20-6608
No. ____________

IN THE

SUPREME COURT OF THE UNITED STATES

Zachary Patten — PETITIONER
(Your Name)

vs.

Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Zachary Patten
(Your Name)

1727 W. Bluewater Hwy
(Address)

Ionia, MI 48846
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. Petitioner was denied his constitutional right to the effective assistance of counsel, where in spite of petitioners extensive mental health history and the facts of the case indicating that he was legally insane when Ms. Portilla-Esparza killed, counsel failed to investigate and raise the defense of insanity.

II. Petitioner's counsel performed deficiently by failing to request an independent evaluation of petitioners competence to stand trial and in failing to investigate petitioners mental health history and discover that he required medication to cope with his mental health disorders, Petitioner was prejudiced because of this error prevented him from assisting in his own defense.

III. Petitioner was denied his constitutional right to the effective assistance of counsel where, counsel failed to investigate evidence, and facts of the case to prepare, present and defend his client with a defense that would be constitutionally correct. As there was insufficient evidence to convict petitioner, Also petitioner is entitled to a new trial where evidence seized from an unconstitutional search was used against him at trial.

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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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[ ] is unpublished.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 Michigan Court of Appeals court appears at Appendix B to the petition and is

[ ] reported at ________________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 April 29th 2020.
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 AND STATUTORY PROVISIONS INVOLVED

Ineffective assistance of counsel. US Const. Amend. VI; Const 1963, art I §20

ulawfull search and seizure of evidence US const Amend 14; Const 1963, art I §11

Insufficient evidence to convict.

Unreasonable search and seizures USCS Const. Amend 4 of 14

STATEMENT OF THE CASE

Petitioner was convicted of first degree premeditated Murder, Carrying a Concealed weapon, and felony firearm. He was convicted by jury. Petitioner sought appeal in Court of Appeals But they affirmed with trial court. After this he filed his appeal in the Michigan Supreme Court, they stated judgment of Court of Appeals is considered and it is denied, because we are not persuaded that the questions presented should be reviewed. And now seek certiorari.

REASONS FOR GRANTING THE PETITION

The petitioner should be entitled to certiorari because great Injustices were done throughout his case and trial. His attorney Was constitutionally ineffective. Constitutionally there is a right to present a defense, but one was not prested. The evidence was insufficient to convict as the lead Det. testified that the murder weapon that was used for the murder was different than the gun that the petitioner owned. Det. stated twice the gun was different. The petitioner has a right to assist in his own defense, he was denied that right as he was a mere spectator during trial. Petitioners counsel was ineffective as he did no investigation into the case, he did not prepare or present a defense nor was there any cross-examination of witness's, he only asked question's for clarification as he couldnt hear. Also at no time shall defense counsel admitt guilt of his client if his client does not give ~~per~~ permission as he wishes to maintain his innocence. And he failed to seek directed verdict with insufficient evidence as petitioner couldnt have killed the victim if the Det. states a different gun was used and not petitioners. The importance is there are so many other cases that are presented with the same issues, inconsistances. And are constitutionally incorrect, the wrongs in cases should and need to be sought out and corrected. The Court of Appeals picks and chooses what they want to comment ~~of~~ on to make there decision and the Michigan Supreme Court simply decides there not interested in your case this is highly damaging and seems unfair and we are given a fair shot. Please see attached pages for a more indepth look at the wrongs and why I feel as though certiorari should be granted.

I. Petitioner was denied his constitutional right to the effective assistance of counsel where, in spite of petitioner's extensive mental health history and the facts of the case indicating that he was legally insane when Ms. Portillo-Esparza was killed, counsel failed to investigate and raise the defense of insanity.

Standard of Review

"Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. Generally, a trial courts finding of fact, if any, are reviewed for clear error, and questions of law are reviewed de novo." People v. Solloway, 316 Mich App 174 (2016) (quotations and citations omitted).

DISCUSSION

An accused right to counsel encompasses the right to "effective" assistance of counsel. US Const, Amend VI; Const 1963, art 1, § 20; Powell v. Alabama, 287 US 45 (1932). One's right to effective assistance of counsel is so undmined as to require reversal of a conviction where counsels performance falls below an objective standard of reasonableness, and there is a reasonable probability that the outcome of the trial would have been different but for the deficient performance. Strickland v. Washington, 466 US 668 (1984). See also People v. Pickens, 446 Mich 298, 302-303 (1994).

Counsel's inital error was in his representation of Petitioner was in failing to seek an evaluation of petitioners criminal responsibility. See, e.g., Profit v. Waldron, 831 F2d 1245 (CA 5, 1987); Bouchillon v. Collins, 907 F2d 589 (CA 5, 1990); Curry v. Zant, 371 SE2d 647 (GA 1988); Walker v. Hoffner, 534 F App'x 4 (CA 6, 2013)

The defense of insanity was a viable defense due to petitioner's extensive mental health history. Since this is so, and since the sufficiency defense raised at trial was plainly inadequate, counsel's failure to raise the issue deprived petitioner of more than a substantial defense. People v. White, 127 Mich App 65; 67-68 (1983). It was highly comparable to the type of error recently discussed McCoy v. Louisiana, 584 US _; 138 S Ct 1500 (2018), where defense counsel concedes his client's guilt where his client seeks to maintain his innocence.

In People v. Snyder, 108 Mich App 754, 756 (1981), the Court of Appeals correctly held that even though the defendant had been found competent to stand trial, counsel was ineffective for failing to "obtain an opinion on defendant's criminal responsibility," and for failing to advise his client "to tender a plea of not guilty by reason of insanity." This was so because counsel was aware of a number of facts that indicated the defendant may not have been sane at the time he committed the charged crimes. The competency evaluation was no substitute for a criminal responsibity evaluation because "an evaluation of sanity, which, on the facts before him, defense counsel should have undertaken, would place in issue whether the defendant knew that what he was doing at the time of the crimes was right or wrong, and, if he did, whether he had the will power to resist doing the wrongful act." Id at 757. The facts in the present case are the same.

Even assuming that the Forensic Center would have evaluated petitioner's criminal responsibility for his actions, counsel would have been entitled to request, and recieve, funds to pay for a defense witness to support petitioner's defense of insanity. MCL 768.20a(3); Ake v. Oklahoma, 470 US 68 (1985); People v. Kennedy, 500 Mich 981 (2017). The Court of Appeals erred by failing to allow him to attempt to prove prejudiced.

In Profit v. Waldron, the defendant had been found both competent to stand trial and sane at the time of the offense by the court-appointed expert. Defendant's attorneys knew he had previously escaped from a mental institution, but not that he had been committed after being found legally insane in another case. Based on the expert's findings of sanity, they declined to pursue an insanity defense. Profit, 831 F2d at 1247. The Fifth Circuit held that counsel's assistance was constitutionally ineffective, rejecting as unsound strategy counsel's reliance on the court's expert alone without further investigation. Id at 1249.

In Curry v. Zant, after post-conviction proceedings, the Georgia Supreme Court held that counsel was ineffective when he advised his client to plead guilty without obtaining an independant psychological evaluation after the court-ordered testing at the state hospital proved unfavorable to the defense. Experts testified at the post-conviction proceedings that the defendant was seriously mentally ill, had an IQ of 69, and was both incapable of disting-uishing right from wrong and of controlling an impulse to commit a wrongful act. Curry, 371 SE2d at 648-649. The court rejected trial Counsel's explanation that he believed a second opinion would be futile:

> [counsel's] failure to take a crucial step of obtaining an independant psychiatric evaluation of Curry deprived his client of the protection of counsel... The failure to obtain a second opinion, which might have been the basis for a successful defense of not guilty by reason of insanity and would certainly have provided crucial evidence in mitigation, so prejudiced the defense that the guilty plea and the sentence of death must be set aside.

The facts of this case are even less defensible since an initial criminal responsibility evaluation was not requested or conducted. Counsel was clearly aware of petitioners mental health, as he requested his competency to stand trial be evaluated. But abandoned a second opinion and a criminal responsibility be requested or conducted.

Similarly in Curry v. Zant, he could not control and impulse to commit a wrongful act. Petitioner suffers from intermittent explosive disorder, which is just one of Petitioner's Mental health disorders. Petitioner was diagnosed with intermittent explosive disorder ("IED") in 2002 (he was 16 yrs old at time of initial diagnosis). In 2014, psychologists at a different mental health clinic made the same diagnosis, and also concluded that petitioner suffered from Major Depressive Disorder with psychotic features. In 2018, doctor at Michigan Department of Corrections also concluded that petitioner has IED.

A Forensic Center psychologist who evaluated petitioner concluded that "the defendant has a history of depressive disorder and was likely experiencing a mood disorder to some degree around the time of the alleged offenses".

Pursuant to MRE 201, this court take judical notice of the existence and content of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), which is published by the American Psychiatric Association. People v. Kahley, 277 Mich App 182, 190 n 3 (2007).

According to the DSM:

Individuals with intermittent explosive disorder often have less severe episodes of verbal and/or nondamaging, nondestructive, or noninjurious physical assult ... in between more severe destructive/assultive episodes. ... Regardless of the nature of the impulsive aggressive outburst, the core feature of intermittent explosive disorder is failure to control impulsive aggressive behavior in response to subjectively experienced provocation (i.e. psychosocial stressor) that would not typically result in an aggressive outburst. The aggressive outbursts are generally impulsive and/or anger-based, rather than premeditated or instrumental ... and are associated with significant distress or impairment in psychosocial function.

...

The magnitude of aggressiveness expressed during the recurrent outbursts is grossly out of proportion to the provocation or to any precipitating psychosocial stressors. The recurrent aggressive outbursts are not premeditated. (i.e. the are impulsive and/or anger-based) and are not committed to achieve some tangible objective (e.g., money, power, intimidation).

...

Depressive disorders, anxiety disorders, and substance abuse disorders are most commonly comorbid with intermittent explosive disorder.

As suggested by petitioners IED dignoses 2002, 2014, 2018, "[i]ntermittent explosive disorder appears to follow a chronic and persistent course over many years."

The DSM V describes Major Depressive Disorder as follows:

The essential ~~frame~~ feature of a major depressive episode is a period of at least 2 weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities.

...

Many individuals report or exhibit increased irritability (e.g. persistent anger, a tendency to respond to events with angry outburts or blaming others, an exaggerated sense of frustration over minor matters).

...

Psychomotor changes include ... retardation (e.g., slowed speech, thinking, and body movements; increased pauses before answering; speech that is decreased in volume, inflection, amount, or variety of content, or ~~matters~~ muteness).

...

Many individuals report impaired ability to think, concentrate, or make even minor decisions. They may appear easily distracted or complain of memory difficulties. Those engaged in cognitively demanding pursuits are often unable to function.

The recurrent psychotic specifier indicates that symptoms reoccur over multiple episodes, which involve delusions and/or hallucinations.

Also indicative to petitioner was acting under some uncontrollable impulse, a simple investigation made by defense counsel would have made aware of not only the intermittent explosive disorder but the other disorders petitioners suffers from, also the fact that he told therapists in 2014 that he "consistently" "hears voices in his head about hurting others" and that he thinks of "killing every-one" ... several times per day.

Defense Counsels strategy, or lack there of to present a defense was objectively unreasonable and virtually guaranteed a guilty verdict.

Petitioner was, in all likelihood, legally insane when the offense occured. There is a reasonable probability that had Mr. Patten's attorney investigated petitioner's mental health history, requested both an initial and independant evaluation of petitioner's criminal responsibility, and asserted and supported an insanity defense at trial, the jury would have delivered a verdict of not guilty by reason of insanity.

The petitioner is entitled to remand so that he can establish that he recieved ineffective assistance of counsel and move the trial court to grant him a new trial as a result.

II. Petitioner's counsel performed deficiently by failing to request an independent evaluation of petitioner's competence to stand trial and in failing to investigate petitioners mental health history and discover that he required medication to cope with his mental health disorders. Petitioner was prejudiced because this error prevented him from assisting in his own defense.

Standard of Review

"Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. Generally, a trial courts finding of fact, if any, are reviewed for clear error, and questions of law are reviewed de novo." Solloway, 316 Mich App at 187-88 (quotations and citations omitted).

Discussion

Petitioner's counsel was the only person in a position to effectively protect him from standing trial at a time when he could not fully assist in his own defense. Throughout the trial, and time he spent in county jail he recieved no medications as he was severely depressed and dealing with his other disorders without help, it wasnt until after he was convicted that his mental health disorders were aknowledged and recieved medication as well as treatment for his mental health disorders. The Forensic Center's competency evaluation revealed obvious flaws and inconsistencies that defense counsel did not follow up on. The results of counsel's failure to investigate petitioner's mental health history and request an independent review of his competence that would utilize complete information was a trial in which petitioner was only an observer and not a participant. Petitioner is entitled to retrial so that he can assist in defending the charges against him.

A. Trial counsel performed deficiently when he failed to investigate petitioners mental health history and need for medication, and failed to request an independent evaluation of his competence, in which petitioner's complete mental health history could be considered before he was tried and convicted of first degree murder.

As set forth above, counsel had concerns of petitioner ability to assist in his own defense since he requested that petitioners competence be evaluated by the Forensic Center. Knowing that petitioner's mental health was at issue, counsel had an obligation to perform an investigation into and uncover petitioner history of Mental health disorders that were in issue throughout this case. Even if at the time of the evaluation or trial petitioner was not proactively volunteering information about his mental health history or status, the Forensic Center's competency evaluation should itself alerted counsel that further investigation into petitioners mental health was necessary.

Ms. Hart who was called as a witness by the prosecutor, testified that she was still petitioners girlfriend at the time of trial, would of certainly provided the information she knew with petitioner attorney. This would have included sharing Ms. Richardson's (petitioner ex-wife) June 10^{th} 2017 text messages to her. The text messages would have inform counsel of the following:

- Petitioner is frequently institutionalized;
- Petitioner was in a mental hospital in Grand Rapids when he was 16 or 17; and
- Petitioner has been prescribed medication and treatment for his mental health disorders.

A review of this exchange by itself would have put counsel on notice that petitioner information obtained by the Forensic Center was inaccurate. It would have also put counsel on notice that petitioner was not taking medication or recieving treatment that Ms. Richardson viewed as crucial to his mental health.

While ultimately concluding that petitioner was competent to stand ~~at~~ trial, the Forensic Center did raise substantial concerns that petitioners depression and passivity could impede his ability to assist in his own defense. All the while not prescribing medication or treatment to petitioner to help him deal his mental health and give him a fair shot at assisting in his own trial. The evaluation asserted that petitioner "denied recieving any mental health treatment as a child, juvenile, or adult," again should have put counsel on notice that petitioner had a substantial history of recieving mental health treatment, by stating that "[r]ecords were also requested from Pine Rest Christian Hospital, Owensboro Psychiatric Unit, Memorial Hospital, Beacon Light Outpatient Clinic, and Kalamazoo County Jail."

At the very least, these contradictions should have put counsel on notice that (1) there were serious doubts as to petitioners competence, as he was unable to assist in his defense due to the Forensic Centers contradictions and flaws in there report, if done with complete and accurate he would of avoided a life sentence; and (2) the flaws and contradictions of the first evaluation were subject to debate and second evaluation was necessary as it would of been conducted accurately and have use the complete information without mistake.

While the Forensic Center stated petitioner's unusal responses to certain questions signaled malingering, it was not taking into consideration petitioners complex mental health history, and specifically one disorder that effects your ability to understand things correctly is dysthymic disorder. Constitutionally effective counsel would have investigated and uncovered petitioners mental health history, and would have sought independent review of petitioners competence so that his competence could have been properly evaluated based on complete and accurate information.

B. Because counsel failed to investigate petitioners mental health history and needs, petitioner was not provided the medication and treatment necessary to enable him to participate in his own defense. it was not until he had been convicted that he recieved medication and treatment.

"The conviction of an accused person while he is legally incompetent violates due process." People v. Chambers, 14 Mich App 164, 174 (1968), citing Bishop v. United States, 350 US 961 (1956). Counsel's failure to investigate petitioners mental health history and failure to request that petitioner recieve treatment as well as medication for his mental health and recieve an independent evaluation of his competence prejudiced petitioner on the most fundament and practical levels: it essentially forfeited his right to fully assist in his own defense, the end result of which was a life sentence without the possibility of parole.

Had counsel provided reasonable assistance by seeking information about petitioner's mental health, by seeking independent review of his competence, or seeking to ensure that he recieved mental health treatment while he was in jail awaiting trial. Petitioner would have recieved medication and therapy that was necessary for him to work with his attorney to develop a defense.

To the extent that one may wish to excuse counsel's failure to assert insanity because of inaccurate information relating to a flawed and incosistent evaluation counsel failed to vigorously protect petitioner from having to stand trial when he was not competent to do so as a second evaluation should have been conducted by an independent source and a insanity defense should have been asserted after a criminal report and independent if necessary. Counsel failed to develop a defense, failed to recieve or investigate things that would benefit petitioner's defense, and counsel did not allow petitioner his right to assist in his own defense.

Petitioner requires substantial medication to treat severe depression, bipolar disorder, and intermittent explosive disorder as well as therapy. Petitioner was off his medication from Mid-

2015 until he was taken into custody by MDOC after his conviction in this case. while in custody in Kalamazoo County Jail awaiting to stand trial he was not taking medication and suicidal, petitioner was also housed in St. Joseph County Jail where he to was suicidal and in observation for 40 days. Petitioner while in Kalamazoo County Jail was housed in the mental health wing of the jail with deputies doing 5-minute checks on inmates. It is more than perplexing that despite being suicidal, deemed by the jails, and despite the Forensic Center recognizing that petitioner's depression was so severe that it impeded his ability to assist in his own defense, he was not deemed incompetent stand trial, and that he was not provided medication for his mental health until after he was convicted and committed to the custody of the MDOC.

Now that petitioner is recieving medication and therapy for his mental health, he is able to assist his counsel in his defense once a new trial is granted. Obviously petitioner's competence at the time of trial cannot be reevaluated utilizing the complete information, that defense counsel should have obtained. However, it is apparent that, at least on August 23, 2017, when he was interviewed by the forensic Center for his competence evaluation, petitioner was not able to assist in his own defense because he was clearly not competent at the time.

Had counsel investigated and uncovered petitioner's mental health history and requested an independent evaluation of petitioner's competence, or simply that the County Jail provide him mental health treatment while he awaited trial, it is more than likely that petitioner would have recieved mental health treatment necessary to enable him to fully engage and participate in his defense and not just be a mere spectator at his own trial.

C. Mental health history

During clinical assesment in 2018 in MDOC custody the petitioner was diagnosed with: Bipolar disorder, personality disorder, depression, and Intermittent explosive disorder. Where he is recieving medication and treatment.

In 2014, at the Northeastern Center in LaGrange IN, the petitioner was diagnosed with: Major Depressive disorder, recurrent, with psychotic features, depression, and Intermittent explosive Disorder. He recieved medication and treatment.

In 2003, while hospitalized in Owensboro Ky, he was in the psych Unit and was diagnosed with: Depression, Intermittent explosive Disorder, and Bipolar Disorder

In 2002, 2003, 2005, petitioner recieved out patient care from Community Mental Health in Sturgis MI and Three Rivers MI, where he was diagnosed with dysthimic disorder, Major Depressive Disorder, single episode, and Intermittent explosive Disorder. He recieved medication as well as treatment.

In 2002, he was hospitalized at Pine Rest Christian Hospital in Grand Rapids MI. Where he recieved treatment medication and he was diagnosed with: Dysthlmic Disorder, Major Depressive Disorder, single episode, Depression, and Intermittent explosive Disorder.

The petitioner has an extensive mental health history stemming from a juvenille to present day (16 to 35yrs). During the evaluation there was no consideration with these issues petitioner has. The Dr. completely ignored petitioner in this regard. But states defendant could use medication for his depression... Dr Brewers evaluation is construd and contradicts itself from front to back. If counsel would have red the report he alone would have seen the issues with the report.

Due this level of ineffectiveness by defense counsel petitioner is entitled to a new trial.

III. Petitioner was denied his constitutional right to the effective assistance of counsel where, counsel failed to investigate evidence and facts of the case to prepare, present and defend his client with a defense that would be constitutionally correct. As there was insufficient evidence to convict petitioner. Also petitioner is entitled to a new trial where evidence seized from an unconstitutional search was used against him at trial.

Standard of Review

"Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. Generally, a trial courts finding of fact, if any, are reviewed for clear error, and questions of law are reviewed de novo." People v. Solloway, 316 Mich APP 174 (2016) (quotations and citations omitted).

Discussion

An accused right to counsel encompasses the right to "effective" assistance of counsel. US Const, Amend VI; Const 1963, art 1, § 20; Powell v Alabama, 287 US 45 (1932). One's right to effective assistance of counsel is so undermined as to require reversal of a conviction where counsels performance falls below an objective standard of reasonableness, and there is a reasonable probability that the outcome of the trial would

Witness Diana Moore, also never identifies the petitioner to even being at the scene the night of the incident. she never identifies the defendant during her testimony, the A.P.A. Koches tells her to look around the room nodding her head towards Defendants table. She also states in her police repor of only hearing what happened. This testimony should of been impeached or should of been deemed inadmissable.

Due to incosistent and false testimony the above witnesses purged themselves and petitioner is entitled to a new trial

C. Unconstitutional search and seizure of 2002 chrysler Pacifica.

The original officer who searched vehicle Arron Skibo, never states in any reports of finding multiple rounds of ammunition in the front passenger door but states to an open of box of ammunition on front passenger seat. During a different search Kalamazoo Department of Public Safety Lab Tech Todd Neldon states the box was closed and he states to find multiple rounds in passenger door and on seat where ammunition box was found. Also there were multiple towing companies involved. Its evident that the vehicle was not in its original form when Todd Neldon had recived the vehicle. On 7/21/17 Kalamazoo Department of Public Safety took possession of the vehicle. Lead Det. Joseph Paul applied for a search warrant of the vehicle on 7/27/17 he states that the vehicle could'nt be processed. And at no other time does he make an addition or a new report to state the vehicle could be processed.

The petitioner is entitled to a new trial due to an unconstitutional search that evidence was used against him.

D. Ineffective assistance of trial counsel.

Throughout petitioner's case in Kalamazoo he was housed in another County Jail, petitioner only came to Kalamazoo for court dates on writs. Petitioner's counsel only seen him on those court dates, he failed to visit petitioner to talk trial strategy, to get information out of petitioner that would help with the case. Petitioner wrote numerous Letters with questions and information Counsel failed to responed.

Counsel failed to seek independant evaluation of competency he also fails to file proper paperwork for a criminal responsibility report, as petitioner acted extremely out of character the night of the incident, which his extensive mental health history contributed to. Counsel failed to investigate these Mental health issues as he had atleast some clue as something wasnt right as he sought out a competence evaluation.

During petitioners trial he was a mere spectator, he was not allowed to take notes and could not

Communicate with his attorney as he sat on the other side of the Courtroom away from the Defendant table. During a brief recess counsel came back to the table asked petitioner what he noticed about the witnesses, petitioner states all their stories have changed, counsel states I know, but during trial he doesnt object or cross-examine on their different testimony. Counsels only cross-examination was to clarify as he Misunderstood What was said. As stated in Section (B. Petitioner Trial) there are impactful contrations that should have been explored by counsel.

A Defendant has a right to assist in his own defense but petitioners own counsel denied him of this fundamental right as counsel sat away from petitioner and he could not take notes.

Counsel should be found ineffective also for not asking questions of significant importantance: (1) Lead Det. Joseph Paul tells the court during testimony that the weapon used was a 9mm type. This was said twice by Det, Paul. Counsel fails to challenge Det, as petitioner's gun was a Hi-point 9mm and to challenge Det. How can petitioner have done this if his gun was different than the weapon he states was used in the shooting. (2) Counsel fails to cross-examine Brenda Cabrera as she was a hearsay witness, as she states Who did this by asking her cousin Oscar, she states the night of incident I didnt see anything, and was told who did it. Counsel fails to submit her statements as evidence to show reason for impeachment purposes or to show perjury. Counsel fails to cross-examine witness on her testimony. (3) Counsel fails to ask witness Juan Portillo how he could tell it was the petitioner the night of incident and how he could identify petitioner in court, if he couldnt see who was driving, it was almost dark, he was 300 ft away (e.g. one football field), has never seen or met petitioner before and is someone who is unfamiliar to him. Counsel fails to submit evidence of statements made to police, in order to impeach his testimony or show perjury as clearly he also is a mere hearsay witness. (4) Counsel never asks Diana Moore how she knew it was the petitioner as she states of only hearing what happened, and does not identify the petitioner the night of incident. Counsel fails to submit evidence of statements to support hearsay, to impeach testimony or to show perjury. (5) Counsel fails to present mitigating evidence at sentencing which leave him ineffective. (6) Defense counsel fails to ask for an acquittal of the murder charge when he presents evidence for the directed verdict, as Det. Joseph Paul states twice the murder weapon was a 9mm Hype, not a Hi-point 9mm which the petitioner possed.

Counsel performance was deficient under the Six Amendment of the US constitution. Strickland v. Washington, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).
People v. Pickens, 446 Mich 298, 521 NW2d 797 (1994.
United States v. Wade, 388 US 218, 224, 87 S Ct 1926, 1931, 18 L Ed 2d 1149 (1967).

During the Length of the case counsel failed to do any reasonable investigation into the case. People v. McGhee 268 Mich. App. 600, 626; 709 NW2d 595 (2005). It's clearly visible looking at the complete record, months leading up to trial, and trial itself, no investigation took place, no kind of preparation for trial, trial strategy, and defense was not displayed. Counsel failed to communicate on all levels with petitioner, petitioner was housed in a different county jail, he was transported to Kalamazoo on writs.

At no time during trial did petitioner consent to the admission of guilt by his attorney or in closing arguments, had and wanted to continue to maintain his innocence. But, counsel took it upon himself to admit guilt, which resulted in a life sentence. Counsel was and should be found ineffective and should remand to trial courts to determine that petitioner had in fact wished to maintain his innocence and had not consented to counsel to admit any type of Guilt. State v. Harbison, 315 N.C. 175, 337 S.E. 2d (1985). At no time shall an attorney admit their clients guilt. People v. Maready, 205 N.C.

Counsel's performance feel below an effective level and due to this the petitioner should be entitled to a new trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Zachary Patten

Date: 7/15/20