

No. 20-7429

IN THE
SUPREME COURT OF THE UNITED STATES

William Davis
Appellant

v.

David Shinn et al
Appellees

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

MOTION FOR A REHEARING

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SUPREME COURT OF THE UNITED STATES

William Davis

Appellant

No. 20-7429

v.

David Shinn et al

Appellee

MOTION FOR A REHEARING

In pursuant to the Rules of the Supreme Court of the United States Rule 44, Appellant, William Davis respectfully request this Court to grant this Motion for Rehearing. Appellant attests that this petition is limited to intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented and that the petition is presented in good faith and not for delay.

The judgement of this Court denying Appellant's Writ of Certiorari was entered on May 3, 2021, and Appellant submitted his initial Motion for Rehearing within 25 days from that date. On June 15, 2021 the Clerk's Office returned the Motion and instructed Appellant to resubmit in corrected form compliant to Rule 44 of the Rules of this Court. This Motion is written 15 days of that date.

Respectfully Submitted on this 30th day of June 2021

by

William Davis

I. SUMMARY OF GROUNDS IN QUESTION

The decision denying relief for a COA should be overturned, and remanded for appeal and for further development of the facts, including an evidentiary hearing and mental examination. Appellant made a substantial showing of a denial of his constitutional rights and shown that 1) a jurist of reason would find it debatable whether his habeas corpus petition states a valid claim, and 2) a jurist of reason would find it debatable whether the district court was correct in its procedural ruling.

A. Appellant demonstrated how the district court's factual findings regarding his competence to stand trial and plead guilty conflicts with the established rules and procedure, and existing case law of this Court.

1. Appellant asserted both ~~and~~ procedural and substantive due process incompetency claims which are based on ineffective assistance of counsel. The procedural claim asserts that his counsel failed to request a competency hearing and the superior court failed to sua sponte conduct a competency hearing. The substantive claim asserts that his due process rights were violated because he was incompetent when he pleaded guilty, regardless of whether the superior court should have conducted a competency hearing under Pate.

2. Counsel's assessment of Appellant's mental state, in the mitigation memo, as having posttraumatic stress disorder (PTSD), poor cognitive ability, poor memory and confusion, and needing other parties other than counsel

to help explain his plea advice could form a basis of a due process and an ineffective assistance challenge because of counsel's failure to raise the issue of Appellant's competence before the state court. However, the district court found that counsel's description in the mitigation memo did not incorporate concerns regarding Appellant's competency despite ~~the words~~ ^{its wording} chosen by counsel meet the reasonable ground standard to doubt competence under this Court's existing case law in Dusky, Fote, and Drope. See also Bouchillon v. Collins, 907 F.2d 589, 592-94 (5th Cir. 1990). Nevertheless, the district court finding the mitigation memo had failed to raise any concerns regarding Appellant's competency to enter in a guilty plea and indeed sought judicial assistance to persuade Appellant into accepting the state's proffered plea as a "favorable one", is tantamount to an admission to a denial of a constitutional right to effective assistance of counsel under Strickland and Hill. Although the district court recognizes that Appellant's mental condition was unstable and he could not reasonably consult with counsel, the district court placed emphasis ~~solely~~ solely on Appellant's exchange with the superior court (from the record) to determine that he was competent to waive his rights and plead guilty. Here, the district court disregarded the rationality standards under Dusky, and the scope of the inquiry was limited to identifying only signs of disorganized behavior and speech and other negative symptoms like flat affect therefore, the district court did not ~~not~~ definitely rule out the mental disturbance that affected Appellant's sense of reality ^{that} ~~which~~ prevented him from entering into a knowing, intelligent, and voluntary waiver of his constitutional rights. Moreover, the district court deferred to the state courts' factual findings regarding Appellant's competency without the benefit of a hearing where Appellant could fully and fairly present evidence and witnesses, or be heard. It is in the Appellant's position that he did not have ~~"sufficient"~~ sufficient present ability to consult with his lawyer with

a "reasonable degree of rational understanding" when his counsel needed to seek judicial assistance to give him plea advice because of his cumulative mental disturbance; and he did not have a rational and factual understanding of the proceedings against him when he waived his constitutional rights and plead guilty because of the assistance counsel sought out led him to believe that it was his ~~the~~ Marine Corps honor and duty to do so. Therefore, on these grounds, Appellant had met his burden of demonstrating the denial of his constitutional rights to due process of law and effective assistance because of counsel's failure to request a hearing to determine his competency where reasonable grounds existed to doubt his competence to stand trial and plead guilty, and ~~the~~ the district court erroneously deferred to the state court's factual determination regarding competency.

B. The district ~~the~~ court's decision to deny Appellant's ineffective assistance of counsel claim for counsel's failure to advise him of an insanity based defense is clearly erroneous particularly in light of his mental health background and disputed issues of material fact and available evidence involving matters affecting the credibility of unsworn statements from compromised witness alleging he threatened and coerced victim into staying silent ~~of~~ of the offenses to evade detection.

1. ~~the~~ Appellant asserts he was denied effective assistance because of his counsel's failure to advise him of an insanity defense. Although Appellant had alleged that he would not have pleaded guilty had he been advised of the

defense, the district court, however, determined that he would be unable to establish prejudice premised on counsel's failure to pursue an insanity defense because the victim alleged he had threatened her with physical force and other forms of coercion to keep her quiet. Accordingly the district court concluded that Appellant encouraging various forms of coercion in effort to evade detection and took precautions while the offenses were ongoing undermines any suggestion that Appellant began displaying a consciousness of guilt after the crimes stopped. However, Appellant had challenged the veracity of victim's unsworn statements were at issue, and that this claim could not have been properly adjudicated without an evidentiary hearing on disputed issues of material fact. Here, Appellant contends that the police report show the prosecution team's concerns that the victim had been compromised through a cell phone and text messages by another one of their witnesses in this case prior to giving her statement to police. The police report also show that the phone had been confiscated and the prosecution team examining ~~the~~ it 52 days prior to drafting up a warrant and before it received a forensic ~~an~~ analysis. Assuming counsel had conducted a reasonable investigation of the circumstances and all relevant facts leading to the merits of this case, then counsel should have been aware of the encompassing details of the victim's unsworn statements that were already in his possession prior to him seeking judicial assistance to persuade Appellant to accept the state's plea offer. The victim's unsworn allegation were obtained and introduced to the court record by a third party through the grand jury and ~~present~~ presentence report which had been summarized from the police report. These allegations were never presented to Appellant prior to post-conviction proceedings, nor ~~are~~ were they cited in the plea agreement, therefore, the district court cannot reasonably ascertain the veracity and integrity of allegations that escaped the

scrutiny of a cross-examination and sanctions under an oath in a court of justice, and an investigation into the character and motives of the declarant who police believe to have been compromised by another witness in this case.

2. Although the district court acknowledges the evidence in the medical records and materials written by counsel corroborating Appellant's mental issues, the district court ^{disregards} ~~rejects~~ the evidence suggesting Appellant's toxic combination of prescribed medication as a contributing cause to the offenses despite medical authoritative manuals and publication supporting Appellant's claim. Even with the district court excluding "a side effect or bad dreams" as a contributing cause, Appellant had offered other factors for the district court to consider. Nevertheless, the district court does not deny Appellant's symptoms of hallucinations, delusions, and altered levels of consciousness, or Appellant's sustained pattern of unknowing irrational behavior documented in his medical record around the time of the offenses and during his admission in the Mental Health Unit after his arrest.

3. The district court acknowledges the evidence in the medical record corroborating the presence of Appellant's mental disturbance, however, denies its evidence as the contributing cause of the offenses because it does not withstand the allegations from a compromised witness regardless of the evidence affecting the credibility of the allegations. Therefore, the merits of this claim ~~cannot~~ could not have been properly evaluated without ever having an evidentiary hearing on the disputed ~~facts~~ issues of material facts and/or an expert examination of Appellant's mental state at the time of the offenses.

II. CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision in not issuing a COA, because Appellant demonstrated a "substantial showing of the denial of his constitutional rights" to due process of law and effective assistance of counsel, as guaranteed by the Fifth and Sixth Amendments of the United States Constitution, from counsel's failure to request a hearing to determine his competency to stand trial and plead guilty when reasonable grounds exist to doubt his competence; and from counsel's failure to advise him of an insanity based defense. Appellant satisfied the standard by demonstrating that a jurist of reason could disagree with the district court's resolution of his Constitutional claims and/or that a jurist of reason could conclude the issues presented are adequate to deserve encouragement to proceed further. See *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1034, 1039 (2003). See also *Slack v. McDaniel*, 529 U.S. 479, 484, 120 S.Ct. 1595 (2000). Moreover, Appellant is entitled to an evidentiary hearing because he developed a factual basis of his claims that if proven, would entitle him to relief.

WHEREFORE BASED ON THE FOREGOING, Appellant respectfully request that this Court enter an order issuing a COA, remand for an appeal, including an evidentiary hearing and mental examination.

Respectfully Submitted on this 30th day of June 2021

by William Davis

x William Davis