

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Dudley Allen Hicks — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First District Court of Appeal, State of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dudley Allen Hicks
(Your Name)

11064 N.W. Dempsey Barron Road
(Address)

Bristol, Florida 32321
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

ORIGINAL

QUESTION(S) PRESENTED

- 1) What kind of evidence and circumstances must be revealed to a criminal attorney to create a bona fide doubt as to his client's competence to require the attorney to request a competency hearing?
- 2) What kind of evidence is sufficient for a State trial court to deny a criminal defendant's postconviction claim of ineffective assistance of counsel without first conducting a formal evidentiary hearing?

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:

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OTHER

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 1st Judicial Circuit Court, Escambia Co 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☒ is unpublished.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 _____.

☐ 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 07/06/2021.
A copy of that decision appears at Appendix A.

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

☐ 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

-United States Constitution, Amendment Six

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; 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.

-United States Constitution, Amendment Fourteen, Section 1

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.

STATEMENT OF THE CASE AND FACTS

Mr. Hicks was arrested in Escambia County and charged by information with one count of capital sexual battery after a doctor authorized by the Department of Children and Family services lodged a complaint.

The Public Defender's Office was assigned to defend Mr. Hicks and attorney Geoffrey Pittman was appointed his counsel of record.

The State of Florida extended Mr. Hicks a plea offer of fifteen (15) years prison followed by fifteen (15) years probation. Mr. Hicks rejected the plea in the interest of maintaining his innocence.

Thereafter, a jury trial was commenced. During trial, Mr. Hicks testified that he never molested his daughter in any way shape or form. He maintained that he was merely teaching his daughter how to properly clean herself and had no sexual motivation whatsoever. (Appx. B, Attic 3, pp. 301-02)

Prior to testifying, Mr. Hicks attempted to make several objections. Mr. Hicks complained of his uncomfortable transfer to the jail and the fact he couldn't be expected to function mentally due to his overnight conditions. Specifically, Mr. Hicks objected as follows:

THE DEFENDANT: Certainly, certainly. I just want to object to being kept up all night long and then expected to be able to function mentally with choosing a jury and whatnot. I just wanted to enter that into the record.

THE COURT: What kept you up all night long?

THE DEFENDANT: The-- the painful trip here and the cold hard concrete steel tank.

THE COURT: What time did you arrive in Pensacola?

THE DEFENDANT: I think I arrived about 4 o'clock, 4 a.m. and, you know. I just want to object to that for the record.....
(Appx. B, Attc. 3, p. 6)

Mr. Hicks also expressed his objection to the unexpected change in judge, because he felt he had "established a bit of a rapport, and now that's lost." (Appx. B, Attc. 3, p. 123)

The trial court attempted to explain to Mr. Hicks that he couldn't lodge objections and had to have his attorney do so. However, Mr. Hicks could not understand that simple direction. (Appx. B, Attc. 3, pp. 122-23)

Likewise, the court tried to explain to Mr. Hicks that he had to cease testifying when an objection was made and Mr. Hicks couldn't even understand that. (Appx. B, Attc. 3, p. 298)

Mr. Hicks made an objection at one point as follows:

THE DEFENDANT: There has been points where skewed language was used, situations are reversed, words are used that are incorrect, according to the situation, and I just wanted to be able to object to those, to mention that, to correct that.

(Appx. B, Attc. 3, p. 183)

When asked if he ever got angry during supervised visits, Mr. Hicks testified as follows:

THE DEFENDANT: There was -- in that space of two years, there was about two times, two times. The first time was when I wasn't able to -- I wasn't allowed to describe a paper I had written up on horse training. I'm a horse horse shoer, for seven years, and -- most of the rest of my life, but seven years full-time. And when I got angry -- I got angry, I got upset that my authority was being taken away from me as a parent. I realize now that I had very little authority at that point; but at the time, I was upset that authority was taken from me.

So I had this paper in my lap, and I was -- I decided that I wanted to leave. So I jumped up, threw the paper down (indicating), and they had preplanned in advance -- they seemed very paranoid about being afraid of me, and so they immediately jumped up and left. And it was very disconcerting, but I -- there was a time around 2010 that I -- that I lost --

(Appx. B, Attc. 3, pp. 289-90)

In the middle of answering a question, Mr. Hicks would completely forget what the question was.

(Appx. B, Attc. 3, p. 292)

The jury returned a verdict finding Mr. Hicks guilty as charged. He was then sentenced to spend the rest of his natural life in prison.

On August 28, 2020, Mr. Hicks filed an Amended Motion for Postconviction Relief. (Appx. C) The motion presented two grounds for relief. First, Mr. Hicks alleged his trial attorney was ineffective for failing to request a competency hearing and

allowed him to be tried while incompetent. (Appx. C, pp. 4-6). Second, it was alleged that Mr. Hicks' counsel was ineffective for allowing him to reject a favorable plea offer while incompetent. (Appx. C, pp. 7-8).

The trial court entered an order on October 5, 2020, summarily denying Mr. Hicks' Amended Postconviction Motion. (Appx. B). The trial court reasoned that Mr. Hicks failed to identify any facts that raised a bona fide doubt about his competency, and therefore, failed to state a sufficient claim. (Appx. B, pp. 4-5). The court held that even if Mr. Hicks stated a sufficient claim, the trial transcript conclusively demonstrated that he was competent because Mr. Hicks was an active and coherent participant in his defense. (Appx. B, p. 5).

Mr. Hicks timely appealed to the Florida First District Court of Appeal. An Initial Brief was filed on December 17, 2020, by Mr. Hicks, arguing that he did state a facially sufficient claim and that the trial transcript did not conclusively refute his claim. (Appx. D).

The State of Florida elected to file an Answer Brief and submitted one to the Court on March 16, 2021. The State did not dispute Mr. Hicks' argument that he stated a facially sufficient claim of ineffective assistance of counsel, but did defend the trial court's ruling that the trial transcript conclusively refuted his claims. (Appx. E).

On July 6, 2021, the Florida First District

Court of Appeal per curiam affirmed the trial court's summary denial of Mr. Hicks' Amended Postconviction Motion. (Appx. A).

REASONS FOR GRANTING THE PETITION

GROUND ONE

MR. HICKS ALLEGED SUFFICIENT FACTS TO ESTABLISH A PRIMA FACIE CLAIM THAT HIS STATE APPOINTED TRIAL ATTORNEY WAS INEFFECTIVE FOR FAILING TO REQUEST A COMPETENCY HEARING

Mr. Hicks filed a State postconviction motion alleging that his State appointed trial attorney was ineffective for failing to request a competency hearing prior to Mr. Hicks rejecting a plea offer and proceeding to trial.

It was alleged that there were sufficient facts before counsel to create a bona fide doubt regarding Mr. Hicks' competency. Specifically, Mr. Hicks alleged in his motion that his attorney was aware that Mr. Hicks suffered from a personality disorder and bipolar disorder, two mental health disorders that severely affects the proper functions of an individual's mental faculties. (Appx C, pp. 5-6).

It was also pointed out that while conversing with Mr. Hicks, he would appear spaced out, and at times, not make any sense in his dialog. Mr. Hicks further alleged that in mid-conversation he would suddenly become emotionally distraught. (Appx C, p. 6).

The State trial court denied the motion without giving Mr. Hicks an opportunity to develop the facts of his claim in a formal hearing. The trial court's reasoning was that the motion did not allege any "specific facts showing that a reasonable competent

attorney would have questioned his competence to proceed." (Appx. B, p. 5)

This Court has held that a competency hearing is "required where the evidence raised a 'bona fide doubt' as to a defendant's competency". *Drope v. Missouri*, 420 U.S. 162, 173 (1975). The Court further stated that:

"evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.

There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed...."

Drope, 420 U.S. at 180.

While *Drope* decided a question concerning when a court should order a competency hearing based on the evidence before it, Mr. Hicks argues that same standard should apply to a criminal defendant's attorney. When sufficient evidence is made known to a trial attorney that puts his or her client's competence in question, the attorney is obligated to request the court to conduct a competency hearing.

In *Pate v. Robinson*, 383 U.S. 375 (1966), this Court concluded that defendant's irrational behavior, which included defendant appearing "in a daze, with a 'glare in his eyes,' and would not speak

or respond to questions" *Id.* at 379, was sufficient to alert the court to defendant's possible mental incompetence and trigger a hearing. *Id.* 385.

Likewise, in *Taylor v. Davis*, 164 F. Supp. 3d 1147 (N.D. Cal. 2016), the defendant argued that his pre-trial behavior, pre-penalty phase behavior, and his mental health history should have created a bona fide doubt as to his competence. The Federal District Court for the Northern District of California agreed and stated that the defendant's "mental health evidence alone should have triggered a competency hearing...." *Id.* 1156.

The allegations Mr. Hicks made in his postconviction motion regarding his irrational behavior and mental health history should have been sufficient to alert counsel to Mr. Hicks' potential mental health concerns. Counsel should have requested a competency hearing and his failure to do so was ineffective.

GROUND TWO

MR. HICKS ALLEGES THAT THE STATE TRIAL COURT DID NOT HAVE SUFFICIENT RECORD EVIDENCE TO DENY HIS CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WITHOUT FIRST CONDUCTING A HEARING

In denying Mr. Hicks' two claims of ineffective assistance of counsel, the State trial court solely relied on portions of the trial transcript. The State court held that the transcript was sufficient to deny the claims without a formal hearing. The court explained as follows:

"In addition, it bears noting that the record demonstrates that Defendant was an active and coherent participant in his defense. He personally inquired of the Court on several occasions, and testified logically in his own defense. He objected to the conditions at the jail, to the fact that a different judge presided for a portion of his trial, and to certain language used during trial. At the conclusion of his trial, he testified articulately on his own behalf."

(Appx B, p. 5)

Mr. Hicks appealed to the State appellate court and argued that the transcript did not conclusively refute his claims. Mr. Hicks alleged that while the State trial court's observation may have been accurate, the transcript also lent support to his claims. The transcripts demonstrated that

Mr. Hicks couldn't follow simple instructions from the court that he couldn't lodge objections and had to let his attorney do it, it showed that Mr. Hicks couldn't understand that he had to cease testifying when an objection was made, it showed that Mr. Hicks' testimony didn't make sense at times and he appeared confused, and it also showed that Mr. Hicks would forget questions as soon as they were asked. (Appx. D, pp. 6-8).

In Florida, a claim of ineffective assistance of counsel can be summarily denied without a formal hearing if the court determines that the claims are conclusively refuted by the record. *McLin v. State*, 827 So.2d 948 (Fla. 2002).

Mr. Hicks contends that this standard is adequate for this Court to adopt, with two specific clarifications:

First, the record evidence must conclusively refute the claim of ineffective assistance of counsel. The evidence cannot be of such a nature that it both supports and refutes a defendant's allegations.

In *Drope v. Missouri*, 420 U.S. 162 (1975), while it was a case addressing whether a trial court erred in not holding a competency hearing, this Court provides some guidance on what kind of evidence conclusively refutes a claim of error. Specifically, this Court stated:

"The sentencing judge and the Missouri Court of Appeals concluded that the psychiatric evaluation of petitioner attached to his pretrial motion for a

continuance did not contain sufficient indicia of incompetence to stand trial to require further inquiry. Both courts mentioned aspects of the report suggesting competence ..., but neither court mentioned the contrary data."

Id. 175.

As such, evidence that is for and against a defendant's claim of ineffective assistance of counsel is not evidence that conclusively refutes the claim. The evidence must be for or against, but it can't be both.

The trial transcript relied on by the State trial court in Mr. Hicks' case did lend support to the trial court's conclusion that Mr. Hicks was competent. However, it also lent support to the contrary and bolstered Mr. Hicks' claim that there was sufficient evidence before counsel to create a bona fide doubt about Mr. Hicks' mental condition. This is not conclusive record evidence.

Second, the evidence cannot be so remote in time and removed from the circumstances to be considered irrelevant. The evidence must be contemporaneous in time or directly linked to the situation to have some material nexus.

For instance, in Mr. Hicks' case the State trial court relied on the trial transcript to deny his claim that trial counsel was ineffective for allowing him to reject a plea offer without first requesting a competency

hearing. However, the plea was offered and rejected approximately six months prior to trial. The trial transcript cannot reflect Mr. Hicks' mental state six months prior to the trial. This is not the kind of record evidence that can conclusively refute Mr. Hicks' claim of ineffective assistance of counsel.

Therefore, the State trial court did not have sufficient evidence to conclusively refute Mr. Hicks' two claims without first conducting a formal evidentiary hearing. Mr. Hicks was denied due process in his State postconviction proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: _____