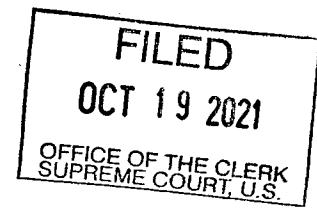


ORIGINAL

No.

21-6547



SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 2021

RICHARD LYNN LONG, JR., PETITIONER

VERSUS

STATE OF LOUISIANA, RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES SUPREME COURT

5<sup>th</sup> CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE

PETITION FOR WRIT OF CERTIORARI

RICHARD LYNN LONG, JR.  
(Your Name)

17544 Tunica Trace, Louisiana State Penitentiary  
(Address)

Angola, La. 70712  
City, State, Zip Code)

N/A  
(Phone Number)

### **QUESTION PRESENTED**

Mr. Long asserts that his trial counsel was ineffective for failing to notify the court of the contents of a neuropsychological report that found he was incapable of assisting legal counsel in his own defense and should therefore undergo treatment of his psychosis in a secure, psychiatric facility outside of the general prison population. Mr. Long further asserts that as a result of the scientific determination rendered by Dr. Pinkston, his legal counsel should not have counseled him to enter into a plea agreement nor should the plea agreement he eventually entered into be considered valid, because there was no indication he had regained competency.

#### **QUESTION 1.**

Did the Fifth Circuit Court of Appeal err in deferring to the state court finding that Mr. Long was not prejudiced by his trial counsel's failure to notify the court of his incompetency before allowing him to enter into a plea agreement?

#### **QUESTION 2.**

Did the Fifth Circuit Court of Appeal err by sanctioning the District Court's departure from the accepted and usual course of judicial proceedings instituted to safeguard the right of the accused not to be tried while incompetent?

#### **QUESTION 3.**

Can the plea of one who has been indubitably determined incompetent be considered valid by a court of law in the United States of America?

**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:

**RELATED CASES**

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## **TABLE OF AUTHORITIES CITED**

### **CASES**

**Martinez v. Ryan, 132 S.Ct 1309**  
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### **STATUTES AND RULES**

**28 U.S.C. §1254(1).**  
**28 U.S.C. §1257(a)**  
**28 U.S.C. §2254**  
**14<sup>th</sup> Amendment United States Constitution**

### **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 appear at Appendix "A" to the petition and is

[X] reported at; or, 20-30046

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

The opinion of the United States district court appears at Appendix "B" to the petition and is:

[ ] reported at Civil Action 18-0608; 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 \_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or, **Louisiana Supreme Court do not have**

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

The opinion of the Second Circuit 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.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 6/1/2021.

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 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 court:

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 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 FEDERAL PROVISIONS INVOLVED**

### **U.S. CONT., AMEND. XIV**

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.

### **28 U.S.C. §2254**

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such a process ineffective to protect the rights of applicant.

**(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.**

**(3) A State shall not be deemed to have waived the exhaustion requirements or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.**

**(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.**

**(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—**

**(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or**

**(2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in State court proceeding.**

**(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.**

**(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the**

court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce the part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing

such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel fro an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254. (It is Mr. LONG understanding that this law has been changed pursuant to the holdings of *Martinez v. Ryan*, 132 S.Ct 1309.)

## STATEMENT OF THE CASE

Mr. Richard Long Jr. entered into a qualified plea in January of 2014 to the first-degree murder of Officer Thomas Alexander. The plea was pursuant to *State v. Crosby*, 338 So.2d 584 reserving the right of Mr. Long to challenge the pre-trial identification of Francis Coenen, the home owner in whose house the crime occurred. Mr. Long was induced to enter into this plea on the advice of his counsel who insured him that it was the only way to challenge Mrs. Coenen's identification of him as the perpetrator of this crime.

Before entering into this plea Mr. Long had been determined by Dr. James Pinkston to be incapable of assisting legal counsel in his defense. And that as a result of his psychosis, delusional thought process and confusion his ability to make even simple decisions may fall prey to his delusions. Nevertheless, Mr. Long's counsel, without apparently informing the court of the contents of this report, allowed his client to enter into a plea arrangement that would subsequently deprive him of the rights guaranteed him under the Constitution of this country.

The Second Circuit Court of Appeal and the Louisiana Supreme Court both affirmed Mr. Long's conviction in regards to the challenged pre-trial identification. The issue of Mr. Long's competency to enter into a plea or any other issue surrounding competency was never adjudicated on direct appeal.

The nature of this case originates from the Habeas Corpus petition Mr. Long filed on March 27, 2018. In contention were seven matters; 1) the State breached the plea agreement petitioner reasonably believed he entered; 2) ineffective assistance of counsel by failing to hire a blood splatter expert; 3) ineffective assistance of counsel for failing to hire an expert to independently analyze DNA evidence; 4) ineffective assistance of counsel for failing to procure a

handwriting expert; 5) ineffective assistance of counsel by failing to conduct any independent investigation; 6) counsel failed to raise issue of competency to stand trial; and 7) petitioner was not competent to enter a plea.

Mr. Long takes the position that as a result of the uncontradicted neuropsychological report prepared by Dr. Pinkston that his plea and resulting conviction is illegal and should be voided until such time as Nunc Pro Tunc hearing on the issue of his competency can be conducted. If such hearing is deemed unable to be performed with a reasonable degree of accuracy, then Mr. Long's conviction should be overturned.

#### **REASONS FOR GRANTING THE WRIT**

##### **I. THE WESTERN DISTRICT OF LOUISIANA AND THE FIFTH CIRCUIT COURT OF APPEALS MISAPPLICATION OF 28 U.S.C. 2254(d)(1) & (d)(2), WARRANTS THIS COURT'S ATTENTION/ THE DECISION OF THE 5<sup>th</sup> CIRCUIT IS IN CONFLICT WITH THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES**

Generally a [valid] guilty plea, waives all non-jurisdictional defects. Petitioner is aware of this established case law. And although Petitioner will argue throughout this petition for writ of certiorari that his guilty plea was not valid, petitioner, in the interest of judicial economy, will focus this petition primarily on the issues surrounding his competency at the time of his entering into a qualified plea agreement with the State of Louisiana. Petitioner, however, does not want the Court to construe this as a surrendering of any of the issues he presented for review in the lower courts. Petitioner's success in presenting the issue of his incompetency will render all other issues moot and is therefore the issue of primary importance.

Numerous cases have held that where there is a bona fide doubt of the competency of a person accused of a crime, certain due process procedures must be employed before the judicial

proceeding can move forward. Whether the judicial proceeding is a jury trial or the entering of a plea matters little. What matters is the safeguarding of the rights of an accused who may for whatever reasons be unable to understand the proceedings against him or unable to assist counsel in his defense. 28 U.S.C. 2254 (d)(1) and (d)(2) state: **(d)** An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.
- (2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in State court proceeding.

The Supreme Court of the United States held in *Pate v. Robinson*, 86 S.Ct. 836, that "Mental alertness and understanding displayed by accused in colloquies with state trial judge did not justify ignoring **uncontradicted** testimony of accused's history of pronounced irrational behavior or failing to hold hearing on issue of accused's competence to stand trial." The link between this Supreme Court holding and the instant case which Petitioner seeks to point out is that there was an uncontradicted neuropsychological evaluation conducted three months after Petitioner was arrested that explicitly stated "Given his(petitioner's) level of confusion and disorganization, the patient is currently incapable of assisting legal counsel in his own defense". The report continued by stating that "Although he presents as though capable of understanding information, he is nonetheless easily disorganized, and very likely influenced by a delusional belief system. It is probable that with appropriate and successful treatment of his psychosis, and

with appropriate remediation/competency restoration, he will become capable of assisting legal counsel in his own defense and proceeding to trial. In the mean time, it is recommended that the patient be housed in a secure, psychiatric facility and outside of the general prison population."

These conclusions and recommendations were reached by Dr. Pinkston with only limited patient records but were guided by his training, experience and considerations of the relevant scientific literature and made with "a reasonable degree of scientific certainty." A copy of the above report in its entirety can be found in the appendix attached to this petition.

Three points of concern need be stated concerning this report. Those are the contents of the report, which party or parties were aware of the contents of the report and does the findings of the report raise a bona-fide doubt of the competency of Petitioner to enter into a plea agreement.

Although stated in numerical order, the three points mentioned in the previous paragraph will be argued in a conjunctive manner. In a collateral attack upon a conviction, the issue of incompetence has a two part nature. There is the procedural due process afforded in State proceedings and the issue of incompetency in fact. Due to the fact that Mr. Long was never afforded an evidentiary hearing he has only a one line statement included in the neuropsychological report that the Court was suppose to receive the contents of this report. That line can be found on page 1 of the neuropsychological report and it states "It was also explained to the patient, and he understood, that the results of this examination would be shared with the court and other individuals in position to aid the court in its decisions." However, whether or not the trial court ever received the contents of this report has never been determined, admitted, or denied. For that reason alone, Mr. Long's allegations concerning what the court may have will be

of a conclusory nature or not mentioned at all.

Incompetence in fact is proven by a preponderance of evidence. Preponderance of evidence can be stated simply as evidence which has the greater weight, the evidence that has the most convincing force. The trial court had numerous chances to explore the issue of Mr. Long's incompetence. The first being in a Motion to Withdraw Guilty Plea filed by Mr. Long after he began receiving treatment from a psychiatrist employed by the Louisiana State Penitentiary. At that time Mr. Long's conviction was only eight months old. The information was disregarded by the trial court in that instance. [See Attached Motion]

Mr. Long then raised the issue in post-conviction proceedings. The trial court for the most part accepted the interpretations of the District Attorney. What is notable however is neither the Court nor the State ever once challenged the contents of the report. They instead sought to interpret the report according to their legal positions. Mr. Long asserts that because the report was never objected to nor contradicted by the State, that its entire contents should be accepted as true not just cherry picked parts that do not accurately depict the findings of the report.

This Court has categorically established in hundreds of cases and for at least six decades that "due process prohibits the conviction of a person who is mentally incompetent." *Bishop v. United States*, 76 S. Ct.440. In the *Bishop* case, the Doctor who evaluated Mr. Bishop stated "This man has no delusions, hallucinations nor anything that would be suggestive of a mental disorder." The doctor in Mr. Long's case stated "The patient detailed a complex delusion involving the government, drugs, AIDS, extraterrestrial life, and religion reportedly used to control others, especially Blacks and homosexuals." The doctor further stated "His(Mr. Long's), thought processes were tangential. His abstract reasoning was impaired. No hallucinations or

obsessions were apparent in the patient's presentation during the evaluation. However, his presentation was notable for delusional thought processes surrounding paranoid conspiracies and evidence of past and recent psychosis." Mr. Long assumes the Court recognizes the obvious contradiction.

The constitutional right of mentally incompetent person to not be tried while he is in a state of incompetency can not be waived by the incompetent by a guilty plea or otherwise. Furthermore, it is contradictory to argue that a defendant may be incompetent and yet knowingly or intelligently waive his rights. *Pate v. Robinson*, 86 S.Ct 836. What is notable in the *Pate* case is the uncontradicted testimony of four witnesses called by the defense. It is notable because at no time in Mr. Long's case was there ever any type of hearing or procedures employed to determine if Mr. Long was competent to proceed to trial. Mr. Long's counsel in the face of overwhelming evidence failed to explore further the issue of incompetency.

The instant case mirrors *Bouchillon v. Collins*, 907 F.2d 589. After Mr. Bouchillon's counsel was informed that his client had a history of mental problems and had been institutionalized in the past, he failed to do any further inquiry. Mr. Long had been hospitalized on two separate occasions. Each hospitalization lasting approximately a week. On the first occasion in 1998, Mr. Long was diagnosed with Bipolar disorder and prescribed Haldol, and Congentin. The drugs Lithium and Risperdal were eventually prescribed to Mr. Long as well. The adverse side effects of these drugs are well known. Yet with evidence such as this in the hand of Mr. Long's counsel he neglected to inform the Court of the contents of this report, Mr. Long assumes.

The plethora of evidence in support of Mr. Long's incompetency is overwhelming. In fact

the only argument the State presents that is contrary to the determination that Mr. Long was competent to enter into a guilty plea is the from their perspective he had the ability to understand questions and respond to them. However, the State should be cautious when employing this reasoning for two important reasons. One can be found in *Lokos v Capps*, 625 F.2d 1258. The Fifth Circuit held in that case that "The nature of Lokos' condition was such that he was able to understand questions and respond to them. One need not be catatonic, raving or frothing, to be unable to understand the nature of the charges against him and to be unable to relate realistically to the problems of his defense." This holding negates the State's contention that Mr. Long, because he was able to give information about individuals and resources he had prior to entering the plea. The neuropsychological report addressed this issue as well stating "However, as a result of his psychosis, delusional thought process, and confusion, the patient manifests difficult recalling and relating specific facts pertaining to his actions and whereabouts. Although perhaps capable of locating witnesses, the same factors will interfere with his ability to examine witnesses. He may have difficulty maintaining a consistent defense given the strength of his bizarre delusional belief system. His psychosis will interfere with his ability to listen to the testimony of others for inconsistencies or misstatements. Finally, he is not currently in a position to testify in his own defense, and it is probable that under the stress of trial his mental condition may deteriorate."

Secondly concerning the State's adopted position. Dr. Pinkston said in his report that Mr. Long has the ability to present as though capable of understanding information but he is nonetheless easily disorganized and very likely influenced by a delusional belief system. The State should not have the luxury of citing the parts of the report they perceive to be in favor of

their arguments, yet be able to wholly ignore the parts and conclusion that favors Mr. Long's argument. This matter should have, could have been resolved by ordering an evidentiary hearing, competency hearing determination or some other type of protective hearing to clarify what can appear to be contradictory information presented in the report.

The Supervisory power of this court is being invoked because the Fifth Circuit has so far departed from the course of judicial proceedings and sanctioned such a departure by a lower court that the proceedings held in this case are contrary to the upholding of justice. Absent is the inherent sense of fairness legal proceedings must have in order for its results to be considered reliable. An unfavorable ruling in this court will be the impetus for the lower courts to began whittling away the rights of those defendant who are afflicted with mental issues beyond their control. Mr. Long concedes the fact that he has since received help with his mental issues and are currently controlling them by the medication Zoloft and a strict prayer regiment. What is to be the case of those who are not as fortunate as Mr. Long though? Those who like Mr. Long have categorical evidence of their incompetency but have never received a competency hearing and who lack the wherewithal and faith to overcome their illness?

Mr. Long, was through no help of the court whatsoever, able to adhere to Dr. Pinkston's recommendations. He was housed away from general population in a one man cell for nine years and prescribed Wellbutrin, Prozac and Zoloft by Dr. Matthew Gamble, a psychiatrist employed by the Louisiana State Penitentiary. Mr. Long also had frequent consultations with Dr. Gamble. Exactly what Dr. Pinkston recommended. It should be noted that Dr. Gamble diagnosed Mr. Long as suffering from an unspecified depressive disorder and an unspecified personality disorder. Notably this diagnosis was after Mr. Long entered into the qualified plea arrangement

with the State. Mr. Long's diagnosis by Dr. Gamble and his current treatment plan has been included in the appendix of this application. We are however not talking about Mr. Long's condition now. The issue at hand is the condition of Mr. Long at the time of his plea. This Court has to intervene in this matter for the sake of clarity and justice.

A writ application covering a topic such as this can go on for pages and pages. Mr. Long does not feel this should be necessary. The preponderance of evidence present at the time of Mr. Long's condition favors him almost exclusively. There is no evidence to fully support the State's contention that Mr. Long was competent at the time of his entering into a plea. What there is, is the professional view of two doctors trained in the field of psychology who both state that Mr. Long was suffering from some sort of mental disorders. The Courts are of course the final determiners of a defendant's competency. But that determination has got to made when evidence such as the type Mr. Long has is presented to the Court uncontradicted.

In summation, Mr. Long will list for this Court several areas of concern contained in the neuropsychological report conducted by Dr. Pinkston. Several areas that should have been sufficient for Mr. Long's counsel to inform the Court of his client's condition. Or if the court was informed, matters that should have led the court to order a competency hearing *sua sponte*:

- Mr. Long encountered police officers and somehow ended up on the floor of the police station with little memory of the incident. Later awakening in a hospital. Page 2 of 9 of the Neuropsychological Report.
- He[Mr. Long] reported psychiatric hospitalizations during 1998 and 1999. Page 3 of 9 of the Neuropsychological Report.
- The patient's memory was unreliable and distorted as a result of his significant delusions. Page 4 of 9 of the Neuropsychological Report.
- His abstract reasoning was impaired. Page 4 of 9 of the Neuropsychological Report.
- His associations were loose. Page 4 of 9 of the Neuropsychological Report.

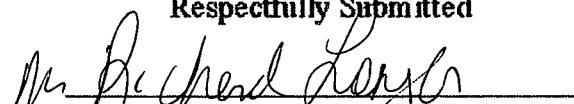
- Individuals with similar response styles often manifest difficulties with logic and judgment, and they have problems with anger and suspiciousness that often lead to unpredictable and irrational behavior. Page 6 of 9 of the Neuropsychological Report.
- He demonstrates some difficulties with his rational understanding of the consequences related to his charges sufficient to interfere with his ability to currently proceed to trial. (This statement was written as is.) Page 8 of 9 of the Neuropsychological Report.
- Given his level of confusion and disorganization, the patient is currently incapable of assisting legal counsel in his own defense. Page 9 of 9 of the Neuropsychological Report.

The report says all that is necessary for this Court to intervene in this matter. Mr. Long also included a copy of a report compiled by the Louisiana Public Defender Board who decertified Mr. Long's counsel for failing to comply with the Louisiana Capital Defense Guidelines and the *Performance Standards for Criminal Defense Representation in Indigent Capital Cases* (LAC 22:XV. Chapter 19). Among other things Mr. Goorley, Mr. Long's counsel failed to provide high quality representation in the areas of litigation, legal research, analysis, drafting of litigation documents, skills in oral advocacy and skills in the investigation, preparation, and presentation of evidence bearing upon mental status [of his clients].

## CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals.

Respectfully Submitted

  
 Mr. Richard Long Jr. #363322 pro-se  
 Camp C Wolf -2  
 Louisiana State Penitentiary  
 Angola, La 70712  
 Date: 10/18/2018