

21-5257

Supreme Court, U.S.
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No. 21-_____

In The
SUPREME COURT OF THE UNITED STATES

JERMAINE LATWONE HAYNES,
Petitioner,

v.

GEORGE STEPHENSON, Warden
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Jermaine Latwone Haynes, #342370
Petitioner, *pro se*
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ORIGINAL

* This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

QUESTIONS PRESENTED

Was Petitioner Denied His Constitutional Right
To The Effective Assistance Of Counsel and A
Fair Trial Proceeding, Pursuant To U.S. Const.,
Amends Vi, Xiv; Mich. Const. 1963, Art. 1, §20,
Where Defense Counsel failed To:

PARTIES TO THE PROCEEDING

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

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS BELOW

The final order of the United States Court of Appeals, 6th Circuit, denying a certificate of appealability, appears at APPENDIX A to the petition and is reported at *Jermaine Latwone Haynes v Willis Chapman*, 2021 U.S. App. LEXIS 11675 (Case No. 20-1221; April 20, 2021). The final opinion and order of the United States District Court - E.D. Mich., denying the petition for writ of habeas corpus and declining to issue a certificate of appealability appears as APPENDIX B to the petition and is reported at; *Haynes v Campbell*, 2020 U.S. Dist. LEXIS 16904, (Dk. No. 16-cv-14371, E.D. Mich., February 3, 2020). The final order from the Michigan Supreme Court is published at *People v Haynes*, 871 N.W.2d 191, 2015 Mich. LEXIS 2711, 498 Mich. 921 (S.C. No. 151877, November 24, 2015). The final opinion of the Michigan Court of Appeals is published at, *People v Haynes*, 2015 Mich. App. LEXIS 1029 (Mich. Ct. App. No. 320409, May 19, 2015). (See Appendix, filed under separate cover).

JURISDICTION

Petitioner, Jermaine Latwone Haynes respectfully petitions for a writ of certiorari to review the final judgment of the United States Court of Appeals for the Sixth Circuit, (2021 U.S. App. LEXIS 11675, Case No. 20-1221, April 20, 2021). This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The Sixth Amendment of the United States Constitution states in relevant part: "In all criminal prosecutions, the accused shall...have the assistance of counsel for his defense." "The Sixth Amendment right to counsel is applicable to the states through the Due Process Clause of the Fourteenth Amendment." *People v Williams*, 470

Mich. 634; 641; 638 NW2d 597 (2004) (citing *Gideon v Wainwright*, 372 US 335, 83 S Ct 792, 9 L Ed.2d 799 (1963)).

28 U.S.C. 1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party to any civil case, before or after rendition of judgment or decree.

28 U.S.C. 1915(a)(1): Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action, or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

STATEMENT OF THE CASE

A. Factual background and trial court proceedings

Petitioner Haynes was convicted on January 9, 2014, of the offenses of two counts of Assault w/intent to Murder, Felon in Possession of Firearm, and Felony Firearm. Petitioner was sentenced as a habitual fourth offender to 30-50 years concurrent terms with possession of a firearm, followed by a consecutive 2 years for the Felony Firearm. Petitioner alleges that he was not properly represented during his trial procedures by trial counsel in violation of the US Cons, Ams V, VI, XIV; Cons. 1963, art 1, § 17.

Mr. Haynes contends that trial counsel was deficient when he failed to:

- a.) investigate, discover, and present Ms. Melrose Williams' text-messages to the Petitioner and possible testimony as well as Petitioner's text-messages to his brother which would revealed Petitioner's present state of mind;
- b.) obtain hospital and police reports/documents that would have substantiated Petitioner's claim as to why he feared for his life;
- c.) failed to present a self-defense theory, and for failing to question the Petitioner as to occurrences which led to his behavior on the day of the incident.
- d.) failed to introduce mitigating circumstances at Petitioner's sentencing which could have resulted in a lesser sentencing by the trial judge.
- e.) counsel neglected to have at Appellant's defense any psychological testing or witnesses to determine and establish the sanity and culpability of the Petitioner.

Because Petitioner was not supplied with a copy of the trial transcripts so that he may include the necessary page numbers, exhibits, etc., to his Standard

4 Brief, and because counsel's omissions do not appear on the record, Mr. Haynes now requests an evidentiary hearing to place on the record the reasons given by counsel for his inactions. See *People v. Ginther*, 390 Mich 436, 443; 212 N.W.2d 922 (1973).

Furthermore, Petitioner also seeks an evidentiary hearing pursuant to MCR 7.313 to develop a testimonial record to support his claims. To the extent that the claims raised depend on facts not on record, and the fact that there are no records/transcripts, it is incumbent upon Mr. Haynes to make a testimonial record at this level to support his claims; by asking the Court to take the testimony of trial counsel.

B. Procedural history

Mr. Haynes first timely filed an appeal of right, in which Mr. Haynes raised all of the issues presented in his habeas petition. On May 19, 2015, the Michigan Court of Appeals denied relief on all claims. Michigan Court of Appeals Opinion, 320409, RE 1, #1, Page ID 26-35.

The court rejected the claims that his rights under the Fifth Amendment were violated where trial counsel failed to investigate and present evidence related to text messages exchanged by Melrose Williams and petitioner and Frederick Haynes and petitioner, which would have indicated "that the victim and his friends were seeking out the petitioner with the intent to do him harm" and that petitioner believed "that his life was in danger from the police." Michigan Court of Appeals Opinion, 320409, RE 1, #1, Page ID 29-30. Even though counsel was well aware that this evidence existed and could present a

significant challenge to the prosecutor's claim that petitioner did not act in self-defense. Indeed, the introduction of the text messages would have shown that petitioner was "in fear for his life". The court also found no error where trial counsel failed to discover and introduce hospital records and police reports as well as other documents related to Gaskin's leg injuries. Critical evidence which could have introduced to the jury the fact that petitioner's neighbor's house had been shot-up because the shooter[s] thought that it was petitioner's house. Michigan Court of Appeals Opinion, 320409, RE 1 #1, Page ID 31-32.

The Court of Appeals also rejected Mr. Haynes' argument that he fired the gun in self-defense after he was approached by Akins with a handgun. Michigan Court of Appeals Opinion, 320409, RE 1, #1, Page ID 32. The Court also found that counsel's failure to introduce mitigating circumstances at petitioner's sentencing which may have resulted in petitioner receiving a lesser sentence, and counsel's failure to request psychological testing be performed on petitioner, did not raise to the level of constitutional error requiring relief from a conviction and sentence that fails to pass constitutional muster. Michigan Court of Appeals Opinion, 320409, RE 1, #1, Page ID 33-34.

The Michigan Supreme Court denied leave to appeal in its Order of November 24, 2015. Michigan Supreme Court Order, 151877, RE 1, #2, Page ID #37. Mr. Haynes' application to the Supreme Court raised all constitutional issues again raised herein, and his petition to the Michigan Supreme Court was filed timely.

Mr. Haynes timely applied for a writ of habeas corpus on the grounds that the state court unreasonably applied federal law to the claims outlined above.

On February 3, 2020, the United States District Court, by the Honorable Mathew F. Leitman, denied the petition. Opinion and Order Denying Petition for Writ of Habeas Corpus, RE 2, Page ID # 1025. The District Court denied a certificate of appealability relating to all issues raised in this brief. Opinion and Order Denying Petition for Writ of Habeas Corpus, RE 2, Page ID # 1025.

REASONS FOR GRANTING THE PETITION

GROUND I

Petitioner Was Denied His Constitutional Right To The Effective Assistance Of Counsel and A Fair Trial Proceeding, Pursuant To U.S. Const., Amends VI, XIV; Mich. Const. 1963, Art. 1, §20, Where Defense Counsel failed To:

- a. Trial counsel was ineffective for failing to investigate, discover and present Ms. Melrose Haynes' text messages to the petitioner and possible testimony as well as petitioner's text messages to his brother which revealed petitioner's present state of mind.
- b. Defense counsel proved ineffective when he failed to obtain hospital and police reports/documents that would have substantiated petitioner's claim as to why he feared for his life.
- c. Counsel was ineffective for failing to present a self-defense theory, and for failing to question the petitioner as to the occurrences which led to his behavior on the day of the incident.
- d. Trial counsel proved ineffective when he failed to introduce mitigating circumstances at petitioner's sentencing which could have resulted in a lesser sentence by the trial judge.
- e. Petitioner was denied his right to due process and effective assistance of counsel wherein counsel neglected to have at appellant's defense any psychological testing or witnesses to determine and establish the sanity and culpability of the petitioner.

Standard of Review: The Sixth Amendment guarantee of the right to counsel encompasses the right to effective assistance of counsel at trial. US Const., Amend. VI; Const. 1963, art. 1, §20. A defendant is denied this right where (1) Counsel's performance fell below the accepted standard of professional practice, and (2) That deficient performance prejudiced the defendant. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052, 2064; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich. 298, 338; 521 N.W.2d 797, 815 (1994). Prejudice can be demonstrated where the error is

sufficient to undermine confidence in the outcome of the proceeding, meaning that a new trial must be granted where there is a reasonable probability that the jury would have acquitted if counsel had been effective. *Strickland*, 466 US at 694-95.

Analysis:

The Sixth Amendment provides that the accused in a criminal prosecution "shall enjoy the right ... to have the Assistance of Counsel for his defence." US Const, Am VI; see also *Powell v Alabama*, 287 US 45; 53 SCt 55; 77 LEd 158 (1932); *Glasser v United States*, 315 US 60; 62 S Ct 457; 86 LEd 680 (1942). This requirement is made applicable to the states through the Fourteenth Amendment due process clause. *Gideon v Wainwright*, 372 US 335, 342; 83 S Ct 792, 796; 9 LEd2d 799 (1963). Likewise, Const 1963, art 1, §20 provides that the accused in a criminal prosecution "shall have the right ... to have the assistance of counsel for his ... defense."

To show that he was denied the effective assistance of counsel, a petitioner must demonstrate that, considering all of the circumstances, counsel's performance fell below the objective standard of reasonableness and so prejudiced the petitioner that he was denied a fair trial and a reasonable probability exists that, but for counsel's conduct, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 LEd2d 674 (1984); *People v Pickens*, 446 Mich 298; 509 NW2d 152 (1994); *People v Carbin*, 463 Mich 590; 617 NW2d 332 (2001). With respect to this second prong of the test, the Court adopted the following standard:

The petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 US at 694. The *Strickland* Court explicitly rejected an "outcome determinative" test, i.e. "that counsel's deficient conduct more likely than not altered the outcome in the case." 466 US at 693. In so doing the Court reasoned that the outcome of a case which includes deficient conduct is less entitled to a presumption of accuracy and fairness.

Knowledge of the law applicable to the petitioner's case is of course essential to rendering such assistance. *People v Carrick*, 220 Mich App 17, 22; 558 NW2d 242 (1996). Counsel here demonstrated that he lacked such knowledge by failing to:

a.) **INVESTIGATE, DISCOVER AND PRESENT MS. MELROSE WILLIAMS' TEXT MESSAGES TO THE PETITIONER AND POSSIBLE TESTIMONY AS WELL AS PETITIONER'S TEXT-MESSAGES TO HIS BROTHER WHICH REVEALED PETITIONER'S PRESENT STATE OF MIND.**

It is unclear why Ms. Melrose Williams' text messages were not retrieved and presented at trial in support of Mr. Haynes' defense by his attorney Mr. Winters. What is clear is that Ms. Williams had personal knowledge that the victim and his friends were seeking out the Petitioner with the intent to do him harm collaborating Petitioner's testimony. The Petitioner informed his trial counsel Mr. William Winters of the existing text messages but counsel completely ignored Petitioner's information. Trial counsel should have put forth the effort in attempting to retrieve and present at trial the text messages in question. Mr.

Haynes was deprived of the right to the effective assistance of counsel by counsel's failure to conduct proper investigation in this regard, US Const, Ams VI, XIV; Const 1963, art 1, § 20; *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

To be effective, defense counsel must investigate, prepare, and timely assert all substantial defenses, *Kimmelman v Morrison*, 477 US 365; 106 S Ct 2574; 91 L Ed 2d 305 (1986). The failure to call supporting witnesses can constitute ineffective assistance where their testimony could have changed the outcome of the case, *People v Johnson*, 451 Mich 115; 545 NW2d 637 (1996); *People v Bass*, 247 Mich App 385; 636 NW2d 781 (2001).

The Court held in *People v Grant*, 470 Mich 477; 684 NW2d 686 (2004) that trial counsel failed to investigate and substantiate the petitioner's primary defense by neglecting to interview a child criminal sexual conduct victim's family concerning a bike accident and resultant vaginal injury they had witnessed, which accident the child claimed never occurred. "A sound trial strategy is one that is developed in concert with an investigation that is adequately supported by reasonable professional judgments. Counsel must make an independent examination of the facts, circumstances, pleadings and laws involved ..." *Von Moltke v Gillies*, 332 US 708, 721; 68 SCt 316; 92 L Ed 2d 309 (1948). This includes pursuing 'all leads relevant to the merits of the case,' *Blackburn v Foltz*, 828 F 2d 1177, 1183 (C.A.6, 1987)." *Grant*, supra., (Opinion of Kelly and Cavanagh, JJ, with Taylor and Markman JJ concurring in the result only).

Based on this principle, the Sixth Circuit affirmed the grant of a habeas petition in *McClellan v Rapelje*, 703 F3d 344 (CA 6, 2013), a first degree murder

case, where trial counsel failed to contact defense witnesses who would have testified that the victim picked up a gun and approached the petitioner with a gun before the petitioner shot him. In granting the petition, the District Court had dismissed the assertions that counsel had declined to call the witnesses because they could have been impeached based on inconsistencies in their stories, noting that "[t]he problem for Respondent is that none of these factors were considered. Defense counsel had no idea what these witnesses had to offer, and whether the value of their proposed testimony." *McClellan v Rapelje*, unpublished, 2010 WL 2447999 (June 14, 2011).

The same holds true in the case against the Petitioner, where counsel's failure to discover and present Ms. Melrose Williams's text-messages and possible testimony undermined Mr. Haynes' legitimate claim to self-defense. Moreover, there is more than a reasonable probability that Mr. Haynes would have been acquitted of the charges of assault with intent to murder but for counsel's failure to present to the jury Ms. Williams' text messages and testimony, *Strickland, supra*.

In conjunction with counsel's ineffectiveness in obtaining the above text-messages from Ms. Melrose Williams, counsel was again ineffective when he failed to retrieve the text-messages sent by the Petitioner to his brother Frederick Haynes.

During trial, the prosecuting attorney cross-examined the Petitioner, and during this cross-examination, she insinuated that the Petitioner was not the victim as he had stated, but rather the aggressor. That had the Petitioner been a victim he would have used his cell phone which was on his person at the time, to contact the police.

Here, counsel had the opportunity to bring to the jury's attention the fact that about a week before the day of the incident, Petitioner had sent text messages to his brother stating that he felt his life was in danger from the police. Had counsel retrieved these text messages, he could have countered the prosecutor's insinuations that the Petitioner had not been a victim but the aggressor in the case by demonstrating the type of fear Petitioner had towards the police. Trial counsel again proved grossly and constitutionally ineffective.

b.) DEFENSE COUNSEL PROVED INEFFECTIVE WHEN HE FAILED TO OBTAIN HOSPITAL AND POLICE REPORTS/DOCUMENTS THAT WOULD HAVE SUBSTANTIATED PETITIONER'S CLAIM AS TO WHY HE FEARED FOR HIS LIFE.

As previously stated, Petitioner Haynes informed his trial counsel that he had been warned that the victim and his friends were seeking him out to do him harm. This information came directly from Ms. Melrose Williams, who was the sister of Adrian, who is friends with the complainant Mr. David Dwusu and had personal knowledge as to the intents of the victim and his friends against Mr. Haynes and Mr. Haynes's friend Mr. Anthony Gaskins. Petitioner Haynes informed his trial attorney of the fact that not long after he had received the warning text messages from Ms. Melrose Williams, Mr. Gaskins had been shot in the leg with injuries severe enough to warrant the amputation of his leg. Mr. Gaskins and Petitioner Haynes were friends and known to hang-out together by the victim and his friends.

In addition, had trial counsel retrieved the police reports that Petitioner Haynes had mentioned to him, he could have introduced to the jury the fact that Mr. Haynes' next door neighbor's house had been shot up because the perpetrators were under the impression that it was Mr. Haynes' residence.

Introducing these facts to the jury would have brought clarity to the jury as to the Petitioner's state of mind which could have acquitted Mr. Haynes of the charges. Instead trial counsel completely disregarded the information given to him by the Petitioner and in so doing failed to act in accordance with the effective assistance standard established in Strickland, which states that "Counsel has a duty to either make reasonable investigations or make a reasonable decision that makes investigations unnecessary." *Strickland v. Washington*, 466 US at 690-691. Given the importance of the police and hospital reports in substantiating Petitioner's defense claim, counsel fell short in fulfilling his obligation and thus deprived Mr. Haynes of his due process rights accorded to him by both the United States Constitution and Michigan Constitution.

c.) COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT A SELF-DEFENSE THEORY, AND FOR FAILING TO QUESTION THE PETITIONER AS TO THE OCCURRENCES WHICH LED TO HIS BEHAVIOR ON THE DAY THE INCIDENT.

The Petitioner Mr. Haynes took the stand in his own defense. Prior to so doing, he had made his trial counsel aware that he acted in self-defense when he fired his weapon in the direction of the complainant Mr. Dwusu. He advised his

trial counsel that he did so only after he had observed Malik, who was with Mr. Dwusu, walking towards him and pulling a handgun out of his waist area. (TT, 01/08/23014, at 12-13). Mr. Haynes advised his counsel that he felt he was in immediate danger of death and feared for his life and that he felt he had no other choice available to him but to fire his weapon.

However, while Petitioner was on the stand his counsel failed to pose any questions that would have brought these facts to the attention of the jury. The case, in essence, came down to a credibility contest between the complainant and Mr. Haynes. There was no substantial evidence presented at trial to demonstrate that the petitioner was indeed the aggressor against Mr. Dwusu. On the contrary, had trial counsel been effective in impeaching Mr. Dwusu with his preliminary examination transcripts and the fact that Mr. Dwusu was susceptible to the whims and influences of the police in expressing their story as to what actually took place between him and Mr. Haynes, the jury would have convicted the Petitioner of felonious assault at best, as evidence would have surfaced through the Petitioner's testimony as to the true occurrences that led to the incident at hand.

Counsel's failure in not questioning the Petitioner as to the reason why he fired in the direction of the complainant and his friend proved ineffective as it precluded the petitioner the opportunity to present to the jury the reasons for his actions on the day of the incident. This was not merely a sound strategic choice, but failure to represent his client.

Counsel's decision not to put to the jury Petitioner's side of what took place the day of the incident fell outside the range of professionally competent assistance and amounted to ineffective assistance. Counsel improperly decided not to present

testimony favorable to the Petitioner and by doing so lacked the sound trial strategy requirement accorded to the Petitioner. The only logical explanation for counsel's failure not to properly question the Petitioner as to the reason for his actions, or rather reactions, was counsel's lack of preparation and to be fully prepared to proceed with trial and represent his client according to the standards established in *Strickland*.

The heart of effective representation is the independent duty to investigate and prepare, *Goodwin v. Balkcom*, 460 U.S. 1098, 103 S.Ct. 1798, 76 L.Ed2d 364 (1983). Therefore, permissible strategy can never include the failure to investigate into a petitioner's plausible line of defense, *Strickland, supra*. The Court in *Moore v. U.S.*, 432 F.2d 730 (3rd Cir, 1970) said:

“‘[6] ... The exercise of the utmost skill during the trial is not enough if counsel has neglected the necessary investigation and preparation of the case or failed to interview essential witnesses or to arrange for their attendance. Such omissions, of course, will rarely be visible on the surface of the trial, and to that extent the impression of a trial judge regarding the skill and ability of counsel will be incomplete.’” *Id.*, at 739

Counsel proved ineffective for failing to properly question Petitioner and no form of strategy can justify counsel's lack of performance other than lack of strategy itself.

d.) TRIAL COUNSEL PROVED INEFFECTIVE WHEN HE FAILED TO INTRODUCE MITIGATING CIRCUMSTANCE AT PETITIONER'S SENTENCING WHICH COULD HAVE RESULTED IN A LESSER SENTENCING BY THE TRIAL JUDGE.

This court has stated "the right to effective assistance of counsel at sentencing is guaranteed under the federal constitution, as the opportunity is afforded for presentation of facts in extenuation or mitigating of the offense, correction of any errors in reports of petitioner's past conduct, and appeal to the equity of the court." (Emphasis added), *People v Dye*, 6 Mich App 217 (1967); *People v Theodorou*, 10 Mich App 409 (1968).

Petitioner Haynes was denied his right to effective assistance of counsel during the mitigating phase of his trial. Counsel failed to follow up with obvious avenues of investigation that would have led to valuable mitigating evidence concerning the Petitioner's abuse and violent childhood, his intense grief over the loss of a family member, and the possibility that he was suffering from a mental defect.

e.) PETITIONER WAS DENIED HIS RIGHT TO DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL WHEREIN COUNSEL NEGLECTED TO HAVE AT APPELLANT'S DEFENSE ANY PSYCHOLOGICAL TESTING OR WITNESSES TO DETERMINE AND ESTABLISH THE SANITY AND CULPABILITY OF THE PETITIONER.

Ineffective assistance of counsel can be premised on a failure to call witnesses or present other evidence which would have supported a substantial defense that

might have made a difference in the outcome of the trial, *People v Hoyt*, 185 Mich App 531; 537-538; 462 NW2d 793 (1990). A defense is substantial if it might have made a difference in the outcome of the trial, *People v Kelly*, 186 Mich App 524; 465 NW2d 569 (1990).

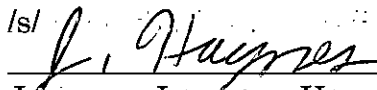
Under Michigan law, counsel's failure to call an expert witness "constitutes ineffective assistance of counsel if it deprives the petitioner of a substantial defense," *People v Dixon*, 263 Mich App 393, 398 (2004). A substantial defense is "one that might have made a difference at trial," *People v Chapo*, 283 Mich App 360, 371 (2009). Here, the Petitioner made trial counsel aware that he was on psychotropic medication, in particular Seroquel (See attached Exhibit D), and had been diagnosed with paranoia schizophrenia and post-traumatic stress disorder, or PTSD. At the time that counsel was made aware of these facts, he should have requested a psychological testing to determine what defense he should put forth on behalf of the petitioner. Had counsel performed his duties as guaranteed to Mr. Haynes by the U.S. and Michigan Const., the jury would have heard the possible reasons why Petitioner was hypersensitive to the surrounding circumstances and found that the Petitioner was not culpable for his actions.

CONCLUSION AND RELIEF SOUGHT:

WHEREFORE; Petitioner submits that he has presented the Court with compelling reasons for consideration and ask that this Court grant the petition for a writ of certiorari, further Petitioner ask that the Court reverse his convictions and remand this matter to the state court with appropriate instructions.

Respectfully submitted,

/s/


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