

21-5427 ORIGINAL  
No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

JUN 29 2021

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

KUSHAWN MILES-EL — PETITIONER  
(Your Name)

VS.

MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF MICHIGAN  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KUSHAWN MILES-EL #237011

(Your Name)

N6141 INDUSTRIAL PARK DRIVE  
ALGER CORRECTIONAL FACILITY

(Address)

MUNISING, MICHIGAN 49862

(City, State, Zip Code)

N/14

(Phone Number)

QUESTION(S) PRESENTED - \*\*\* CAPITAL CASE \*\*\*

- I. WHETHER THE STATE COURT HAS DENIED PETITIONER KUSHAWN MILES-EL ANY RIGHT, PRIVILEGE OR IMMUNITY GUARANTEED HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES AND STATE OF MICHIGAN.
- II. WHETHER PETITIONER KUSHAWN MILES-EL WAS DEPRIVED OF HIS SIXTH AMENDMENT RIGHT TO COUNSEL BECAUSE OF AN IRRECONCILIBLE CONFLICT BETWEEN HIMSELF AND HIS TRIAL ATTORNEY CARL BOLDEN, JR..
- III. WHETHER PETITIONER KUSHAWN MILES-EL WAS DENIED HIS SIXTH AMENDMENT RIGHT TO THE ASSISTANCE...OF COUNSEL FOR HIS DEFENSE.
- IV. WHETHER PETITIONER KUSHAWN MILES-EL WAS DEPRIVED OF HIS LIFE AND LIBERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT; WHERE THE ~~COURT~~ FAILED TO CONDUCT A "COMPETENCY HEARING", AFTER PETITIONER'S COURT ORDERED PSYCHOLOGICAL EXAMINATION
- V. WHETHER PETITIONER WAS DENIED HIS RIGHT TO BE PRESENT AT ALL "CRITICAL STAGES" OF HIS CRIMINAL CAPITAL CASE PROCEEDINGS; IN PARTICULAR THE JANUARY 28, 1994 HEARING HELD ON HIS TRIAL COUNSEL'S MOTION TO WITHDRAW AS COUNSEL, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES.

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## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

MICHIGAN SUPREME COURT  
MICHIGAN COURT OF APPEALS  
WAYNE COUNTY 3RD CIRCUIT COURT OF MICHIGAN  
WAYNE COUNTY PROSECUTOR  
DANIEL J. RUST, APPELLATE COUNSEL  
MICHIGAN ATTORNEY GENERAL'S OFFICE

## RELATED CASES

PEOPLE OF THE STATE OF MICHIGAN v KUSHAWN MILES-EL,  
WAYNE COUNTY CIRCUIT COURT NO. 93-10422-FC (*SEE APPENDIX B*)

KUSHAWN MILES-EL v CHIPPEWA CORRECTIONAL FACILITY WARDEN, CONNIE HORTON  
MICHIGAN COURT OF APPEALS NO. 352357

KUSHAWN MILES-EL v CHIPPEWA CORRECTIONAL FACILITY WARDEN CONNIE HORTON  
MICHIGAN SUPREME COURT NO. 161748

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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 judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the WAYNE COUNTY CIRCUIT COURT court appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was *N/A*.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: *N/A*, and a copy of the order denying rehearing appears at Appendix *A*.

An extension of time to file the petition for a writ of certiorari was granted to and including *N/A* (date) on \_\_\_\_\_ (date) in Application No. *A*.

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

For cases from **state courts**:

The date on which the highest state court decided my case was *MARCH 30, 2021*. A copy of that decision appears at Appendix *A*.

A timely petition for rehearing was thereafter denied on the following date: *N/A*, and a copy of the order denying rehearing appears at Appendix *A*.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. *A*.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor; and to have the ['Assistance of Counsel for his Defense.']"

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

Section 1. [Citizens of the United States]-

"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."

Article 1, §2 of the Michigan Constitution of 1963 provides in pertinent part:

§2 Equal Protection.

Sec. 2. No person shall be denied the equal protection of the laws.

Article 1, §13 of the Michigan Constitution of 1963, provides in pertinent part:

§13 Conduct of suits in person or by counsel.

Sec. 13. A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

Article 1, §17 of the Michigan Constitution of 1963, provides in pertinent part:

§17 Due Process of Law; Fair Treatment at investigations.

Sec. 17. No person shall be deprived of life, liberty or property without due process of law. The right of all individuals, to fair and just treatment.

Article 1, §20 of the Michigan Constitution of 1963, provides in pertinent part:

§20 Rights of accused in criminal prosecutions.

Sec. 20. In every criminal prosecution, the accused shall have the right to have compulsory process for obtaining witnesses in his or her favor; to have the assistance of counsel for his or her defense; to have an appeal as a matter of right; and as provided by law, when the trial court so orders, to have the assistance as may be necessary to perfect and prosecute an appeal.

## STATEMENT OF THE CASE

Petitioner Kushawn Miles-El was convicted of "Capital" First-Degree Premeditation and Deliberated Murder by a Jury trial. He was sentence to serve Life Without Parole in prison by the Recorder's Court of Detroit, Judge Thomas E. Jackson, in Wayne County, Detroit, Michigan on May 3, 1994.

On October 7, 1993, In an Unrelated criminal case, Petitioner was sentenced by another Recorder's Court of Detroit, Judge to undergo Psychiatric Treatment at the Recorder's Court Psychiatric Clinic. (See Appendix\_\_\_\_, attached). On October 1, 1993, Petitioner Miles-El was ordered by trial court Judge Thomas E. Jackson to undergo a "Psychiatric Evaluation" relative to a claim of "Legal Insanity" at the time of the Homicide; Diminished Capacity and Criminal Responsibility; and Competence to Stand trial. At the Recorder's Court Psychiatric Clinic. (See Petitioner Kushawn Miles-El's Affidavit and order, attached as Appendix\_\_\_\_, \_\_\_\_).

A psychiatric evaluation was conducted on Petitioner Miles-El at the Recorder's Court Psychiatric clinic. No report was ever filed with the Court or with defense attorney Carl B. Bolden, Jr., and defense attorney never requested a competency/insanity hearing and the trial court also failed to conduct a competency/sanity hearing after Petitioner's court ordered psychiatric evaluation.

In November and December 1993, Petitioner filed several complaints against his trial attorney Carl B. Bolden, Jr., alleging ineffective assistance, breakdown in communications as well as other allegations against trial attorney Bolden with the Michigan Attorney Grievance Commission, and trial judge Thomas E. Jackson and requested the appointment of substitute counsel or to represent himself. (See Appendix\_\_\_\_). On January 24, 1994, Trial Attorney Carl B. Bolden Jr., filed a "Motion To Withdraw as Counsel", due to "An Irreversible Breakdown in the Attorney-Client Relationship" to the "Extent that Counsel Could NO LONGER ADEQUATELY REPRESENT the Defendant." (See Appendix\_\_\_\_). On January 28, 1994 a hearing was held on counsel's motion to withdraw, "without the presence of Petitioner Miles-El". (See Appendix\_\_\_\_, 1/28/94 Motion Hearing Transcripts attached).

On January 28, 1994, (without Petitioner Present at the hearing), the trial judge denied trial counsel's motion to withdraw and forced Petitioner Miles-El to a Capital Murder trial with an attorney that he was in conflict with.

Petitioner's counsel filed a Notice of an Insanity Defense, due to Voluntary Intoxication, October 1, 1993. Trial Counsel did not investigate, the results of Petitioner's psychiatric evaluation report, no witnesses were called on Petitioner's behalf for his defense and no request was made by the trial attorney for a competency hearing.

Petitioner Miles-El's Trial Attorney did not present any defense or theory of defense relating to his legal insanity/voluntary intoxication defense, once the prosecution rested, trial attorney Carl Bolden rested, depriving Petitioner Miles-El of his right to the assistance of counsel for his defense and his right to present a complete defense.

On April 15, 1994, Petitioner Miles-El was found guilty by a Jury of Capital First-Degree Premeditated Murder, MCL 750.316; Assault with intent to do Great Bodily Harm, MCL 750.84; and two (2) counts of Felony Firearm. MCL 750.227b.

STATEMENT OF THE CASE (page 3 of 3 continued)

the U.S. District Court for the Eastern District of Michigan. The Petition was dismissed as barred by the statute of limitations in 2006.

In 2019 Petitioner filed a Verified Petition For A Writ of Habeas Corpus in Michigan Court of Appeals pursuant to MCL 600.4304(2), MCL 600.4307 and MCR 3.303(A). The Michigan Court of Appeals denied the petition without reason or explanation May 19, 2020. July 2020, Petitioner appealed the court of appeals on an Application For Leave to Appeal in the Michigan Supreme Court. The Supreme Court denied Petitioner's Application For Leave to Appeal, because they were not persuaded by the questions presented on March 30, 2021. (See Order attached as Appendix-A). Now Petitioner Kushawn Miles-El, in Pro Per/Se, seeks Certiorari in this Honorable Court.

REASONS FOR GRANTING THE PETITION (Page 2 of \_\_\_, continuation)

This Court has also held: That the denial of the effective assistance of counsel does violates due process and when a defendant is forced by a State to trial in such a way as to deprive him of the effective assistance of counsel the Due Process Clause is also violated. See Powell v Alabama 287 U.S. 45, 52, 58 (1932); see also House v Mayo, 324 U.S. 42, 46 and Glasser v United States, 315 U.S. 60, 69-70.

Petitioner Miles-El claims that he was denied his Sixth Amendment right to counsel because of an irreconcilable conflict between himself and attorney Carl Bolden, Jr. (See Appendix-B, attached).

Petitioner Miles-El describes his relationship with attorney Bolden as one clouded by "an atmosphere of mistrust, misgivings and irreconcilable differences" resulting from a Grievance Complaint filed with the Attorney Grievance Commission against Attorney Bolden for Ineffective Assistance of Counsel; Breakdown in the Attorney-Client Relationship; Breakdown in the Communications and conflicting interests. The breakdown of Miles-El's relationship with Bolden began with Bolden refusing to visit him in the county jail, consult and communicate with him, failing to investigate witnesses and failing to investigate the results of the psychiatric evaluation and Miles-El's grievance complaint for investigation against Bolden.

Petitioner claims that an irreconcilable conflict existed between him and his trial attorney Bolden and that it rose to the level of breakdown described in Wilson v Mintzes, 761 F.2d 275, 280 (6th Cir. 1985); United States v. Viles, 906 F.2d 1122, 1130-1131 (6th Cir. 1990); See also Brown v Craven, 424 F.2d 1166, 1169 (9th Cir. 1970); Where a court "compels one charged with a grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in an irreconcilable conflict [it] deprives him of the effective assistance of any counsel whatsoever." See Brown, *supra*, 424 F.2d at 1170.

Federal Circuit Court of Appeals have applied the constructive denial of counsel doctrine to cases where the defendant has an irreconcilable conflict with his counsel, and the trial court refused to grant a motion for substitution of counsel.

Therefore the trial court's denial of counsel's motion to withdraw denied Petitioner Miles-El of the Effective Assistance of Counsel at Trial, and his right to counsel and his right to a fair trial. In violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, §17, 20 of the Michigan Constitution of 1963. See Also Daniels v Woodford, 428 F.3d 1181 (9th Cir. 2005); Plumlee v. Sue Del Papa, 426 F.3d 1095 (9th Cir. 2005).

**II. PETITIONER KUSHAWN MILES-EL WAS DEPRIVED OF HIS SIXTH AMENDMENT  
RIGHT TO COUNSEL BECAUSE OF AN IRRECONCILABLE CONFLICT BETWEEN  
HIMSELF AND HIS TRIAL ATTORNEY CARL BOLDEN, JR...**

This Court [has] explained that a constructive denial of counsel occurs when the defendant is deprived of "the guiding hand of counsel." See Powell v. Alabama, *supra*, 287 U.S. at 69, 53 S.Ct. 55, 64 (1932). This brand of Sixth Amendment violation has occurred in cases involving the absence of counsel from the courtroom, conflicts of interests between defense counsel and the defendant, and

official interference with the defense. In addition, constructive denial will be found when counsel fails "to subject the prosecution's case to meaningful adversarial testing..." See *Cronic v. United States*, 466 U.S. at 659. Accordingly when the defendant can establish that counsel was not merely incompetent but inert, prejudice will be presumed. See also *Plumlee*, *supra* 426 F.3d at 1103; *Brown v. Craven*, *supra* 424 F.2d at 1170. See also *People v. Charles O' Williams*, 386 Mich 565 (1972). See also *Brecht v. Abrahamson*, 507 U.S. 619, 629 (1993).

**III. PETITIONER KUSHAWN MILES-EL WAS DENIED HIS SIXTH AMENDMENT  
RIGHT TO THE ASSISTANCE...OF COUNSEL FOR HIS DEFENSE.**

Petitioner Miles-El claims that due to a conflict of interest and a breakdown in the attorney-client relationship that trial counsel deprived him of his Sixth Amendment Right to the Assistance of Counsel for his Defense and "Compulsory Process for Obtaining Witnesses, (a) Brenda Sanders; (b) Lagena Dockery; (c) Jamaal Hailey; (d) Raymond Dockery; (e) Leon Wiley, who were available to testify in his favor in regards to Petitioner's Legal Insanity/Voluntary Intoxication Defense to First Degree Premeditated Murder. (See Witnesses Affidavits Attached as Appendix-\_\_\_\_, \_\_\_\_\_.). Trial Counsel Bolden failed or refused to investigate the results of the psychiatric evaluation, conducted on Petitioner Miles-El at the Recorder's Court Psychiatric Clinic for his Competency/Sanity to stand trial. Attorney Bolden also failed or refused to request a "Competency/Sanity Hearing", for a determination of Petitioner's Mental Condition/Status and failed or refused to seek an independent psychiatric evaluation and present expert testimony to support Petitioner's Legal Insanity/Involuntary Intoxication Defense, which at the time of Miles-El's trial was a valid defense to First Degree Premeditated Murder, a Specific Intent crime and had counsel assisted Miles-El with his defense by presenting expert testimony, psychiatric reports, call witnesses to testify as to his state of mind at the party on the night of the homicide, the evidence would have been enough to negate the specific intent elements of Premeditation and Deliberation.

"In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of counsel for his defense." U.S. CONST. AM XIV; Article 1, §13 of the Michigan Constitution of 1963. The right to counsel under the Sixth Amendment is made applicable to the States pursuant to the Due Process Clause of the Fourteenth Amendment. See *People v Williams*, 470 MICH 634, 641 (2004). (Citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)). Under the United States and Michigan Constitution "In every prosecution, the accused shall have the right to...have the assistance of counsel for his or her defense..." Mich Const. 1963, Art. 1, §20. *Gideon*, *supra* made clear that the indigent are constitutionally entitled to be represented by counsel when prosecuted for a crime by the State, even though they lack the financial means to hire an attorney, and that the State has an obligation to provide them counsel. See *Gideon*, *supra*, Id. at 344. In *Gideon* the Supreme Court held:

The Assistance of Counsel is one of the Safeguards of the Sixth Amendment deemed necessary to ensure Fundamental Human Rights of Life and Liberty...The Sixth Amendment Stands as a constant Admonition that if the Constitutional Safeguards it provides be "Lost", "Justice will not...be done". *Id.*

The Sixth Amendment requires not merely the provisions of counsel to the accused, but "Assistance" which is to be "for his Defense." Thus, "the Core Purpose of the Counsel Guarantee was to assure 'Assistance' at trial when the accused was confronted with both intracacies of the law and the advocacy of the public prosecutor." If no "Actual Assistance" "for the accused's Defense is

STATEMENT OF THE CASE (Page 2 of 3, continued)

Petitioner filed a timely request for appointment of appellate counsel on May 6, 1994. On June 24, 1994, Daniel J. Rust was appointed to represent Petitioner Miles-El on his Direct Appeal as of Right and the trial court ordered the transcripts to be transcribed and produced for appellate counsel.

Appellate counsel Rust visited Petitioner Miles-El at the Standish Maximum Facility in August 1994. During that interview, Miles-El informed appellate counsel, that he wanted to raise ineffective assistance of trial counsel for (a) Failing to provide assistance for his defense; (b) For depriving him from presenting a complete defense; (c) Failing to call witnesses; (d) Trial Court abusing its discretion denying counsel's motion to withdraw; (e) trial court's denial of counsel's motion to withdraw denied him effective assistance of counsel at trial; (f) trial court's denial of counsel's motion to withdraw, denied him of his right to conflict free representation; (g) trial court's denial of counsel's motion to withdraw denied him a fair trial; (h) trial court's denial of counsel's motion to withdraw denied him of his right to counsel; (i) trial court deprived him of his right to be present at the January 28, 1994 Motion Hearing on trial counsel's motion to withdraw which was a "critical stage." Appellate counsel Rust refused Petitioner's request to raise these important and obvious constitutional and structural errors. Petitioner Miles-El also sent several letters to appellate counsel Rust requesting that he raise the issues discussed with him in person in 1994 and 1995 and appellate counsel still refused and failed to raise the important and obvious claims on his direct appeal as of right. (See Petitioner Miles-El's Affidavit, attached as Appendix-\_\_\_\_).

On November 17, 1994, Appellate counsel Daniel J. Rust, filed an "Untimely Appeal Brief" (waiving Miles-El's right to Oral Argument), without having a complete or entire Lower Court Records or Transcripts before filing his opening brief on direct appeal. Appellate counsel raised three (3) Issues on Miles-El's Direct Appeal. (1) Defendant's Statement was improperly submitted into evidence; (2) There was insufficient evidence to convict Defendant of the charged offense; and (3) Trial court failed to instruct the jury on lesser included offense of Voluntary Manslaughter. Petitioner Miles-El's conviction was affirmed by the Michigan Court Appeals, April 26, 1996, under Court of Appeals no. 176779.

November 2001, Petitioner Miles-El, filed his first MCR 6.500 Motion For Relief from Judgment, raising for the First Time: (a) Trial Court abused its discretion; (b) Petitioner was denied his right to counsel; (c) Petitioner was denied his right to conflict free representation; (d) Petitioner was denied his right to a fair trial; (e) Petitioner was denied his right to the effective assistance of counsel; (f) Petitioner was denied his right to present a complete defense; (g) Petitioner was denied the effective assistance of trial and appellate counsel; and other issues were raised for the first time. Petitioner also filed a separate motion requesting for an Evidentiary "Ginther" Hearing on his ineffective assistance of counsel claims as required under People v Ginther. The trial court denied Petitioner's motion for relief from judgment and his motion for an evidentiary hearing on 6/11/02. (See Appendix-\_\_\_\_). Petitioner filed subsequent Applications for Leave to Appeal in the Michigan Court of Appeals and Michigan Supreme Court and a request for an evidentiary hearing and was denied in both courts.

In 2005, Petitioner filed his first §2254 Petition For Writ of Habeas Corpus in

## REASONS FOR GRANTING THE PETITION

Petitioner Kushawn Miles-El conviction and capital sentence under Michigan Law, was obtained without Due Process of Law by the Constitutional and Structural Errors committed by: (1) The Trial Court abusing its authority, when it denied trial counsel's motion to withdraw as counsel and depriving Petitioner Miles-El of (a) His Right to Conflict-Free Representation; (b) The effective assistance of counsel at trial; (c) His Right to be Present at the January 28, 1994 Motion Hearing on counsel's motion to withdraw which was a "critical stage"; (d) The Right to Counsel; (e) a Fair Trial; (2) Appellate Counsel failing to provide Petitioner Effective Assistance of Counsel on Direct Appeal as of Right, by failing to request, obtain and review the complete or entire Lower Court Records and Transcripts before filing an "untimely appeal brief" on Petitioner's behalf, depriving Miles-El of Adequate and Effective Appellate Review. The errors committed by the Trial Court and Appellate Counsel on Direct Appeal deprived Petitioner Miles-El of a "Fundamentally Fair Trial and Direct Appeal which resulted in a verdict and result lacking in reliability." Because Petitioner's Trial and Direct Appeal as of Right was not held in Accord with the Due Process Clause of the Fourteenth Amendment.

Petitioner Miles-El's conviction and capital sentence under Michigan Law was obtained in violation of His Sixth Amendment Right to: (1) The 'Assistance of Counsel For His Defense' by Trial Counsel First stating in his motion to withdraw that there was an 'irreversible breakdown in the attorney-client relationship to the extent that he could no longer adequately represent the Defendant'; Second by failing to investigate the result of the psychiatric evaluation report relating to Petitioner's Competence to Stand Trial and His Sanity at the time of the Homicide and request a competency/sanity hearing; Third by depriving Petitioner Miles-El of his right to present a complete defense, by not investigating, preparing and presenting his only valid defense of Legal Insanity due to Voluntary Intoxication, which was a defense to a specific intent crime of First Degree Premeditation and Deliberated Murder, instead trial counsel abandoned Petitioner's entire defense and/or theory of defense altogether and rested without presenting any defense whatsoever; (2) Compulsory Process for obtaining available witnesses in favor of Petitioner's defense of voluntary intoxication; (3) His Right to Counsel; (4) His Right to the effective assistance of counsel at trial; (5) His right to conflict free representation. Trial counsel deficient performance and serious errors undermined the confidence of and the reliability of a fair trial which undermined the confidence of and the reliability of a fundamentally fair trial resulting in a verdict lacking in reliability. See Kimmelman v Morrison, 477 U|S| 365 (1986); See also Evitts v Lucey, 469 U.S. 387 (1985); Powell v Alabama, 287 U.S. 45, 52, 58 (1932); House v Mayo, 324 U.S. 42, 46; Glasser v United States, 315 U.S. 60, 69-70.

### I. THE STATE COURT HAS DENIED PETITIONER KUSHAWN MILES-EL OF RIGHTS PRIVILEGES OR IMMUNITIES GUARANTEED HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES AND STATE OF MICHIGAN.

This Court has held that State Defendants has a federal constitutional Due Process right not to be deprived of his life and liberty except in accordance with the laws of the State and that federal right was violated when state rules applied to others were not applied to Petitioner Miles-El. See Hicks v. Oklahoma, 447 U|S| at 343, 346 (1980).

REASONS FOR GRANTING THE WRIT, (Page 4 of \_\_\_\_)

provided, then the Constitutional Guarantee has been violated. To hold otherwise "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's Requirement that an accused be given the Assistance of Counsel. The Constitution's Guarantee of Assistance of Counsel cannot be satisfied by mere formal appointment." The substance of the Sixth Amendment also guarantees the accused a "compulsory process for obtaining witnesses in his favor." This right is also, "Fundamental and essential to a fair trial," which applies in both State as well as federal courts, see *Washington v. Texas*, 388 U.S. 14, 17 18 (1967). The right to present a defense combines together with the right to confront adversarial witnesses, and thus has constitutionalized "the right to a defense as this Court knows it." See also *California v. Green*, 399 U.S. 149, 176 (1970).

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.

Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. The right is a fundamental element of Due Process of Law. See *Washington v. Texas*, 388 U.S. at 19.

Due Process of Law is the basic constitutional right to be heard in one's own defense at a fair trial. This means that a defendant has an unquestionable right to present a defense, the right to present the defendant's version of the fact." *Id.* at 19.

Petitioner's Sixth Amendment right to the assistance of counsel for his only defense was violated by trial counsel's failure to investigate, prepare and present Miles-El's Legal Insanity/Voluntary Intoxication Defense to First Degree Murder, investigate the psychiatric evaluation report, present expert testimony, call multiple witnesses in support of defense caused Petitioner Miles-El to a serious injustice that infected the entire trial itself making the verdict in his capital murder trial unreliable. *McCoy*, 138 S.Ct. 1500 (2018); *Faretta*, 422 U.S. 806, 819-20.

**IV. WHETHER PETITIONER KUSHAWN MILES-EL WAS DEPRIVED OF HIS LIFE AND LIBERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT; WHERE THE TRIAL COURT FAILED TO CONDUCT A "COMPETENCY/SANITY HEARING", AFTER PETITIONER'S COURT ORDERED PSYCHOLOGICAL EXAMINATION.**

Petitioner Miles-El claims that the trial court's failure to conduct a competency hearing and make an inquiry into his competence to stand trial deprived him of his constitutional right to a fair trial. Petitioner did not waive the defense of incompetence to stand trial. Trial Counsel on several occasions insisted that the Petitioner Miles-El's sanity was an issue. (See Order for psychiatric evaluation, attached as Appendix-\_\_). Petitioner states that he was entitled to a hearing on the issue of his competence/sanity to stand trial.

Petitioner asserts, that on an unrelated criminal case that he was ordered to "undergo psychiatric treatment" at the Recorder's Court Psychiatric Clinic, October 7, 1993. (See Appendix-\_\_, attached). Petitioner was also ordered by Recorder's Court judge Thomas E. Jackson, to undergo a psychiatric evaluation, on October 1, 1993, relative to a claim of insanity. (See Appendixt-\_\_). While Petitioner was awaiting trial on first degree murder charges, the Petitioner

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was placed on suicide watch multiple times in the Wayne County Jails psychiatric ward. (See Affidavit of Kushawn Miles-El, attached as Appendix-\_\_\_\_) and his trial counsel and trial judge was made aware that Petitioner was placed on suicide watch.

Petitioner was eventually had a psychiatric evaluation at the Recorder's Court Psychiatric Clinic. No Report was ever filed and Trial Counsel failed or refused to investigate the results of Petitioner's psychiatric evaluation and the trial court failed to conduct a competency hearing after Petitioner's court ordered psychiatric evaluation.

This Court has held, the conviction of an accused while he is legally incompetent violates Due Process and State procedures must be adequate to protect this right. See Bishop v United States, 350 U.S. 961 (1956); Droe v Missouri, 420 U.S. 162; 95 S.Ct. 896 (1975). In Droe v. Missouri, *supra*, this Court held: That the defendant's due process right to a fair trial was violated by the trial court's failure to suspend trial until the defendant's competence could be determined. Although trial counsel had not made a proper pre-trial motion for a competency hearing and the psychiatric report which had been prepared for trial did not clearly suggest the defendant was incompetent, the Droe Court nonetheless found the trial court had a duty to conduct an evaluation of competency based events during trial such as attorney's comments concerning Petitioner's mental state and the testimony concerning defendant's bizarre behavior and psychiatric history. The Droe Court expressed doubt that the defendant's failure to move for a competency hearing could ever operate to waive his due process rights. *Id.* at 176. See Also United States v. Johns, 728 F.2d 953 (7th Cir. 1984). Under Michigan Law the trial court must render a separate finding of competency when evidence of incompetency is presented. See People v. Belanger, 73 Mich App 438 (1972)!!

Following an Michigan State Court trial, the Petitioner was found guilty of First Degree Premeditated and Deliberated Murder and sentenced to Life without Parole imprisonment. Although the Petitioner, an indigent represented by a court appointed attorney, (who filed a motion to withdraw based on an irreconcilable breakdown in the attorney client relationship and a conflict of interest), had failed to demand a hearing as to Miles-El's competency to stand trial, his trial counsel contended on more than one occasion throughout trial that the Petitioner Miles-El was insane both at the time of the homicide, and at the time of trial and that there were several witnesses who would have testified as to Petitioner's state of mind at the time of the homicide and the fact that he was already undergoing court ordered psychiatric treatment from an unrelated case, and him being on suicide watch on more than one occasion in the wayne county jail, in support of his being insane. Trial counsel failed to investigate the results of the psychiatric evaluation and present expert testimony and other evidence and witness testimony and the court's failure to conduct own its own an inquiry into petitioner's mental state, Petitioner's insanity defense and insanity at the time of trial was not presented or investigated, Petitioner was convicted. The counsel Daniel J. Rust who was appointed to represent Petitioner on his Direct Appeal as of Right, refused to investigate this claim and raise it for appellate review in Petitioner's appeal brief. The Michigan Court of Appeals and Michigan Supreme Court affirmed his conviction. Petitioner claims that he was convicted in an unduly hurried trial (with an attorney who labored under conflicts of interest and a breakdown in the attorney client relationship); without a fair

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opportunity to obtain expert psychiatric and other witnesses testimony and without sufficient development of the facts on the issue of his competence to stand trial. Petitioner was denied due process by the state's failure to conduct a hearing upon his competency to stand trial.

Petitioner asserts that his constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial, that he is entitled to have the writ granted and that he be discharged unless the State of Michigan gives him a new trial within a reasonable time, because the facts before the trial judge suggested not that Miles-El's crime was an insane act but whether they suggested he was incompetent to stand trial. Petitioner states that even though his trial counsel phrased his questions and argument in terms of his present insanity, this could interpret his language as necessarily placing in issue the question of Petitioner Miles-El's mental competence to stand trial. Counsel was simply borrowing the terminology of the relevant Michigan Statutes and decisions. Michigan law in effect at the time of Petitioner's trial differentiated between lack of criminal responsibility and competence to stand trial, but used "Insanity" to describe both concepts. See *People v Shahideh*, 277 Mich App 111 (HN10) (2007); *People v. Rossart*, 99 Mich App 66, 74 (1980)!! The evidence raised a sufficient doubt as to Petitioner's competence to stand trial so that he was deprived of due process of law under the Fourteenth Amendment and Article 1, §17 of the Michigan Constitution of 1963, by the trial court's failure to afford Petitioner a hearing on that issue. See also *People v Hayes*, 421 MICH 271, 282 (1985).

**V. PETITIONER WAS DENIED HIS RIGHT TO BE PRESENT AT ALL "CRITICAL STAGES" OF HIS CRIMINAL "CAPITAL CASE" PROCEEDINGS; IN PARTICULAR THE JANUARY 28, 1994 HEARING HELD ON HIS TRIAL COUNSEL'S MOTION TO WITHDRAW AS COUNSEL, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES.**

On January 24, 1994, Trial Counsel Carl B. Bolden, Jr., filed a motion to withdraw, due to an "irreconcilable breakdown in the attorney-client relationship" to the extent that he could ["no longer adequately represent the defendant"]. On January 28, 1994, the trial court conducted a hearing on counsel's motion to withdraw, ["without Petitioner Miles-El being present at the hearing"]. See (January 28, 1994 Motion Hearing Transcripts, attached as Appendix-B). The trial court denied counsel's motion to withdraw without Petitioner being given an opportunity to plead his case for his request for substitution of counsel.

Petitioner asserts that he has the right to be personally present at "all stages" of his criminal proceedings that is critical to its outcome if his presence would contribute to the fairness of the procedure. See *Snyder v. Massachusetts*, 291 U.S. 97, 105-106 (1934); *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987); See also *People v. Medcoff*, 344 MICH 105 (1955), overruled on other grounds, *People v. Morgan*, 400 MICH 527 (1977); *People v. Russell*, 471 MICH 182, 187 (2004).

Petitioner Miles-El had a constitutional right to be present at the January 28, 1994, hearing held on counsel's motion to withdraw under the due process clause of the Fourteenth Amendment and Article 1, §17 of the Michigan Constitution, of 1963. That right was violated by his absence from the January 28, 1994 hearing. Petitioner has a right to be present in his own person whenever his presence has a relation, reasonably substantial to the fairness of his opportunity to defend against the charge." See *Snyder*, supra, *Id.* at 105-106.

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Petitioner claims that it does not appear that Michigan Courts have addressed the question: of Whether a Criminal Defendant has a Constitutional right to be Present when the trial court considers and rules on defense counsel's motion to withdraw from the case. Specifically a "Capital Case."

It is Bedrock Law that a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome of his presence would contribute to the fairness of the procedure. See Kentucky v. Stincer, *supra* 482 U.S. at 745; United States v. Ganon 470 U.S. 522, 526, 105 S.Ct. 1482 (1985)(Per Curiam)(*"A defendant has a due process right to be present at a proceeding 'whenever his presence has a relation, reasonably substantial to the fullness of his opportunity to defend against the charge."*) (Quoting *Snyder v. Massachusetts*, *supra*, 291 U.S. at 106)). The right to be present protects a defendant's right to confront witnesses and his rights under the due process clause of the Fifth and Fourteenth Amendment. *Gagnon, supra*, 470 U.S. at 526.

In Michigan a criminal defendant has both a common law and a constitutional right to be present at all critical stages of the proceedings or trial. Mich Const. 1963, Art. 1, §17; U.S. Const. AM XIV. These rights are implemented by the Due Process Clause and Vindicates two primary interests: (1) Enabling the defendant to assist in the preparation of a defense, and (2) Ensuring the appearance of fairness in the execution of justice. See *Pinky v State*, 350 MD 201, 209 (1998).

The question that this Honorable Court must decide is whether, in the case before you, Petitioner Miles-El was deprived of his right to be present at a critical stage of the criminal proceedings, in particular the January 28, 1994 hearing on his attorney's motion to withdraw. Federal courts and sister courts have considered this issue. Most of these courts have held that ordinarily a defendant does not have a constitutional right to be present when the court rules on a motion to withdraw as counsel or meet with defense counsel to discuss withdrawl. When the only issue to be determined is the withdrawl of counsel, the matter arises pre-trial and no substantive matters are discussed or considered; the stage of the proceeding is not considered critical." See *Hale v. Gibson*, 227 F.3d 1298, 1311-1312 (10th Cir. 2000); *Green v. Johnson*, 116 F.3d 1115 (5th Cir. 1997); *Bradley v. Henry*, 510 F.3d 1093 (9th Cir); *People v. Cardenas*, 411 P.3d 956.

In *Hale v. Gibson*, *supra* the United States Court of Appeals for the Tenth Circuit held, that a meeting outside the presence of the defendant between defense counsel and the court regarding defense counsel's application to withdraw did not violate the defendant's constitutional right to be present." The defendant was not notified of or permitted to attend the hearing, but the court noted that there was no evidence that the court and defense counsel discussed the "substantive charges against the defendant and/or the truth of the underlying conflict between defense counsel and the defendant. *Id.* at 1311-1312. The meeting did not impinge on the (defendant's) opportunity to defend against the charges against him or affect the fairness of the entire trial" and therefore did not constitute a constitutional violation. *Id.* at 1312.

Similarly in *United States v. Oles*, 994 F.2d 1519 (10th Cir. 1993), the Court of Appeals for the Tenth Circuit held: that defendant's absence from a preliminary hearing where the trial court considered whether appointed counsel would withdraw in favor of potential retained counsel did not violate the defendant's due process

rights (a) because no substantive matters relating to the charges pending against the defendants were discussed and (b) because the defendant did not "Establish" his presence would have contributed to the fairness of the trial. Id. at 1525.

In contrast, the United States Court of Appeals for the Ninth Circuit held in *Bradley v. Henry*, 510 F.3d 1093, 1097-98 (9th Cir. 2007): That a defendant's rights were violated when he was excluded from a meeting between defense counsel and the trial judge at which the judge concluded that the defendant was unable to pay defense counsel and appointed new counsel instead. The court concluded that "Due Process does not permit a judge to decide such a question without hearing the affected party." Id. at 1098.

State courts that have also considered this issue have articulated two approaches to determining when a stage of trial is critical and the defendant's right to be present is implicated. The Mississippi Supreme Court advanced a case-by-case approach. See *Smith v. State*, 724 So.2d 280, 310-312 (Miss 1998). In *Smith*, a Capital Case, the defendant was not present at a pre-trial hearing on a constitutional motion at which the court allowed the defendant's appointed counsel to withdraw in place of his privately retained attorney. Id. at 310. The court held that the defendant's constitutional right to be present was not violated because counsel's motion was made well before trial and defense counsel "made no allegations against the defendant which the defendant was entitled to defend." Id. at 312.

In contrast, the Colorado Court of Appeals held that a defendant's presence at a hearing on Defense Counsel's Motion to Withdraw was required based upon a reading of Colorado Rule of Criminal Procedure 44(d). See *People v. Gardenas*, 411 P.3d 956, 961-963 (Colo App 2015)( Defense counsel sought to withdraw because of irreconcilable differences of opinion with the defendant)!!

Petitioner contends that the Court should issue the Writ of Certiorari to resolve the Split Amongst the Federal Circuit Courts and the State Courts on the Question: Whether a criminal defendant has a constitutional right to be present when the trial court considers and rules on defense counsel's motion to withdraw from the case.

In Hicks v. Oklahoma, 447 U.S. 343, 100 S.Ct. 2227 (1980), This Court has held: "If a state court system arbitrarily withholds the benefit of a state rule of law from a criminal defendant, Due Process of Law is denied. If a state court system treats similarly situated criminal defendants differently, equal protection of law is denied. U.S. Const. Amend XIV. That the state defendant had a Federal Constitutional Due Process Right Not to be Deprived of his Liberty, except in accordance with the laws of the state, and that Federal Right was violated when state rules applied to others were not applied to Hicks. Id. 447 U.S. at 346.

It is argued that all that is involved in this case is the Denial of a Procedural right of exclusively state concern. Where, however a state has provided for the imposition of criminal punishment in the discretion of the trial jury. It is not correct to say that the Petitioner's interest in the exercise of that discretion is merely a matter of state procedural law. The Petitioner in such a case has a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury in the exercise of its statutory discretion and that liberty interest is one that the 14th Amendment preserves against arbitrary deprivations by the state.

Petitioner argues to allow his Conviction and Capital Sentence to Stand without Due Process of Law and the State Court judgments to stand without ANY STATE COURT Affording Petitioner Miles-El an Evidentiary Hearing and Affording Him an Opportunity to be Heard is a "miscarriage of justice" and offends the Due Process and Equal Protection Clause and the Supremacy Clause under Article VI of the United States Constitution and makes Petitioner's entire adversarial trial and appellate process, and results unreliable because his conviction and sentence was obtained in violation of the Due Process Clause. To Allow Petitioner's conviction, sentence and the state court judgments on to remain and stand would in effect insulate the state trial and appellate courts and trial and appellate counsels from review for Constitutional violations, Plain and Structural Errors, denial of a Fair Trial, Denial of the Right to Counsel; For the Denial of the Effective Assistance of Counsel at trial; and Deficient and Inadequate representation. In addition, it would be contradictory not only to decisions of other state courts and other federal circuit courts, but to the Trend of this Court to Ensure criminal defendants (like Petitioner) is not deprived of their life and liberty without due process of law; Ensure a Fair Trial; Ensure evidentiary hearings; adequate assistance of counsel; ensure the right to counsel; the right to conflict free representation and an adequate opportunity to be heard.

#### CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition For a Writ of Certiorari be granted or in the alternative remand this case back to the state courts for a hearing and determination to determine if Petitioner has been deprived of his Life and Liberty without Due Process of Law; the Right to Counsel.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6-22-21