed of without a hearing. As is Catalano v. U.S., 298 F.2d 616 (2nd Cir. 1962). "The question involves what the Defendant understood and is one where his story needs to be

heard. Circumstances show it is impossible to conduct a fair hearing without permitting the Defendant to appear and testify.

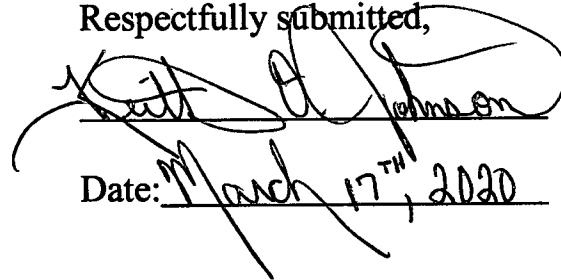
The trial court fundamentally erred in failing to conduct a competency hearing and to make a competency determination once defense counsel moved for a competency determination and trial court granted the motion and appointed an expert to examine the Defendant. Fla.R.Crim.P. 3.210(b).

This case is similar to the situations that were addressed in; Saunders v. State, 242 So.3d 1149 (Fla. 4th DCA2018), as well as; Baker v. State, 221 So.3d 637, (Fla. 4th DCA2017), where the Defendants were proceeded against in a criminal proceeding after trial courts appointed experts to evaluate the Defendant's competency, but the trial courts did not make an independent determination regarding the Defendant's competency. Thus if a nunc pro tunc determination cannot be made of Defendant's competency at the time of trial that is in accordance with the Due Process rights of the Defendant, Keith O. Johnson's conviction and sentence should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Michael A. Johnson". The signature is somewhat stylized and cursive.

Date: March 17th, 2020