No. 20-5619

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES ALLEN MINYARD,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NORTH CAROLINA

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY TO RESPONDENT'S ARGUMENTS

I. Petitioner is not procedurally barred from asking this Court to review the denial of his post-conviction motion.

This petition presents an important question—whether a trial court must hold a competency hearing upon a bona fide doubt as to a defendant's competence before determining whether the defendant voluntarily waived his right to be present at trial. While Petitioner initially raised this issue in his direct appeal to the North Carolina Court of Appeals, Pet. App. 44a–45a, 52a–55a, the record at that time did not contain medical records he obtained post-trial that demonstrate he could not have voluntarily absented himself from trial by ingesting drugs or alcohol, which he presented in his post-conviction Motion for Appropriate Relief in 2018. Pet. App. 1a–13a, 57a–72a.

While the post-conviction court might have barred this claim as successive, it did not. N.C. Gen. Stat. § 15A-1419(a) (2019). The post-conviction court reached the merits of Petitioner's post-conviction motion, including this specific claim. Pet. App. 1a–13a. Despite finding that Petitioner's urine test "reflected a negative result for benzodiazepines," Pet. App. 7a,[1] the court denied Petitioner's motion, erroneously analyzing his claim as a denial of his right to be present at trial, rather than the trial court's failure to hold a competency hearing. Pet. App. 7a–8a.

The post-conviction court never imposed a procedural bar when ruling on Petitioner's motion, and Respondent concedes that the court reached the merits of

[1] As noted previously, the two drugs the trial court found that Petitioner took during trial, Xanax and Klonopin, are benzodiazepines. *See* Pet. at 10 n.3.

Petitioner's post-conviction motion. (BIO 9). Further, Respondent elected not to respond to Petitioner's motion in post-conviction court, thereby failing to raise its argument below.

Because the post-conviction court ruled on the Petitioner's motion, Petitioner was entitled to appeal to the appellate courts. N.C. Gen. Stat. § 1444(f) ("The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in [N.C. Gen. Stat. §] 15A-1422."). Petitioner was required to seek discretionary review by writ of certiorari because Petitioner's time for appeal had expired and he did not have an appeal pending. N.C. Gen. Stat. § 1422(c).

Petitioner sought discretionary review from both the North Carolina Court of Appeals and the Supreme Court of North Carolina. Pet. App. 14a–15a. Even if, as Respondent argues, the Court of Appeals is normally the court of last review for motions for appropriate relief, it is not always. *See* N.C. R. App. P. 21(a) ("The writ of certiorari may be issued in appropriate circumstances by *either appellate court* . . . for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief." (emphasis added)). North Carolina's appellate courts denied review of Petitioner's post-conviction motion, without basing the denial on procedural bar. Pet. App. 14a–15a. Ultimately, it would be fundamentally unfair to permit Respondent to assert procedural bar on appeal when it did not raise this claim in the post-conviction court, and therefore, did not preserve the argument below.

Because the post-conviction court elected to rule on the merits of Petitioner's motion and did not impose a procedural bar, Petitioner was statutorily authorized to seek discretionary review from the appellate courts.

II. The first question presented does not require this Court to engage in fact-finding.

The first question presented is whether, when there is a bona fide doubt as to a defendant's competency, a trial court violates the defendant's due process rights by failing to hold a competency hearing before determining whether the defendant voluntarily waived his right to be present at trial. While this question does arise in a factual context, the question presented is purely legal.

Petitioner contends that the trial court must hold a competency hearing upon a bona fide of competency before determining any voluntary waiver of rights. On direct appeal, the Court of Appeals held that there was a bona fide doubt as to Petitioner's competency. Pet. App. 52a. This is the law of the case. *See Lea Co. v. North Carolina Bd. of Transp.*, 374 S.E.2d 866, 868 (N.C. 1989) (finding that an appellate court decision "on a prior appeal constitutes the law of the case, both in subsequent proceedings in the trial court and on a subsequent appeal"). Based on that law of the case, Petitioner contends that the lower courts should have found constitutional error in the trial court's failure to hold a competency hearing before determining that Petitioner voluntarily waived his right to be present at trial.

The failure to hold a competency hearing upon a bona fide as to competence deprived Petitioner "of his constitutional right to a fair trial." *Pate v. Robinson*, 383 U.S. 375, 385 (1996). This Court has explained that "it is contradictory to argue that

a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to determine his capacity to stand trial." *Id.* at 384.

Thus, it was constitutional error for the trial court not to hold a competency hearing before determining whether Petitioner waived his right to be present at trial. Petitioner is not asking this Court to resolve a factual dispute; to the contrary, Petitioner is requesting that this Court resolve the legal issue presented—whether the trial court was constitutionally required to hold a competency hearing before determining whether Petitioner waived his right to be present at trial.

Respondent argues that the post-conviction court did not resolve the factual dispute in Petitioner's motion (BIO 10–13), but the court explicitly found that "[i]t appears that a urine test reflected a negative result for benzodiazepines." Pet. App. 7a. That finding necessarily means that the drugs the trial court assumed he overdosed on were not present in his system. Moreover, the medical record showing that no benzodiazepines were in Petitioner's system is in the post-conviction record, Pet. App. 70a, and Respondent does not dispute what it shows.

After that factual finding, the post-conviction court's order then turned to harmless error review, further showing that the trial court erred in assuming that Petitioner overdosed on benzodiazepines. Pet. App. 7a–8a. The post-conviction court would have no reason to engage in harmless error review unless there was an error in the first place. *See, e.g.*, *State v. Lawrence*, 723 S.E.2d 326, 331 (N.C. 2012) ("[H]armless error review functions the same way in both federal and state courts: '[B]efore a federal constitutional error can be held harmless, the court must be able

to declare a belief that it was harmless beyond a reasonable doubt.'" (quoting *Chapman v. California*, 386 U.S. 18. 24 (1967))). Respondent's attempt to reframe the issue as involving an unsettled factual dispute is misguided.

Incompetence and voluntary waiver of rights are mutually exclusive. As this Court has held, a defendant must be competent to voluntarily waive his or her rights. *See, e.g., Pate*, 383 U.S. at 384 ("It is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial."). That the State courts have repeatedly failed to apply this Court's clear rules does not "militate[] against" this Court's review. (BIO 13). Rather, with no factual dispute, the important first issue is squarely presented.

III. *Teague v. Lane* does not bar Petitioner's claim.

While Respondent argues that Petitioner would be unable to benefit from a favorable ruling by the Court, *Teague v. Lane*, 489 U.S. 288 (1989) is inapplicable to Petitioner's claim because Petitioner does not ask this Court to adopt a new constitutional rule of criminal procedure. Instead, Petitioner asks this Court to explicitly hold what is dictated from its longstanding precedent—there must be a competency hearing upon a bona fide doubt as to competence before a voluntary waiver of constitutional rights can be considered. Petitioner's argument that such an error is subject to structural error review is not asking this Court to adopt a "new rule;" to the contrary, such terminology only makes clear the analysis the Court has used in prior cases.

The collateral review doctrine refers to "judicial review that occurs in a proceeding outside of the direct review process." *Wall v. Kholi*, 562 U.S. 545, 560 (2011). *Teague* provides that *new* constitutional rules of criminal procedure are generally not retroactively applied to convictions that have become final at the time the new rule is announced. 489 U.S. at 310. "'[A] case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government.' Or '[t]o put it differently, a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final.'" *Penry v. Lynaugh*, 492 U.S. 302, 314 (1989) (quoting *Teague*, 489 U.S. at 301); *see also Butler v. McKellar*, 494 U.S. 407, 412 (1990).

Here, Petitioner does not ask the Court to announce a "new" procedural or substantive right. Instead, Petitioner respectfully requests that this Court apply the existing case law from *Drope v. Missouri*, 420 U.S. 162 (1975), and *Pate* to hold that a trial court violates a defendant's Fourteenth Amendment due process right to a fair trial by failing to hold a competency hearing upon a bona fide doubt of competency. *See Drope*, 420 U.S. at 173 (holding that a competency hearing is required upon a bona fide doubt as to defendant's competency); *Pate*, 383 U.S. at 385 (holding that a trial court's failure to sua sponte institute a competency hearing upon a bona fide doubt as to defendant's competence deprives the defendant "of his constitutional right to a fair trial").

Furthermore, Petitioner's contention that the lower courts erroneously analyzed his claim as a voluntary waiver of presence issue does not require this

Court to promulgate a "new" rule. Voluntary waiver presupposes competence, and this Court previously reasoned that "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to determine his capacity to stand trial." *Pate*, 383 U.S. at 384.

Thus, Petitioner asks the Court to apply existing case law and hold that the trial court violated Petitioner's Fourteenth Amendment due process right to a fair trial by failing to hold a competency hearing before determining that Petitioner was voluntarily absent from trial. This Court's *Drope* and *Pate* decisions dictate such a result, and such a holding does not impose any new burdens or obligations on Respondent beyond what is already constitutionally required of it under *Pate*. *See* 383 U.S. at 385 (holding that "[w]here the evidence raises a '*bona fide* doubt' as to a defendant's competence to stand trial, the judge on his own motion must impanel a jury and conduct a [competency] hearing," and that failure to "make such [an] inquiry thus deprive[s] [a defendant] of his constitutional right to a fair trial").

Moreover, Respondent acknowledges Petitioner's contention that this Court and other courts "have consistently addressed the failure to hold a competency hearing upon a bona fide doubt as to competency as justifying relief – reversal or remand – without any determination of prejudice," (BIO 16), and such consistency further shows that a decision in Petitioner's favor would not constitute a "new rule" but would instead be one that was dictated by precedent existing at the time of his conviction. Therefore, *Teague* does not bar Petitioner's claim.

Finally, Respondent tacitly acknowledges that the state court of appeals may have erred—an error repeated by the post-conviction court on review here (despite the supplemented record)—but chalks it off to this case being "an outlier resting upon its particular facts." (BIO 16). This case is "an outlier" precisely because the state courts have repeatedly failed to apply the rule from *Drope* and *Pate* that there must be a competency hearing upon a bona fide doubt as to a defendant's competency. An appropriate fix for such an "outlier" would be for this Court to grant, vacate, and remand for consideration in light of *Drope* and *Pate*. *See, e.g.*, *Stutson v. United States*, 516 U.S. 193, 194 (1996) (noting that a GVR may be granted "for further consideration in light of potentially pertinent matters which it appears that the lower court may not have considered"); *Youngblood v. West Virginia,* 547 U.S. 867, 868-70 (2006) (granting a GVR and explaining that the reason for remand was to allow the lower court to consider the defendant's factually plausible *Brady* claim that the prosecution withheld exculpatory) (per curiam); *Hodgkiss v. United States*, 522 U.S. 1012 (1997) (granting a GVR in light of an earlier decision by the Court that went unmentioned in the circuit's decision).

CONCLUSION

The petition for a writ of certiorari should be granted.

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