

No. 21-6241

ORIGINAL

Supreme Court, U.S.
FILED

AUG 30 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC J. TURNER, PETITIONER,

v.

HON. RICHARD L. BROCH JR.,
Circuit Court Judge of the Sixth Judicial
Circuit Douglas County Illinois et al.,

KATE WATSON,
State's Attorney
Douglas County Illinois,

T. JEANNINE GARRET,
Public Defender
Douglas County Illinois,

RESPONDENT'S

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the trial court failed to order a determination of the defendant's schizophrenia?

Whether a conviction that violates due process happened while the defendant was legally incompetent?

Whether § 1331 federal question jurisdiction invokes F.R.E. R. 302 or 18 U.S.C. § 4241?

LIST OF PROCEEDINGS

Conviction: July 19, 2011, a Douglas County jury found Mr. Turner guilty of one count of: (1) driving under the influence of alcohol; (2) driving with a blood alcohol concentration over .08. (D 6)

Direct Appeal: January 25, 2013, Appellate Court Fourth District of Illinois affirmed, in a Summary Order, *People v. Turner*, No. 4-11-0743; (C. 239, 316) May 29, 2013, Illinois Supreme Court denied leave to appeal, No. 115828, in *People v. Turner*, 39 N.E.3d 566 (Ill. 2013); November 18, 2013, U.S. Supreme Court denied certiorari in *Turner v. Illinois*, No. 13-5344. (B 1)

Collateral Attack: August 7, 2015, and April 2, 2018, Douglas County trial court denied relief from judgments; (R. 344; C. 471, 488-89, 491) January 9, 2018, Appellate Court Fourth District of Illinois vacated \$1374.00 in clerk's statutory fees and otherwise affirmed in No. 4-15-0643, *People v. Turner*, 2018 Ill. App (4th) 150643-U and September 10, 2020, affirmed in No. 4-18-0251, *People v. Turner*, 2020 Ill. App (4th) 180251-U; (C. 476-82) (A 1-8) November 6, 2020, Illinois Supreme Court denied mandamus and/or prohibition relief in No. 126490; (B 2) April 19, 2021, and May 6, 2021, U.S. District Court Central District of Illinois dismissed relief for mandamus or prohibition in No. 20-CV-2352, and prohibition in No. 21-CV-2087, due to a lack of jurisdiction. (B 2, 3) On July 27, 2021, U.S. Court of Appeals Seventh Circuit dismissed for failure to pay docking fees in Nos. 21- 1929, and 21-1930. (A B)

OPINIONS BELOW

The Appellate Court Fourth District of Illinois, *People v. Turner*, 2018 Ill. App (4th) 150643-U and *People v. Turner*, 2020 Ill. App (4th) 180251-U. (A 1-8)

JURISDICTIONAL STATEMENT

Petitioner seeks review of federal orders and judgments of July 13, 2021. Petitioner invokes 28 U.S.C. § 1254 (1), § 1257 (a), and Amendment I.

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment XIV. 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.

FRE R. 302. In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.

18 U.S.C. § 4241 (*Please see Appendix for full text (C 1)*)

Ill. Article 104, Sec. 104-10. Presumption of Fitness; Fitness Standard. A defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. (*Please see Appendix for full text (C 2)*)

STATEMENT OF THE CASE

Petitioner did not default direct appeal that ended in 2013, by new evidence unavailable until 2015.

On April 15, 2011, the trial court order a determination by a “*bona fide*” doubt of defendant’s bipolar but did not inquire, observe, or otherwise *sua sponte* order a determination of his schizophrenia. (D 1-5)

On September 10, 2020, petitioner timely raised facts and new evidence of a Doctor’s Discharge Note: (1) schizophrenia, (2) prescribed Quetiapine, (3) report without schizophrenia, Quetiapine, and consequences of a plea, and (4) he was not present at any competency hearings, all in violation of Article 104. The state appellate court’s federal review affirmed the trial court’s denial that this, “does not, standing alone raise a *bona fide* doubt as to defendant’s fitness.” (A 7; C 2) *People v. Turner*, 2020 Ill. App (4th) 180251-U, 7

On July 19, 2011, defendant was convicted of DUI while legally incompetent. (A 2; B 1) On August 7, 2015, and April 2, 2018, petitioner timely raised newly found evidence on relief from judgments. On January 9, 2018, and September 10, 2020, the appellate court affirmed petitioner’s timely appeal’s. (A 1-8; D 1-17) On November 6, 2020, the Illinois Supreme Court denied leave to file a timely petition of mandamus and/or prohibition on the same merits, *In re Turner v. Broch*, No. 126490. (B 2) On April 19, 2021, and May 6, 2021, the U.S. District Court had § 1331 jurisdiction by F.R.E. R. 302, Ill. Art. § 104-10, and 18 U.S.C. § 4241, to grant § 1651 writs by § 1441, § 1652, Amendment I, and XIV *In re Turner v. Broch*, No. 20-CV-2352 and 21-CV-2087 and dismissed for lack of jurisdiction. (B 2, 3) On July 13, 2021, the Seventh Circuit did not review the merits and denied leave for appeal *in forma pauperis* in Nos. 21-1929, 21-1930 cons. (B 5) This Court has jurisdiction to review the judgment on a writ of certiorari because the claims have not been adjudicated on the merits that were unavailable on direct appeal. (B 1)

REASONS FOR GRANTING THE WRIT

The conviction of the legally incompetent defendant violates due process and is prohibited.

Contrary to *Pate*, the trial court did not *sua sponte* order a determination of a *bona fide* doubt raised by defendant's schizophrenia and Quetiapine under § 104-11(a) and § 104-21, that continues to enforce and exceed the authority of its legitimate jurisdiction of his legally incompetent conviction. (D 1-17)

Chavez v. United States, 656 F.2d 512, 516 (9th Cir. 1981) ("The court need not have reasonable grounds for believing the defendant incompetent. To the contrary, a trial court is not to make such an evaluation. Mcador, *supra*, at 938. Once the motion is made, the trial court should defer making an evaluation of competency until after the examination has taken place.")

Pate v. Robinson, 383 U.S. 375, 378 (1966) ("The conviction of a legally incompetent defendant violates due process.") The court's below erred and are contrary by it's assessment of *Drope* and *Pate*, and deprived defendant's inalienable Amendment XIV rights. Defendant's schizophrenia and Quetiapine are two separate merits and claims that stand together, not alone. (A 7; D 1-7) *Drope v. Missouri*, 420 U.S. 162, 180 (1975) ("[E]ven one of these factors standing alone may, in some circumstances, be sufficient." Presumption applies F.R.E. Rule 302 (rule nisi) to Ill. Art. Sec. 104-10. *Hornick v. Boyce*, 280 F. App'x 770 (10th Cir. 2008) Defendant's bipolar was a substantial and legitimate doubt to his mental competence, and his schizophrenia is the same. (D 1-17) *Pate* and § 4241 are federal ingredients in § 104-10. (C 1, 2) *Chavez v. United States*, 656 F.2d 512, 516 (9th Cir. 1981) ("[T]he 'bona fide doubt' standard discussed in *Pate* is very similar to the language in § 4241.") *Streetman v. Lymaugh*, 835 F.2d 1521, 1526 (5th Cir. 1988) (§ 4241 closely resembles *Pate*.) *Osborn v. Bank of the United States*, 9 Wheat. (22 U.S.) 738 (1824); *American Fire & Casualty Co. v. Finn*, 341 U.S. 6 (1951); *Mine Workers v. Gibbs*, 383 U.S. 715 (1966); *Pliva, Inc. v. Mensing*, 564 U.S. 604, 621 (2011) ("The Supremacy Clause, on its face, makes federal law 'the supreme Law of the Land' even absent an express statement by Congress.") *United States v. Cornejo-Sandoval*, 564 F.3d 1225, 1233 (10th Cir. 2009) A void challenge may be attacked by new evidence verified by McFarland MHC at anytime. (A 6; C 2)

Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) ("Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute.")

The court's below were suppose to automatically reverse or vacate by due process for a direct appeal. (A 5; B 2) *Valley View Health Care, Inc. v. Chapman*, 992 F. Supp. 2d 1016, 1045, (E.D. Cal. 2014) ("When other facts or conditions intervene, forming a new basis for a claim, the issues are no longer the same and res judicata does not apply.") *Ryan v. Gonzales*, 568 U.S. 57, 68 (2013); A final judgment is not a bar for writ of prohibition. *Mazurek v. Armstrong*, 520 U.S. 968 (1997); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092 (11th Cir. 2004); *James v. Singletary*, 957 F.2d 1562, 1570 (11th Cir 1992) ("Pate therefore put another spin on the already well-established prohibition against trying and convicting an incompetent defendant.") The § 104-15 doctor's report is invalid, and by § 104-11 (b), the court order failed to to pay an expert. (C 2; D 11-17) *Ake v. Oklahoma*, 470 U.S. 68, 86-87 (1985) The trial court violated § 104-16 by not allowing an opportunity for continuances and defendant's right to be present at the fitness hearings without a waiver. *Parker v. Newman*, 10 Ill. App.3d 1019, 1021 (1973) (C 2; D 1-5)

Cooper v. Oklahoma, 517 U.S. 348, 354, 359 (1996) ("No one questions the existence of the fundamental right that petitioner invokes. We have repeatedly and consistently recognized that "the criminal trial of an incompetent defendant violates due process. *Medina v. California*, 505 U.S. 437, 453 (1992); *Drope v. Missouri*, 420 U.S. 162, 171-172 (1975); *Pate v. Robinson*, 383 U.S. 375, 378 (1966). Nor is the significance of this right open to dispute.")

Petitioner respectfully requests this Court grant a writ of certiorari and reverse the judgment below.


Respectfully Submitted,


Eric J. Turner

CERTIFICATE OF COMPLIANCE

I certify this document was prepared and complies with Rule 32.2, & 14 (1) (c), not exceeding 5 pages. By 28 U.S.C. § 1746 (2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on Date: August 2, 2021


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