No. 22-1070

IN THE
SUPREME COURT OF THE UNITED STATES

STANFORD JAMES STELLE, III
Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The State's Opposition confirms the need for clarity on what standard applies when analyzing whether a successive competency proceeding is required. The State claims California's heightened "substantial change" burden is no different from the standards applied in any other jurisdiction. But the State misreads or ignores the diverging, hodgepodge of standards laid out in Mr. Stelle's Petition—"substantial change," "new evidence casting a serious doubt," "some change," "sufficient doubt," "bona fide doubt." Instead, the State resorts to a parade of horribles that affording due process and respecting fundamental constitutional safeguards with lower standards—such as some change, sufficient doubt, or bona fide doubt—will burden the courts with frivolous claims. Yet, courts applying those standards have had no difficulty dispensing with frivolous claims nor are those courts clogged with such claims.

Because California applied an unconstitutional standard to deny Mr. Stelle his fundamental due process right not to be tried, convicted, or sentenced if mentally incompetent, and because of the disparate standards applied by jurisdictions nationwide, this Court should grant review and clarify the safeguards required to protect this fundamental right.

ARGUMENT

I. State and Federal Courts Apply Diverging Standards On Successive Competency Proceedings.

Following this Court's guidance in *Pate v. Robinson*, 383 U.S. 375, 385 (1966) and *Drope v. Missouri*, 420 U.S. 162, 172 (1975), state and federal

courts apply largely uniform standards governing initial competency proceedings, requiring such proceedings upon receipt of evidence creating a sufficient, bona fide, or reasonable doubt in a defendant's competency to stand trial.

In *Drope*, this Court admonished that "*a trial court must always be alert to circumstances suggesting a change* that would render the accused unable to meet the standards of competence to stand trial." 420 U.S. at 181 (emphasis added). A criminal defendant must have "'sufficient *present* ability'" to be competent. *Id.* at 172 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)) (emphasis added).

The states and federal circuits have taken *Drope*'s "circumstances suggesting a change" language in dramatically different directions when analyzing the need for a successive competency proceeding. And some states and circuits impose a heightened and unconstitutional burden for successive proceedings, requiring evidence beyond the requirements imposed by *Pate* and *Drope*.

A. States' standards vary widely, with many imposing unconstitutionally heightened barriers to successive proceedings.

California exemplifies the subset of states that apply a heightened burden for successive competency proceedings. If a court finds a defendant competent to stand trial at an initial proceeding, it will not reevaluate the defendant's competency "unless the court 'is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the validity of that finding.'" *People v. Rodas*, 429 P.3d 1122, 1129 (Cal. 2018) (quoting *People v. Jones*, 811 P.2d 757, 780 (Cal. 1991)). Virginia and

West Virginia employ nearly identical standards. *See, e.g.*, *Dang v. Commonwealth*, 752 S.E.2d 885, 893 (Va. 2014) ("substantial change in circumstances or new evidence casting a serious doubt") (cleaned up); *State v. Sanders*, 549 S.E.2d 40, 51–52 (W. Va. 2001) (same).

In contrast with the states imposing heightened standards, other states properly apply the same standard for initial and successive competency proceedings. As required by *Pate* and *Drope*, courts in these states order a successive competency proceeding whenever there is a "reasonable ground" or "bona fide doubt" as to a defendant's present competency to stand trial. *See, e.g.*, *Nowitzke v. State* 572 So. 2d 1346, 1349-50 (Fla. 1990) ("reasonable ground"); *Archie v. State*, 875 So. 2d 336, 338 (Ala. Crim. App. 2003) ("a reasonable and bona fide doubt").

In opposition, the State argues there is no "genuine conflict of authority" because all states share a common practice of "evaluat[ing] whether there was a change in circumstances that would warrant a new competency proceeding following a prior finding of competence." Opp. 8; *see also id.* 12-13. The State elides the issue. Mr. Stelle does not claim some states ignore changes in circumstances altogether when considering whether to order a successive competency proceeding—there would be no need for a successive proceeding if circumstances were unchanged. Rather, the inter-state split exists in the preliminary burden to demonstrate the change in circumstance necessitating a successive competency proceeding.

The State does not respond to the baseline premise that a requirement to demonstrate a "*substantial* change" or "*serious* doubt," as is the practice of California and other states, represents a heightened

barrier relative to states like Florida that require a showing of "reasonable grounds" or "bona fide doubt." *Nowitzke*, 572 So. 2d at 1349-50.

This is not just semantics. The different tests and burdens imposed across the states produce different outcomes. For example, in *Dang*, Virginia applied a heightened "substantial change" standard to affirm the denial of a second competency proceeding despite new evidence that re-contextualized and undermined the conclusions of the initial expert report. 752 S.E.2d at 894-98. Based on its finding that there was no "substantial change" to trigger a successive proceeding, the trial court never evaluated "the clinical relevance of the new information" and instead deferred to a previous report "predicated on incomplete and inaccurate information." *Id.* at 898-99 (Mims, J. dissenting).

Mr. Stelle's case epitomizes the practical effect of the differing standards. Rather than consider Mr. Stelle's present competence to stand trial, the court stated it would not "relitigate," "redo," or "revisit" the findings in the initial competency proceeding. RT 161, 187, 265, 283, 344, 370. Accordingly, because the trial court concluded there was not a "substantial change in circumstances" or "new evidence casting a serious doubt on the prior finding of competence" standard, the trial court never determined whether Mr. Stelle met the *Dusky* "sufficient present ability" standard after the October 2020 proceeding. Pet. App. 62. *See Dusky*, 362 U.S. at 402.

The State cannot abstract away the distinction between "change" and "substantial change" by focusing on a "change in circumstances." Opp. 11-12 (arguing there is "no genuine conflict"). Contrary to

the State's contention, the heightened evidentiary barriers imposed by California and other states prevent courts from properly evaluating a defendant's present ability to stand trial. For Mr. Stelle, the trial court recognized the two *new* expert opinions raised for the first time diagnoses of autism spectrum disorder and schizotypal personality disorder. RT 374-75. And those experts concluded that a prior malingering diagnosis was flawed in light of these new diagnoses. *Id.* Those circumstances alone were sufficient to establish a change in circumstances warranting a successive competency proceeding. California's heightened burden is not abstract but a concrete barrier to due process.

B. Federal circuit courts further demonstrate the fragmented standards applied for successive competency proceedings.

Federal courts fall into two main categories, either properly applying the same *Pate* and *Drope* standard for both initial and successive competency proceedings, *see, e.g., United States v. McKnight*, 794 F. App'x 271, 273-74 (4th Cir. 2020) (bona fide doubt); *Reynolds v. Norris*, 86 F.3d 796, 799-800 (8th Cir. 1996) (sufficient doubt); *United States v. White*, 670 F.3d 1077, 1082 (9th Cir. 2012) (bona fide doubt); *United States v. Williams*, 113 F.3d 1155, 1160-61 (10th Cir. 1997) (bona fide doubt); *United States v. Cometa*, 966 F.3d 1285, 1291 (11th Cir. 2020) (bona fide doubt), or imposing an unconstitutionally heightened barrier, similar to California, *see, e.g.*, *United States v. Maryea*, 704 F.3d 55, 69 (1st Cir. 2013) (significant change in circumstances); *Senna v. Patrissi*, 5 F.3d 18, 20 (2d Cir. 1993) (substantial

change); *Franklin v. Bradshaw*, 695 F.3d 439, 449-50 (6th Cir. 2012) (significant new evidence).

The State repeats its misleading abstraction, claiming that because all circuits look to whether circumstances have changed since an initial proceeding, there is no conflict. Opp. 14-16. The State ignores the difference between tests that require a "*significant* change" and those that require only "*some* change" or "sufficient doubt." Opp. 14-16 (emphasis added). *Compare, e.g.*, *Maryea*, 704 F.3d at 69 (applying a "significant change in circumstances" test) *with Reynolds*, 86 F.3d at 799-800 (applying a "sufficient doubt" test).

The State's misapprehension, and corresponding failure to respond to Mr. Stelle's argument is exemplified by the claim that "Stelle *concedes* that the 'First, Second, and Sixth Circuits' apply a standard 'similar to' the courts below in evaluating whether to conduct a successive competency hearing." Opp. 14 (emphasis added). That is not a "concession." It is the central thrust of Mr. Stelle's Petition: multiple federal circuits impose the same unconstitutional requirements as California. These heightened standards conflict with the uniform tests the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits apply for initial and successive proceedings. Only this Court can resolve this conflict.

II. The State's Contortions And Rhetorical Diversions Are Unpersuasive.

The State offers four other reasons this Court should not review California's unconstitutional heightened standard and resulting deprivation of Mr. Stelle's fundamental due process rights. Each lacks merit.

First, the State contends California's heightened burden is no different from the standard set forth in *Drope*. Opp. 10-11. The State argues its standard is constitutional because its courts are "alert to circumstances suggesting a change [in competency]." *Id.* at 10 (quoting *Drope*, 420 U.S. at 181). The State's response lacks analytical rigor. In California, "a trial court may rely on [a prior finding of competence] unless the court 'is presented with a *substantial* change of circumstances or with new evidence casting a *serious* doubt on the validity of that finding.'" *Rodas*, 429 P.3d at 1129 (quoting *Jones*, 811 P.2d at 780) (emphasis added). In *Drope*, this Court did not address the question of whether or how a prior finding of competence is relevant to the question of whether a successive competency proceeding is required. 420 U.S. at 180-82. And no reading of *Drope* supports California's imposition of a heightened burden to raise a sufficient doubt about a defendant's present ability to understand the proceedings against them and assist in their defense. *See id.*

Further, California's heightened burden does not trace itself to *Drope* but instead to a judicial reliance interest in a much different context. Pet. 16-17 (citing *People v. Zatko*, 145 Cal. Rptr. 643, 651 (Cal. Ct. App. 1978)). Notably, the State offers no citation to a California case linking its unconstitutional heightened burden to *Drope*. *See* Opp. 10-11. There is no link. California's courts erected the heightened burden to lessen the burden on courts considering competency issues. *See Zatko*, 145 Cal. Rptr. at 651.

The State ignores the basic truth that words have meaning—"circumstances *suggesting* a change," *Drope*, 420 U.S. at 181 (emphasis added), is not the

same as "*substantial* change" or "*serious* doubt." *Rodas*, 429 P.3d at 1129 (emphasis added). The trial court denied Mr. Stelle a second competency proceeding not because there were no "circumstances *suggesting* a change [in competency]," *Drope*, 420 U.S. 181 (emphasis added), but for lack of a "*substantial* change in circumstances" and "new evidence casting a *serious* doubt on the" prior finding of competence. RT. 377 (emphasis added). Mr. Stelle was denied his fundamental due process rights as a direct result of California's unconstitutional standard.

Second, the State erroneously asserts that Mr. Stelle seeks "plenary review" of competency at a defendant's whim and a requirement for successive competency proceedings "even if the evidence mirrors the evidence presented in an initial competency hearing." Opp. 10-11. Not true. Mr. Stelle asks the Court to review and clarify what standard a court should apply in determining whether due process requires a successive competency proceeding. Pet. 15. Mr. Stelle suggests this Court look to Florida, Alabama, and the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, among other jurisdictions, for the correct test. *Id.* at 19-20. Nowhere does the Petition suggest, much less demand, that a defendant be permitted to repeatedly challenge competency based on the same evidence and arguments. Pet. 14-24. Instead, Mr. Stelle argues that requiring a "substantial change in circumstances" or "new evidence casting a serious doubt" is unconstitutional because under *Pate* and *Drope*, competency proceedings are required when there is sufficient doubt—or sufficient *new* doubt—about a defendant's present ability to understand the criminal proceedings or aid in their defense. Pet. 14-15. And

Drope already dispensed with the concern that "motions for psychiatric examinations [would be] made merely for the purpose of delay," responding that courts need not "accept without question a lawyer's representations concerning the competency of his client." 420 U.S. at 177 n.13.

Third, the State contends a "sufficient doubt" standard for successive competency proceedings will "create profound administrability challenges." Opp. 11. In the State's view, providing the fundamental due process the U.S. Constitution demands will inconvenience the State and clog up the courts. At the outset, fundamental rights do not erode merely because the State thinks their protection will be burdensome. *See Drope*, 420 U.S. at 181-82 ("[T]he correct course was to suspend the trial until such an evaluation could be made. That this might have aborted the trial is a hard reality.").

The State offers this critique as bald supposition. Opp. 11. It cites no authority or any support for its claim that a "sufficient doubt" or "bona fide doubt" standard has created *any* problems in the jurisdictions currently applying that standard—such as Florida, Alabama, and the Fourth, Eighth, Ninth, Tenth, and Eleventh Federal Circuits. *See* Opp. 11. If it were true that such a standard were unworkable, the evidence would be abundant. *Cf. Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 329 (2009) (noting that jurisdictions had already recognized the argued-for protections of the Confrontation Clause and none of the predicted unintended consequences had occurred).

Concluding its parade-of-horribles, the State contends a sufficient or bona fide doubt standard "would stray from the requirements of *Drope*," Opp.

10, by placing "no weight on a prior competence determination" and "'conceivably result in a defendant's never being tried, since he would be able to stall any trial indefinitely by simply reasserting the same factors over and over.'" *Id.* at 11 (quoting 40 Am. Jur. Proof of Facts 2d 171 § 18 (2023)). Contrary to the State's assertions, Opp. 11, *Drope* did not say a prior finding of competence carried no weight or any weight at all. *Drope*, 420 U.S. 180-81. *Drope* does not address that question. *Id.* This Court said prior *medical* opinions are relevant to an analysis of whether a competency proceeding is warranted. *Id.* at 180. And Mr. Stelle does not contend that a competency proceeding must be held "where there is *no* evidence of any changed circumstances since the original determination." 40 Am. Jur. Proof of Facts 2d 171 § 18 (emphasis added). *See* Pet. 14-15.

The State vainly recasts Mr. Stelle's arguments because the record is clear that Mr. Stelle raised a sufficient or bona fide doubt about his competence, and that the State evaded its obligation to provide a successive competency proceeding only because of its heightened, unconstitutional standard. Mr. Stelle offered two *new* expert opinions concluding he was incompetent, which were formed after recent evaluations and based on *new* information and understandings—that Mr. Stelle suffers from autism spectrum disorder and schizotypal personality disorder. RT 94-106, 263-73. These new opinions explained that prior determinations about malingering were based on unreliable diagnostic tests. *Id.* Further, Mr. Stelle provided evidence the State influenced the court-appointed expert who concluded Mr. Stelle had returned to competence and upon whom the court relied upon in finding him

competent in the first place.[1] RT 377. All of this evidence was *new* and raised a sufficient or bona fide doubt about Mr. Stelle's competence, entitling Mr. Stelle to a successive competency proceeding under the tests applied in Florida, Alabama, and the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits. *See Nowitzke*, 572 So. 2d at 1350 (Florida); *Archie*, 875 So. 2d at 338 (Alabama); *McKnight*, 794 F. App'x at 273-74 (Fourth Circuit); *Reynolds*, 86 F.3d at 799-800 (Eighth); *White*, 670 F.3d at 1082 (Ninth); *Williams*, 113 F.3d at 1160-61 (Tenth); *Cometa*, 966 F.3d at 1291 (Eleventh).

III. This Case Is An Ideal Vehicle To Address This Question.

The State does not dispute that this case cleanly presents the question of what standard should be applied in analyzing whether a successive competency proceeding is necessary. *See* Opp. 8, 16-17. The question was pressed and passed upon, and the record well developed, at every stage of the proceedings below.

Instead, the State claims this Court's review would not be helpful because, although the State denied Mr. Stelle a successive competency proceeding, Mr. Stelle was permitted to offer evidence and testimony, which the trial court considered. Opp. 16-17. The State misses the point and mischaracterizes the

[1] The State wrongly asserts, Opp. 10 n.3, that Mr. Stelle does not argue the 2019 restoration of competence determination was influenced by the State's improper *ex parte* communication with a court-appointed expert. *See* Pet. 10 n. 3 ("The prosecutor's and Dr. Jones's failure to disclose this information inexorably infected the proceeding."). *See also Brady v. Maryland*, 373 U.S. 83 (1963).

proceedings below. The constitutional harm arose from the trial court applying an unconstitutional heightened standard—requiring a "substantial change in circumstances" or "new evidence casting a serious doubt about the prior finding of competency"—to deny Mr. Stelle a critical and fundamental procedural safeguard. Pet. App. 62.

A preliminary evidentiary hearing is no substitute for a competency proceeding. Had the trial court applied a constitutional standard, criminal proceedings would have been suspended and Mr. Stelle would have received a successive competency proceeding, including the right to put the question to a jury. *See* Cal. Penal Code §§ 1368, 1369. And Mr. Stelle would have had a full and fair opportunity to investigate the State's *ex parte* communication encouraging the court-appointed expert to find Mr. Stelle competent, which neither the State nor the expert disclosed until the eve of the preliminary hearing.

That the trial court held a preliminary evidentiary hearing does not absolve its denial of Mr. Stelle's fundamental due process right to a competency proceeding.

CONCLUSION

For the foregoing reasons, and those expressed in the Petition for a Writ of Certiorari, Petitioner respectfully requests this Court grant the Petition.

This the 4th day of August, 2023.

Respectfully submitted,

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