

No. 20-7429

SUPREME COURT OF THE UNITED STATES

ORIGINAL

WILLIAM DAVIS

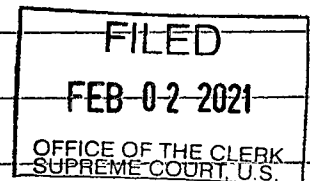
Petitioner - Appellant

v.

DAVID SHINN et al

Respondents - Appellee

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

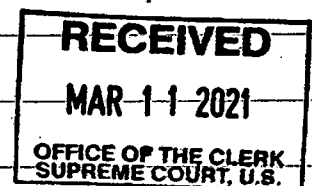


William Davis #305652 in pro pria perso'na

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PETITION FOR A WRIT OF CERTIORARI

PRAYER

Petitioner William Davis respectfully petitions for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Ninth Circuit denying Petitioner an Application for Certificate of Appealability.

QUESTIONS PRESENTED

Whether a reasonable jurist could debate whether Petitioner made a substantial showing of an Ineffective Assistance of Counsel claim and a due process claim where: 1) Counsel failed to move for a mental examination and hearing to determine Petitioner's competency to stand ~~trial~~ trial and/or plead guilty; 2) Counsel failed to advise Petitioner of an insanity defense or alternatively failed to adequately investigate the circumstances that led to the offense.

OPINIONS BELOW

The following opinions and orders below are pertinent here, (all of which are unpublished): 1) Order of the Maricopa County Superior Court denying the petition for post-conviction relief on April 25, 2017 (attached

as Appendix A); 2) Order of the Arizona Court of Appeals, Division One, from the review of the post-conviction relief petition on January 18, 2018 affirming Petitioner's conviction and sentence (attached as Appendix B); 3) Order of the Arizona Supreme Court denying review of the post-conviction relief petition on August 29, 2018; and 4) denial of a Certificate of Appealability (COA) on October 2, 2020, and the denial of a request for a rehearing on November 3, 2020.

STATEMENT OF JURISDICTION

The district court and the Ninth Circuit Court of Appeals denied Petitioner's request for a COA. The final order was entered on November 3, 2020. This Petition for Certiorari is filed within ninety days of that date. In Hohn v. United States, 524 U.S. 236 (1998), this Court held that, pursuant to 28 U.S.C. sect. 1254(i), the United States Supreme Court has jurisdiction, on certiorari, to review a denial of request for COA by a circuit judge or a panel of a Federal Court of Appeals.

STANDARD OF REVIEW

Denial of Certificate of Appealability:

In Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standards for issuance of a COA:

... a prisoner seeking COA need only demonstrate a "substantial showing of the denial of a constitutional right." A prisoner satisfies this standard by demonstrating a jurist of reason could disagree with the district court's resolution of his constitutional claims or that a jurist could conclude the issues presented are adequate to deserve encouragement to proceed further ... We do not require petitioner to prove, before the issuance of a COA, that some jurist would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. *Id.* 123 S.Ct at 1034, citing Slack v. McDaniel, 529 U.S. 473, 484 (2000).

STATEMENT OF THE CASE

1) Petitioner William Davis was convicted upon the plea of guilty for one count of Sexual Conduct with a Minor and two counts of Attempted Sexual Conduct with a Minor. He was sentenced to two terms of lifetime probation to be served consecutively to a twenty-seven year prison term, by the superior court of Maricopa County Arizona on November 5, 2015.

2) On December 7, 2015, Petitioner filed a timely Notice for Post-Conviction Relief (PCR) of right. Petitioner's court appointed PCR attorney requested to withdraw from this case after filing his Notice of Completion

of Post-Conviction Review on May 16, 2016. The Superior court granted Petitioner to file his own PCR petition ~~pro per~~ pro per, to that, Petitioner timely filed his PCR petition on February 21, 2017, after being granted several extensions. The superior court denied relief, consequently dismissing the petition on April 25, 2017. The subsequent motion for reconsideration was also denied.

3) On June 16, 2017, Petitioner filed a timely review petition in the Arizona Court of Appeals. The state's appeals court granted review, however denied relief on January 25, 2018. The subsequent motion for reconsideration was denied on February 23, 2018.

4) On March 19, 2018, the Arizona Supreme Court granted Petitioner's motion to extend time to file his review petition by March 27, 2018. Petitioner timely submitted his review petition through the institution's mail system, however, it did not file with the Arizona Supreme Court clerk til March 29, 2018. Nevertheless, the court denied the review petition on August 29, 2018.

5. On June 4, 2019, Petitioner filed a Writ of Habeas Corpus in the district court, and a motion to amend the Writ of Habeas Corpus Petition founded on the ~~the~~ settlement conference judge who accepted the guilty plea to convict Petitioner, did not take the oath of his office. Petitioner also filed a motion to expand the record on September 27, 2019, to include

in the record a copy of the Avondale Police Departmental Report, in its entirety, to challenge the credibility of witnesses after Respondents submitted excerpts of unsworn testimony made out of court to answer the Writ of Habeas Corpus Petition.

6) On March 20, 2020, the magistrate judge recommended that the Petition of Writ of Habeas be denied with prejudice, as well as the motion to expand the record, however, the motion to amend the writ was granted. Petitioner filed timely objections, and Respondents filed an answer.

7) On May 18, 2020, the district court overruled Petitioner's objections and adopts the magistrate judge's recommendations and analyses, consequently denying and dismissing the Petition for Writ of Habeas Corpus and motion to expand the record with prejudice, and the Motion for a COA as well.

8) On May 29, 2020, Petitioner filed a Notice of Appeal in the district court. The deadline to file the motion for COA was July 3, 2020, however, the Resource Library was closed on that day in observance of the Federal Holiday. Petitioner efiled the Motion for a COA in the United States Court of Appeals, for the Ninth Circuit, the following business day on July 6, 2020.

9) On October 2, 2020, the Court of Appeals for the Ninth Circuit denied the request for a COA. Petitioner motioned for a rehearing on October 16, 2020, however, on November 3, 2020, the motion was denied.

10) On January 21, 2021, Petitioner submitted a Motion to this Court, requesting an extension of time, to file his Writ of Certiorari from the February 1, 2021 deadline. Petitioner has been burdened with lockdowns and quarantines due to COVID-19 protocols here on the Unit, which adversely affected his ability to access the Resource Law Library until it was electronically brought up online on January 16, 2021 via tablet. Moreover, Petitioner anticipates a delay in the process of his filing from the institutions mail system because of the department's operating procedures verifying Petitioner's indigent status by Department of Corrections personnel.

STATEMENT OF PERTINENT FACTS

Petitioner William Davis is a United States Marine war veteran diagnosed with service connected cardiovascular dysfunction and post-traumatic stress disorder (PTSD). Petitioner also has history of suffering from hallucinations, delusions, and altered levels of consciousness.

Petitioner initiated contact with Avondale Police Department to report his conduct which resulted in his step daughter's pregnancy. When police asked Petitioner whether if his conduct had been consensual, according to the police report, Petitioner responded: "With me having power over her, to me, it can't be consensual." Consequently, Petitioner was arrested and charged with three counts of Sexual Conduct with a Minor.

Petitioner was processed into the Maricopa County Jail shortly after his arrest, where psychologist found him to be mentally and physically unstable during his intake evaluation. The Superior court's Release Questionnaire had already list him as being mentally disturbed. Petitioner was subsequently classified to house in the Mental Health Unit (MHU), however, he was evacuated to a local hospital for an acute Cardiovascular emergency, before being moved to the MHU. The hospital's lab test show Petitioner having antidepressants and benzodiazepines in his system. Petitioner was discharged from the hospital a week later, and ^{was} brought back to the MHU. Petitioner ~~would have~~ had to be moved to the infirmary, where he remained until sentencing, under constant clinical observation after being evacuated to the local hospital from the MHU two more times. Petitioner exhibited irrational behavior during one of these subsequent hospital admissions where he unconsciously signed to receive an unnecessary medical procedure that caused him to have severe kidney injury and heart failure on account that it had already been performed five day prior.

Petitioner's Counsel moved the superior court to designate this case Complex because of locations of Petitioner's health records, to receive doctors' evaluations, expert witnesses, and ~~large~~ large number of exhibits linked to expert testimony. Petitioner's health records show that, prior to his arrest, he was treated by the Department of Veterans Affairs (VA), ~~for~~ in Phoenix, for multiple Cardiovascular and renal illnesses; and was simultaneously prescribed Citalopram, ~~Trazodone~~ Trazodone, Zolpidem, and Ambien to treat various

psychiatric and psychological disorders. These medications are known to have severe side-effects that cause people to engage in activity and later having no memory of the behavior. His VA caregivers report ~~an~~ an increase of lucid dreams where he would physically act them out, such as throwing plates of food and stating to family members that he was throwing snowballs. VA providers also report Petitioner stating he felt like he was losing chunks of time.

Petitioner's health records also show that he suffers from other ailments such as, uncontrolled hypertension, diabetes, and hypokalemia. Individuals who suffer from hypokalemia has changes in their central nervous system, such as delirium or psychosis. see *Treatise: Your Blood Never Lies* by James B. Latta. There were also safety concerns where Petitioner could become lost when driving or walking alone. VA psychologist noted Petitioner has difficulty tracking his thoughts when he moves into emotional topics, and at times he seems to miss elements of conversations. A doctor observed Petitioner in an altered level of consciousness and noted that it was more likely related to his having accelerated hypertension.

Counsel describes Petitioner's mental and physical condition, in an email to the prosecutor, as deteriorating. Counsel also submitted a mitigation memo to the superior court and prosecution prior to the settlement conference. Counsel described Petitioner being:

Withdrawn and forgetful, habitually anxious, and has extreme difficulty remembering things on a daily basis; diagnosed with having PTSD, poor cognitive ability, poor memory and confusion, almost deaf in one ear (mortar fire), and isolated and withdrawn.

The mitigation memo also opposes statements in the police report suggesting Petitioner had emptied bank accounts, because he does not have the cognitive ability to handle finances and billing and is why his wife handles the accounts and his VA disability payments as well. Further, Counsel expressed that Petitioner was not understanding that taking the state's plea offer will save his family and he needs "other parties" other than Counsel himself to explain it to him.

At the Settlement Conference, the superior court initiated discussions towards the outcome of a similar case it had previously presided over. The superior court said Petitioner would be traumatized if he were to go to trial. When the court asked Petitioner what was his hesitency about signing the plea, Petitioner ~~response~~ responded that he would rather talk to his attorney. This is when the superior court told Petitioner ~~that~~ its "personal thought" for him to use fundamentals, principles, and virtues of honor, duty, and respect from the Marine Corps to plead guilty. Petitioner subsequently signed the plea agreement.

The superior court asked Petitioner, during the Change of Plea, whether he took drugs, alcohol, or ~~medicin~~ medication in the past twenty-four hours. Petitioner stated that he was sick and took a lot of medication, and that he did not know and think if anything affect his decision, judgement, or understanding. To that, Petitioner replied, no.

Counsel spoke on Petitioner's behalf, during the sentencing, mentioning his military service and cardiac illnesses, however, counsel failed to bring attention to Petitioner's psychiatric history of hallucinations, delusions, and altered levels of consciousness around the times of the offense. Petitioner likewise spoke on his own behalf: (According to transcripts):

People make mistakes. Seldomly, they own up to them and hold themselves accountable. I encouraged her to report me. I ~~re~~ yield to superior authority by reporting my crime to police. I confessed my crime on record to police... I put it all on me I've never pointed the blame at anyone or ever encouraged anyone else for my actions. My display of courage, integrity and accountability reflects my true medal that would forever be questioned and overshadowed by my criminal actions. I'm ~~not~~ usually not loss for words or weak, but actually hearing in hi-fi the suffering, it real and incredibly close to me....

Petitioner also described his signing the plea as "doing the honorable thing"; and that a twenty-seven year flat is appropriate.

Petitioner filed a timely PCR petition claiming: 1) Defense Counsel's decision to limit mental health investigation and failing to seek a psychological evaluation when there was substantial evidence to doubt Defendant's competency is ineffective assistance; and 2) Defense Counsel's failure to advise Defendant of a possible defense based on a mental disease or defect ~~is~~ and failing to investigate Defendant's mental state at the time of the offense is ineffective assistance. The superior court denied and dismissed the Petition~~s~~. The court's ruling is based on its review of the transcripts of the Petitioner's exchange with the judge during the settlement conference and the change of plea hearing. See Appendix A. The superior court found that Petitioner was clearly competent and that his plea was knowingly, intelligently, and voluntarily made. Although Petitioner alleged in his PCR petition that he would have gone to trial had he been ~~ade~~ properly advised of an affirmative defense, the superior court held that Petitioner's ~~claim~~ insanity defense and ineffective of counsel is unrelated to the validity of the plea and non-jurisdictional. see Appendix ^A at 3. The superior court further held that Petitioner failed to show that his counsel acted unreasonably or that the outcome of the proceedings would have been different. Id. Petitioner immediately filed a motion for reconsideration to clarify that coercion compelled the plea of guilty. That motion was denied.

Petitioner filed a review petition in the Arizona Court of Appeals. He reiterates his Ineffective Assistance of Counsel claims regarding the denial of a competency hearing and failure to advise him of an insanity defense and investigate his mental state around the time of the offense, ~~and~~ Petitioner also clarified his coercion allegation from the motion for reconsideration by bringing attention to the Superior Court's comments during the Settlement Conference. The appeals court declined to address the inducement claim because of its holding that it had been raised for the first time on review. see Appendix B at 3. The appeals court determined Petitioner's display of "normal communications skills and thought process" and demonstration of "understanding his rights and consequences of waiver" was sufficient evidence to support the superior court's finding see Appendix B at 3 and 4. The appeals court also found that Petitioner likewise failed to set forth a colorable claim that he could assert an insanity defense because of the evidence showing that he threatened the victim to keep her silent, and no evidence was presented that he did not know what he was doing was wrong. Id at 4. The evidence ~~has been~~ of the threat allegations is listed in the presentence report and claims to be a summary from the Avondale Police Report.

Petitioner filed a Writ of Habeas Corpus petition in the United States District Court in Arizona. Petitioner contends that his Sixth Amendment right to effective assistance of counsel and his Fourteenth Amendment due process and equal protection rights were violated when ...

1) Counsel denied him his right to receive a mental examination and hearing to determine his competency; and 2) Counsel failed to advise him of an insanity defense and failed to investigate his mental condition at the time of the offense. Respondents submitted its answer to the Writ of Habeas Corpus with an excerpt of the Victim's ~~st~~ unsuited police testimony in the presentence report, summarized from the Avondale Police Department-mental Report # 15-04871, alleging Petitioner hit and threatened her to ~~keep her~~ silent. Petitioner filed a motion to expand the record to include the Avondale Police Report, on grounds that it show concerns of Victim testimony being compromised by her mother through phone texts, and police confiscating that phone without a warrant for 52 days, and failing to recover 14% of deleted material. The police report also show the Victim's mother, who is also Petitioner's wife, told police that he had emptied out the bank accounts.

The District Court ~~has~~ recognized that material written by counsel show that counsel was indeed aware of Petitioner's PTSD and other "mental issues", and medical records proffered by Petitioner corroborate the presence of those issues. See Appendix D at 9. However, the district court asserts the record is replete with evidence suggesting that Petitioner was competent because of his display of lucidity, answers to questions were coherent which provided assurances of his ~~competency~~ competency, and spoke in depth about his contrition. Id at 8. The district court also held that the mitigation memo did not raise any concerns regarding Petitioner's competency to enter into a

guilty plea, but indeed sought the judge assistance in persuading Petitioner that the state's plea offer is a favorable one. Appendix D at 9. The district court further concluded the Arizona Court of Appeals did not violate clearly established law by concluding that Petitioner would be unable to establish prejudice on any ineffective assistance of counsel claim premised on counsel's failure to pursue an insanity defense. Id at 10. He the district court determined Petitioner did indeed encouraged various forms of coercion in effort to evade detection using threats of physical force and family disintegration designed to coerce the Victim into staying silent, Id at 10, "and the fact that he took precautions while his crimes were ongoing undermines any suggestion that he began displaying consciousness of guilt after the crimes stopped. Id.

The district court denied the motion to expand the record to include the Avondale Police report. The district court agrees with and adopts the magistrates recommendations. See Appendix D at 11. The magistrate held that Petitioner's admission that he had "power over" the victim is sufficient to corroborate that he knew his conduct was improper. "The disclosure of the Avondale Police report is not necessary to supplement that fact." However, Petitioner also argue that the police report would show the state's concerns of Victim's out of court testimony being compromised through texts with another potential witness in this case. Police report show the phone was confiscated and accessed without a warrant. The unrecovered data did not ~~had~~ have bearing on the magistrate analysis.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Notwithstanding all the above factors, based on decisions of this Court in *Drope*, *Pate*, *Dusky*, and *Hill*, Petitioner's right to due process and effective assistance of counsel claims arise from counsel's failure to request a mental examination and hearing to determine his competency, and to advise him of an insanity defense or in the alternative, to adequately investigate the circumstances surrounding the offense. Petitioner maintains that *Drope*, *Pate*, and *Dusky* due process violations regarding competency, and right to effective assistance of counsel under *Hill* should be considered. In particular, Petitioner maintains that the district court's findings of fact are contrary to or an unreasonable application of Supreme Court precedent, and/or unreasonable factual determinations consisting of exclusive reliance of colloquies in the transcripts, out of court witness testimony, and mistakes of fact. Consequently, and for all the reasons below, Petitioner respectfully request this Court to consider all errors that may rise to the level of plain errors, and due process violations for out of fundamental ~~fairness~~ fairness.

A. District Court's factual findings ~~and~~ relies on questionable witness testimony and is not supported by a fair evidentiary forum.

"Full and Fair Proceeding:"

In *Townsend v. Sain*, 372 U.S. 293, 312 (1963), this Court reversed the district court's dismissal of a habeas corpus petition because the lower court improperly had refused to hold an evidentiary hearing on the petition.

Prior to its amendment in 1946, 28 U.S. sect. 2254 (2) explicitly stated that "a full and fair hearing" in the state courts is a prerequisite to federal deference to state court's fact findings. Although the current version of the statute (28 U.S.C. sect. 2254 (2)(2); 2254(e)) no longer contains that language, the statute's requirement of "reasonable" state court fact finding procedures, *Id.* 2254 sect. (2)(2), encompasses the pre-existing standard. See *Federal Habeas Corpus Practice and Procedures* 7.1.

Townsend v. Sain, 372 U.S. 293, 312 (1963) (state determination of fact not binding in federal habeas corpus proceedings if not based on a "full and fair" fact finding procedures). See also *Keeny v. Tamayo-Reyes*, 504 U.S. 1-10 (1992) ("state must afford the petitioner a full and fair hearing on his claim federal claim or else federal ~~hearing~~ rehearing of fact is required).

B. District court's finding of fact regarding
Petitioner's claim of a denial of a right to
an examination and hearing to determine
his ~~comp~~ competency is contrary to Supreme
Court precedent and/or unreasonable factual
determination.

The Court's standard in *Dusky*, *Pate*, and *Drope* support Petitioner's

position regarding ~~the~~ his competency. This Court has already explain the standard used to determine competency to stand trial as "Whether he (the defendant) has sufficient present ability to consult with his lawyer with a reasonable and rational understanding - and whether he has a rational as well a factual understanding of the proceedings against him."

Dusky v. United States, 362 U.S. 402 (1960) 80 S.Ct. 789 4. L.Ed 2d 824.

"When factual matters bearing directly on the plea are truly in controversy, an oral colloquy is not an acceptable vehicle for resolving them.

United States v. Joslin, 434 F.2d 526, 531 (D.C. Cir. 1986).

Evidence of a petitioner's present mental ~~ental~~ condition are commonly considered at arriving at a decision to hold a mental examination and hearing and could shed considerable light on why a petitioner may not have the ability to consult with his attorney and comprehend the proceeding. See Pate v. Robinson, 383 U.S. 86 S.Ct. 836 15 L.Ed 2d 815 (1966) (the Court held that failure to observe procedures adequate to protect a defendants not to be ~~trial~~ tried or convicted while incompetent to stand trial deprives him of his right to a fair trial). Petitioner's mental health history together with the contents inside the mitigation memo, should have been sufficient grounds to request an examination and hearing to determine his competency to plea guilty. An examination conducted by a psychiatrist and psychologist by way of perpetuating testimony through deposition, could give a court first expert advisement of a petitioner's: 1) ~~Personal~~ Personal history and

present symptoms; 2) description and results of test; and 3) examiner's diagnoses, findings, prognoses, and treatment.

Individuals with biological predispositions and certain psychological traits are at risk to acute disturbances in their sense of reality if they are ~~placed~~ placed within certain environmental situations. Here, concerns regarding Petitioner's illnesses and the fact he was not able to consult with his counsel was brought before the Superior Court, as the district court determined, to be persuaded that the states existing plea offer is a "favorable one", however, Petitioner was by the superior court that it was its "personal thought" to plead guilty for honor, duty, and respect for the Marine Corps. Petitioner's false belief that it was his Marine Corps duty and honor to plead guilty was the product of an abnormal mental state characterized by a delusion that had not been dispelled by his counsel or in colloquies with the court. see *Pate v. Robinson* 383 U.S. 375, 385-86 (1966) (error not to hold a competency hearing in light of defendant's history of irration behavior, including vivid paranoid delusions, attempting to leap from a moving cab, attempting to set wife's clothes on fire, murdering infant son, and attempting suicide, even where interactions with judge does not not indicate incompetence). When the superior court determined that Petitioner's plea was knowing, intelligent, and voluntary, the colloquy was not vigilant of the delusional thought pattern.

C. District Court's findings regarding
Petitioner's ineffective assistance claim
that his Counsel failed to advise him of an
insanity defense and failed to investigate
the circumstances surrounding the offense
is contrary to Supreme Court precedent and
an unreasonable factual determination

The general standard for "effective assistance of counsel in the guilty plea context is *Strickland v. Washington*, 466 U.S. 668 (1984). The requirement to show prejudice was already announced by the United States Supreme Court in *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985):

"The defendant must show 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." *Id.*

This Court has recently clarified that success may have nothing to do with the decision to go to trial. In *Lee v. United States*, 137 S.Ct. 1958 (2017), the Court acknowledged that in some cases throwing a "hail mary" by going to trial might seem more rational than pleading guilty with a guaranteed losing ~~out~~ outcome --- The Third Circuit summed up Hill's standard:

"The Hill inquiry did not involve examining the petitioner's likelihood of ~~se~~ success had he insisted on a trial, but merely whether he would go to trial at all."

Valazquez v. Supt Fayette 521 937, F.3d 151 (3rd Cir. 2019). Here, chances of success matters little if there are other options available

Petitioner relies on the statutory texts to support his insanity defense claim under A.R.S 13-502, that plainly states:

" A person may be found guilty except insane if at the time the commission of the criminal act was afflicted with a mental disease or defect of such severity that person did not know the criminal act was wrong."

Here the first element in the statute is at the time of the commission the person was afflicted with a severe mental disease or defect. The second one refers to the ability of the accused to comprehend what he was doing and the awareness of the characteristic characteristics of his acts.

The district court determine the Arizona Court of Appeals did not violate clearly establish prejudice in his IAC claim premised on counsel's failure to ~~persue~~ pursue an insanity defense, because ~~for~~ it had been alleged Petitioner encourage various forms of ~~coercion~~ coercion if effective effort to evade detection by using threats of physical force and family disintegration. Nevertheless the district court determination relies on questionable witness testimony. ~~It is~~ ~~being compromised by~~ ~~the~~ ~~to the~~

Petitioner has the burden to ~~can~~ prove he could assert an insanity defense by clear and convincing evidence. It is the respondent who would have to prove Petitioner sane beyond a reasonable doubt. Moreover, Petitioner burden for his IAC claim of showing a reasonable probability he would had gone to trial.

In the light of Petitioners mental health history and treatment; Prosecution witnesses credibility; ~~Peto~~ Petitioners 27 year prison sentence at his age, it would have been reasonable to go to trial.

CONCLUSION

Based on the foregoing factors, this Court should grant the Petition for a Writ of Certiorari and order a full hearing and full briefing

Respectfully Submitted on this 2nd day of February 2021

by William Davis

~ William Davis