ORIGINAL

No. 20-6805

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL M. WILLIAMS — PETITIONER
(Your Name)

vs.

JOSH STEIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL M. WILLIAMS
(Your Name)

1245 CAMP RD. (PIEDMONT CORR. INST.)
(Address)

SALISBURY, NORTH CAROLINA 28147
(City, State, Zip Code)

(202) 709-2018
(Phone Number)

QUESTION(S) PRESENTED

1. Did the trial court err when it reviewed prisoner Williams' initial motion of post conviction relief for verbatim transcript on a Constitutional Violation of the 6th Amendment Requirement, finding grounds for the ineffective assistance of counsel claim - ordering appointment of counsel - ordering counsel to perfect an M.A.R (motion appropriate relief) [the state of North Carolina's Article 89 Motion: post-conviction-relief] then denying Prisoner Williams' an actual hearing on an evidentiary nature, nor enforcing the same order which required appointed counsel to perfect the M.A.R.?

2. Did the trial court err when - refusing evidentiary hearing - commit plain error, by, not hearing Prisoner Williams' actual innocence claim in his own handwritten Motion Appropriate Relief, showing substantial Brady violations, when the state of North Carolina has it's own relief available for a Roviaro violation under State v. McEachern, 114 N.C. App. 218, 441 S.E.2d 574 (1994): dismissal? (See also Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed. 2d 639 (1957)).

3. Did the District Court err where, Prisoner Williams' post conviction relief motion showed trial court had ordered - and dismissed - appointment of counsel four different times, with four different attorney's, who were all in violation of the trial court order to perfect the M.A.R., forcing Prisoner Williams to handwrite his own motion, a showing that

QUESTION(S) PRESENTED

Prisoner Williams did, infact recieve ineffective assistance of appellate counsel, the *coram nobis* doctrine attached—already within N.C.'s Article 89 Motion, e.g., N.C.G.S.§ 15A-1411, et seq.—triggering the writ of *coram nobis* doctrine of protection and the District Court did not issue the clearly established Federal Provision of Constitutional Law?

4. Did the Circuit Court err when it did not address Prisoner Williams' overwhelming showing of mental retardation—with the evidences coming from trial court files, trial court prosecutor psychologists and court evaluations—where trial counsel, nor appellate counsel advocated for Prisoner Williams not at all, in violation of Rickman v. Bell? (131 F. 3d 1150, 1157 (6th Cir. 1997) ("failure to actively advocate his client's cause had the effect of *not* a defense counsel, but with a second prosecutor.")

5. Did the District Court—by not making factual findings on Prisoner Williams' clear and overwhelming showing of actual innocence within his handwritten Article 89 Motion—mislead the Circuit Court, who did not review Williams' appeal under the *de novo* standard, taking a fresh look without considering the district's decision—err?

6. Where the District Court—and the Circuit Court—did not properly toll under §§ 2244(d)(2), has Prisoner Williams now been prejudiced?

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:

STATE OF NORTH CAROLINA v. MICHAEL WILLIAMS
STATE OF NORTHCAROLINA v. MIKE WILLIAMS
STATE OF NORTH CAROLINA v. MICHAEL MUSTFUS WILLIAMS

RELATED CASES

- State v. Mike Williams, No. 00-CRS-000221, Scotland County Superior Court for the State of North Carolina. Judgment entered May 8, 2001.

- State v. Mike Williams, No. 00-CRS-000222, Scotland County Superior Court for the State of North Carolina. Judgment entered May 8, 2001.

- State v. Michael Williams, No. 00-CRS-000227, Scotland County Superior Court for the State of North Carolina. Judgment entered May 8, 2001.

- Same 3 File No.'s above: "AMENDED", Scotland County Superior Court for the State of North Carolina. Judgment entered September 20, 2001.

- State v. Michael Williams, No. 00-CRS-221-227, Scotland County Superior Court for the State of North Carolina. Order entered May 7, 2001.

- State v. Michael Mustfus Williams, No. 00-CRS-221-227, Scotland County Superior Court for the State of North Carolina. Plea Adjudication entered May 7, 2001.

- State v. Michael Williams, No. 00-CRS-221, 00CRS 222-00CRS229, 02CRS52653, Scotland County Superior Court for the State of North Carolina. Assignment of Counsel entered February 3, 2010.

- [SAME]: Motion To Withdraw As Counsel entered February 18, 2010.

- [SAME]: Order Allowing Withdrawal Of Counsel (and appointing of different counsel) entered March 25, 2010.

- State v. Michael Mustfus Williams, No. 00CRS 221-227, Scotland County Superior Court for the State of North Carolina. Order Allowing Withdrawal By Attorney And Production Of Trial Transcripts (and appointing of different counsel) entered December 14, 2011.

- State v. Michael Williams, No. 00CRS 222, Scotland County Superior

Court for the State of North Carolina. Vacated Judgment of May 8, 2001 entered March 20, 2013.

- [SAME]: Felony Judgment Findings Of Mitigating Factors entered March 20, 2013.

- [SAME]: Judgment And Commitment (resentencing) entered March 20, 2013.

- State v. Michael Williams, No. 00CRS227, Scotland County Superior Court for the State of North Carolina. Vacated Judgment of May 8, 2001 entered March 20, 2013.

- [SAME]: Felony Judgment Findings of Mitigating Factors entered March 20, 2013 (No. 00CRS227).

- [SAME]: Judgment And Commitment (resentencing) entered March 20, 2013 (No. 00 CRS 227).

- State v. Michael M. Williams, No(s) 00 CRS 221-227, Scotland County Superior Court for the State of North Carolina. Order, denying Defendant's Motion Appropriate Relief As Amended & Motion To Reconsider on April 8, 2016

- State v. Michael M. Williams, No. P17-302, North Carolina Court of Appeals. Petition Writ Certiorari denied, May 22, 2017.

- [NOTICE: Page 5; "the [N.C] Supreme Court will not entertain petitions for certiorari or petitions for further discretionary review in [motion for appropriate relief upon grounds listed in G.S. 15A-1415(b)]".

- [N.C. Supreme Court, Petition Discretionary Review denied July 20, 2017 irrelevant].

- Michael M. Williams v. Josh Stein, No. 1:18-cv-345, United States District Court, Middle District of North Carolina, Writ Habeas Corpus. Order and Judgment: Respondent's Motion Summary Judgment Granted, Habeas Petition Denied & Dismissed, and Certificate of Appealability, Denied September 10, 2019.

- Michael M. Williams v. Josh Stein, No. 19-7633 (1:18-cv-00345-CCE-JEP) Certificate of Appealability, Denied & Appeal Dismissed: United States Court of Appeals, Fourth Circuit, April 6, 2020, Judgment.

- Michael M. Williams v. Josh Stein, No. 19-7633 (1:18-cv-00345-CCE-JEP) United States Court of Appeals, Fourth Circuit, April 28, 2020, Mandate.

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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\C 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 D 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 Recommendation U.S. Magistrate Judge court appears at Appendix C 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 April 6, 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 May 22, 2017.
A copy of that decision appears at Appendix D.

[ ] 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

Amendment 6, Effective Assistance of Counsel
Amendment 4, Illegal Seizure
Amendment 8, Cruel and Unusual Punishment
Amendment 14, Due Process and Equal Protection
Article III, § 2
42 U.S.C. §§ 12101 *et seq.*
28 U.S.C §§ 2244(d)(1)(D)
28 U.S.C. §§ 2253(c)(2); § 2254(d), (d)(1) & (2)
18 U.S.C. §§ 3006A(c)
28 U.S.C. §§ 1651
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& Act of 1789, § 20, 14-1-82
(under) *Ex parte Yerger*, 8 Wall. 85, 19 L.Ed. 332 (1869)

STATEMENT OF THE CASE

On January 7, 2000, Michael M. Williams was arrested and charged with: Count 1, Assault W/ Deadly Weapon W/ Intent To Kill Inflicting Serious Injury of Terrance Blue; File 222, Assault W/ Deadly Weapon W/ Intent To Kill Inflicting Serious Injury of James Quick; and Count 3, File 00 CRS 227, Discharging Firearm Into Occupied Property by James Quick, Terrance Blue and Kevin Murphy. In addition, Mr. Williams was also charged with Robbery With A Dangerous Weapon, for an August 31, 2000 conviction, File 00 CRS 228. In approximately 3 days, the court appointed attorney Chris Wood to all files.

The files were seperated for trial; following a jury trial, on August 31, 2000 Mr. Williams was convicted of Robbery With A Dangerous Weapon in the file of 00CRS228 — said sentence Aggravated with juvenile file 95-J-60 in Appendix C hereof: Mr. Williams' attorney did not object. The North Carolina Court of Appeals affirmed. Needless to say, Mr. Williams fired attorney Wood from representing the remaining files: 00CRS221, 222, 227, herewithin case.

Williams' sister retained counsel Gregory B. Thompson on May 3, 2001. Attorney Wood filed a motion to withdraw on May 7, 2001, and was allowed to withdraw, handing over the Files\Discovery to Thompson. However, Michael M. Williams was still called, Judge William C. Gore demanding that Williams plead or jury trial would start, then. On that same day, May 7, 2001, Williams was advised by counsel Thompson to plead guilty to all three counts\files subjecting Williams to three consecutive sentences, consecutive to file 00CRS228; the sentences were not adjudged until the next day, May 8, 2001: 27 months minimum, 40 months maximum File 222; 27 months minimum, 40 months maximum File 227; 109 months minimum, 140 months maximum File 221; all, consecutive to each.

Unknown to Williams, the two 27-40 months sentences are illegal: they are not within the North Carolina Structured Sentencing Act, Sentencing Chart Guidelines. On July 5, 2001, the N.C. DOC-Combined Records contacted Scotland County Courts, after no response from June 7, 2001 inquiry. Still non-responsive, on July 11, 2001, Scotland County was contacted again, where N.C. DOC specifically advises that Mr. Williams' sentences must be increased.

On September 20, 2001, under the ruse of correcting 'clerical errors', Mr. Williams was taken to Scotland County Courts from N.C. DOC, denied counsel and resentenced to 27-42 months, File 222; and 27-42 months, File 227, increasing Williams' sentence an additional 4 months. The "Amended" judgments show a different clerk and judge on only one judgment, and the changing of attorney Greg Thompson; however, 5-8-2001 stays the same, beside the "amending" judge, even with the clerk signature and date change of 9-20-2001: creating clerical errors.

While having various D.O.C. case management contacts, Williams is experiencing 'confusion': he is being told that he has 'more time' than he was sentenced to. Attorney Thompson is saying he doesn't know; and counsel Wood is saying that he gave Discovery\File to Williams the same date Williams' sister met with attorney Thompson, retaining counsel for $1,500.00. After numerous unsuccessful attempts at obtaining the files\discovery, Williams obtains copies of judgments—"Amended"—showing File 222 and 227 sentence increases. Williams files for a Verbatim Transcript, approximately November, 2009. On February 3, 2010, Williams is 'writted' to Scotland County Courts: counsel is ordered appointed to 'perfect' Williams' "MAR Motion" (a Motion Appropriate Relief); however, fired attorney Chris Wood is appointed counsel.

Wood files motion to withdraw on February 18, 2010, specifically stating that Williams' motion for preparation of a stenographic transcript 'infers... ineffective assistance of counsel'. On March 25, 2010, Williams is 'writted' yet again: Wood is allowed to withdraw, and Harol Carlin is appointed.

After over a year with no prosecution of the MAR, attorney Carlin was removed: he has since been disbarred. Robert Schmidt was appointed.

Almost another year with no proceedings, Schmidt was removed and attorney D.W. Bray was appointed as counsel. Attorney Bray, just as the prior three counsel's, did not comply with the original February 3, 2010, Order: perfect an MAR. Williams files MAR, pro se May 31, 2012—over two years, and four court appointed attorneys later. Williams' two sentences that were illegally amended in September, 2001 are now vacated; however, he is immediately resentenced to yet another amended judgment: March 20, 2013.

Williams files Judicial Notice, March 16, 2015; also filing MAR As Amended and Motion To Reconsider, March 16, 2015: Denied, April 8, 2016 (not delivered until

June 20, 2016). Williams filed Petition for Writ of Certiorari December 14, 2016: denied May 22, 2017, North Carolina Court of Appeals. N.C. Supreme Court denied Petition Discretionary Review\Appeal on Constitutional Question, July 20, 2017.

Williams filed _habeas_ on 28 U.S.C. § 2254 Form in U.S. District Court of North Carolina, April 25, 2018; petition transferred to U.S. District Court of North Carolina, Middle District (from Eastern District) on April 27, 2018.

July 2, 2019 U.S. Magistrate Judge recommended Respondent's Motion for Summary Judgment be granted, that _habeas_ be dismissed and the action be dismissed. September 10, 2019 said Recommendation took place.

United States Court of Appeals, Fourth Circuit denied a certificate of appealability, dismissing the appeal, April 6, 2020. Mandate issued April 28, 2020. Williams applied for _this_ petition, approximately July, 2020; recieved extension of time, to properly file, in accordance with Rule 14.

REASONS FOR GRANTING THE PETITION

A federal court may grant habeas relief to a prisoner incarcerated on a state conviction if the petitioner demonstrates that he is in custody in violation of the Constitution or law of the United States. 28 U.S.C. § 2254(a). A habeas petition may be granted only if a state court's ruling on a federal constitutional question "was contrary to, or involved an unreasonable application of, clearly established Federal law," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding". 28 U.S.C. § 2254(d)(1) & (2).

The Sixth Amendment guarantees the right to the effective assistance of counsel, applicable to the states through the Fourteenth Amendment. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984). Under Strickland, a defendant must prove two elements: (1) that his trial counsel's performance fell below "an objective standard of reasonableness," Id. at 688; and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," Id. at 694.

When a petitioner argues that a state court finding was "clearly erroneous," he retains the ability to state a claim for habeas relief for an "unreasonable determination of the facts." Badelle v. Correll, 452 F.3d 648, 654-55 (7th Cir. 2005). A petitioner qualifies for habeas relief if the state court decision was "based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding". 28 U.S.C. § 2254(d)(1); Charlton v. Davis, 439 F. 3d 369, 374 (7th Cir. 2006).

Williams has raised numerous ineffective assistance of counsel claims under Amendments VI and XIV in all of his post-conviction motions and filings. In fact, attorney Christopher Wood - initially appointed and ordered to assist Williams, in perfecting an MAR, after court review of petitioner's initial filing, for post conviction remedy under motion for verbatim transcript - argued such in his 2001 and 2010 motions to withdraw: in 2010 motion, attorney Wood is averring, in essence, 'wait... this ineffective assistance of counsel claim he's interred, applies to me also.' Indeed, the post conviction remedy court hearing of March 25, 2010 'agreed', appointing Haral Carlin, withdrawing attorney Wood. Subsequently, attorney Carlin has been disbarred; attorney Robert Schmidt - who was appointed after the court withdrew attorney Carlin - for months and months, stagnated Williams's post conviction process, to where Williams sought his removal. The court - withdrawing Schmidt - then appointed D.W. Bray: approximately 3 years, 4 months and 3 additional attorneys - and - 0 compliance with a court order by the Honorable Jack Thompson, Scotland County Superior Court Judge, on February 3, 2010 for post conviction appointed counsel to perfect Williams's MAR (motion appropriate relief), which had to be handwritten and filed by Williams on May 31, 2012 (within Appendix A) - still not recieving a hearing until March 20, 2013. Petitioner should not - indeed, cannot — be punished for counsels incompetence: it is *plain error*, which is (1) an error (2) that was obvious (3) affecting his substantial rights, and (4) affected the *fairness, integrity, or public reputation of the judicial preceedings.* United States v. Cotton, 535 U.S. 625 (2002). Respectfully, "a *pro se* complaint must be construed liberally". Haines v. Kerner, 404 U.S. 519 (1972).

QUESTIONS ONE PRESENTED & TWO

Bad advice to plead guilty are the worst cases of IAC: petitioner Williams' is made exceptionally worse, due to the fact that he is borderline functioning, mentally emotionally handicapped, with an IQ of 67, which is below the legal threshhold of mental retardation and being incompetent to stand trial. Court appointed counsel Christopher Wood knew this, since being assigned Williams' cases, January, 2000 - Files 00CRS 221-228. Infact, this information was illegally used to aggravate Williams' sentence on File 00CRS 228, after attorney Wood led petitioner down the dark path of trial: the court used the 'being found to be a juvenile delinquent' in clear error; Williams had never been adjudged juvenile delinquent. See, exhibits 1,2,3 of Williams' Motion to Reconsider, Appendix C. This, standing alone, shows "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52 (1985).

From August 31, 2000 — the date of the judgment for File No. 00CRS228, until May, 2001, Petitioner Williams continued to demand trial for the remaining files: 00CRS 221-227. This contention is supported by the state's own averment at the March 20, 2013 hearing: "Ms. Newton offered a package plea ...prior to his first trial... in case number 00CRS228... and he was found guilty... And the package plea offer was withdrawn." See, Appendix C. Attorney Wood filed no motions, did no investigations—interviewing witnesses or contacting alleged victims. In fact, for 8 more months—a clear speedy trial violation now that Williams is a state prisoner—Attorney Wood did nothing at all, except seek Williams' family members out, so as to further induce and pressure Williams to plead guilty. Being that Williams was actually innocent—victims, victims' family members and the like, all witnesses to the shooting—had contact with Williams' family members multiple times, Williams', nor his family, were even thinking about not going to trial: they were demanding resolution as well. Nevertheless, they didn't know that Michael wasn't even to be standing trial at all, due to his incompetence.

May 3, 2001 petitioner's family members were just as fed up as Williams concerning delay in a second trial, and paid Attorney Gregory Thompson $1,500.00 to take over the case. On May 7, 2001 in the morning session, attorney Wood made motion to withdraw; court made an a.m. order to withdraw Wood, noting Thompson as Counsel of Record. However, in the afternoon session of court, the prosecutor maliciously called Files 00CRS 221—227 for trial, in clear violation of N.C.G.S. § 15A-1012(a), (b) where a defendant may not plead for seven days. Attorney Thompson took Williams' family's money and told petitioner to plead guilty, all in a matter of days – doing no investigation, and surely not any background on Mr. Williams' mental capacity to proceed to trial, much less knowingly and intelligently plead guilty. Add insult to injury, the plea was never valid, as the sentences were not even possible to be given, for they are not anywhere on the sentencing chart. This deficient performance – further compounded by not argueing for mental disease and defect for mitigating circumstances during sentencing – show attorney Thompson incompetent representation.

Petitioner Williams wanted to go to trial: both records reflect that. His newly hired attorney gave the same bad advice to plead guilty. By going to trial, Williams had a significant chance of an acquittal; he just didn't have an attorney acting in his best interest. Calling the shooter — and the shooting victims – along with the many witnesses in the housing project all but guaranteed that. But his attorney's incompetence had him in a viseage of words that he couldn't understand. Even so, Thompson's incompetence is abundantly clear, by recommending he plead to illegal sentences. The Third Circuit summed up the Hill, inquiry in this way: "The Hill, inquiry did not involve examining the petitioner's likelihood of success had he insisted on trial, but merely whether he would have gone to trial at all." Velazquez v. Supt Fayette SCI, 937 F.3d 151 (3d Cir. 2019). Williams had already sacrificed that 'package deal,' in order to prove his innocence about these allegations, the only rational option available. The Fourth Circuit gave their interpretation of Hill, that "but for his counsel's erroneous advice, he could have negotiated a different plea agreement." United States v. Swaby, 855 F. 3d 233 (4th Cir. 2013). See also, Rodriguez-Penton v. United States, 905 F. 3d 481 (6th Cir. 2018) (collecting cases).

Besides counsel's bad advice, the government's misconduct also provides grounds to establish prejudice under Hill. The government withheld "stunning" evidence here also favorable to the defense. The shooter handwrote his confession; the victim's own mother identified the shooter — not Petitioner Williams. Numerous witnesses interviewed at the scene of the crime — in broad daylight — identified the shooter — not Petitioner Williams. In fact, more than one witness said that as soon as the shooting began — Williams was gone. Running away from the altercation, not actively involved. "Absent this misconduct, there was a reasonable probability that the petitioner would not have pleaded guilty but, rather, would have rejected the proffered plea agreement and opted for trial." Ferrara v. United States, 456 F. 3d 278 (1st Cir. 2006).

When the Honorable Jack Thompson made his February 3, 2010 order, and appointing counsel, it is fair to say that he realized petitioner's claims about ineffective assistance of counsel: North Carolina hardly ever resolves IAC claims fairly, almost always using Strickland, on an unreasonable probability of error. Even the Seventh Circuit holds that Strickland, requires an ineffectiveness claim to be assessed in light of "the totality of the omitted evidence." Washington v. Smith, 219 F. 3d 620, 634-635

(7th Cir. 2000), quoting Strickland, 466 U.S. at 695. A reviewing court "must 'evaluate the totality of available ... evidence—both adduced at trial' and the additional available evidence that adequate counsel would have procured.'" Harris v. Thompson, 689 F.3d 609, 648 (7th Cir. 2012), quoting Williams v. Taylor, 529 U.S. 362, 397, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).

The post-conviction evidence refutes the governments position — on all avenues. The state hindered the prosecution of petitioner's MAR so overwhelmingly through 4 different attorneys; the government, through several different judges. Contrary to Respondent's claims, Williams made it very clear numerous filings — with abundant documented and factual evidences — about how he had IAC, and the withholding of evidences:

THE COURT: Let the record reflect that Mr. Williams is present along with court-appointed counsel, Mr. Bray. Mr. Bray, you were appointed by the Court to represent Mr. Williams with respect to the MAR. Have you had the opportunity to review that, I guess, first of all, would be my first question to you?

MR. BRAY: Yes, your Honor, I have -- I have reviewed the MAR.... I have reviewed the exhibits that were attached to the MAR.

What this shows is the fact that (1) the attorney did not do the MAR, as previously ordered by Honorable Jack Thompson and (2) the court was aware that Williams's hand was finally forced to handwrite his MAR on his own.

Nevertheless, Mr. Bray did advise the court:

> Mr. Bray: And after reviewing the MAR, there appears to be <u>two</u> major issues the Court needs to address. (Tr. p. 3; <u>see</u>, Appendix C).

However, as soon as attorney Bray began arguing about the "discovery that was provided to me by the defendant as far as any potential exculpatory... evidence... the actions of previous counsel... in determining whether their assistance was effective.

One being it -- one thing I noted from the beginning is--" (Tr. p. 11)

> THE COURT: Well, just a second. Would counsel approach, please, for just a moment. Sorry to interrupt.
>
> (Bench conference)
>
> MR. BRAY: And that being said, your Honor, I think we've covered everything that we need to cover at this point." (Tr. p. 11)

The court — and Respondent — mislead the District Court, the Circuit Court, and, will attempt to mislead <u>this</u> Court: the State, and every officer of the court of Scotland County Superior Court, March 20, 2013 colluded, in the facade of granting Petitioner Williams a hearing — then circumvented the hearings function: to hear evidence.

Indeed, this same Judge—Richard T. Brown—had <u>already</u> set this up, 15 months prior, on December 14, 2011, changing the Honorable Jack Thompson's 'Marching Order,' saying that he is removing attorney Haral E. Carlin (the one that got disbarred), and appointing attorney Robert Schmidt for the purpose of resentencing only. <u>See</u>, APPENDIX, *in forma pauperis*.

Petitioner Williams' rights were further in violation of Federal Rule of Criminal Procedure 11. By the court's willful participation in—what <u>is</u> a new plea negotiation—under color of law, Due Process and Equal Protection were abused. See, <u>United States v. Anderson</u>, 903 F.2d 1425, 1438-39 (9th Cir.) The 'cure' is to allow the defendant to withdraw the plea. <u>See</u>, e.g., <u>United States v. Barrett</u>, 982 F.2d 193, 196 (6th Cir. 1992) (improper judicial participation in plea bargaining process cured by assignment to another judge); <u>United States v. Washington</u>, 109 F.3d 459, 464 (8th Cir. 1997) (permitting defendant to withdraw plea cured any possibility court had somehow coerced defendant into pleading guilty). Any time the government implicitly takes a position on a sentencing adjustment during a hearing, then the government has breached the agreement. <u>United States v. Nolan-Cooper</u>, 155 F.3d 221, 236 (3d Cir. 1998).

A plea agreement is governed by the law of contracts. <u>Santobello v. New York</u>, 404 U.S. 257, 262 (1971). In North Carolina, an additional protection is in place: N.C.G.S. § 15A-1024 which requires that if a sentence is <u>greater</u> than the sentence agreed to within a plea, the defendant must be told, and (1) advised that he has a right to renegotiate a better plea (2) be informed of his right to withdraw his plea and (3) go to trial. Williams invoked this absolute right at the end of his MAR. See, Appendix B. And the record is clear: the sentence increase of September 20, 2001 was illegal, and the state — and court knows this: it is, showing of clear Due Process violation:

> MR. HARDIN: ... He was sentenced... the second being 27 to 40 months... and the third judgment being 27 to 40 months... (Tr. p. 5)

> "As to the resentencing issue, the 27 to 42 months, as the amended judgment shows, that Judge Ellis mistakenly believed was clerical error, I do agree... to go to 42 months would not be within the plea transcript or the terms that this defendant agreed upon on his plea. (Tr. p. 9)

See, Appendix C, Transcript.

By refusing the evidentiary hearing, not enforcing the original February 3, 2010 order for counsel to perfect Williams' MAR, in essence, circumvented the Petitioner's initial presentation of actual innocence, especially where the state — and attorney Wood withheld Discovery and the exculpatory evidence for approximately 9 years. Indeed, as late as 2007 — 6 years after conviction, attorney Christopher Wood was still withholding Discovery. See, Motion To Reconsider, Attachment 2, Appendix C.

Just as Petitioner stated in Question 2: the State of North Carolina has a clear and Constitutional remedy for such a Discovery violation as found in Roviaro; dismissal. See, State v. McEachern, 114 N.C. App. 218, 441 S.E.2d 574 (1994) (under Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed. 2d 639 (1957)).

QUESTION THREE PRESENTED

This Court retains jurisdiction to review the gatekeeping orders pursuant to the All Writs Act, 28 U.S.C. §1651; such orders are not immune from direct review. The writ of error of coram nobis, is specific about appeal counsel. The right to appeal a criminal conviction exists, by statute. In the State of North Carolina, an Article 89 motion is the appeal, by post conviction remedy, codified under N.C.G.S. 15A-1411, et seq.: this section has the writ of coram nobis doctrine specifically written under Article 89 motions; This deals with appellate counsel being ineffective assistance of counsel. It is an absolute right to file an M.A.R.

Once the right to appeal is granted, the Equal Protection and Due Process Clauses command that an indigent defendant has a right to appointed counsel that is effective, Douglas v. California, 372 U.S. 353, 9 L. Ed. 2d 811, 83 S. Ct. 814 (1963), and access to the courts. See Griffih v. Illinois, 351 U.S. 12, 18, 100 L. Ed. 891, 76 S.Ct. 585 (1956) (an appeal, once allowed, Due Process and *Equal Protection*

Clauses protect against invidious discrimination); Nelson v. Peyton, 415 F.2d 1154 (4th Cir. 1969) cert. denied sub nom. Cox v. Nelson, 397 U.S. 1007, 25 L.Ed. 2d 420, 90 S.Ct. 1235 (1970) (once right granted, must give equal access and unqualified right to counsel); 18 U.S.C. § 3006A(c).

As a matter of law, Petitioner is entitled to counsel on Article 89 motions for M.A.R.'s, pursuant to N.C.G.S. § 7A-450, et seq. & § 15A-1420, et seq.. Breaches of plea agreements by the government violate the defendant's constitutional rights and call into question the "honor of the government, public confidence in the fair administration of justice, and the effective administration of justice." United States v. Lezine, 166 F.3d 895, 901 (7th Cir. 1999) (quoting United States v. Harvey, 791 F.2d 294, 300 (4th Cir. 1986)).

Evitts v. Lucy, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) holds that "the fairness of the appellate process requires that a defendant recieve *more than* nominal representation from his counsel." Evitts, also guarantees Due Process of IVX Amendment as well as triggering the error of coram nobis.

Petitioner had his appeals process significantly altered, delayed and otherwise undefended through no fault of his own. Williams' IQ below 70, see McCarver v. North Carolina, 533 U.S. 975 (2001); Atkins v. Commonwealth of Virginia, 534 S.E.2d 312 (2000) and, DSM-IV, 'by definition, an IQ below 70 represents mental ability at or below the 2nd percentile' — significantly hindered his understanding and voided, ab initio, any waiver of any Right.

Williams had 4 different attorneys, over 3 years on the Files hereof: no court would continue to pay appointed counsels, if there's nothing of substance and material in the files. So it stands to reason then, that the Eleventh Circuit has it correct, not the Fourth. "Ineffective assistance of counsel is mixed question of fact and law subject to *de novo* review." Greene v. United States, 880 F.2d 1299, 1305 (11th Cir. 1989).

The State breached the plea agreement on September 20, 2001 – plain error. See, United States v. McQueen, 108 F.3d 64 (4th Cir. 1997). The State cannot suggest it is clerical error: State v. Jarman, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000), and "it cannot under the guise of an amendment... correct a judicial error." Especially when the breach is a sentence increase. Bush, holds:

> "[The S]uperior Court was *required* to consider merits of motion, where defendant asserted that his conviction was obtained unconstitutionally." State v. Bush, 307 N.C. 152, 297 S.E.2d

563, 669 F. Supp. 1322 habeas corpus granted, affirmed 826 F.2d 1059 (1982). Petitioner brought as much of the record here as he had, and within the Appendix, a showing is more than enough.

"No good reason exists to penalize petitioner for his counsel's failure". Galloway v. Stephenson, 510 F. Supp. 840, 844 (M.D.N.C. 1981). Petitioner Williams' sentence was increased, the State breached the plea contract – and illegally tried to cover it up. Once Williams became aware of discovery file and the increase, he sought out appropriate relief – which he is legally entitled to: Due Process and Equal Protection require that he be allowed to withdraw his guilty plea.

QUESTION FOUR PRESENTED

"Failure to actively advocate his client's cause had the effect of not a defense counsel but with a *second prosecutor*." Rickman v. Bell, 131 F.3d 1150, 1157 (6th Cir. 1997).

Attorney Wood seen the file with Williams' IQ: it was the same file used to aggravate sentence 00 CRS 228. Add the fact that Wood was still withholding the discovery file, 2007. Whether or not attorney Thompson seen File 95-J-60 is not known: but it is highly unlikely that Wood, turning over the Files, kept it. Even so, Petitioner Williams attached the documents to his handwritten MAR: appointed appeal counsel for the MAR definitely seen it. Which shows that defense counsel did, in fact, collude as "a second prosecutor". Rickman, Id.

Under the prejudice prong, "reasonable probability is one 'sufficient to undermine confidence in the outcome'", and it is "not necessary for the habeas petitioner to demonstrate that the newly presented mitigation evidence would necessarily overcome the aggravating circumstances". Summerlin v. Schriro, 427 F.3d 623, 640, 643 (9th Cir. 2005)(en banc). Instead, the court was to "reweigh the evidence in aggravation against the totality of available mitigating evidence." Wiggins v. Smith, 539 U.S. 510, 534, 123 S. Ct. 2527, 156 L.Ed. 2d. 471 (2003). The trial court wouldn't even allow counsel to argue the IAC — a showing that the court did not give Williams Equal Protection of the law, violating Due Process by the prejudicial denial of a real and total evidentiary hearing. The totality of available mitigating evidence includes evidence "both... adduced at trial, and the evidence [available for] the habeas proceeding". Williams v. Taylor, 529 U.S. 362, 397, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). "This *includes* examination of mental health records". Summerlin, 427 F.3d at 630 (citation omitted).

Williams is *still* suffering a denial of a constitutional right: the United States Constitutional Amendment to effective assistance of counsel Under VI Amendment: the Fourth Circuit not in accord with other circuits, on 28 U.S.C. §2253(c)(2). Petitioner should have recieved counsel and a hearing — not another cover up. In Boyde v. California, this court holds that "evidence about the defendant's background and character is relevant because of the belief long held by *society* that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." 494 U.S. 370, 382, 110 S. Ct. 1190, 108 L. Ed. 2d 316 (1990) (emphasis, citation, and quotation marks omitted). In fact, the North Carolina Supreme Court awards defendants a new trial where a trial court excludes defendant's evidence of his "diminished capacity."

Additionally, diminished capacity means that a defendant lacks the capacity to *form the state of mind* necessary for conviction: by definition, assault with a deadly weapon would be considered a general intent crime because it depends on the intent to do the physical act of using a deadly weapon against another; and assault with a deadly weapon with intent to kill would be a specific intent crime because it requires the additional purpose of trying to kill another. "In assessing the reasonableness of an attorney's investigation... a court *must consider* not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Wiggins v. Smith, 539 U.S. at 527, 123 S.Ct. 2527 (2003). The petitioner possessed no weapon: there can be no intent.

It is unreasonable to know Mr. Williams suffers severe diminished capacity, as he's mildly retarded with an IQ of 67 — and not investigate further. It is seriously prejudicial to know, as court appointed counsel, that the State of North Carolina — with diminished capacity defense 'on the books' and readily available, did not move for non-suit, knowing Williams wasn't (1) the shooter (2) not charged with aiding and abetting (3) not charged with accessory and (4) not charged with any conspiracy. It is a matter of record, that not even these 'aggravators' were incorporated within Williams' indictments.

The Seventh Circuit and the Eighth Circuit, respectively, have it right, when it comes to invalid pleas — and a petitioner's diminished capacity, with significant mental disability history:

The Seventh: "Plea invalid when court failed to ensure defendant understood both nature of crime and that mere presence at scene of crime was insufficient to establish guilt". Nevarez-Diaz v. United States, 870 F.2d 417, 421 (7th Cir. 1989), the Eighth Circuit: "Plea invalid when record indicated defendant's youth, troubled background, and substantial mental impairments clouded decision-making throughout state proceedings". Wilkins v. Bowersox, 145 F.3d 1006, 1015 (8th Cir. 1998).

"When the state court addresses a legal question, it is the law as determined by the Supreme Court of the United States that prevails". Lindh v. Murphy, 96 F.3d 856 (CA 7 1996) (en banc), rev'd on other grounds, 521 U.S. 320 (1997). This has, clearly, not been the case: not counsel, nor the courts, are decision-making according to the evidences and cases.

QUESTION FIVE PRESENTED

Due Process is violated if the court fails to conduct a retrospective competency hearing. United States v. Mason, 52 F.3d 1286, 1292-93 (4th Cir. 1995). The conviction of a legally incompetent defendant violates Due Process. Bishop v. United States, 350 U.S. 961 (1956). And, just as in Pate, "we do not think there could be a meaningful hearing on that issue at this late date, [this court should] direct... [and] order [Williams] discharged". Id. Pate, : "Where information is known to the court at the time of a plea hearing sufficient to raise doubts about a defendant's competency — the Court must conduct sua sponte, a competency hearing, even if not requested." Pate v. Robinson, 383 U.S. 375 (1966).

"Indeed, it is indistutable that a lower court is bound" by higher court decisions. United States v. Bell, 5 F.3d 64, 66-67 (4th Cir. 1993). Clearly, no *de novo* standard, of the complete files has been done. Prejudicial error.

QUESTION SIX PRESENTED

The Fifth Circuit clarifies AEDPA time limit tolling: the United States Supreme Court has defined a "properly filed" application as one "when its delivery and acceptance are in compliance with the applicable laws and rules governing filings." Artuz v. Bennett, 531 U.S. 4 (2000). Additionally, "until the application has achieved final resolution through the state's post-conviction procedures". The Fifth Circuit recognized that its precedents on this issue "do not chart the clearest path." The Court pointed to this court for help: "The touchstone, however, must be the Supreme Court teaching that a state post-conviction application remains 'pending' within the meaning of § 2244(d)(2) as long as the ordinary state collateral review process is 'in continuance'— that is, until the application has achieved final resolution through the state's post-conviction procedures." See, Leonard v. Deville, 960 F.3d 164 (5th Cir. 2020); Carey v. Saffold, 536 U.S. 214 (2002).

In the State of North Carolina, an Article 89 Motion—MAR—the starting point of post-conviction procedures is (1) not a new motion (2) has no time limit. The "appeal", the petition for writ of certiorari to the N.C. Court of Appeals has no time limit. The next step, to the N.C. Supreme Court for a petition for discretionary review (PDR) "will not be entertained." See, Filing An Appeal, page 5, Appendix G. At no time was Williams' state post conviction remedy untimely. In fact, almost identical to the Eighth Circuit case Jimerson v. Payne, 957 F.3d 916 (8th Cir. 2020), the counsel complained about of the ineffective assistance of counsel claims is still withholding Discovery; and the prosecutions office did, in fact, destroy exculpatory evidence, where the victims mother—a clear view eyewitness—told police that Michael M. Williams, "Mike-Mike", hadn't did anything: "it wasn't him". In light of Arizona v. Youngblood, 488 U.S. 51 (1988), the prosecutor destroying evidence in Williams' case, was a bad faith move violating defendant's constitutional rights.

Williams' application did not achieve final resolution, because the North Carolina Rules of Appellate Procedure gives a right of appeal for post conviction MAR's — the petition for writ of certiorari, however, as the laws and rules are 'booby-trapped' to where the petitioner cannot make "one complete round"—see, Leonard, Id.— to the N.C. Supreme Court, Williams' petition would also remain pending, just as in the Fifth Circuit, under Leonard. This will automatically show, tolling unexpired.

An objectively unreasonable standard has been applied as a finding, and "no fair-minded" jurist would agree. Bobby v. Dixon, 132 S.Ct. 26, 27 (2011). See also, Miller-El v. Dretke, 545 U.S. 231, 240-265 (2005) (there can be no presumption of correctness under §2254 where state court's facts "not at all supported by the evidentiary record"); Wiggins, Id.; Miller-El v. Cockrell, 537 U.S. 322, 346 (2003)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael M Williams

Date: October / 30 / 2020