21-5276

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.

ORIGINAL

WILLIAM BRANSFORD
Petitioner,

V

DANIEL WINKLESKI,
Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Filed By:
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QUESTIONS PRESENTED

1. Should pre-AEDPA standard of review apply in a 28 U.S.C. §2254 petition when an indigent defendant has been constructively abandoned by appointed appellate attorney during the direct appeal process?

2. Is a direct appeal adjudicated in accord with due process of law if appellate attorney challenges the applicability of Chapter 980, a sex offender civil commitment as the single issue while omitting clearly stronger issues?

3. Was petitioner denied ineffective assistance of counsel and/or Due Process when trial attorney failed to hire a DNA expert for the defense in a CODIS case where DNA was the only means of connecting petitioner to the crime?

4. Was counsel constitutionally ineffective at plea bargaining stage when petitioner rejected the plea offer without the benefit of having a DNA expert opinion?

5. Whether psychological report conducted by the state without counsel's knowledge or permission was harmless error?

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PARTIES TO THE PROCEEDING

The only parties to this proceeding, in this Court or below, are the petitioner (defendant below) William H. Bransford and the respondent Dan Winkelski.

OPINIONS BELOW

Order of the United States Court of Appeals for the Seventh Circuit denying a request for a certificate of appealability appears at (Appendix A). The order of the United States District Court for the Eastern District of Wisconsin appears at (Appendix B) and is reported at 2020 WL 8461550, William H. Bransford v. Dan Winkelski, 20-CV-462-JPS.

Wisconsin Court of Appeals decision dated April 23, 2019 appears at (Appendix C) and is reported at 387 Wis.2d 685, State of Wisconsin v. William Bransford. Milwaukee County Circuit Court decision dated January 10, 2018 appears at (Appendix D). Wisconsin Court of Appeals decisions dated October 3 & August 9, 2016 appears at (Appendix E).Decision of direct appeal appears at (Appendix K).

JURISDICTION

The United States District Court Eastern District of Wisconsin denied petitioner's writ of habeas corpus under 28 U.S.C. §2254 on October 27, 2020. The United States Court of Appeals for the Seventh Circuit denied a certificate of appealability On February 3, 2021. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the ***Fifth, Sixth and Fourteenth Amendments of the United States Constitution.***

The ***Fifth Amendment*** provides in pertinent part: No person shall be deprived of life, liberty, or property, without due process of law .

The ***Sixth Amendment*** provides in pertinent part: In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

The ***Fourteenth Amendment*** provides in pertinent part:
No State shall 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.

Ineffective assistance of counsel causing the denial of a constitutional right has been highlighted in a long line of cases that includes ***Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), and Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).***

The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment. This right to counsel applies to all critical stages of criminal proceedings.

STATEMENT OF FACTS

CASE HISTORY

On July 25, 2000 Abby-Rene Drost a 27 year old white female reported to the Milwaukee Police Department that she had been sexually assaulted by an unknown black male. The case remained cold until December 10, 2001 when petitioner, William H. Bransford hereafter (Bransford) became a suspect during a routine search of CODIS. Bransford was serving an 18 month sentence at a minimum security work-release center and was required to submit a DNA sample as a result of a gun conviction. On December 28, 2001 the Milwaukee police department obtained an order to produce Bransford to participate in a line-up as a suspect for the July 25, 2000 sexual assault.The victim did not identify Bransford out of the line-up. On January 23, 2002 pursuant to Wis. Stat 971.23(9) the state gave notice of intent to submit DNA evidence at trial to connect Bransford to the crime. On February 5, 2001 a second oral swab was collected from Bransford. At the preliminary hearing the DNA reports were entered by stipulation and defense counsel objected to the reports being submitted to the court without signatures. The state made a plea offer on March 15, 2002 recommending a bifurcated prison term of 30 years which Bransford denied without the benefit of a DNA expert because defense

Attorney Lew Wasserman was of the opinion that there was no need to consult a DNA expert for the defense. Wasserman also failed to inform Bransford that the counts in the case could be ran consecutively. The case proceeded to trial without a defense DNA expert.

On April 23, 2002 after an eight day jury trial Bransford was convicted of robbery, kidnapping and six counts of second degree sexual assault. Bransford was sentenced to a bifurcated sentence of 168 years under TIS-I with 112 years in the Wisconsin State Prison System and 56 years of extended supervision with all counts ran consecutive.

Attorney Lew Wasserman who was appointed through the state public defender's office represented Bransford at trial. Attorney Wasserman called no witnesses for the defense and did not obtain the assistance of a DNA expert at any point. The Honorable Jacqueline D. Schellinger, Circuit Court Branch 34 of Milwaukee County, presided.

APPELLATE HISTORY

On July 10, 2002 the indigent appellant represented by

appointed counsel Dianne M. Erickson filed a Notice of Intent to Pursue Post-Conviction Relief. Subsequently on October 13, 2003 a Motion For Post-Conviction Relief to modify the sentence on the grounds that the sentencing court

should have considered the availability of Chapter 980 at sentencing was filed by appointed counsel such motion was denied by written order of the Circuit Court on October 20, 2003.

Attorney Erickson hired DNA expert Alan Friedman to review the DNA reports performed by the Wisconsin Crime Lab. Mr. Friedman stated in his conclusions in a report on October 24, 2003, "In my opinion, this evidence was of sufficient quality that it would have gotten in irregardless of whether the standard was general relevance, reliability (Daubert) or general acceptance by the scientific community (Frye)."

On November 10, 2003 Ms Erickson filed a Notice of Appeal and an Appeal from Judgment and Conviction. The Wisconsin Courts of Appeals, District I, affirmed the trial Court's decision on December 17, 2004. Petition for Review was filed on January 18, 2005 and denied by the Wisconsin Supreme Court on April 6, 2005.

In a letter dated April 19, 2005 Ms Erickson stated "I do not know whether if our DNA expert, Alan Friedman, had been involved earlier in the case, you might have settled with the state and cut some losses?" After Petition for Review was denied by the Wisconsin Supreme Court Attorney Erickson told Bransford in a letter dated July 25, 2005 "I know of nothing else you can file, or I would have filed it."

On June 17, 2014 Bransford filed a pro se motion to review the presentence report (PSI). The PSI was ordered to be sealed at the sentencing hearing by Judge Jacqueline D. Schellinger because defense counsel moved to strike the PSI. Defense counsel presented a motion to the court to completely redo the PSI on the basis that Bransford was psychiatrically evaluated without counsel's permission or knowledge. Bransford's pro se motion to review the sealed PSI was denied by the circuit court and affirmed by the Wisconsin Court of appeals and petition for review was denied by the Wisconsin Supreme Court on November 4, 2015.

On March 17, 2016 Bransford proceeding pro se filed for a writ of habeas corpus, alleging ineffective assistance of appellate counsel which was denied and subsequently a motion for reconsideration was denied on October 3, 2016.

State v. Bransford (Bransford III), No. 2016AP553-W, (WI App Aug. 9, 2016).The court ruled in the order for reconsideration that since ***Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786*** was not the applicable law in the state of Wisconsin at the time of Bransford's trial in April 2002 appellate attorney Diane M. Erickson was not ineffective for failing to bring the argument on direct appeal even though it was properly preserved at trial. Petition for Review was denied by the Wisconsin Supreme Court on February 13, 2017.

On September 29, 2017 continuing pro se Bransford filed a collateral attack pursuant to WISCONSIN STAT. § 974.06 arguing that postconviction counsel was ineffective for not pursuing claims based on trial counsel's ineffectiveness. Specifically, Bransford claimed his trial counsel was ineffective for failing to do the following: (1) retain a DNA expert to assist him during the process of deciding whether to accept the State's plea offer; (2) failure to present an adequate defense at trial; and (3) failure to secure a new PSI for sentencing. State v. Bransford (Bransford IIII),2018AP266. The Wisconsin Court of Appeals decided that the WIS. STAT. § 974.06 motion did not allege sufficient facts to demonstrate prejudice as to Bransford's DNA expert claim, stating that he failed to show that this claim or any of his claims were clearly stronger than the claim that postconviction counsel actually brought.

Id.¶12 -¶24.The the procedural bar of ***State v. Escalona-Naranjo, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994)*** and was applied. Petition for Review was denied July 10,2019.***Escalona*** severely limits collateral attacks in Wisconsin courts.

On March 23, 2020, Bransford filed for a petition for a writ of habeas corpus pursuant to ***28 U.S.C. § 2254,*** in the United States District Court Eastern District of Wisconsin William H. Bransford v. Warden Dan Winkelski,20-CV-462-JPS,2020, WL 8461550.The petition for writ of habeas corpus was denied on October 27, 2020 under Rule 4 and Rule 11(a) of the Rules Governing Section 2254 Cases. Bransford filed to the United States Court of Appeals for the Seventh Circuit for a certificate of appealability on December 2, 2020. The request for a certificate of appealability was denied by the circuit court on February 3, 2021.

REASONS FOR GRANTING THE PETITION

There is a conflict between the state and circuit courts on the question of whether an indigent criminal defendant is constitutionally entitled to DNA expert assistance reasonably necessary to his defense. Granting certiorari would clarify the scope of the constitutional right to expert assistance set forth in ***Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985)***. There is a split of authority on the question of whether an Ake

violation constitutes a trial error subject to harmless error inquiry or a structural error in which prejudice should be presumed, see ***McWilliams v. Comm'r, Alabama Dep't of Corr., 940 F.3d 1218, 1224-26 (11th Cir. 2019)*** (holding that an Ake violation was structural error), with ***White v. Johnson, 153 F.3d 197, 201 (5th Cir. 1998)*** , ***Tuggle v. Netherland, 79 F.3d 1386, 1392-93 (4th Cir. 1996)*** and ***Brewer v. Reynolds, 51 F.3d 1519, 1529 (10th Cir. 1995)*** (holding that an Ake violation was subject to harmless error analysis).

Indigent criminal defendants will continue to be prosecuted in state courts without the basic tools to meaningfully participate in criminal proceedings if this court does not insist that the states adhere to the fundamental rights articulated in ***The Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.*** This court has left this issue in the hands of the states which will manifest more cases like this one where indigent defendants are denied meaningfully participation during plea bargaining, at trial and sentencing.

Resolution of this issue on the merits would clarify if an indigent defendant implicated in CODIS by DNA evidence to a crime has a constitutional right to an independent defense DNA

expert and if that right extends to the pretrial plea bargaining stage. Recognizing the right to a ex parte DNA expert would eliminate the risk of indigent defendants being compelled to plead guilty without an opportunity to evaluate the evidence against them or foregoing a plea offer without knowing the strength of the evidence to be potentially presented at trial. Our criminal justice system today is for the most part a system of pleas, not a system of trials. ***Missouri v. Frye, 566 U.S. 134, 143 - 144, 132 S.Ct. 1399, 182 L.Ed.2d 379. Pp. 1384 - 1388***

Granting certiorari on this case would protect the due process rights of indigent defendants confronted with DNA evidence being introduced and not hold them responsible for the actions or inactions of incompetent appointed counsel.

The 1 -year period of limitation to application for a writ of habeas corpus under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") should not be applied at the expense of depriving indigent criminal defendants of Due Process of law and when as in this case the state court never adjudicated a direct appeal on the merits of the criminal trial process. It is impossible to prove actual innocence, or meet the adversarial requirement without the assistance of a DNA expert under the circumstances of this case. The manifest injustice of convicting a criminal defendant in a DNA CODIS case without a DNA expert to assist and the fact that on appeal this issue was omitted for a frivolous issue should be considered an

extraordinary circumstance subject to pre-AEDPA standard of review.

It is paramount that the prosecution and state courts not be afforded the luxury of depriving indigent defendants of substantial constitutional rights and banking on procedural bars and time limitations to cause waiver of those rights to individuals who generally have limited knowledge of criminal law and the rights guaranteed to them by the United States Constitution. Pro se criminal defendants become familiar with the law only after years of incarceration facing situations where their only hope of justice is to fend for themselves.

SUMMARY OF ARGUMENT

When a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution and, in particular, in accord with the Due process clause. ***U.S.C.A. Const.Amend. 14.***

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was not intended as a means to deprive indigent criminal defendants of Due Process of law. A basic principle of the ***Uniform Post-Conviction Procedures Act*** is that it is preferable to deal with claims on their merits rather than to seek an elaborate set of technical procedures to avoid considering claims which may be assumed

to not be meritorious.

As part of the AEDPA revisions, Congress provided that this increased level of deference would apply only to those cases that were "adjudicated on the merits." Congress did not, however, define "adjudicated on the merits," and the Supreme Court has not provided a clear definition for the lower federal courts to apply. If appellate counsel in a criminal case files a brief on direct appeal that does not argue or even refer to any legal issues at all, should prejudice be presumed due to the constructive abandonment of counsel? ***U.S.C.A. Const.Amend. 6. Smith v. Robbins, 528 U.S. 259, 120 S. Ct. 746 1999 WL 420454 (U.S.).***

In ***Ake v. Oklahoma, 470 U.S. 68, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985)*** the Supreme Court held that an indigent defendant is entitled as a matter of constitutional right to an appointed expert in some cases. ***The Criminal Justice Act of 1964*** and ***(18 U.S.C.A. § 3006A(e)*** mandates that an indigent defendant shall have the right, in certain circumstances, to obtain the services of an investigator or expert at government

expense. An ex parte hearing should be held on defendant's request for investigative assistance. "It is beyond dispute— that DNA and other types of experts may sometimes "be

crucial to the defendant's ability to marshal his defense", ***Ake at 80, 105 S.Ct. 1087.*** "Prosecution experts, of course, can sometimes make mistakes. The threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts have been found in the forensic evidence used in criminal trials. This threat is minimized when the defense retains a competent expert to counter the testimony of the prosecution's expert witnesses; it is maximized when the defense instead fails to understand the resources available to it by law", ***Melendez-Diaz v. Massachusetts, 557 U.S. 305, 319, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009).*** The constitutional analysis set forth in ***Ake*** logically extends beyond psychiatric experts ***Husske v. Com., 252 Va. 203, 476 S.E.2d 920 (1996).*** Without an adversarial process, there is no legal deterrent to careless, sloppy, or manufactured police work. Bransford's conviction was obtained by a trial process that was fundamentally unfair when the pendulum of justice was tilted in favor of the state with its judicial power and team of experts while Bransford stood alone with an appointed lawyer who was not prepared for the complex nature of a CODIS DNA case.

The appellate process in this case is even more troubling because Bransford's direct appeal was disposed of by a different appointed attorney arguing solely that the trial judge should have considered Chapter 980, a sex offender commitment to be served after a prison term. A first appeal as of right is not adjudicated in accord with due process of law if the appellant does not have effective assistance of attorney. ***U.S.C.A. Const.Amends. 6, 14. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)***

In ***Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)***, this court held that a criminal defendant's Sixth Amendment right to counsel is violated if his trial attorney's performance falls below an objective standard of reasonableness and if there is a reasonable probability that the result of the trial would have been different absent the deficient act or omission. ***Id., at 687-688, 694, 104 S.Ct. 2052.***

ARGUMENT

1. Standard for Application of Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") when no issues were adjudicated on the merits of the case on direct appeal in

state court.

If the claim was not "adjudicated on the merits," the federal circuits courts agree that a federal court should apply the pre-AEDPA standard of review to the claim. ***28 U.S.C.§ 2254(d)(1)***,by its terms, only applies if the state court adjudicated the federal claim on the merits. See generally ***Johnson v. Williams, 568 U.S. 289, 133 S.Ct. 1088, 185 L.Ed.2d 105 (2013)***,***Federal Habeas Manual § 3:10.*** "AEDPA's strict standard of review only applies to a "claim that was adjudicated on the merits in state court proceedings." ***(citing 28 U.S.C. 2254(d).*** In this case the only issue presented in the direct appeal process was an argument that trial Judge Jacqueline D. Schellinger should have considered Chapter 980 at sentencing. The question before this court is whether this argument satisfies the requirements of appellate review articulated in ***Evitts v. Lucey, 469 U.S. 387 (1985), Douglas v. California, 372 U.S. 353 (1963)*** or ***Anders v. California, 386 U.S. 738, 87 S.Ct. 1396.***

Bransford's verbal communication with his appellate counsel, Ms Erickson consisted of one phone call and she voiced her frustration regarding case related cost and delayed payment by the Wisconsin State Public Defender's

office. Bransford played no role in her choice to bring this sole argument in a postconviction motion and ultimately disposing of his one and only direct appeal by presenting this argument as a direct appeal (Appendix H, K). In this case the frivolous issue presented was unrelated to the possible meritorious issues associated with the case. In this respect filing the frivolous issue was perhaps more damaging than not presenting any issues at all or filing a no merits brief. The statute of limitations under AEDPA in this circumstance constitutes a denial of access to the federal courts because in reality the direct appeal in this case started in 2014 when Bransford proceeding pro se requested access to the psychological report in the sealed PSI(Appendix L). The state court decisions on Bransford's collateral attacks reflect decisions that were based on an "unreasonable determination of the facts in light of the evidence presented in the State court proceeding." ***Harrington v. Richter, 562 U.S. 86, 97-98, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011), quoting 28 U.S.C. § 2254(d)(1)-(2).***

2. Appellate Attorney's Failure to search the record for meritorious, clearly stronger issues deprived petitioner of

his one and only Direct Appeal

In this case the direct appeal presented no arguable issues related to the pretrial, trial or sentencing proceedings. ***Douglas*** holds that the right to counsel on the first appeal of right requires counsel to file an advocate's argumentative brief (a "merits brief"). Because Bransford's state appeal presented several substantial appellate issues, the filing of the brief filed by appellate attorney Dianne M. Erickson violated the right to counsel established in ***Douglas*** and was simply a means of circumventing the direct appeal process.

The (Daubert challenge) which was preserved for review represents an issue that satisfies the standards set forth in a line of Supreme Court cases addressing the constitutional right to (a "merits brief"),(a "no merits brief") and the effective assistance of counsel during the direct appeal process.

The collateral attacks which Bransford filed in state court and in his federal ***28 U.S.C. §2254*** represent issues of possible merit related to the case by contrast to the actual "direct appeal process" that was based on a frivolous issue (APPENDIX C,D,E and K).

Considering the complexity of this case one would be

inclined to question whether appellate counsel's single argument fail below "an objective standard of reasonableness" ***Strickland v Washington, 466 U.S.668 (1984).*** Bransford's direct appeal was in essence a meaningless ritual and was possibly filed in bad faith at minimum it was incompetence or oversight by appellate counsel.

3. Whether petitioner was denied Due Process when trial attorney failed to hire a defense DNA expert in a CODIS case where DNA was the sole means of connecting petitioner to the crime?

"Due process is flexible and calls for such procedural protections as the particular situation demands." ***Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).*** In a CODIS DNA case there should logically be a due process right to a publicly funded DNA expert to investigate the legitimacy of the evidence. In ***Mathews v. Eldridge, 424 U.S. 319*** "the Court considered the three-factor due process test (1) "the private interest that will be affected by the action of the State," (2) "the governmental interest that will be affected if the safeguard is to be provided," and (3) "the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an

erroneous deprivation of the affected interest if those safeguards are not provided." A DNA expert was not requested or obtained by defense trial attorney Lew Wasserman. His decision was made without even consulting with a DNA expert. Counsel's decision not to investigate can not be viewed as reasonable trial strategy. At the time of Bransford's trial in April 2002 the admissibility of DNA evidence in Wisconsin was governed by the relevance standard. In the absence of a defense DNA expert the prosecution's expert was not subjected to the adversary process required to constitute a fundamentally fair trial. Even Wasserman himself realized his mistake of not consulting or obtaining a DNA expert for the defense and moved for judgment not withstanding the verdicts (APPENDIX F). Under ***Daubert*** and ***Rule 702,*** challenges to the particular procedures and methodology go primarily to the weight of the DNA evidence and not to admissibility. All expert testimony is governed by the principles of ***Rule 104(a)***. The proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence. See ***Bourjaily v. United States, 483 U.S. 171 (1987).***

Postconviction DNA testing or a review of the

prosecution's DNA lab reports during postconviction proceedings is not equivalent to the advice that a defense DNA expert may offer pretrial. It can not be assumed that a defense DNA expert would not have benefited Bransford (Appendix C,D). The assistance a DNA expert for the defense would have provided Bransford's counsel in "evaluating, preparing, and presenting the defense that Ake requires" is unknown and, as such, cannot be quantitatively assessed therefore prejudice should be presumed ***McWilliams v. Comm'r, Alabama Dep't of Corr., 940 F.3d 1218, 1224-26 (11th Cir. 2019)***. The ***Ake*** standard was not even addressed in the decisions by the state courts as if it was never mentioned in the pro se collateral attacks. The state of Wisconsin was has not properly addressed the merits of this case.

4. **Was counsel constitutionally ineffective during plea negotiations when petitioner rejected the plea offer without the benefit of a DNA expert.**

Before the trial the state made a plea offer. Bransford refused the plea offer and elected to go to trial. The decision to refuse the plea bargain was made without the benefit or advice of a DNA expert to which he was entitled. Was Bransford precluded the effective assistance of counsel at the pretrial

stage?

If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is infringed, prejudice can be shown if loss of the plea led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence ***Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203, Lafler v. Cooper, 132 S. Ct. 1376(2012).***

Defense counsel's decisions are not immune from examination simply because they are deemed tactical, and a strategic choice based on misunderstanding of law or fact can amount to ineffective assistance. ***U.S. Const. Amend. 6.*** In evaluating claims of ineffective assistance of counsel, strategic choices made after less than complete investigation give rise to ineffective assistance.

"The law is clear that defense counsel must provide competent advice at the plea stage as well as provide competent representation at trial. ***"86 Fordham L. Rev. 1709 The Duty to Investigate and the Availability of Expert Witnesses ,Stephen A. Saltzburg.*** (Appendix J at 1725 ¶2 FN 90-91)

On appeal Attorney Erickson voiced concern on why the services of a DNA expert were not used. Attorney Erickson

obtained the services of Alan Friedman a forensic scientist. Mr. Friedman stated in the conclusions of his report "In my opinion , this evidence was of sufficient quality that it would have gotten in irregardless of whether the standard was general relevance, reliability (Daubert) or general acceptance by the scientific community (Fyre) (APPENDIX G). If given this information before trial the question should be asked whether counsel would have advised proceeding to trial and if Bransford would have accepted the plea offer. Ms Erickson's words in correspondence with Bransford suggest that she was unaware that a plea bargain was offered in this case. (APPENDIX H). Attorney Erickson's actions are difficult to distinguish from those of an appellate counsel who completely failed to perfect a direct appeal.

5. Whether psychological report conducted by the state without counsel's knowledge or permission,was a harmless error?

In preparation of the PSI report Bransford was psychologically examined without counsel(Appendix C,State v.William Bransford 2018AP266 at ¶20). Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a

reasonable doubt,***Estelle v. Smith, 451 U.S. 454 (1981); Chapman v. California, 386 U.S. 18(1967).*** Judge Jacqueline D. Schellinger made a defining statement concerning "future dangerousness" when she sentenced Bransford to 168 years furthermore the judge's insistence on proceeding interfered with counsel's request to strike. Sealing the PSI was not a proper remedy because one can not definitely say that the error did not cause a substantial and injurious effect or influence in determining" the trial court's sentence". ***Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993).***

Attorney Dianne M. Erickson did not address the psychological report on appeal even though her one issue raised was related to the type of mitigating evidence and mental conditions that may have been found in the psychological report. It appears that Ms. Erickson did not even seek access to the sealed PSI. The complete transcript of the trial is a prerequisite to a decision on the merits of an appeal ***Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed 89.*** A proper remedy would have been a continuance to allow the defense to procure its own expert to counter the prosecution's expert or to redo the entire PSI with a new PSI writer and sentencing judge.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities

This honorable court is respectfully urged to grant certiorari, to remand the convictions and remand the entire matter for a new trial.

Dated:THIS 27th DAY OF JULY, 2021

Respectfully Submitted By:

William J Bransford

William Bransford,
Petitioner, Pro se