

No. 20-7212

IN THE
SUPREME COURT OF THE UNITED STATES

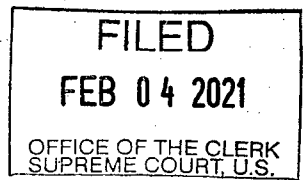
ORIGINAL

Kareem Davenport PETITIONER
(Your Name)

vs.

The people of the state of Illinois RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kareem Davenport (M-49922)
(Your Name)

711 Kaskaskia street
(Address)

Menard, IL 62259
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- If a person is assumed mentally unfit for trial and the steps to find defendant fit or unfit is not correctly adhered to, can that defendant waive his right to file a motion to vacate because of an untimely filings?
- Is being on wrong medication that heavily sedates you a valid reason to file a motion to vacate untimely once you are not on that same medication?
- If a violation of a State statute consequently violates a federal constitutional rights, can a petitioner argue this case in this U.S. Supreme Court?
- Did the trial court fail to adhere to adequately follow the steps to find defendant fit for trial?
- Was counsel [trial] ineffective under the Strickland test for not fully adhering to S.H.A. 725 ILCS 5/104-10

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:
-

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-7
REASONS FOR GRANTING THE WRIT	8-22
CONCLUSION.....	23

INDEX TO APPENDICES

APPENDIX A IDOC Psychiatric Diagnostic Evaluation

APPENDIX B IDOC psychiatric Progress note

APPENDIX C Decision of State Appellate court

APPENDIX D Decision of state supreme court

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
• People v. Brandon, 643 N.E.2d 712	8, 19, 20
• People v. Geras, 655 N.E.2d 894	8
• People v. Cook, 25 N.E.3d 717	9, 11, 12, 13, 14
• People v. Contorno, 750 N.E.2d 290	9, 12
• People v. Thompson, 511 N.E.2d 993	12, 13
• People v. Cleer, 766 N.E.2d 311	12
• People v. Greene, 430 N.E.2d 219	12
• People v. Lucas, 487 N.E.2d 1212	13
• Godínez v. Moran, 509 U.S. 389, 113 S.Ct. 2680, at 2692, 125 L.E.2d 321, 61 U.S.L.W. 4749 (1993)	14, 15
• People v. Birdsall, 670 N.E.2d 700, 172 Ill. 479	16, 17
• Drope v. Missouri, Supra 420 U.S., at 180-181, 95 S.Ct. at 908	18

STATUTES AND RULES

• S.H.A. 725 ILCS 5/104-10	11, 18, 20, 21
• S.H.A. 725 ILCS 5/104-21(a) code of criminal procedure of 1963 (Ill. Rev. Stat. 1983, ch. 38, Par. 104-21(a))	17, 19, 20

OTHER

Table of Authorities cited

<u>Cases</u>	<u>Page Number</u>
• Pate v. Robinson, 383 U.S. 375, 385, 86 S.Ct. 836, 842, 15 L.Ed.2d 815 (1946)	18
• People v. Kinkead, 168 Ill.2d 394, at 406-407, 660 N.E.2d 852, 214 Ill.Dec. 145 (1995)	21
• People v. Douthitt, 51 Ill.App. 3d 758, 366 N.E.2d 955, 9 Ill. Dec. 444	22

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.

☒ 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 State Appellate ~~State~~ 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 _____.

☐ 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 12/23/20.
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

The Federal constitutional's fourteenth Amendment - "The due process clause prohibits the prosecution of a defendant who is unfit to stand trial."

725 ILCS 5/104-10 - "Presumption of fitness; fitness standard. A defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense."

725 ILCS 5/104-21(a) of the code of criminal ~~procedure~~ procedure of 1963 (Ill. Rev. Stat. 1983 ch. 38, par. 104-21(a)) - "A defendant who is receiving psychotropic drugs or other medications under medical direction is entitled to a hearing on the issue of his fitness while under medication."

The Federal constitutional's sixth Amendment - "In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The charges to which Davenport pled guilty were attempted murder and attempted aggravated vehicular hijacking occurring on January 13th, 2016. The former count alleging that Davenport had shot Howard Walker was amended to state that he had struck Walker. The latter count alleged that Davenport pointed a firearm at Walker and demanded him to get out of his vehicle by the use of force or by threatening the imminent use of force and he carried on or about his person or was otherwise armed with firearm. The latter count was amended to substitute "dangerous weapon" for "firearm".

Davenport was evaluated and found to be legally fit, ~~not~~ but legally insane. The guilty-plea hearing was held on September 13, 2017. Davenport was represented by counsel. After the trial court went over the jury waiver and the possible sentences, the state gave the factual basis.

The trial court sentenced Davenport, pursuant to the agreement, to concurrent terms of 15 years each on attempted murder and aggravated [attempted] vehicular hijacking. The trial court advised Davenport that he had to file a motion to withdraw the guilty plea within 30 days before appealing.

On April 16th, 2018, Davenport filed a motion to reconsider sentence, alleging the following: (1) there were extenuating circumstances; (2) the state forced him -4-

To take his "time" by telling him that if he did not, they were going to start trial, and he was not prepared; (3) for attempted aggravating vehicular hijacking, Davenport was to serve 85% of his sentence, but he was required only to serve 50%; (4) there was no evidence supporting his guilt of attempted murder; and (5) he pled guilty to two charges that arose out of the same act.

On April 19th, 2018, Defendant filed a motion to withdraw his guilty plea, alleging the following: (1) he was forced by the prosecutor to take the "time"; (2) They told him if he did not, they were going to start trial, and he was not prepared yet; (3) he was ordered to serve 85% of his sentence for attempted aggravated vehicular hijacking, but he was required only to serve 50%; (4) he was under medication that made him unclear as to what he was pleading; (5) The proportionate

penalties clause was violated; (6) there were no facts to support his guilt of attempted vehicular hijacking or attempted murder; and (7) "ineffective assistance of counsel."

On July 6th, 2018, appellant filed a notice of appeal stating that he was appealing the September 13, 2017, judgement. This appeal was assigned number 1-18-1507. On August 31, 2018, Davenport filed a motion for leave to file a late notice of appeal; the motion appeared to be directed to the April 20, 2018, denial of his motions to reconsider his sentence and to withdraw his guilty plea. On September 18, 2018, late notice of appeal was allowed from April 20, 2018, order, and the late notice of appeal was filed on September 19, 2018. The appeal was assigned number 1-18-1886. This court consolidated the two appeals on October 23, 2019.

Davenport's appellate counsel filed

a motion to withdraw as counsel pursuant to ANDERS V. CALIFORNIA. On 10/24/2019, Davenport filed his Anders response on November 26th, 2019, Davenport's response was denied [REDACTED] on February 14th, 2020. Davenport filed a Petition for leave to appeal & on September 29th, 2020 the Supreme court of Illinois allowed. Then the courts denied his appeal on December 23rd, 2020.

I have been thinking about you a lot lately
and wondering how you are getting on.
I hope you are well and happy.
I am still working hard at my job,
~~but I am~~ but I am taking some time off
to relax and enjoy life.
I will be back soon.
Love,
John

REASONS FOR GRANTING THE PETITION

QUESTION PRESENTED: If a person is assumed mentally unfit for trial and the steps to find defendant fit or unfit is not correctly adhered to, can that defendant waive his right to file a motion to vacate because of an untimely filings?

Answer: "People v. Brandon, 643 N.E. 2d 712 - AS the united states Supreme court has recognized, "it is contradictory to argue that a defendant maybe incompetent, and yet knowingly or intelligently "waive" his right to have the court determine his capacity to stand trial"

In comparison, I can not intelligently waive my right to file motion to vacate because of untimeliness.

"People v. Gevas, 655 N.E. 2d 894 - Antipsychotic drugs such as mellaril can have a "sedation-like effect" that in severe cases may affect thought processes."

Question Presented: Is being on wrong medication that heavily sedates you, a valid reason to file a motion to vacate untimely once you are not on that same medication?

I believe People v. Gevas answers this question as well. In my Illinois Department of corrections medical records, (Appendix A & B) it shows I was prescribed an extreme amount of effexor alone.

Kareem Davenport - Petitioner

vs.

-9-

Memorandum of Law

Question presented: If a violation of a state statute consequently violates a federal constitutional rights, can a petitioner argue this case in the U.S. Supreme Court?

Answer: "People v. Cook, 25 N.E.3d 717"

~~Normally~~ Normally, a trial court's decision that a defendant is fit to stand-trial will not be reversed absent an abuse of discretion (People v. Contorno, 750 N.E.2d 290). However, because the issue is one of constitutional dimension, the record must show an affirmative exercise of judicial discretion regarding the fitness determination while defendant here did not raise this issue in the trial court, the determination of fitness concerns a substantial right, making plain-error review appropriate."

In good belief the trial court did not follow their state statute to find me fit for trial. This comparison to Cook is merely to show that this issue is a constitutional one.

Question Presented: Did the trial court fail to adhere to adequately follow the steps to find defendant fit for trial?

Answer: At time of mental fitness evaluation and hearing petitioner was prescribed 100 mg of effexor and 100 mg of nuerotin in the morning. Then at night petitioner was prescribed 100 mg of effexor, 100 mg of nuerotin, and 50 mg of Benedryl. By the time of petitioners plea hearing, 5 months later petitioner was prescribed 175 ~~mg~~ mg of effexor and 200 mg of nuerotin in the morning. At night petitioner was prescribed 175 mg of effexor, 200 mg of nuerotin, and 50 mg of benedryl.

The due process clause of 14th Amendment prohibits prosecution of person who is unfit to stand trial. This was violated consequently because of the violation of S.H.A. 725 ILCS 5/104-10. As petitioner was found fit to stand trial but trial court only stipulated to what experts findings, was not what experts would testify to. This would be reflected in petitioners court transcripts of May 30th, 2017 (Defendant filed copy of this courtdate transcript with the Illinois supreme court and does not have it on hand).

Also it is no inquiry into petitioners prescribed medication, not even as a question to see if petitioner was taking his medication. However the ultimate decision as to a defendants fitness must be made by the trial court, not the experts. A trial court must analyze and evaluate the basis for an experts opinion. The court should be active, not passive, in making the fitness determination. (People v. Cook, 25 N.E.3d 717,

people v. Thompson, 511 N.E. 2d 993).

"Where a trial court fails to conduct an independent inquiry into a defendant's fitness but instead, relies exclusively on the parties' stipulation to a psychological report finding the defendant fit, the defendant's due process rights are violated."

(People v. Cook, 25 N.E. 3d 717, People v. Contorno, 750 N.E. 2d 290, People v. Cleer, 766 N.E. 2d 311, People v. Thompson, 511 N.E. 2d 993, People v. Greene, 430 N.E. 2d 219).

"For example, in Contorno, the parties stipulated, without further discussion of the issue, that an expert's report found the defendant fit to stand trial. The matter was not raised in a post-trial motion. On appeal, we found plain error and reversed. We first noted that it was ambiguous whether the parties stipulated to the expert's ultimate conclusion or whether they stipulated that the experts would testify in conformance with his report. Further, the trial court's order

stated only that the defendant was found fit pursuant to the stipulation, there was no indication that the court conducted any analysis of the expert's opinion. As a result, we stated, while the trial court might have made an independent determination of fitness, from the record it appeared that the court merely accepted the expert's conclusion. Thus, it appeared that the trial court did not exercise its discretion in finding the defendant fit," (Cook, 25 N.E.3d 717, 3d cont'n citing Lucas, 487 N.E.2d 1212).

"In Thompson, the parties stipulated to the reports of two experts who found that the defendant fit did not discuss the issue other than that it noted the stipulation. The third district reversed. It distinguished cases in which a stipulation was acceptable, noting that, in those cases, the parties recited a detailed stipulation to their conclusions stating that the distinction is a fine one. The court observed that the parties ~~stated that the defendant was fit~~

~~_____~~
~~_____~~
~~_____~~ stipulated
only to the experts findings and
conclusions instead of stipulating that
the experts would testify that in
their opinion the defendant was fit.
Further, it was clear that the trial
court's decision was based solely on
the stipulation, as it did not appear from
the record that the trial court even
reviewed the reports to which the
parties were stipulating. In addition, although
not dispositive, the trial court did not
question the defendant or the attorney
about the matter, stating that the trial
court should not be passive, but active in
making the assessment as to fitness which
the law requires. The court reversed.
(Cook, 25 N.E.3d 717)

In *Godinez v. Moran*, 509 U.S. 389, 113
S.Ct. 2680, at 2692, 125 L.E.2d 321,
61 U.S.L.W. 4749 (1993) at Justice

Blackman & Stevens dissenting opinions, they talk about how the judge asked defendant if he were taking meds, and from Moran's affirmative answer, the judge failed to inquire deeper regarding the type, dosage, and effect of the meds. As this was a harmful error, In Petitioner's case at fitness hearing he was not asked if he was even taking his meds as it is in all of his medical reports he was prescribed multiple medications combined with psychotropic medications.

As in Godinez v. Moran he was allowed to plead anew, Petitioner's case is not an "exceptional" case where he could be remanded back to court to find out if he was fit or not at time of fitness hearing & plea hearing. The effects of the medication Davenport was prescribed renders a person's capability to voluntarily, intelligently, & competently plead guilty. As in Moran's case, Just like petitioner he was on meds at time of plea hearing. The lack

Of inquiry into the medication, dosages, & effects of the meds. Davenport was prescribed was substantially harmful to his guilty plea. Davenport could not go back in front of a judge now that he is not under the effects of those medications and have the judge consider if he was fit or not at time of fitness or plea hearing.

Further, the effects finding the petitioner mentally fit would be inconsistent because of how much those doses were increased from time of fitness hearing and plea hearing then to now petitioner being on entirely different medication so he would need to be evaluated again. Petitioner's case in this aspect is similar to *People v. Birdsall*, 670 N.E.2d 700, 172 Ill. 479, as the state argues that a retrospective hearing would be appropriate. The court denies them stating "we decline to speculate whether or not even objectively measurable physical effect of potentially 'mind altering' drugs may exert on a given defendant's

psychological state and ultimate fitness to understand and assist in his or her defense. We find it inappropriate to remand the cause for a hearing into the pharmacokinetics of the drugs involved as a means of determining defendants' fitness retroactive to the time of trial. Even though Birdsall was fighting a different statute, Davenport still could not be brought back to court for a judge to look into the pharmacokinetics of the medications he was taking and find out if he was fit or not at fitness and plea hearing.

Overall, Davenport was not given a correct fitness hearing. Section 104-21(a) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1983, Ch. 38, par. 104-21(a)) provides that a defendant who is receiving psychotropic drugs or other medications under medical direction is entitled to a hearing on the issue of his fitness while under "medication."

"We do not mean to suggest, of course, that a court is required to make a competency determination in every case in which a defendant seeks to plead guilty or to waive his right to counsel. As in any criminal case, a competency determination is necessary only when a court has reason to doubt the defendant's competence." (see *Drope v. Missouri*, supra, 420 U.S., At 16 (80-18), 95 S.Ct., at 908, *Pate v. Robinson*, 383 U.S. 375, 385, 86 S.Ct. 836, 842, 15 L.Ed. 2d 815 (1996). Davenport was required a fitness hearing, and did not receive a correct one.

Question Presented, was counsel [trial] ineffective under the Strickland test for not fully adhering to S.H.A. 725 ILCS 5/104-10

Answer, Petitioner brings error from ~~the~~ counsel [trial] in that counsel allowed petitioner to be found fit not in compliance with S.H.A. 725 ILCS 5/104-

10, and that counsel did not read into the expert's report as well. Violation of this statute consequently violates the 14th Amendment; Counsel's deficiency in defending me violates the 6th Amendment.

In *People v. Brandon*, 162 Ill.2d 450, 643 N.E.2d 712, 205 Ill. Dec. 421, the trial court found that counsel for Brandon was ineffective due to the fact that counsel failed to inform trial court that defendant was entitled to fitness hearing under 725 ILCS 5/104-21(a). "The only explanation for the failure of Brandon's attorney to raise the question of Brandon's medication earlier in the proceedings or to invoke the requirements of section 104-21(a) of the code of criminal procedure, once the fact of his medication was in evidence is that counsel did not comprehend the significance of Brandon's treatment or their client's rights under the law." *Id.* at 458-459.

Even though petitioner is bringing a violation of another statute, it is not significantly different. A fitness hearing under 725 ILCS 5/104-21(a) is not complete if 725 ILCS ~~5/104-10~~ 5/104-10 is not adhered to. Just as trial judge was in error to merely stipulate to experts report & for not inquiring into experts report himself, Counsel was ineffective for same reasons.

"If the legislature has given defendants a statutory right to a hearing under the conditions specified and a defendant chooses to exercise that right, we fail to see how there can be any room for the exercise of discretion by the court. The court must honor a defendant's proper demand for a jury trial or his invocation of the right against compelled self-incrimination." Id. at 461. Counsel is required to inquire into experts report & not merely stipulate to expert's

As for this issue not being one brought up in petitioners motions, they still cannot be waived. "His allegation that his plea was entered under mistake was sufficient to avoid the rule of Supreme court that issues not raised in the motion shall be deemed waived on appeal." (People v. Douthitt, 51 Ill. App. 3d 758, 366 N.E. 2d 955, 9 Ill. Dec. 444.) As well this is an issue of constitutional dimension and cannot be waived at any time.

findings under 5/104-10. This violation constitutes a deficiency of counsel,

"However, the defendant's use of Thorazine was brought out in the presenting report ordered by the court. It does not appear from the record any inquiry was made to determine whether and to what extent defendant's use of such medication might have affected his fitness to assist in his defense." (People v. Kinhead, 168 Ill.2d 394, at 406-407, 660 N.E.2d 852, 214 Ill.Dec. 145 (1995))

This issue Davenport is bringing forth could not have been a judgement of trial strategy, the only explanation to this is counsel making a human fallibility not adhere to these statutes I bring forth. This mistake is extremely harmful to my case & plea of guilty. This suffices both parts of the Strickland test.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Karen Davison

Date: 02/ /21