

U.S. Sup. Ct. No. _____

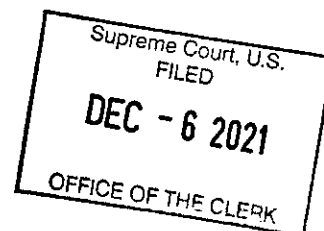
THE SUPREME COURT OF THE UNITED STATES

21-7008
MARCO DANE ACOFF,
Petitioner,

vs.

STATE of ALABAMA,
Respondents.

ORIGINAL



On Appeal From The Circuit
Court Of Calhoun County, Alabama.
Circuit Court No. CC2016-8283, Appellate
Court No. CR-19-0281, Sup Ct. No. 1200005.

• PETITION FOR A WRIT OF CERTIORARI •

By Petitioner

ADDRESS OF COUNSEL:

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QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE ALABAMA SUPREME COURT WRONGFULLY DECIDED AN IMPORTANT ISSUE RAISED TO THEM BY PETITIONER MARCO DANE ACOFF WHERE HE WAS DENIED A TIMELY AND MEANINGFUL MENTAL EVALUATION WHEN THE STATE'S HIGHEST COURT WAS REPUGNANT TO THE PREVIOUS DECISIONS RENDERED BY THIS COURT AS WELL AS TO THE PROTOCOLS OF THE UNITED STATES CONSTITUTION?

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

<u>Names</u>	<u>Dates</u>
1) Indicted On	1/14/2016
2) Request for a plea of not guilty by reason of mental disease or defect at arraignment	1/25/2016
3) Motion for a court-ordered mental evaluation	8/19/2016
4) Trial Court ordered the evaluation	8/23/2016
5) State moves to revoke bond	8/14/2018
6) Acoff moved to fire counsel	1/9/2019
7) Atty. Broome asks to withdraw	1/14/2019
8) Judge Bud Turner assigned	3/5/2019
9) Atty. David Alexander and Atty. Doug Ghee assigned	4/17/2019
10) Guilty verdict	12/4/2019
11) Notice of Appeal	12/20/2019
12) Conviction Affirmed by Court of Appeals	9/4/2020
13) Writ of Certiorari by Supreme Court affirmed	7/9/2021

TABLE OF AUTHORITIES

<u>Names(s)</u>	<u>Page(s)</u>
1.) <u>Ake v. Oklahoma</u> , 470 U.S. 68	6, 9
2.) <u>Armstrong v. Manzo</u> , 380 US 542	10
3.) <u>Barker v. Wingo</u> , 401 U.S. 514	2, 9
4.) <u>Byrd v. State</u> , 178 So.3d, 445	12
5.) <u>Clematis v. State</u> , 370 So. 2d, 432	19
6.) <u>Canally v. State</u> , 38 So. 3d, 618	15, 18
7.) <u>Cook v. State</u> , 64 So. 3d, 672	16
8.) <u>Doe v. Independent</u> , 15 F. 3d, 443	23
9.) <u>Dowdy v. Gilbert Eng'g Co.</u> , 511 F. 2d, 225	12
10.) <u>Ex parte Gingo</u> , 605 So. 2d 1237	11
11.) <u>Ex parte LaFlore</u> , 445 So. 2d, 932	19
12.) <u>Hunter v. Beshear</u> , 2018 WL 564856	1, 2, 3, 5, 6, 10, 12
13.) <u>Matthews v. Eldridge</u> , 424 U.S. 319	16, 17
14.) <u>M'Nagten Case</u> , 10 Clark + Fin. 200	16, 17
15.) <u>Missouri RR v Humes</u> , 115 U.S. 512	14
16.) <u>Mooney v. Holohan</u> , 294 U.S. 103	14
17.) <u>Pyle v. Kansas</u> , 317 U.S. 213	22
18.) <u>Shipp v. M³ Mahon</u> , 234 F. 3d, 907	21
19.) <u>Words and Phrases</u> , 2008	21

OTHER STATUTES AND PROVISIONS

1.) <u>Amendment IV, U.S. Const.</u>	3, 20, 21
2.) <u>Amendment IV, U.S. Const.</u>	20
3.) <u>Amendment VI, U.S. Const.</u>	20
4.) <u>Art. I Sec. 13, Ala. Const.</u>	22
5.) <u>Rule 11.6, Ala R Crim P.</u>	5, 6
6.) <u>§ 13A-3-1, Ala. Code 1975</u>	16
7.) <u>§ 15-16-21, Ala Code 1975</u>	2, 5, 7, 18

STATUTORY PROVISION TO CONFER
JURISDICTION

Pursuant to 28 U.S.C.S. § 2101(d) establishes the 90 day policy following direct review from state court, where the manifest purpose of the quoted constitutional provisions where life, liberty and property are affected, are to secure the citizen against the arbitrary action of those in authority, and to place him under the protection of the law.

SPECIFICATION OF THE STAGE

This litigation is at the stage where Petitioner's petition for a writ of certiorari to the Alabama Supreme Court was affirmed on July 9, 2021, and pursuant to Rule 10(c), Fed. R. App. Proc., it is ripe to be heard by this most Honorable Court because their ruling was not made with any recognition to what the laws of this Court and the U.S. Constitution stands for.

BASIS FOR FEDERAL QUESTION

Pursuant to 28 U.S.C. § 1331, the federal courts shall have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States.

BASIS FOR FEDERAL QUESTION

1. The basis for the federal question is the federal law which is the subject of the suit. The federal law must be a part of the federal law which is the subject of the suit. The federal law must be a part of the federal law which is the subject of the suit.



STATEMENT OF THE CASE

This is a petition for a Writ of Certiorari to be issued on behalf of Petitioner, Marco Dane Acoff (hereinafter referred to as "Acoff") against the State of Alabama for their exercise in denying and depriving him of his constitutionally protected clearly established right to receive a timely and meaningful competency and sanity mental evaluation.

The records of his trial process clearly shows where he timely gave notice to the Circuit Court of Calhoun County that his plea of choice was that he was "not guilty by reason of mental disease and/or defect".

After which, the trial judge ordered the evaluation to be conducted. And in accordance with the statute, the trial judge further ordered that any further trial processes be suspended.

Nothing else were to take place on his case until he was evaluated by an expert from the Alabama Department of Mental Health.

But, according to statute in effect at the time he requested the evaluation, the evaluation had to be conducted within 42 days. But it wasn't.

And so, Acoff was not evaluated until three years later.

Nowhere near timely and certainly not meaningful. Because he had a claim in that

said that he was not sane at the time of the offense.

The State of Alabama have used the excuse for not getting him a timely and meaningful evaluation claiming that Acoff had made bond, And was released. And while he was out on bail that he failed to "hasten the process,"

As if he was free on bond but never asked for an evaluation when he was out.

Well, that excuse cannot be validly accepted because the statute says that once the evaluation is granted, that the examination must be held within those 42 days.

Acoff, though, was not out free on bond 42 days after the evaluation was ordered.

He was not released until three years after it was ordered. For he had holdovers in Shelby County and Autauga County.

Also, he served time in prison under the control of the Alabama Department of Corrections.

So, in those three years after the order was issued, Acoff was available to be given the mental evaluation that was ordered in 2016.

Now the conduct in what the State of Alabama did was violative of what the previous rulings of this Court has stood for.

And it disrespects the U.S. Supreme Court's principle that it is illegal to try

an incompetent person.

But even moreso than that, the conduct by the Alabama Supreme Court in ruling against the evidence and facts that Acopp showed to them in his writ of certiorari to the Alabama Court of Criminal Appeals, which they affirmed on July 9, 2021, clearly shows this Court how they were repugnant to not only the 14th Amendment to the United States, but to the statutes and precedents of this Court as well.

Acopp is seeking justice for he had not been taking his psychotropic medications upon his release from prison. And he was feeling depressed. And was not in his right frame of mind at the time his crime was committed.

His evidence to this effect is overwhelming. So he is asking this Court to please utilize its supervisory powers to review his claims on certiorari.

For if the law is what it says it is in this country, the Court will rule favorably for him.

Because the ruling by the Alabama Supreme Court shows that they don't respect the constitution.

STATEMENT OF THE FACTS

This is a writ of certiorari filed by the Petitioner, Marco Dane Acoff (here-in-after referred to as "Acoff"), to this most Honorable United States Supreme Court challenging the conduct by the Alabama Supreme Court's repugnancy in failing to follow the concepts of the fourth, sixth, and fourteenth amendments to the United States Constitution when he was tried and convicted of First Degree Pharmacy Robbery and First Degree Armed Robbery in the Circuit Court of Calhoun County.

The issue raised in the Alabama Supreme Court was that such supreme court disregarded that Acoff's right to receive proper due process of law was indeed violated when the trial court did not provide him with a timely and meaningful mental health evaluation before he was carried to trial.

Acoff will show in his presentation here how he timely filed the necessary and required plea of "not guilty by reason of mental disease and defect" after he was indicted and at his arraignment,

He will also show how he was seeking to show the trial court how the basis of that "diminished responsibility plea was made with full intentions for the State of Alabama to

evaluate his mental state at the time of the offense.

But because Acoff "posted" bond money (yet was not released), the State of Alabama pretended that it was his fault for Calhoun County's failure to give him a timely and meaningful mental health evaluation.

To follow Acoff will list the important dates and exhibits that will show clearly and unequivocally just how he was still in custody of the State of Alabama even after he posted the bail money. And how Alabama knew where he was but they still did not timely schedule an evaluation for him.

THE FACTS ARE AS FOLLOWS:

1.) On January 14, 2016, Petitioner Acoff was indicted on one count of First Degree Robbery, a violation of §13A-8-41, Code of Alabama 1975, and one count of First Degree Pharmacy Robbery, a violation of §13A-8-51, Code of Alabama 1975. See Petitioner's Exhibit # 19; and # 20;

2.) On January 25, 2016, Acoff officially entered his pleas to the indictments pleading the affirmative pleas of not guilty by reason of mental disease and defect. See Petitioner's Exh. # 12;

3.) On August 18, 2016, Acoff's trial counsel, William Broome, Jr., entered a renewed motion for a mental health examination, and sent it to the

Circuit Court Judge of Calhoun County, i.e., Judge Howell. See Petitioner's Exh. # 4;

4.) On August 23, 2016, Judge Howell granted the motion and ordered that a mental health evaluation be conducted on Acoff pursuant to § 15-16-21, Code of Alabama 1975. See Petitioner's Exh. # 5;

5.) On February 8, 2016, Acoff posted his bond money on both charges but he was not released on bail at the time that he posted his bail. For he had holdovers at other venues. See Petitioner's Exh. # 8;

6.) On May 7, 2018, Acoff was finally released on bail. See Petitioner's Exh. # 10;

7.) On August 14, 2018, the State motioned the Circuit Court of Calhoun County to revoke Acoff's bond because they claimed that he had been charged with committing new crimes, i.e., Possession of Paraphernalia, and Public Order Crimes. See Petitioner's Exh. # 21;

8.) On August 16, 2018, Judge Howell issued an arrest warrant for Acoff based upon those false charges. And upon examination of his arrest order shows that the false charges were redacted. See Petitioner's Exh. # 22;

9.) On January 9, 2019, Acoff filed a pro se motion seeking permission from the trial court to allow him to fire his retained counsel, Mr. Broome. See Petitioner's Exh. # 23;

10.) On January 9, 2019, Judge Howell refused to allow Acoff to fire Mr. Broome, claiming that he had a contractual agreement with him. See Petitioner's Exh. # 24;

11.) On February 27, 2019, Acoff, through court-appointed counsel motioned the Circuit Court of Calhoun County for his bond to be reinstated. See Petitioner's Exh. # 25;

12.) On March 11, 2019, the presiding judge, the Honorable Bud Turner set the motion for reinstatement of bond to be ~~reinstated~~^{heard}. See Petitioner's Exh. # 26;

13.) On April 12, 2019, the motion to reinstate Acoff's bond was officially denied. See Petitioner's Exh. # 27;

14.) On December 4, 2019, the jury returned a verdict of guilty on both charges against Acoff;

15.) On December 20, 2019, Acoff gave a timely notice of appeal;

16.) On September 4, 2020, Acoff's convictions were affirmed by the Alabama Court of Criminal Appeals. See Petitioner's Exh. # 2.

17.) On July 9, 2021, Acoff's Writ of Certiorari to the Alabama Supreme Court was affirmed. See Petitioner's Exh. # 1.

ARGUMENT

I.

WHETHER THE ALABAMA SUPREME COURT WRONGFULLY DECIDED AN IMPORTANT ISSUE RAISED TO THEM BY PETITIONER MARCO DANE ACOFF WHERE HE WAS DENIED A TIMELY AND MEANINGFUL MENTAL EVALUATION WHEN THE STATE'S HIGHEST COURT WAS REPUGNANT TO THE PREVIOUS DECISIONS RENDERED BY THIS COURT AS WELL AS TO THE UNITED STATES CONSTITUTION? Answer: Yes.

Yes. The Alabama Supreme Court did wrongfully decide that the Petitioner, Marco Dane Acoff (hereinafter referred to as "Acoff"), was not entitled to a timely and meaningful competency evaluation. See Petitioner's Exhibit #1.

In reaching such conclusion, the Alabama Court of Criminal Appeals (whose memorandum opinion was adopted by the Alabama Supreme Court), held that the provisions of Hunter v. Beshear, No. CV 2:16 CV 798-MHT, 2018 WL 564856 (M.D. Ala. Jan. 25, 2018), has no application to this case because it was a civil case involving the failure of the Department of Mental Health to provide timely mental-health and competency restoration treatments and did not involve the dismissal of an indictment in a criminal case. See Petitioner's Exh. #2, of that memorandum opinion, page 3.

The State of Alabama further concluded that Acoff was not a pretrial detainee. They claimed that (1) Acoff stayed free on bond before his trial, and was out free on bail until his bond was revoked.

But Acoff will show how that conclusion was erroneous. Because by law he was entitled to have received the "timely and meaningful competency and mental health sanity evaluation" within 42 days after the order that was issued for the evaluation to be conducted was entered by the Honorable Judge Brian P. Howell on August 23, 2016. See Petitioner's Exh. # 5.

And, (2) they claimed that Acoff did nothing to "hasten" the evaluation process while he was out on bond.

Never even considering that it was not Acoff's duty to "hasten" the process, because the two important legal authorities that were in place at the time that Judge Howell ordered that an evaluation be done on him required that the evaluation be conducted within 34 days, under the provisions of Hunter v. Beshear, and 42 days, pursuant to § 15-16-21, Code of Ala. 1975.

Then, (3) they claimed that Acoff failed to show how he was "prejudiced" by the delay in evaluating him. See Petitioner's Exh. # 4, taken from pages 2 and 3 of his Writ of Certiorari to the Alabama Court of Criminal Appeals ("Opinion", adopted by the Supreme Court of Alabama).

So here, as Acoff did there at the threshold of his argument to the State of Alabama on Writ of Certiorari, he is saying that he had a right to a speedy and timely mental evaluation.

Because pursuant to Barker v. Wingo, 407 U.S. 514 (1972), Acoff was entitled to a fast, "fair and speedy trial."

But since it took the State of Alabama over three full years and approximately ten or eleven months any resemblance of his sixth amendment rights to receive a fair and speedy trial pursuant to what the "Barker" Court was stressing was lost and destroyed.

For you see, Acoff was indicted on January 4, 2016 and was not tried and convicted until December 4, 2019. See Petitioner's Exh # 6 and # 7.

This is not loose jargon that Acoff is speaking here. But rather is the presentation of a United States citizen who is seeking what the United States Constitution has promised and guaranteed each one of America's citizens.

THE 14TH AMENDMENT SAYS:

"... 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 within its jurisdiction equal protection of the laws."

Now what Acoff is stressing here on certiorari review is that the State of Alabama has acted "repugnant" to the above U.S. Constitutional concept.

Instead of them providing Acoff with the same protections and privileges as they would to the pretrial detainees in Hunter v. Beshear, the State of Alabama took the road to re-bel against the U.S. Constitution and claim that Acoff was not a pre-trial detainee because he "posted" bail.

ANALYSIS

So let us now quicken (hasten) the process here and just analyze how long had Acoff remained legally classified to be a pretrial detainee.

First of all Acoff "posted" bond on February 2, 2016. See Petitioner's Exh. # 8.

Next, he filed a formal "motion for court-ordered mental examination of defendant" on August 18, 2016. See Petitioner's Exh. # 9.

After that the most Honorable Circuit Court Judge Brian P. Howell "ordered" the mental evaluation to be conducted on him, dated August 23, 2016. See Petitioner's Exh. # 5.

And, in the context at the end of that "Order", Judge Howell made it specific and known to all parties involved that "further criminal proceedings against the Defendant are hereby suspended until such time as the Circuit Court received a report from Taylor Hardin Secure Facility". See page 3 of Exh. # 5.

Now, what the above-information has shown is that when Judge Howell had granted Acopp's motion for mental examination on August 23, 2016, that the State of Alabama had either 42 days after that to evaluate him. Or, if not using §15-16-21, Code of Ala. 1975, they had 34 days to evaluate him pursuant to the provisions enumerated in Hunter v. Beshear. See Petitioner's Exr. #12:

So lets first look at §15-16-21, just to properly realize what Acopp's rationale is:

"If any person charged with a felony is held in confinement under indictment and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity . . ."

Judge Howell saw the reasonable grounds. And he ordered that the trial process be suspended until the exam.

And then Rule 11.6, Ala. R. Cr. P., kicks in to say and establish that the evaluation be conducted within 42 days. Then Hunter v. Beshear's ruling became law on January 25, 2018, thus reducing the evaluation time down to 34 days.

All of this was done pursuant to the United States Constitution and the due process clause of the 14th Amendment.

But let us not ever forget what this Court stated in Ake v. Oklahoma, 470 U.S. 68 (1985), about how it is illegal to try an incompetent person.

And so, with the trial court being very much aware of the dangers of taking an incompetent person to trial, Judge Howell obeyed the statutes and relevant case law and authorities, and he "ordered" the evaluation to be conducted.

Again the relevant laws required that within 42 days, see Rule 11.6, the evaluation was to be conducted. Or, at the very least, the evaluation was to be conducted within 34 days pursuant to Hunter v. Beshere.

ACOFF'S PRETRIAL STATUS

Now the relevant question here is where was Acoff? Was he still in custody as a pretrial detainee after he posted bond on February 2, 2016, or was he released from custody soon after he posted bond?

The evidence that Acoff will show here is that he remained in state custody until he was finally released on bail on May 3, 2018. See Petitioner's Ex. #10.

This exhibit, Ex. #10, clearly shows that he was released from the custody by the Alabama Department of Corrections.

Also, there is Petitioner's Ex. #11, which is a time sheet on Acoff's state custody transactions.

This exhibit clearly shows where Acopp was sentenced to ten years on August 9, 2016 from the Circuit Court of Shelby County.

And then on September 1, 2016, he was sentenced to four more years from the Circuit Court of Autauga County, Such sentence to run concurrently with his ten year sentence received from Shelby County.

But more so than anything the above - convictions show where Acopp, who was initially being held by the Circuit Court of Calhoun County was not released from state custody until May 2, 2018. See Petitioner's Exh. #10, again.

Therefore, Acopp was still in the custody of the State of Alabama more than 42 days after he posted bond. Yet, he still was not brought before an expert psychiatrist, or any other qualified expert, so that he could have been evaluated properly pursuant to the State of Alabama created statute of §15-16-21.

Nor was he provided with the provisions of Rule 11.6, Ala. R. Cr. P.

For although he had posted "bail money" on February 2, 2016, he still was not "released" from custody officially (or unofficially) until May 2, 2018.

Acopp remained in pretrial status for two years and three months and five days after posting the \$60,000.00 bond. See Petitioner's Exh. #10, again.

So why wasn't he mentally evaluated within the 42 day time frame of the statute that they (the State of Alabama) had created?

RECAP OF HIS CLAIMS

Acoff begs this most Honorable Court to look back at page one of this argument. There, at page 1, this Court can plainly see that Acoff states that the Alabama Supreme Court through their adoption of the Alabama Court of Criminal Appeals had falsely claimed that the reason that Acoff was not given a timely mental health evaluation was because he was out "free on bail until his bond was revoked," and, two, that while out on bond he "did nothing to hasten the process" of getting the mental evaluation done.

Now, thus far, Acoff has unquestionably and unequivocally shown where his motion for the mental health evaluation was put in on August 18, 2016 and such motion was granted on August 23, 2016. See Petitioner's Exh. #9 and Exh. #5, again.

When Judge Howell granted the examination, it was taxing upon the court to ensure that the provisions of the statute be followed. But they didn't follow them.

HOW WAS ACOFF PREJUDICED

BY THE DELAY

It seems that even after Acoff raised his "motion to dismiss the indictment" that was lodged against him; the State of Alabama then got repugnant to what rights did he have to even challenge his indictment and they said, three, that Acoff failed to show how he was "prejudiced" by the delay.

But Acoff responded in his writ of certiorari that was ruled upon by the Alabama Supreme

Court that his Sixth Amendment rights were violated pursuant to Barker v. Wingo, 407 U.S. 514 (1972).

But the Alabama Supreme Court acted repugnant to that implication as well. Seeming ~~to not~~ understand that the "Barker Court" was convened to determine how long was too long in carrying a defendant to trial.

The relevant time frames expressed by the high courts have customarily condoned that six months is certainly fair enough to satisfy being reasonable enough to satisfy the sixth amendment. Some other courts have deemed nine months.

Acoff's main point in all of this was that if he was entitled to receive a fair and speedy trial pursuant to "Barker v. Wingo", and that he also was entitled to receive a timely and meaningful mental health examination pursuant to Ake v. Oklahoma, that where the State of Alabama waited approximately four years (from October 2015 until December 9, 2019), see Petitioner's Exh. #12 and Exh. #13, then also waited approximately three years before giving him the mental evaluation ordered by Judge Howell in 2016, that surely the indictment against him should have been dismissed.

That was how he was prejudiced by the delay. And Acoff expressed such to them. But the State of Alabama relied on false evidence to deny him his sought after relief.

Because of all of the previously stated reasons, that he had posted \$60,000.00 bail and that he was still being held in state custody shows where Acoff should have long before, received the mental evaluation.

That he also was given a very long delay in bringing him to trial as well. Clearly, Alabama was being repugnant to the Constitution as well as to current United States Supreme Court laws.

And so, clearly, the Court can see where Acoff was indeed prejudiced by the long delay in being brought to trial.

Plus, when you coupled the long delay in bringing him to trial with the very long three years to conduct the evaluation, you have nothing else but prejudice being shown.

For remember, the statute that Alabama created calls for 42 days later not 3 years later. Also, that the ruling announced into law in the State of Alabama in Hunter v. Beshear, the competency evaluation had to be conducted quickly.

So yes, he was prejudiced by those extensive delays.

For Alabama wasn't even trying to recognize what this Court said in cases like Matthews v. Eldridge 424 U.S. 319, 333 (1976), quoting Armstrong v. Manzo, 380 U.S. 542, 545 (1965), that there are situations where certain time frames are appropriate and reasonable.

And most certainly if it was approved that 34 days or 42 days would be enough time for the evaluation to be conducted in.

Also, that 6 months up to 9 months would be fair enough time to prepare for a trial. But not 4 years for the trial. Or 3 years for the evaluation.

So yes, there was "prejudice". For due process was not afforded Acoff at his trial. And according to Ex parte Gingo, 605 So. 2d. 1237, 1240-41 (Ala. 1992), whenever any due process renders a trial to be fundamentally unfair, dismissal of an indictment can be warranted.

Surely, the indictment and his trial process should have been halted.

ABUSE OF DISCRETION

Acoff assumes, arguendo, that this Court may ask, well, why didn't the charges get dismissed against him?

The answer being that obviously the trial judge abused his discretion when he denied Acoff's motion to dismiss the indictment that was lodged against him. Evidence was presented to the trial judge that showed where Acoff was arrested in 2015 and his trial was being held in 2019.

That evidence was simple for the trial judge to decipher.

Further evidence was presented to the trial judge that showed where Judge Howell "ordered" that a competency evaluation be conducted on Acoff and that any further trial processes be suspended until the evaluation be conducted,

Yet, no timely and meaningful competency evaluation was done on him pursuant to Judge Howell's order.

And they knew that Acoff had not been released. The problem was the same as what those pretrial detainees were enduring in Hunter v. Beshear. The Alabama Department of Forensic Sciences Laboratory were not scheduling the court-ordered evaluations in a timely manner.

Also remember that Hunter v. Beshear became law in Alabama in 2018, but Acoff went to trial in 2019. So the law was clearly established about the 34 days time frame now.

The trial judge had all of this information before him. Yet he still denied Acoff's motion to dismiss and held his trial.

But Acoff has shown this Court with unequivocal evidence, with indisputable evidence how the trial judge's decision to carry him to trial without affording him with proper due process of law was a clear abuse of his judicial discretion:

"A trial judge abuses his discretion only when his decision is based upon an erroneous conclusion of law or where the record contains no evidence on which he rationally could have based his decision."

See Byrd v. State, 178 So. 3d. 445, 450-51 (Ala. Cr. App. 2009); and Dowdy v. Gilbert Eng'g Co., 511 F.2d 225 (9th Cir. 1975).

There is nothing in the records of Accoff's trial that would make the trial judge's decision to deny his motion to dismiss be a correct ruling.

For all evidence points to Judge Howell ordering that a mental evaluation be conducted on Accoff way back on August 23, 2016.

And that all trial processes cease until the evaluation is conducted.

It took approximately three years for the evaluation to be conducted.

There is most certainly no evidence in the records of Accoff's trial where we could rationally conclude that this is what, and he made the decision to deny Accoff was based on. Nothing.

And certainly his decision where he stated for a reason that Accoff was released on bond after the order was entered and was therefore no longer a pretrial detainee won't suffice either.

Because as Accoff has already shown to the Court, he was not released free on bond until some three years later. See Exh # 5, Exh. # 9 and Exh. # 10, again.

The trial judge even used false evidence to deny Accoff his rights to a fair trial. So surely the trial judge abused his discretion when he denied Accoff's motion to dismiss.

And he clearly violated his due process rights to receive a fair trial where no timely and meaningful competency evaluation was provided to him after it had been ordered.

FALSE EVIDENCE

To elude the basic concept that Acoff's duly expected right to receive a fair trial in the United States of America. And precisely from the State of Alabama, the State of Alabama used false evidence to get him wrongfully tried and convicted. See Ryle v. Kansas, 317 U.S. 213 (1942); also see Mooney v. Holohan, 294 U.S. 103 (1935).

The false evidence that the state used was that Acoff had been released "free on bail" soon after he was indicted.

But Acoff has real proof that he was not released immediately free on bail. And he has already shown how he "posted" the bail. But had holdovers in other venues. And how he was finally released free on May 7, 2018. See Acoff's Exh. #10, again.

False evidence. Other false evidence was where the State of Alabama fabricated the lies that he had been out committing other crimes. See Petitioner Exh. #14.

They used that fabrication to support revoking his bond after he was only allowed to benefit from paying the bond about 90 days of freedom.

No charges were ever proven and the \$60,000.00 surety was mishandled against Acoff through and by the hands of the State of Alabama. See Petitioner's Exh. #15.

LOST EVIDENCE

As Acoff was previously illustrating to the Court how the trial court tried to Eardone's denial of his due process rights by the use of "false evidence", he will show here how the trial court abused its discretion when it relied upon "no evidence" when ruling on his competency at the time of the offense claim.

In reaching the conclusion that Acoff was sane at the time of the offense, the State of Alabama admitted that they did not have any of his mental health records before them when evaluating his condition.

At Petitioner's Exh. #16, it shows where the examining trial judge admitted that he did not have all of Acoff's psychiatric records on the history of his condition before making his ruling to deny him the diminished responsibility defense. See Conally v. State, 33 So. 3d 618 (Ala. Cr. App 2007). Where it says:

"... that an examining expert must have documentation and records before making the determination". . .

So, without having all of the records pertaining to Acoff's mental health condition, the trial court just arbitrarily and capriciously denied him a proper competency evaluation. Not only was he not evaluated timely, but now, without the trial court not even caring whether it had all his records or not.

This competency evaluation was essential to Acoff proving that he was not competent at the

time that the offense was committed.

But now this evidence was lost. The most essential elements that show where Acoff had a history of mental illnesses. And he told the authorities that he had not been taking his psychotropic medications. And that he had been feeling depressed before the crimes took place.

His claims were almost identical to those claimed by the defendant in (Ex parte) Cook v. State, 64 So. 3d 672 (Ala. 2010). In that case the supreme court agreed with Cook that it would be error to deny him the evaluation.

And remember, Acoff was essentially denied the evaluation where the 42 days or the 34 days had long ago expired.

When the evaluation was finally conducted some three years later, the evidence that the expert failed to examine, such as his prison records (since he had recently been released from prison) and his childhood mental records could have likely shown the expert a better picture of how Acoff may have felt at the time of the crimes.

But now Evidence was lost. And such lost records were very important to his defense.

Because now he was being deprived of his diminished responsibility defense. See §13A-3-1, Code of Ala. 1975.

That defense was important to Acoff's defense. Because he was not sane at the time of the offense. So he pleaded not guilty and not guilty by reason of mental disease or defect.

It took away the show of diminished responsibility pursuant to the M'Naghten Rule, i.e., "a person is not liable if at the time of the ~~crime~~

committing of the act, the party accused was labouring under such a defect of reason from the disease of the mind, as to not know the nature and quality of the act he was doing". See M'Naghten's Case, 10 Clark & Fin. 200, 210 (1843). See Petitioner's Exh # 18, which shows where he had not been taking his medications upon leaving prison.

The record reveals that the presiding judge in open court admitted his ineptness and adamant refusal to abide by the established rules of court to have all of the important mental health records before him where he stated, as follows:

"I haven't had time to review and read the entire case presented to review and review the entire case to support the arguments. I recognize the different facts and being somewhat familiar with the scheduling issues resulting -- you know, this case being on the docket and recognizing he had some time to be out would deny the motion."

See Petitioner's Exh # 16. This ruling tells it all. The Judge admits he didn't review the entire case on Acoff's mental condition.

The Judge further admits in the above - quote how he was familiar with the scheduling problems. Meaning he recognized that Acoff had been waiting far too long.

And then he really abuses his discretion where he says that although the case has been on the docket far too long that he was still going to deny the motion because Acoff had spent some amount of time out.

But Acoff has shown this Court already how he was not already out free. He has shown how he did not go free on bond, but had other cases in other counties (holdovers) that were still pending. See Petitioner's Exh # 11, again.

And since the evidence of Acoff's sanity was not completely reviewed by the trial court, that relevant evidence of his insanity is now irretrievably lost. See Connally v. State, 33 So. 3d 618 (Ala. CrApp 2007), again.

WHERE WAS THE JURY?

The trial judge's rationale for denying Acoff the benefit of utilizing the "diminished responsibility" defense does not sufficiently fit his decision to the facts.

And it was unquestionably a violation of the Ala Code 1975, § 15-16-21, the trial court did not follow its rules. The trial court did not submit the question of Acoff's sanity to a jury in accordance to that statute. See as follows the following:

" . . . the trial of such person shall be suspended until the jury shall inquire into the fact of such sanity . . . "

So where was the jury? That is a question that needs to be answered here. Because how can we allow the State of Alabama to create laws and not follow them.

Evidently, the trial court did not believe in following the language of the statutes. Or that criminal statutes must be strictly followed. See Clements v. State, 370 So.2d 723, 725 (Ala. 1979).

It is the wording of this statute that a jury be empaneled after the preliminary examination.

Acoff's sanity was never reviewed by a jury. And it was noted in Ex parte LaFlore, 445 So.2d 932 (Ala. 1983), by the Alabama Supreme Court that,

"... a criminal defendant is entitled to a jury trial on the issue of mental competency to stand trial..."

So where was the jury? Instead of the trial court following the language of the statute and submit the case to the jury, it took matters upon itself to deny his insanity at the time of the offense plea. Again we see the abuse of his discretion.

IT STILL DOES NOT MATTER

It still does not matter what the trial court did after August 23, 2016.

Because it was on that date that Judge Howell did obey the statute. See Petitioner's Ex ~~1~~ 2.

"... and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended..."

When Judge Howell stated the same exact principles in his order granting the evaluation (see Petitioner's Ex #5) that all trial processes be suspended, the three year delay in conducting the evaluation was a blatant violation of the United States Constitution, Amend IV, VI, and XIV.

It also never cleared up the fact, reliably, as to what was Acoff's mental condition at the time of those offenses.

But where it was ordered at Exh #5 that all processes be suspended until the timely and meaningful mental evaluation be conducted, and all processes did stop, prevented the State of Alabama from carrying Acoff to trial.

Because 42 days after the order to suspend was entered, the evaluation had to have been conducted. But it wasn't, why?

Obviously, the State of Alabama misinterpreted the facts of his case. They assumed, without checking, that Acoff made bond and went free.

But all the while he was still in State custody. See Petitioner's Exh. #10. Where it shows where he had detainers with Shelby County Circuit Court and Autauga County Circuit Court.

Their failure to ensure for Acoff his clearly established constitutional right to a timely and meaningful mental evaluation, has caused his right to be free from being deprived of his due process rights.

For it has not been properly proven by the State of Alabama that he was sane at

the time of those offenses. See the quote below:

"The manifest purposes of the quoted constitutional provisions where life, liberty, and property are affected, are to secure the citizen against the arbitrary action of those in authority, and to place him under the protection of the law."

See 3 Words and Phrases, 2228; Missouri R.R. v. Humes, 115 US 512. Because:

"... 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 within its jurisdiction equal protection of the laws. . ."

See the 14th Amendment to the United States Constitution. Also:

"... that all courts shall be open; and that every person for any injury done him, in his lands, goods or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay. . ."

See Article I, Section 13 of the Alabama Constitution. All that Acoff is saying here is that "any person" means himself as well as anybody else is entitled to the EQUAL PROTECTIONS OF THE LAWS made and promulgated in this country.

And that the State of Alabama made laws in which Acoff tried to reap the benefits of their meaning, but Alabama failed to abide by their own state created laws.

In which such conduct can require the supervisor power of the United States Supreme Court to step in and intervene.

Acoff further asks this most very Honorable Court to be mindful of the fact that he is a layman with very limited knowledge of the law. And that in his inexperienced attempts to cite cases in support of his claims may have stumble here or there. See Shipp v. McMahon, 234 F.3d, 907 (5th and 11th Cir, 2000):

"To show that a right is clearly established, the plaintiff does not have to refer to precedent that is directly on point, or that declares that the conduct in question is unlawful. Rather the right is clearly ~~unlawful~~ ^{established} if based on pre-existing law, the conduct in question is apparent."

Well, surely the conduct in question here is clearly apparent. See Doe v. Independent School Dist., 15 F.3d 443 (5th Cir. 1994).

Acopp did not have to "hasten" any process. He remained in state custody until approximately three years had passed.

The 45 day period after the trial processes were suspended meant that an evaluation had to have been conducted timely and meaningful.

Otherwise the U.S. Constitution has been violated. For an incompetent person at the time of the commission of his offense has been tried.

CONCLUSION

Wherefore, premises considered, the Petitioner, Marco Dane Acopp, prays that this most Honorable United States Supreme Court grant him this relief that he is seeking on writ of certiorari.

Dated: Oct. 16th 2021

Respectfully Submitted,
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