21-8228

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
MAY TERM 2022

No. _____

ANGEL DANIEL CARABALLO
Petitioner,
v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS AND
ATTORNEY GENERAL, STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS,
FOR THE ELEVENTH CIRCUIT

Appellate Case No: 21-10914-J

Angel Caraballo DC#C03521
Avon Park Correctional Institution
8100 Hwy 64 E.
Avon Park, Florida 33825
Petitioner Pro Se

QUESTION(S) PRESENTED

Question (1)

WHETHER DEFENDANT IS ENTITLED TO A COMPETENCY HEARING WHERE THE FACE OF THE COURT RECORD REFLECTS THAT THE STATE, DEFENSE COUNSEL AND THE COURT WERE ALL MADE AWARE THAT A DEFENDANT HAS EXTENSIVE MENTAL HEALTH ISSUES THAT BRINGS INTO QUESTION A DEFENDANT'S COMPETENCY.

Question (2)

WHETHER COUNSEL'S STATEMENT ON RECORD THAT HE CANNOT RECALL A CERTAIN SET OF FACTS RISES TO THE LEVEL OF SUFFICIENT EVIDENCE TO OVERCOME SWORN FACTS OF A DEFENDANT.

LIST OF PARTIES

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

LIST OF ALL PROCEEDINGS DIRECTLY RELATED

The United States Court of Appeal for the Eleventh Circuit entered a written opinion of the decision entered by the United States District Court for the Middle District of Florida which denied the Petitioner's 28 *U.S.C.* §2254 petition for writ of habeas corpus. The decision of the Eleventh Circuit Court of Appeal captioned *Caraballo v. Secretary, Florida Department of Corrections and Attorney General, State of Florida*, case no: 21-10914-J and was decided on February 8, 2022, reconsideration denied on March 21, 2022 and appears at Appendix A and B to the petition and has been designated for publication but is not yet reported. The United States District Court for the Middle District of Florida entered an Order denying the Petition for Writ of Habeas Corpus filed pursuant to 28 *U.S.C.* §2254 on February 16, 2021. Appendix C See *Caraballo v. Secretary , Department of Corrections and Attorney General, State of Florida*, case no: 6:19-cv-497-Orl-41LRH. Florida Supreme Court review was not sought as the Fifth District Court of Appeal did not issue a written opinion. Petitioner *Rule* 3.850 Motion for Postconviction Relief was per curiam affirmed on appeal without opinion. See *Caraballo v. State,* 265 So. 3d 633 (Fla. 5th DCA 2019) rehearing denied by *Caraballo v. State*, 2019 Fla. App. LEXIS 4349 (Fla. Dist. Ct. App. 5th Dist., Feb. 22, 2019). The original rule 3.850 Motion for Postconviction Relief was filed in the Ninth Judicial Circuit in and for Osceola County, *Caraballo v. State*, case no: 2007-CF-4511 and was denied per final order on February 2, 2018.

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Caraballo v. State, case no: 2007-CF-4511, Ninth Judicial Circuit in and for Osceola County, Florida.

JURISDICTION

This Petition seeks review of the judgment entered by the United States Court of Appeals for the Eleventh Circuit denying a Certificate of Appealability and upholding the denial of the Petitioner 28 *U.S.C.* §2254 Petition for Writ of Habeas Corpus. The Eleventh Circuit captioned this case Caraballo v. Secretary, Florida Department of Corrections and Attorney General, State of Florida, case no: 21-10914-J and was decided on February 8, 2022 reconsideration denied on March 21, 2022 both opinions are attached as Appendix A and B. The jurisdiction of this Court to review the judgment is invoked under 28 *U.S.C.* §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves *Amendment V* to the *United States Constitution* which provides that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

This case involves *Amendment VI* to the *United States Constitution* which provides that:

> 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 accusation; 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.

This case involves *Amendment VIII* to the *United States Constitution* which provides that:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This case involves *Amendment XIV* to the *United States Constitution* which provides that:

> Section I. 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.
>
> Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The above Amendments are enforced by *Title* 28, Section §2254, *United States Code*:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in 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.

STATEMENT OF THE CASE

The Petitioner, Angel Daniel Caraballo, was arrested and charged in the Ninth Judicial Circuit in and for Osceola County, Florida case number 2007-CF-004511-CR, with a total of eight felony charges, as follows: Count 1 and 2 – capital sexual battery on a minor in violation of Florida Statute §794.011(2); Count 3 and 4 – a lewd act upon a child in violation of Florida Statute §800.04(1); Count 5 and 6 – lewd and lascivious battery in violation of Florida Statute §800.04(4)(a); Count 7 – lewd or lascivious molestation in violation of Florida Statute §800.04(5)(c)(2); Count 8 – sexual activity with a child in violation of Florida Statute §794.011(8)(b).

The Petitioner pled not guilty as to all counts and demanded a trial by jury. The Petitioner proceeded to trial and was convicted as charged as to all counts.

Following trial, the Petitioner was immediately sentenced to a mandatory life sentence in Counts 1 and 2 and Counts 3 and 7, 15 years DOC and Count 8, 10 years DOC all sentence run concurrently. Petitioner filed a timely notice of appeal. The Petitioner's judgment and sentence was appealed to the Fifth District Court of Appeal of Florida, which was per curiam affirmed. *Caraballo v. State*, 68 So.3d 249 (Fla. 5th DCA 2011).

On June 1, 2012, Petitioner filed a post conviction motion pursuant to *Rule* 3.850 of the *Florida Rules of Criminal Procedure* claiming ineffective assistance of trial counsel. The state trial court granted the Petitioner an evidentiary hearing as to the issue presented on Certiorari on November 6, 2017.

Selected Post Conviction Evidentiary Hearing Testimony

The Petitioner testified that he first hired Tony Padron to represent him on several felonies (R 398). Mr. Padron was only on the case for a few months because the Petitioner and his family

couldn't pay Mr. Padron the money on time. Petitioner testified he had told Mr. Padron of his mental health issues and the he could not function without his medication. (R 400). (The Petitioner stated he was having major depression, severe panic disorder, insomnia, and hearing voices. (R 399). During this time, the Petitioner was having hallucinations; he was confused, couldn't remember facts and was having problems communicating with people. (R 401, 403). He also testified that he had been Baker-Acted twice and had tried to commit suicide. Petitioner told Mr. Padron that he was being treated by the Department of Veteran's affairs. (R 399). While Mr. Padron was counsel of record he filed a bond motion for the Petitioner and in that motion talked about Petitioner's mental health condition. (R 400).

Petitioner testified the next lawyer to represent him was Kelley Collier. (R 403) He testified that Mr. Collier also filed a motion for bond. (R 403). The bond motion was filed on December 16th 2008. (R 403 to 404). Petitioner testified that before Mr. Collier filed the motion for bond they had discussed Petitioner's mental health issues and advised counsel that he needed his medication because the jail was not providing the proper medication and as a result he couldn't think right. (R 404). Mr. Collier was aware the Petitioner was being treated for four years by the Department of Veterans Affairs for his depression, anxiety, hallucinations and his insomnia. (R 424). Petitioner told Mr. Collier he needed his medication and Mr. Collier told him he was going to take care of getting him the proper medication. (R 404). When asked how many times Mr. Collier visited him before the trial Petitioner stated all he could remember is once and that he never received his medication. (R 404, 409).

The one time the Petitioner remembered meeting Mr. Collier he experienced a panic attack and wanted to leave before defecating on himself. Petitioner testified that a competency or mental health evaluation was never performed while the Petitioner was in the county jail

awaiting trial, even though Mr. Collier and the Petitioner discussed the Petitioner having a competency evaluation performed. (R 407).

Petitioner testified that his mother Blanca Caraballo hired Mr. Collier to represent him and that his sisters Irene Lanzot, Margie Nuqui, and Doris Fuentes facilitated communications with the lawyer. (R 406). He further testified that his sisters all watched the trial.

Petitioner stated he did not have an opportunity to call witness he wanted to testify in this case and remembered having no discussions with Mr. Collier concerning any decisions during trial. (R 407, 410 and 413). Petitioner couldn't remember anything at trial; he couldn't even remember the reading of the verdict. (R 413, 414). All the Petitioner could remember of the trial was the bench and a red light. (R 409). He could not remember what took place during trial but did remember taking medication before trial to relieve his panic attacks and so he would not defecate on himself. (R 410). Petitioner testified that before trial he signed a medical release form so his lawyer could receive his medical record form the VA and his military record. (R 422) After being found guilty, the Petitioner was sent to Orlando Reception Center where he finally had a mental break down. He could not walk, was dragging his foot and his body was bouncing. (R 412). The nurse called an ambulance, and the Petitioner was admitted into an outside hospital. (R 413).

Attorney Gustavo Padron testified he represented the Petitioner at the evidentiary hearing and that he couldn't find a file pertaining to this case. (R 430). Mr. Padron could not recall being given information by the Petitioner or his family concerning his mental health issues. (R 430). However, Mr. Padron, could recall having a bond hearing in front of Judge Polodna to get the Petitioner bond. (R 432). Mr. Padron could recall meeting with the Petitioner and the Petitioner being shackled during the interview. (R 432). When Mr. Padron was asked was there anything

that would have prompted you to move for a mental evaluation, he stated no, but emphasized that he was only on the case a short time. (R 432). But yet Mr. Padron prepared a motion for bond in the Petitioner's case stating "The Defendant suffers from mental illness and is not being treated nor given proper medication. (T 000030). The motion for bond was filed on December 19, 2008 in Osceola County, Florida.

Kelly Collier testified that he recalls representing the Petitioner in this case. (R 435). He testified he recalls visiting the Petitioner several times in the Osceola County jail. Mr. Collier testified he did not have a competency evaluation done on the Petitioner. (R 436). Mr. Collier also testified he had no concerns about Petitioner's competency. However, he could recall the Petitioner being a patient at the VA and seeing VA doctors who prescribed him medication. (R 437). Mr. Collier remembered filing a motion for bond in the Petitioner's case. (R 437) also see (T 000062). After being shown paragraphs three of the motion he agreed that it addressed concerns that Petitioner was not receiving proper treatment for his mental health in jail because he was not receiving the fifteen medications which were prescribed by the Veteran's Administration due to his psychiatric maladies. (R 438). The motion for bond filed for the Petitioner was filed with attachments, which showed the medications the Petitioner was receiving that included 200MG Sertraline for depression, 4MG Lorazepam for anxiety, 20MG Olanzapine for Hallucinations, Delusions, and sleep, and 100 MG Trazodone for his sleeping disorder along with 11 other medications. Paragraph 4 and 5 of the motion for bond also states the Petitioner was diagnosed with panic disorder and under psychiatric care by VA doctors which were scheduling a CAT scan for memory issues prior to Petitioner's arrest. He testified he placed it in the motion for purpose of argument, that it was a reason why he should be given a bond so he could receive better treatment. (R 438). Mr. Collier went on further to say he had

concerns about whether the Petitioner was getting the proper medication and being optimally treated in the jail. (R 438).

Mr. Collier testified that he noticed the Petitioner was flat and depressed but explained that it has been a long time and he did not remember any specific discussion. (R 438). He did not recall having a discussion concerning whether to seek a competency evaluation on the Petitioner. (R 438-439). Mr. Collier could not recall having a discussion with jail personnel about the Petitioner's dedication. He testified he did not feel like those concerns rose to the level of a competency issue, he felt Petitioner communicated fine, he didn't exhibit much emotion other than sadness. (R 439). Yet Mr. Collier's personal notes show that the Petitioner was having bizarre behavior. (Exhibit A attached to brief.)

Mr. Collier could not recall the family of the Petitioner's concerns about the Petitioner's court room demeanor and the family's observations. (R 440) But did remember talking to Petitioner's mother about the case. (R 444). Mr. Collier testified the fact Petitioner may or may not have been on medication would not have any determination of whether he believed whether the Petitioner was competent or incompetent. (R 445).

Margarita Nuqui testified that she was the Petitioner's sister. (R 448). She admitted knowing her brother the Petitioner was being treated before and during trial for his psychiatric issues. Ms. Nuqui admitted that she never discussed the Petitioner's mental health issues with Mr. Collier. Ms. Nuqui did testify that during trial the Petitioner was not responding or reacting, he was just sitting there. (R. 450). She testified she became concerned with the Petitioner's mental state due to his behavior; she said Petitioner was slumped in the chair and played with his hands. (R 451-452). Ms Nuqui knew the Petitioner was taking medication before trial. (R 451). When asked

whether she discussed her concerns with Mr. Collier she stated yes. (R 452). Ms Nuqui testified that during deliberation she asked Mr. Collier why the Petitioner wasn't talking. Mr. Collier told her he was the lawyer not to worry about anything and if this didn't work out that he would give a letter to the next lawyer when this is over. (R 452).

Irene Lanzot testified that she was the sister of the Petitioner. (R 457). She testified to being present at her Petitioner's trial and observing his demeanor. (R 457). Ms Lanzot acknowledged knowing that the Petitioner was taking medication for psychiatric issues and was being prescribed the medications from the VA. (R 458). She observed the Petitioner when he was not taking his medication, at that time he would get agitated, couldn't walk and was uncontrollably shaky. (R 458). Ms Lanzot also observed the Petitioner during trial, dazed, mind wandering and looked like he didn't understand what was going on at all at trial, he had no reaction. (R 459). He was not paying attention to his surroundings during the trial. (R 460). Ms Lanzot testified she became concerned about the Petitioner when she tried to get his attention and he did not even know she was present at the trial. (R. 461). She stated that at the recess she asked trial counsels Mr. Collier what was going on with her brother (Petitioner) and counsel said "all is well". (R 461).

Blanca Caraballo testified that the Petitioner was her son. (R 466). She recalled her son receiving treatment and medications for his mental health issues. (R 466). Ms. Caraballo testified that prior to the Petitioner's arrest, Florida Hospital called her because the Petitioner disappeared and couldn't be found and they asked was that her son (Petitioner). (R 467). Ms Caraballo agreed that she hired Kelly Collier to represent the Petitioner. (R 467). She recalled meeting with Mr. Collier. Ms. Caraballo testified that when the Petitioner was not taking his medication he would get very nervous, depressed, didn't eat, sleep and did not pay attention. (R 468). Ms Caraballo

testified that she observed the Petitioner during trial he was falling asleep not answering the questions, she said it was like he was in another world. (R 469). She said she never expressed her concerns with Mr. Collier because her daughters talked to Mr. collier. (R 469).

On February 2, 2018, the state trial court entered a final order that denied the Petitioner's Rule 3.850 motion for post conviction relief.

Procedural History of the Ground Raised on Certiorari

The issue presented within this Certiorari was first raised in the Petitioners Rule 3.850 for Postconviction Relief which was filed in the Ninth Judicial Circuit in and for Osceola County, Florida cited as *Caraballo v. State*, case no: 2007-CF-4511 and was denied per final order on February 2, 2018; on appeal in *Caraballo v. State*, 265 So. 3d 633 (Fla. 5th DCA 2019) rehearing denied by *Caraballo v. State*, 2019 Fla. App. LEXIS 4349 (Fla. Dist. Ct. App. 5th Dist., Feb. 22, 2019); within a *Rule* 28 *U.S.C.* §2254 Petition in *Caraballo v. Secretary , Department of Corrections and Attorney General, State of Florida*, case no: 6:19-cv-497-Orl-41LRH and lastly within a certificate of appealability to the Eleventh Circuit Court of Appeal in *Caraballo v. Secretary, Florida Department of Corrections and Attorney General, State of Florida*, case no: 21-10914-J and was decided on February 8, 2022, reconsideration denied on March 21, 2022.

In each of the above instances the issue regarding the Petitioner's competency was never addressed but was passed on by these court's by relying upon a credibility determination between the Petitioner and his many witnesses/documentation versus the credibility of defense counsel who conceded that he could not recall discussing mental health issues even though he filed a Motion to Set Bond where counsel outlined the Petitioners "severe" mental health history. The credibility determination was decided by the State Circuit Court after an evidentiary hearing and was relied upon and upheld throughout each of the following proceedings listed above. This

issue was fully exhausted and timely and neither of these procedural issues have been alleged to bar review of the issue.

BASIS FOR FEDERAL JURISDICTION

This case raises questions of interpretation of the *Fifth*, *Sixth*, *Eighth* and *Fourteenth Amendments* to the *United States Constitution*. The district court had jurisdiction under the general federal question jurisdiction conferred by *Title* 28 *U.S.C.* §1331.

REASONS FOR GRANTING THE WRIT

CARABALLO WAS DENIED DUE PROCESS OF LAW AND EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE STATE COURT FORCED HIM TO GO TO TRIAL WHERE BOTH FACTS AND EVIDENCE ESTABLISHED THAT CARABALLO WAS INCOMPETENT TO PROCEED.

HEY INCOMPETENT DEFENDANT PROVE YOUR INCOMPETENCE!

A. Conflict with decision of other courts

The holdings of the courts below that a competency hearing was not required when ample evidence is presented to the court and defense counsel regarding the Petitioner's competency at the time of the offense or to stand trial is directly contrary to the holding of the Third Circuit Court of Appeal. See *United States v. Haywood*, 155 F.3d 674 (3rd Cir. 1998). In addition, this United States Supreme Court has held that "Although an accused's demeanor at his state trial, including his colloquies with the trial judge, might be relevant to an ultimate decision as to his competency to stand trial, the accused is deprived of his constitutional right to a fair trial by the judge's reliance upon such demeanor evidence as a ground for dispensing with a hearing on the issue of such competency, *where there is uncontradicted testimony of the accused's prior history of pronounced irrational conduct*, including the slaying of his infant son, his attempted suicide, his efforts to burn his wife's clothing, and other acts of violence." See *Pate v. Robinson*, 383 U.S.

375, 384-85, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966); see also *Indiana v. Edwards*, 554 U.S. 164, 177, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008); *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960), and *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975).

The factual issue presented herein is the question of the Petitioner's competency. Throughout each of the stages in this proceeding the historical account of the Petitioner's "severe" mental health issue has not been disputed. The Respondent and the lower State and Federal tribunals have taken the standpoint: Hey incompetent defendant, prove your incompetence! At which point does the eighth amendment trigger the logical conclusion that: an incompetent defendant cannot logically establish his incompetence for he fails to have the cognitive ability to do so.

The questions to be resolved by this Honorable Court is (1) whether a defendant is entitled to a competency hearing where the face of the court record reflects that the state, defense counsel and the court were all made aware that a defendant has extensive mental health issues that brings into question a defendant's competency and (2) whether counsels statement on record that he cannot recall a certain set of facts rises to the level of sufficient evidence to overcome sworn facts of a defendant.

DENIAL OF CONSTITUTIONAL RIGHT

In *Ake v. Oklahoma*, 470 US 68, 84 L Ed 2d 53, 105 S Ct 1087 (1985) this Supreme Court held that the Due Process Clauses' guarantee of fundamental fairness requires the state, "at a minimum, assure defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in the evaluation, preparation, and presentation of the defense."

Caraballo has maintained that under the above outlined circumstances the state trial court failed to follow the proper procedure as a result of defense counsels inactions. In short, defense

counsel was aware of Caraballo's extensive mental health history based on records obtained by the Petitioner and given to counsel, not to mention the many other witnesses as outlined above that were aware of Caraballo's psychiatric history. Without any order from the court, or examination by a psyche doctor, defense counsel somehow determined that Caraballo was competent to proceed to trial.

The District Court in denying the Petitioner's §2254 Petition found that "The trial court found that Collier's testimony was credible. The trial court denied the claim, concluding that counsel did not act deficiently because Collier had no basis to request a mental health evaluation." See District Court "Order" at page 8 of 14. Appendix C The Eleventh Circuit Court of Appeal denial of COA in this case relies upon the above factual findings as well.

However, the District Court's ruling that defense counsel Collier had no basis to request a mental health evaluation is contrary to the face of the record. Indeed, Collier, at the evidentiary hearing, stated on record that he did recall the fact that Petitioner had been treated for mental health issues prior to the crimes. This testimony from counsel brings the second question to the forefront, that being, whether counsels statement on record that he cannot recall a certain set of facts rises to the level of sufficient evidence to overcome sworn facts of a defendant.

Typically, in a postconviction setting, the testimony sworn to as true by a defendant must be accepted as true to the extent that the testimony is not refuted by the record. See *Brown v. State*, 270 So.3d 530 (Fla. 1st DCA 2019)("In reviewing a trial court's summary denial of a postconviction claim, the factual allegations *must be accepted as true* to the extent they are not refuted by the record.") This Honorable United States Supreme Court has ruled likewise. See *Breininger v. Sheet Metal Workers*, 110 S.Ct. 424, 107 Led.2d 388, 493 US 67 (1987)("At this pleading stage, petitioner's allegations *must be accepted as true* and his complaint may be

dismissed "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.") citing *Hishon v King & Spaulding*, 467 US 69, 73, 81 L Ed 2d 59, 104 S Ct 2229 (1984); *Conley v Gibson*, 355 US 41, 45-46, 2 L Ed 2d 80, 78 S Ct 99 (1957). In light of both State law and United States Supreme Court precedent, the Petitioner's allegation that he was incompetent, coupled with numerous witness corroboration and a documented medical history from the VA and hospital records, the allegations must be accepted as true. Defense counsels testimony that he could not recall whether or not the Petitioner and his family discussed with him the Petitioner's mental health issues (R 430) does not refute the sworn allegations presented by the Petitioner to the contrary that must be accepted as true as a matter of law. A credibility determination, as relied upon in both the state and federal courts for denying this claim does not exist when one party cannot recall the facts. See *Pate v. Robinson*, 383 U.S. 375, 384-85, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966)("Although an accused's demeanor at his state trial, including his colloquies with the trial judge, might be relevant to an ultimate decision as to his competency to stand trial, the accused is deprived of his constitutional right to a fair trial by the judge's reliance upon such demeanor evidence as a ground for dispensing with a hearing on the issue of such competency, *where there is uncontradicted testimony of the accused's prior history of pronounced irrational conduct*, including the slaying of his infant son, his attempted suicide, his efforts to burn his wife's clothing, and other acts of violence.") To this present day the existence of the records regarding the Petitioner's severe mental health disorder from the Veterans Administration (4 years worth), Florida Hospital and historical Baker Act commitment(s) have not been contested or refuted.

The Third Circuit Court of Appeal in *United States v. Haywood*, 155 F.3d 674 (3rd Cir. 1998) has recognized that:

> "the opinion that Haywood was competent was predicated on a *credibility judgment* -- Dr. Guy's disbelief of Haywood's insistence that he lacked a clear understanding of the nature and consequences of the proceedings against him... Given these facts and the additional information received by the court in the subsequent proceedings, the integrity of the court's judgment was seriously impaired by the absence of an independent judicial inquiry into Haywood's competency as close to the time of trial as possible. Having determined that the court erred in not conducting a competency hearing, we turn to the question of the appropriate remedy."

In the state court proceedings of the Petitioner the court conducted an extensive evidentiary hearing where multiple witnesses testified to the Petitioner's severe mental health history, baker acts and attempted suicides and advised that they spoke with defense counsel regarding such issues. Defense counsel conceded that he did not recall whether or not such occurred. The court found counsels testimony to be credible when such testimony did not contest or refute the Petitioners claim. This is absurd. The Eleventh Circuit Court of Appeal ultimately upheld these factual findings. Appendix A and B. In light of the Eleventh Circuit's ruling this Honorable Court may grant certiorari review where the Eleventh Circuit decision has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. See *Supreme Court Rule* 10(a).

The Third Circuit Court of Appeal in *United States v. Haywood*, 155 F.3d 674 (3rd Cir. 1998) has recognized that: "Title 18 *U.S.C.* §4241 provides in pertinent part: (a) Motion to determine competency of defendant.--At any time . . . prior to the sentencing of the defendant, the . . . court shall grant [a motion for a competency hearing], or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." The Third Circuit found that a competency hearing was required where evidence

existed that supported the claim that Haywood may be incompetent. The Eleventh Circuits ruling in this case holds to the contrary, where it decided that reasonable jurist would not debate the merits of the underlying claim or the procedural issues that the Petitioner seeks to raise even though ample evidence existed that supported the claim that the Petitioner was incompetent and that counsel was made aware of such. See Appendix A and B.

The trial courts credibility determination was unreasonable in light of the facts of this case, especially when the record reflects that counsel filed a bond motion outlining the Petitioner's "severe" mental health record. (R 400)

Counsel Collier further testified that when he moved for bond, he noted that there were concerns about Petitioner receiving medication for his mental health issues while at the County Jail and requested bond as a direct result of his extensive mental health history.

So the first question must therefore be asked and answered, that being: Whether a defendant is entitled to a competency hearing where the face of the court record reflects that the state, defense counsel and the court were all made aware that a defendant has extensive mental health issues that brings into question a defendant's competency.

LEGAL ANALYSIS

In *Indiana v. Edwards*, 554 U.S. 164, 177, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008) this Honorable Supreme Court noted that:

> The two cases that set forth the Constitution's `mental competence" standard, Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (per curiam), and Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975), specify that [1] the Constitution does not permit trial of an individual who lacks ``mental competency." Dusky defines the competency standard as including both (1) ``whether" the defendant has ``a rational as well as factual understanding of the proceedings against him" and (2) whether the defendant ``has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." 362 U.S., at 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (emphasis added; internal quotation marks omitted).

> Drope repeats that standard, stating that it ``has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." 420 U.S., at 171, 95 S. Ct. 896, 43 L. Ed. 2d 103

The pertinent facts of this present case that are undisputed are that the Petitioner asserted that he had an extensive history of mental health issues that encompass having major depression, severe panic disorder, insomnia, and hearing voices (R 399); hallucinations, confusion, trouble communicating (R 401, 403); Baker-Acted twice and had tried to commit suicide, and was being treated for four years by the Department of Veterans Affairs for his depression, anxiety, hallucinations and his insomnia. (R 424). Defense counsel was fully aware that these issues existed and in fact admitted such in the bond motion that was filed on December 16th 2008 (R 403 to 404) where counsel admits that the Petitioner had an extensive mental health history. Defense counsel further conceded the fact that the county jail did not have the ability to treat the Petitioner's mental health issues which was why the bond was being requested in the first place (R 404). The motion for bond filed for the Petitioner was filed with attachments, which showed the medications the Petitioner was receiving that included 200MG Sertraline for depression, 4MG Lorazepam for anxiety, 20MG Olanzapine for Hallucinations, Delusions, and sleep, and 100 MG Trazodone for his sleeping disorder along with 11 other medications. Paragraph 4 and 5 of the motion for bond also states the Petitioner was diagnosed with panic disorder and under psychiatric care by VA doctors which were scheduling a CAT scan for memory issues prior to Petitioner's arrest. He testified he placed it in the motion for purpose of argument, that it was a reason why he should be given a bond so he could receive better treatment. (R 438). Lastly, the bond hearing was held before the Ninth Judicial Circuit in and for Osceola County, Florida and after oral argument and evidence was presented to the Court, the Court ultimately elected to deny

bond. It is undisputed that a severe mental health history existed and that both attorneys for the Petitioner were aware that such existed and the Court was also made aware that such existed.

In *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975) this Honorable Court held that:

> The defendant's due process right to a fair trial was violated by the trial court's failure to suspend the trial pending a psychiatric examination to determine the defendant's competence to stand trial, since the wife's testimony, the psychiatrist's report, and the defendant's attempted suicide were sufficient indicia of incompetency to require such examination,

The facts as outlined in the Petitioner's case regarding his mental health issues were more extensive than that as outlined within *Drope*, where Petitioner Caraballo had multiple family members who presented testimony regarding his mental health history, was being treated psychiatrically for (4) years by the VA for these issues and also had a history of attempted suicide such as that in *Drope*. This Honorable Court ruled that this evidence establishes "sufficient indicia of incompetency to require such examination." See *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975).

The State Trial Court failed Caraballo and violated the Due Process Clause of the Fifth and Fourteenth Amendments under these particular circumstances by conducting the Petitioner's trial without first ensuring that Caraballo was competent to stand trial and that as a direct result of defense counsels deficient performance in failing to seek a competency hearing counsel permitted his client to be tried before a jury and sentenced to multiple life sentences while his client was incompetent to assist in his trial in violation of the *Sixth* and *Eighth Amendments* to the *United States Constitution*. These issues have been properly raised and preserved within the State and Federal Court proceedings and are therefore ripe for review by this Honorable United States Supreme Court.

The State trial court and the Eleventh Circuit failed to adhere to the tenets of both *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960); *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975) and even *Pate v. Robinson*, 383 U.S. 375, 384-85, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966) and the ruling in conflict with the Third Circuit Court of Appeals ruling in *United States v. Haywood*, 155 F.3d 674 (3rd Cir. 1998) as outlined above. Under the facts of this case certiorari review is warranted.

B. Importance of the Questions Presented:

This case presents a fundamental question of the interpretation of this Court's decisions in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960); *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975) and *Pate v. Robinson*, 383 U.S. 375, 384-85, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966).

The first question regarding whether a defendant is entitled to a competency hearing where the face of the court record reflects that the state, defense counsel and the court were all made aware that a defendant has extensive mental health issues that brings into question a defendant's competency is of great public importance because it effects every court in the United States that is confronted with evidence that an individual has a history of severe mental health issues that brings into question that individuals competency to stand trial. The Petitioner asserts that the eighth amendment to the United States Constitution prohibits a court from bringing an incompetent person to trial who cannot assist in any way with preparing a defense or participating in any meaningful way with his trial and then to uphold a conviction and subsequent life sentence where ample evidence exists to question that Petitioner's competency.

At what point in time, or is there a point in time, when a court is permitted to dispense with legal niceties and procedural requirements in order to obtain a factual determination regarding an

accused competency? As reflected herein there is voluminous evidence in the form of psychiatric records from the VA, Florida Hospital and the Osceola County Jail not including numerous eye witness accounts from witnesses who swore under oath at an evidentiary hearing regarding the Petitioner's history of severe mental health issues. The records exist and have never been contested or refuted in any proceeding against the Petitioner. In *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975) this Honorable Court held that:

> The defendant's due process right to a fair trial was violated by the trial court's failure to suspend the trial pending a psychiatric examination to determine the defendant's competence to stand trial, since the wife's testimony, the psychiatrist's report, and the defendant's attempted suicide were sufficient indicia of incompetency to require such examination,

The Petitioner asserts that this Honorable Court should enter a ruling that permits a court to conduct a competency hearing at any point in time: pre-trial, trial, on appeal or in a postconviction setting where the court is presented with credible testimony and/or competent evidence that brings into question whether a Petitioner was competent to stand trial or accept a plea. Such a ruling would permit a court to ensure that an incompetent individual does not stand trial or accept a plea without first resolving competency and would permit a court to set aside a conviction, sentence or plea at any time if the court is satisfied that an individual was in fact incompetent during any stage of the proceedings.

The second question regarding whether or not counsels statement on record that he cannot recall a certain set of facts rises to the level of sufficient evidence to overcome sworn facts of a defendant is of great public importance because it affects every court in the United States that is confronted with sworn allegations of an accused which is combated with testimony from an attorney who alleges that he cannot recall the incident.

As the law currently stands, the Eleventh Circuit Court of Appeal has consistently held "when the evidence is unclear or counsel cannot recall specifics about his actions due to the passage of time and faded memory, we presume counsel performed reasonably and exercised reasonable professional judgment." See *Cromartie v. Warden, Ga. Diagnostic & Classification Prison*, 2017 U.S. Dist. LEXIS 48328 (11th Cir. 2017); citing *Romine v. Head*, 253 F.3d 1349, 1357-58 (11th Cir. 2001); *Williams v. Head*, 185 F.3d 1223, 1227 (11th Cir. 1999)).

The above rationale was used in the Petitioner's state trial proceedings where defense counsel alleged that he could not recall speaking to the Petitioner or numerous witnesses regarding the Petitioner's severe mental health issues. Counsels unrecalled testimony was found more credible then the sworn allegations of the Petitioner, numerous witnesses and the existence of record evidence that supports extensive mental health issues and that treatment was being given for years prior to and after the trial court proceedings.

If an attorney cannot recall a certain set of facts, the law should resolve the dispute in the favor of the party seeking redress who can recall the facts, especially where both credible corroborative testimony and evidence supports the claim being raised.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully Submitted,

/s/ _____

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