

20-7729
No. _____

In The
Supreme Court of the United States

CASEY ROSE - PETITIONER,

v.

UNITED STATES OF AMERICA - RESPONDENTS,

On Petition For Writ Of Certiorari
To The United States Court of Appeals For The
Fifth Circuit

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

FILED
MAR 30 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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SUPREME COURT, U.S.

QUESTION PRESENTED

Whether the termination of cross-examination of a cooperating ^{witness} with incentives to lie prior to being able to impeach the witness violated the confrontation clause? If so, can reasonable jurists debate the issues?

Whether allowing a documented schizophrenia defendant to represent himself at trial, and facing a life sentence, violated due process of law by not having a competency hearing in light of *Indiana v. Edwards*, 171 L. Ed. 2d 345 U.S. 164 (2008)? If so, can reasonable jurists debate this issue?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

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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 judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition, and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition, and is unpublished.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided the petitioner's case was August 11, 2020. See Appendix A.

The Court of Appeals denied a timely position petition for rehearing on the following date: November 2, 2020, and a copy of the order denying rehearing appears in Appendix C.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V (Due Process Clause):

"No person shall be deprived of life, liberty, or property, without due process of law[.]"

U.S. Const. Amend VI (Confrontation Clause):

"In all criminal prosecutions to be confronted with the witness against him[.]

U.S. Const. Amend VI (Assistance of Counsel Clause): "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense[.]

18.U.S.C. § 4241(a) "a district court must sua sponte conduct a competency hearing if: there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect, rendering him mentally incompetent to the extent that he is unable to understand the nature of and consequences of the proceedings against him or to assist properly in his defense."

STATEMENT OF THE CASE

Attorney D. Robin McCarty initially represented Mr. Rose. (Cr No. 93) Following Mr. McCarty's withdraw, the Court appointed attorney Scott Miller Anderson to represent Mr. Rose. (Cr No. 615) Mr. Rose, dissatisfied with Mr. Anderson's representation, asked the Court for new counsel, but the Court denied his request. (Cr No. 1095, 1102) Mr. Rose proceeded to trial Pro Se with Mr. Anderson as stand by counsel. (Cr No. 1160) After trial, the Court then appointed attorney David Pire to serve as standby counsel for sentencing. (Cr No. 1178) Mr. Rose then sought full representation, and the Court responded by appointing attorney Joseph Padian, who represented Mr. Rose at sentencing and on direct appeal. (Cr No. 1185)

On September 17, 2015, a Jury convicted Mr. Rose of conspiracy to possess with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 846, 841 (a)(1) & (b)(1)(A), and 851, possession of a controlled substance with intent to distribute in violation of 21 U.S.C. §§ 841 (a)(1) & (b)(1)(c), and possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922 (g)(1) and 924 (a)(2). (Cr No. 1169)

On May 5, 2016, the Court sentenced Mr. Rose to life imprisonment.

Footnote[1]

Citations to "Cr No. - " refer to the docket of the underlying criminal proceeding, United States v. Pass et al., Case No 3:14-Cr-367-B. Documents filed in section § 2255 action are cited as "Cv No. _". The title references other documents.

(Cr No. 2320) Mr. Rose filed a direct appeal, and the Fifth Circuit affirmed his conviction and sentence on April 4, 2017. The United States v. Rose, 684 F. App' x 403 (5th Cir 2017) Mr. Rose timely filed a section § 2255 motion on March 19, 2018. (Cr. No 3350) In his § 2255 motion, he asserted:

- 1.) The Court denied his rights under the confrontation clause.
- 2.) Appellant counsel was ineffective for failing to raise the confrontation clause issue on appeal.
- 3.) The government committed misconduct by not correcting perjured testimony of one of its witnesses.
- 4.) [E]ach of his trial court attorneys was ineffective for failing to request a mental health competency examination.
- 5.) Sentencing counsel was ineffective for failing to raise the point that not only was Mr. Rose was heavily medicated during pre-trial,

trial, and sentencing; he had a history of extreme mental health problems.

6.) The Court violated his due process rights by allowing Mr. Rose to proceed to trial prose while suffering from depression, schizophrenia. Under the influence of heavy psychiatric medication during pre-trial, trial, and sentencing, his "competency was not addressed." (Cv No. 1 at 14-22)

The United States filed a response in opposition (Cv No. 7), to which Mr. Rose filed a reply. (Cv No. 10)

On March 19, 2019, a United States Magistrate Judge filed a report and recommendation ("R & R") that Mr. Rose's § 2255 motion be denied, and his case be, "dismissed without prejudice." (Cv No. 11) Mr. Rose filed timely objections to the magistrate Judge's "R & R". (Cv. No. 15) On June 7, 2019, the Court accepted the Magistrate Judge's conclusion over Mr. Rose's objections and denied Mr. Rose a Certificate Of Appealability. (Cv No. 16) On June 7, 2019, a judgment was issued. (Cv. No 17)

On July 30, 2019, Mr. Rose filed a timely notice of appeal (Cv. No 18) and a motion to proceed on appeal in forma pauperis. (Cv No. 19) On August 2, 2019, the Court granted Mr. Rose's motion. (Cv No. 20) Mr. Rose filed a Motion for Issuance of a Certificate Of Appealability ("C.O.A.") in the Fifth Circuit. (Fifth Circuit Appeal No. 19-10882) That

Court, on August 11, 2020, denied a C.O.A. to Mr. Rose. (Id), but that petition was denied on November 2, 2020 (Id).

This timely petition for Writ of Certiorari followed.

ARGUMENT

As stated in Rule 10 of the Supreme Court rules, [r]eview on Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for Writ of Certiorari will be granted only for compelling reasons." This Court's most cited case involving the Confrontation Clause was decided almost 50 years ago. See *Davis v. Alaska*, 415 U.S. 308, 318, 94 S Ct. 1105, 39 L. Ed 2d 347 (1974). This Court's recent decision regarding self-representation with a documented schizophrenic illness was decided 12 years ago. See *Indiana v. Edwards* 171 L. Ed 2d 345, 554, U.S. 164 (2008)

In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witness against them. This is the cornerstone of the sixth amendment. This Court has made clear the Confrontation Clause is not satisfied until sufficient cross-examination has been granted.

No person shall be deprived of life, liberty, or property without due process of law. A competency evaluation for a defendant who has decided to go to trial, waived representation of counsel, faces a life sentence, and is diagnosed with a schizophrenic illness, and is heavily medicated is the cornerstone of the due process foundation.

Granting Certiorari, in this case, will provide valuable protection to the defendant's fifth and sixth amendment to the constitution, and will provide

valuable guidance to the lower courts on when due process requires a competency evaluation, and when the confrontation clause has been satisfied.

The United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings to call for an exercise of this Court's supervisory power.

I. The lower Court's broad interpretations of *Delaware v. Arsdall*, 475 U.S. 673, 679, 106 S Ct. 1431, 89 L. Ed 2d 674 (1986), has allowed the court's to violate the Confrontation Clause and terminate the cross-examination before the baseline of the sixth amendment is satisfied.

Mr. Rose asked witness crow if he "beat up his girlfriends," the Court terminated Mr. Rose's cross-examination of witness crow (Gov. Res Doc 7 9) and cited to *Delaware v. Arsdall*; 475 U.S. 673, 679, 106, S Ct. 1431, 89 L. Ed 2d 674 4986) ("[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confession of the issue, the witness's safety, or interrogation that is repetitive or only marginally relevant")

(Doc .11 at 5) Mr. Rose asks the Court not only to recognize this limitation, but to draw a baseline at "impeachment of the witness," before the sixth

amendment is satisfied. This Court has recognized that restrictions on the scope of cross-examination can violate. See *Davis v. Alaska*, 415 U.S. 308, 318, 94 S. Ct 1105, 39 L. Ed 2d 347 (1974). The Supreme Court in *Davis* makes it clear that the concern with such restriction is that they might undermine the purpose of the cross-examination by denying the DEFENSE COUNSEL the opportunity to "delve into the witness's story to test the witness's perception and memory and also to impeach, i.e., discredit the witness." Id at 316. The Supreme Court has established a test for a violation of the Confrontation Clause, which Mr. Rose's case is an ideal vehicle for this Court to reiterate. [If] "a reasonable jury might have received a significantly different impression of the witness's CREDIBILITY had the DEFENSE COUNSEL had been permitted to pursue his proposed line of cross-examination than the Confrontation Clause has been violated. See *Delaware v. Arsdall* 475, U.S. 673, 679, 106 S. Ct 1431 (1986) (emphasis added three times)

Mr. Rose asked witness Crow if he "beat up his girlfriends," and the Court terminated his cross-examination of witness Crow. This question was relevant to the case, and would serve four purposes. Specifically, 1.) To impeach witness Crow and show that he was a liar, 2.) show the jury why witness Crow accused Mr. Rose of breaking into his apartment to steal a kilo of meth. The question was

meant to draw out a lie. Witness Crow "beat up his girlfriend," Nia Reed was responsible for breaking into the apartment and stealing the kilo. She and her other boyfriend broke into the witness Crow's apartment, and Crow assaulted her as a result of this. This claim could've been proven by John Hall's interrogation video, to which the United States had been truthful and granted John Hall a 5K.1 departure. John Hall said, "Mr. Crow knew that Nia Reed and her other boyfriend broke into his apartment because he whipped her ass. Nia Reed, John Hall, and Brandon Crow ("witness Crow") are on the same conspiracy indictment. 3.) To show a timeline that would establish Mr. Rose had not seen witness Crow since May 2014, and that the firearm transaction could not have taken place in June or July of 2014 as witness Crow said, and 4.) the cross-examination would've allowed Mr. Rose to simply ask how he and witness Crow communicated. Mr. Rose's cell phone records were admitted as evidence, but nowhere in his records were witness Crow's phone numbers. If we can witness Crow was a supplier to Mr. Rose, then how did the two communicate? They didn't, and this too would've shown witness Crow was a liar. In short, The Court terminated the cross-examination of witness Crow before he could be impeached, illustrating the baseline for the Confrontation Clause.

Mr. Rose is serving a life sentence for a kilo of ("ghost dope") that witness Crow, a ("cooperating

witness"), said was stolen from his apartment. This case is an ideal vehicle to reiterate that the Confrontation Clause is not satisfied until the witness has been impeached when dealing with a cooperating witness with incentives to lie.

II. Allowing Mr. Rose to represent himself at trial without a competency hearing when diagnosed with schizophrenia, depression while heavily medicated on psychiatric medication violated his due process in light of *Indiana v. Edwards*, 171 L Ed 2d 345, U.S. 164 (2008).

The Due Process Clause of the fifth amendment states that "no person shall be deprived of life, liberty, or property, without due process of law." U.S. constitution amendment V. This Court has identified a defendant who is mentally incompetent cannot conduct a trial suffering from schizophrenia. *Indiana V Edwards*, 171 L. Ed. 2d 345, US 164 (2008)

"A criminal defendant may not be tried unless he is competent, and he may not waive his right to counsel or plead guilty unless he does so "competently and intelligently." *Godinez v. Moron*, 509 U.S. 389, 396 (1993)(citation omitted). "A defendant is competent to stand trial when he has

"sufficiently presents the ability to consult with his or her lawyer with a reasonable degree of rational understanding" and has "a rational as well as factual understanding of the proceedings." *Dusky v. United States*, 362 U.S. 402 (1960)(per curiam). The same standard applies when determining whether the defendant is competent to waive his right to counsel. *Godinez*, 509 U.S. at 396-98; *Indiana v. Edwards*, 554 U.S. 164 172-73 (2008)

Under 18 U.S.C § 4241(a), a district court must *sua sponte* conduct a competency hearing if:

There is a REASONABLE CAUSE to believe the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his own defense (emphasis added)

Mr. Rose's schizophrenia and depression are well documented in his presentence report. Crim. doc 1877-1 932 18 U.S.C § 4241(a) states, "a District Court court must *sua sponte* conduct a competency hearing if there is REASONABLE CAUSE to believe...." (emphasis three times). What is reasonable cause? Mr. Rose avers That [any]

defendant suffering from a serious mental disease such as schizophrenia ("like Mr. Rose"), the district court should sua sponte conduct a competency hearing because there is a REASONABLE CAUSE to believe that the defendant may be presently suffering from a mental disease or defect. (Emphasize added) This is not written on a blank slate. See Randy Borum & Thomas Grisso, Established Standards For Criminal Forensic Reports; An Empirical Analysis, 24 Bull. Am. Acad. Psychiatric & L. 297 (1996) ("we are well aware that a person suffering from schizophrenia, ("like Mr. Rose"), may have certain periods of lucidity and thus appear perfectly normal at one moment while suffering from delusions of paranoia or hallucinations at another. Indeed, it is the im[precise] and [im]perfect nature of the science known as psychiatry that makes a review of the past available psychiatric records an essential part of a defendant's competency hearing to stand trial." Thus, REASONABLE CAUSE to conduct a competency hearing should be readily met with the defendant suffering from schizophrenia.

Mr. Rose asked the Court to conduct a "G.V.R." in his case in light of Indiana v. Edwards, 171 L. Ed 2d 345, 554 U.S. 164 (2008) (Finding defendant who has schizophrenia "like Mr. Rose" unable to represent himself because he was mentally incompetent to conduct the trial. Mr. Rose's due process rights were in violation when "reasonable

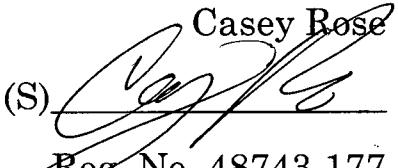
cause" to believe he had a mental disease was readily met with a diagnosed mental health disorder, schizophrenia. A competency hearing was not held for Mr. Rose before proceeding to trial, facing a life sentence, being diagnosed with schizophrenia, and representing himself because he believed the council was working with the United States. The case provides a vehicle for the Court to decide "reasonable cause" for defendants like Mr. Rose.

CONCLUSION

For all the reasons stated above, Mr. Rose asks the Court to grant his petition for Writ of Certiorari. Granting Certiorari will allow this Court to protect others' constitutional rights and correct a grave constitutional error.

3/29/21

Respectfully submitted,

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