No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

STEVEN JANAKIEVSKI — PETITIONER

VS.

EXECUTIVE DIRECTOR ROCHESTER
PSYCHIATRIC CENTER --- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVEN JANAKIEVSKI - *Pro Se Petitioner*
233 Harpington Drive
Rochester, New York 14624
Phone: 585-478-2433

QUESTIONS PRESENTED

1. Is Petitioner Steven's Federal Habeas Petition moot, now that he has been "Unconditionally Discharged" from the custody of the Office of Mental Health (OMH)?

2. Is it Constitutional for the State to sentence an 'insanity aqcuitee' to a predetermined 'hypothetical prison term' to be served in a mental institution, for the crime they were NOT convicted of?

3. Were any of Stevens Constitutionally guaranteed Rights violated by any of the parties involved?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

PAGES

INDEX TO APPENDICES

TABLE OF AUTHORITIES

PAGES

SUPREME COURT CASES

Federal Court of Appeals Cases

STATE CASES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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[X] is unpublished.

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

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[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

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[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 08, 2022

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PAGES

STATEMENT OF THE CASE

In December of 2007, petitioner Steven Janakievski was trying to capture, arrest, and subdue a 'suspected Russian agent'. In the process, he attacked a co-worker (the Suspect) with a utility knife, causing life-threatening stab wounds to the victim's head and neck. At the time, Janakievski had been using controlled substances daily and experienced psychotic delusions, believing that the stabbing victim was a 'Russian spy', and that he was engaged in a 'sting operation' with other Federal agencies to capture and detain the suspected 'Russian agent'. At the end of the 'sting operation', Janakievski believed that he was going to be 'congratulated' by the Federal Agencies involved in the 'sting operation', and that he would be 'commended' for his 'heroic actions'.

Much to his disappointment, he was charged with first-degree assault and tried in the County Court for Monroe County, New York. At trial, psychiatric experts for the prosecution and the defense agreed that, at the time of the attack, Janakievski was suffering from a psychotic disorder and did not appreciate the wrongfulness of his conduct. The court accordingly accepted Janakievski's plea of not responsible by reason of mental disease or defect pursuant to CPL § 330.20.

CPL § 330.20(2) provides that when a criminal defendant is found not responsible by reason of a mental disease or defect, he must undergo a psychiatric examination. On the basis of that examination, the state court is directed to determine in which of three categories, or "tracks," the defendant belongs.[1] If he is found to have a "dangerous mental disorder," defined as a mental illness that renders him "a physical danger to himself or others," CPL § 330.20(1)(c), then he is classified as "track one" and the court must issue a commitment order confining the defendant in a secure mental health facility

for six months. Id. § 330.20(6), (1)(f). If the court finds that the defendant is mentally ill but not dangerous, he is classified as "track two" and the court must issue an "order of conditions"[2] and an order committing him to a non-secure facility, which custody is governed not by the Criminal Procedure Law but by the civil Mental Hygiene Law. Id. § 330.20(7); see also Allen B. v. Sproat, 23 N.Y.3d 364, 368-69, 14 N.E.3d 970 (2014). If the defendant is found to be neither dangerous nor mentally ill, he is classified as "track three" and must either be discharged unconditionally or released subject to an order of conditions. CPL § 330.20(7). The status of a "track one" defendant remains subject to ongoing review, and the state must apply for periodic "retention orders" to keep a defendant in inpatient custody. Id. § 330.20(8), (9). A defendant's "track status," however, is permanent and "governs [his] level of supervision in future proceedings." In re Norman D., 3 N.Y.3d 150, 152, 785 N.Y.S.2d 1, 818 N.E.2d 642 (2004).

According to 'Clearly Established Supreme Court Federal Law', Steven Janakievski was supposed to have been classified as a 'Track 3' status and was entitled to immediate release from confinement from the hospital. However, the County Court Judge, the District Attorney, and the Rochester Psychiatric Center Hospital maliciously ignored the Federal and State Laws and vehemently refused to release Steven from confinement. They felt that Steven needed to be held accountable for the crime that he was acquitted of. So they arbitrarily and capriciously denied Steven's request for a court hearing and they refused to release him from confinement. They felt that he needed to serve a '10-year hypothetical prison sentence' for the crime he was acquitted of, so they basically 'kidnapped' Steven and locked him up in the Rochester Psychiatric Center hospital to begin serving an illegal '10 year hypothetical prison sentence,' without any

substantive and procedural due process of State and Federal laws.

In April 2009, having undergone the required examination, without any due process of law, Janakievski was erroneously, arbitrarily, and capriciously declared by the state court to suffer from a dangerous mental disorder (i.e., to be in "track one") and was committed to the Rochester Psychiatric Center ("RPC") to begin serving an 'unprecedented' and 'illegal' 10-year hypothetical prison sentence. Despite the Hospital medical records and doctor's report confirming that Steven "Patient is in Stable Condition. There is no evidence of psychosis." (100% Not mentally ill)" and also stating "There is no concern for his safety or the safety of others (100% Not dangerous)." see attached hereto Appendix Exhibit C.

This U.S. Supreme Court in Foucha v. Louisiana, 504 US 71 at 77 - Supreme Court 1992, has held, however, that "[t]he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," id., at 368; i. e., the acquittee may be held as long as he is both mentally ill and dangerous, but no longer. We relied on O'Connor v. Donaldson, 422 U. S. 563 (1975), which held as a matter of due process that it was unconstitutional for a State to continue to confine a harmless, mentally ill person. Even if the initial commitment was permissible, "it could not constitutionally continue after that basis no longer existed." Id., at 575. In the summary of our holdings in our opinion we stated that "the Constitution permits the Government, on the basis of the insanity judgment, 78*78 to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." Jones, 463 U. S., at 368, 370.[5] The court below was in error in characterizing the above language from Jones as merely an interpretation of the pertinent statutory law in the District of Columbia

and as having no constitutional significance. In this case, Louisiana does not contend that Foucha was mentally ill at the time of the trial court's hearing. Thus, the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. O'Connor, supra, at 574-575.

Because the medical records and doctor's reports of the RPC Hospital confirm that Steven was 100% Not mentally, and 100% Not dangerous (See Appendix Exhibit C), the State had NO grounds upon which to commit Steven to the mental institution. Steven was entitled to IMMEDIATE release from confinement! However, the State was very well aware of this, and yet they maliciously ignored the laws and imprisoned Steven anyway, to begin serving an illegal 10-year prison sentence.

In Jones v. United States, 463 US 354 at 369- Supreme Court 1983, this Supreme Court has ruled "In light of the congressional purposes underlying commitment of insanity acquittees, we think petitioner clearly errs in contending that an acquittee's hypothetical maximum sentence provides the constitutional limit for his commitment. A particular sentence of incarceration is chosen to reflect society's view of the proper response to commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation. See, e. g., Gregg v. Georgia, 428 U. S. 153, 183-186 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.); Kennedy v. Mendoza-Martinez, 372 U. S. 144, 168 (1963); Williams v. New York, 337 U. S. 241, 248-249 (1949). The State may punish a person convicted of a crime even if satisfied that he is unlikely to commit further crimes.

Different considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished. His confinement rests on his continuing illness

and dangerousness. Thus, under the District of Columbia statute, no matter how serious the act committed by the acquittee, he may be released within 50 days of his acquittal if he has recovered. In contrast, one who committed a less serious act may be confined for a longer period if he remains ill and dangerous. There simply is no necessary correlation between severity of the offense and length of time necessary for recovery. The length of the acquittee's hypothetical criminal sentence therefore is irrelevant to the purposes of his commitment.

Thus, committing Steven to the mental institution to serve a 10-year prison sentence was illegal, outrageous, despicable, malicious, cruel and unusual punishment, and flagrantly UNCONSTITUTIONAL! However, the State was very well aware of this, that they couldn't do this by law. BUT THEY DID IT ANYWAY! BECAUSE THEY JUST DON'T CARE! They feel that they are INVINCIBLE and ABOVE THE LAW! And they feel that they will NEVER be held ACCOUNTABLE for the CRIMES they have committed! This is beyond PSYCHOTIC what the State has done to Steven! What the State did to Steven is clearly the "Crime of Kidnapping", and 'Kidnapping' carries a penalty of a 'Life in Prison' sentence for all parties involved!

After the illegal Initial Commitment, the state court issued subsequent retention orders continuing his involuntary commitment in October 2009, October 2010, December 2010, and August 2012, on the ground that Janakievski continued to suffer from mental illness and was dangerous. In the last of these orders, the court determined that Janakievski was no longer dangerous but remained mentally ill and in need of inpatient treatment. The August 2012 retention order expired in July 2013, but Janakievski continued to be confined in a non-secure wing of the RPC pursuant to a temporary

retention order.

In April 2014, Janakievski, proceeding pro se, filed the instant habeas petition in the United States District Court for the Western District of New York. The petition asserted a range of statutory and constitutional violations with respect to the original April 2009 commitment order, the October and December 2010 retention orders, and the August 2012 retention order. The petition challenged the sufficiency of the evidence supporting the original finding that he was dangerous and mentally ill, asserting that at the time of his commitment to the RPC "the hospital records state that Patient is in Stable Condition. There is NO evidence of psychosis. He has very good Insight. There is NO concern for his safety or the safety of others," and that he "should have been Discharged from confinement" (See attached hereto Appendix Exhibit C). He also alleged that the Initial commitment order violated his right to due process and the Eighth Amendment, because the 'unprecedented' and 'illegal' hypothetical 10-year prison sentence amounts to 'cruel and unusual punishment', because of the fact that he cannot be 'punished' for the crime of which he was "not convicted of" according to Clearly Established Federal and Supreme Court Laws. With respect to the subsequent retention orders, Janakievski asserted that they, too, were not supported by sufficient evidence, that they violated due process (as well as the Federal Rules of Civil Procedure), and that he was deprived of the effective assistance of counsel. As relief, Janakievski demanded that the commitment and retention orders be vacated and that he be unconditionally discharged from state custody.

In June 2018, while his petition to the federal court was pending, the state court released Janakievski from the RPC Hospital subject to an "order of conditions." see CPL § 330.20(12). The ruling was based on a finding that Janakievski's clinical condition

warranted "conditional release from inpatient treatment" because he did not "currently suffer from a dangerous mental disorder and [was] not mentally ill." The order of conditions mandated that for three years (until June 2021) Janakievski continue outpatient mental health treatment, refrain from the use of drugs or alcohol, and seek the state's approval before changing his address or leaving the state. The conditions may be extended for an additional three years on a showing of good cause by the state.

In September 2018, the district court dismissed Janakievski's petition and reasoned that the petition became moot when Janakievski was conditionally released from inpatient custody, as he was "no longer subject to any of the orders" that he challenged in his petition and thus no longer had any redressable injuries. The district court declined to issue a certificate of appealability, but a motions panel of the 2nd Circuit Court of Appeals granted one on the question "whether the district court erred in dismissing Appellant's 28 U.S.C. § 2254 petition as moot,".

On April 10, 2020 the 2nd Circuit Court of Appeals ruled that Janakievski did indeed have redressable injuries, that his Habeas claims were not moot, and remanded the case back to the district court for further proceedings. See Janakievski v. EXE. DIR., ROCE. PSYCHIATRIC CTR., 955 F. 3d 314 - Court of Appeals, 2nd Circuit (2020)

On October 28, 2021 the district court erroneously denied and dismissed Janakievski's petition. In November of 2021, Janakievski timely filed a Notice of Appeal to the 2nd Circuit Court of Appeals, followed by a Motion for a Certificate of Appealability in January 2022. While awaiting a response from the 2nd Circuit on the Motion for Certificate of Appealability, Janakievski was 'Discharged Unconditionally' on March 28, 2022 from the custody of the NYS Office of Mental Health.

On May 25, 2022 a different panel of judges of the 2nd Circuit Court of Appeals issued a motion deferring the motion for certificate of appealability. Stating that "The record reflects that Appellant's 2018 order of conditional release was scheduled to expire in 2021, at which time Appellant would be eligible for unconditional discharge. If Appellant has been unconditionally discharged, his habeas claims may be moot, The parties are ORDERED to submit to this Court, within 30 days of the entry of this order, a response stating whether Appellant has been granted an unconditional discharge. Further, if he has been unconditionally discharged, the parties should address whether the habeas claims are moot. Once the parties have responded, the COA motion will be submitted to a new panel."

After the parties responded, a different panel of judges of the 2nd Circuit Court of Appeals declared that Steven's Habeas petition is 'moot' without giving any legal explanation nor analytical analysis at all. (**this is very suspicious activity on the part of the 2nd Circuit Court of appeals, given their history of providing very eloquent and in-depth analysis and legal and logical reasoning and explanations in many other cases on the subject of 'mootness'.**) See attached hereto Appendix Exhibit A.

And now below, we will address all of the reasons as to why the issues in the Habeas petition are **NOT** moot. Because Janakievski suffers from injuries "that can be redressed by a favorable judicial decision."

REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

I. A United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this U.S. Supreme Court.

The availability of a "partial remedy," however, is sufficient to render a case not moot. Church of Scientology of Cal. v. United States, 506 U.S. 9, 13, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992). A case is "moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." Knox v. Serv. Emps. Int'l Union, Local 1000, 567 U.S. 298, 307, 132 S.Ct. 2277, 183 L.Ed.2d 281 (2012) (citation and quotation marks omitted)...Janakievski v. EXE. DIR., ROCE. PSYCHIATRIC CTR., 955 F. 3d 314 at 319 - Court of Appeals, 2nd Circuit Court of Appeals

GROUND 1:

JANAKIEVSKI suffers a redressable injury caused by "collateral consequences' as a direct result of his erroneous Involuntary Commitment to a Mental Hospital because it now violates his 2nd Amendment Constitutional Right to Bear Arms:

As a result of the Initial Commitment Order on April 02, 2009, Janakievski was designated as a Track 1 meaning that he had a 'dangerous mental disorder', and was Involuntarily Committed to a psychiatric Hospital. This erroneous classification of being mentally ill and Involuntary Committed to a mental hospital now prohibits and disqualifies Janakievski from applying for a 'gun carry permit' in New York State and also at the Federal Level.

According to New York Penal - PEN § 400.00 (1)(j), it states that "a person who has been involuntarily committed to a facility under the jurisdiction of an office of the mental hygiene pursuant to section 330.20 of the criminal procedure law" is disqualified from applying for a 'gun carry permit.'

And, according to Federal Law 18 U.S.C. 922(g)(4) it states that "a person who has been adjudicated as a mental defective or has been committed to a mental institution" is disqualified from applying for a 'gun carry permit.'

Mr. Janakievski has lost out on a lot of job opportunities, by not being able to apply for jobs in Law Enforcement, as a security guard, the U.S. military, a private detective, and the National Guard. He can't even carry a gun for protection while in

dangerous areas of the city. He can't even enjoy the sport of hunting. And he can't even participate in Olympic games or any other sporting events that involve the 'carrying of a gun'. In order to participate in any of these professions, it is required that a person needs to be qualified for a "gun carry permit".

The erroneous classification of Janakievski as a Track 1 acquittee has caused an erroneous deprivation and violation of his 2nd Amendment Constitutional Right to bear certain arms. All of which is a direct 'collateral consequence' which is traceable to the erroneous Track 1 designation of his April 2009 'Initial Commitment Order.'

This 'injury' can be redressed by a favorable decision by this court. This court can provide 'effectual relief' by 'vacating' the Initial Commitment Order of April 2009 on the grounds that it violated Federal Laws designating Janakievski as a Track 1 in the CPL 330.20 scheme and committing him to a mental hospital for the purpose of serving a hypothetical 10-year prison sentence. An Evidentiary Hearing was never held, and Janakievski was entitled to one by law, and he demanded it, but he never got one.

Now, had an Evidentiary Hearing taken place, the evidence of the hospital medical records strongly supported that Janakievski was neither 'mentally ill' nor 'dangerous' at that moment in time, during the time the Evidentiary Hearing should have taken place (See attached hereto Appendix Exhibit C). And that Janakievski should have been designated as a Track 3 and he could have been either 'Discharged Unconditionally' or 'Discharged Conditionally.' Thus, Janakievski would never have been Involuntarily Committed to the mental hospital. And thus, Janakievski would not have had any impediment or disqualification from being able to apply for a 'gun carry permit' at the Federal and State levels.

All of the hospital medical records, at that moment in time, state that Mr. Janakievski was in "Full Remission" of any mental illness or any type of insanity. The doctor's notes, and other medical staff's notes, indicate and state that for Mr. Janakievski there is 'No evidence of psychosis'. And that 'he is not a danger to himself or others'. All of the hospital's staff reports and notes indicate that Mr. Janakievski is 100% **NOT** mentally ill, and 100% **NOT** a danger to himself or others. (See attached hereto Appendix Exhibit C)

There is no way that the State could have proven by a preponderance of the evidence that Janakievski was either mentally ill or dangerous, a 2-prong test that must be satisfied according to Clearly Established Supreme Court Federal Law as described above. Because the hospital medical records worked 100% in the favor of Mr. Janakievski.

One of the things this court has to consider when granting a Certificate of Appealability, is whether Mr. Janakievski has a viable claim that could possibly prevail on the merits. Well, the hospital medical records clearly support the diagnosis that Janakievski was 100% 'NOT mentally ill', and 100% 'NOT a danger to himself or others.' So it is obvious, and without a doubt, that Janakievski should have been designated as a Track 3 and should have been 'Discharged with Conditions' at the very least, if not 'Discharged Unconditionally.' (See attached hereto Appendix Exhibit C).

This is a redressable injury and is something that this court can provide 'effectual relief' for, by reversing and vacating the Initial Commitment Order of April 2009 and/or reclassifying Janakievski as a Track 3. Or, if there is some other method or remedy that this court could provide to help to restore Steven back to a 'clean slate'. In order to

protect Steven's fundamental Constitutional 2nd Amendment right to bear certain arms.

GROUND 2:

Steven has a very substantial 'personal stake in the outcome of this case' defeating any mootness

This erroneous deprivation of liberty has caused an "injury" to Steven's medical records in the Statewide Health Information Network for New York (SHIN-NY).

The Statewide Health Information Network for New York (SHIN-NY), pronounced "shiny", facilitates the secure electronic exchange of patient health information and connects healthcare professionals statewide. In partnership with the New York State Department of Health, NYeC developed and manages the technology platform that connects New York's Qualified Entities (QEs) and enables the sharing of data statewide, ensuring that the SHIN-NY provides access to a patient's electronic medical records wherever and whenever they need it.

What does the SHIN-NY do? The SHIN-NY connects New York's Qualified Entities (QEs), regional health information networks that store and share patient health information. The QEs allow participating healthcare professionals, with patient consent, to quickly access electronic health information and securely exchange data statewide. By utilizing the SHIN-NY, healthcare professionals make informed decisions faster, enabling collaboration and coordination of care to improve patient outcomes, reduce unnecessary and avoidable tests and procedures, and lower costs.

Today, the SHIN-NY connects 100% of the hospitals in New York State, over 100,000 healthcare professionals, and represents millions of people living in or receiving care in New York.

This SHIN-NY system contains all of Steven's medical history records, including all of the medical records from the erroneous 10-year imprisonment that Steven spent at the Rochester Psychiatric Center Hospital. Those medical records contain false, fraudulent, and flawed reports of many varying diagnosis of a mental illness for Steven. These false allegations of different diagnosis' reports have all been debunked in subsequent county court proceedings.

Throughout Steven's erroneous 10-year imprisonment, he was falsely misdiagnosed as having many different mental illnesses, which even the different State doctor's couldn't agree upon amongst themselves. One doctor misdiagnosed Steven as having Bi-Polar-1. A different doctor misdiagnosed Steven as having Schizophrenia. A different doctor misdiagnosed Steven as having Schizoaffective Disorder. A different Doctor misdiagnosed Steven as having Bi-Polar-2. And the list goes on and on.....

The evidence at two separate County Court Evidentiary Hearings found and declared that Steven's diagnosis was a 'temporary drug-induced psychosis' and NOT any of the aforementioned misdiagnosis' above. Now, even though the County Court clarified and declared what Steven's diagnosis truly is, those other flawed misdiagnosed records still remain a part of the SHIN-NY database system.

When Steven's current treating medical doctor's pull up his medical records from the SHIN-NY system, it shows them the false misdiagnosed records from the erroneous 10-year imprisonment from the Rochester Psychiatric Center Hospital. Steven's current doctor's have to take those other false misdiagnosed records into consideration, because they are officially a part of the SHIN-NY medical records system, when developing a course of treatment for Steven for other physical medical conditions that he has. And that

causes confusion for Steven's current treatment medical doctor's because they are not sure what courses of treatments to provide to him. They're not sure what courses of treatment to rule out, and are unable to provide Steven with the best treatment options possible. All because those misdiagnosed reports remain a part of the SHIN-NY system's records.

This United States Supreme Court can provide 'effectual relief' for this redressable injury that Steven is suffering, by 'reversing' and 'vacating' all of the retentions challenged in the Federal Habeas Petition, and by 'expunging' those flawed misdiagnosed medical records. And then in turn, Steven could have the misdiagnosed medical records in the SHIN-NY system be legally expunged as well. And that "cleaning of the records" will give Steven's current medical providers a much clearer picture of what course of treatments would be best suited for some of Steven's other physical medical conditions.

This is a very substantial 'personal stake in the outcome of this case' that Steven has which defeats any mootness.

GROUND 3:

Steven has a 'legally cognizable interest in the outcome of this case' which defeats any mootness:

Steven will be pursuing a 'malpractice' claim for the 'ineffective assistance of counsel' against all of his attorney's that refused and neglected Steven's requests for Evidentiary Hearings, Appeals, Jury Trials, and trial errors. But, before Steven can initiate civil lawsuit proceedings against his former attorneys for their deficient performance in the Initial Commitment Order and Subsequent Retention Order's, Steven must first obtain

'post-conviction relief' by this United States Supreme Court. *See* the case State v. Roat, 466 P. 3d 349 (post-conviction relief must be granted by the Appellate courts first, before a litigant can start legal proceedings for a malpractice lawsuit against an attorney; This is a vital and substantial interest and/or right that defeats any mootness.)

The one case that we will focus on here is Steven's first trial attorney Christopher Schiano for the 'Initial Commitment Order' of April 2009. Steven's trial attorney consented to the two examining psychiatrist's reports that Steven had a 'dangerous mental illness' and that he should be designated as a Track 1. He refused Steven's request for an 'Evidentiary Hearing' to challenge the two psychiatrist's reports and cross examine them. His attorney also rejected Steven's request for his attorney to consult with an independent psychiatrist. He refused to submit the hospital medical records by his then current treating psychiatrist and treatment team. And he refused to subpoena his then current treating psychiatrist Dr. Rajendra Singh from the Rochester Psychiatric Center to testify on Steven's behalf. All of those hospital reports define Steven as being fully recovered and **100%** '**NOT** mentally ill' and **100%** '**NOT** a danger to himself or others.' (See attached hereto Appendix Exhibit C).

Had Steven's attorney conducted an 'Evidentiary Hearing' a reasonable juror and/or trier of fact would have found Steven to **NOT** have had a 'mental illness' and that he was **NOT** 'a danger to himself or others'. And should have been designated as a Track 3 and Discharged from custody either 'conditionally' or 'unconditionally.'

Furthermore, they could have at the least found Steven to be a Track 2 candidate, which is still far better than a Track 1 designation. Because with a Track 2 designation, Steven would have been kept in a regular civil hospital with much more liberties than

those strict rules of a Maximum Security Hospital Forensic unit where Track 1 patients are placed. As a Track 2 candidate, Steven would have had much more due process protections and rights under the Mental Hygiene Law 9.35 where he would have been subject to a "clear and convincing" burden of proof standard of law rather than the mere 'preponderance of evidence' burden of proof standard under a Track 1 designation. *See* case THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v. DARRYL T., Appellant. 166 A.D.3d 68 (2018), 84 N.Y.S.3d 458, 2018 NY Slip Op 06634 **("For the Initial Commitment Order, counsel's failure to conduct an Evidentiary Hearing, failure to cross examine the two psychiatrists reports, and failure to consult an independent psychiatrist, amounts to Ineffective Assistance of Counsel.")**

Steven's attorney's actions of 'ineffective assistance of counsel' caused Steven to a experience a massive depravation and curtailment of liberty of nearly 10 years. Had it not been for his attorney's deficiency, Steven might not have been confined for as long as 10 years, had he been found to eligible for either a Track 3 or even a Track 2 to say the least.

Steven has detailed his substantive arguments for a malpractice and ineffective assistance of counsel claims with supporting case laws. Steven has demonstrated that he has a viable 'legally cognizable interest in the outcome of this case'. Steven must obtain post-conviction relief by this court on the matters stated above, before he can pursue his right to sue and file civil lawsuit malpractice claims against his former attorneys. This is a 'substantial interest' in the outcome of this case that defeats any mootness.

GROUND 4:

Steven has another 'collateral consequence' as a result of all of the retention order's in his case. The combined 10-year history of all of the erroneous retentions can be used against Steven if he were to be subject to a future Involuntary Commitment hearing:

In New York State, when a person is subjected to Involuntary Commitment judicial proceedings, one of the biggest factor's of evidence that is considered by courts, in determining whether a judge should grant a petitioner's request for an Involuntary Commitment, is a person's 'prior history of psychiatric hospitalizations.'

If Steven were to be subject to Involuntary Commitment judicial proceedings in the future, the court could use Steven's entire erroneous 10-year history at the Rochester Psychiatric Center Hospital, as evidence against Steven, to have him Involuntarily Committed to a psychiatric hospital with ease. The courts can also use this "prior history" to 'enhance' Steven's retention periods and keep Steven locked up and confined for 'longer periods of time' in the hospital.

The lower courts have shown in Steven's case to be very futile when it comes to adhering to Federal and State laws concerning Involuntary Commitments and the erroneous continuing confinement of individuals in psychiatric hospitals. Without any protections, Steven could possibly be erroneously Involuntarily Committed again, and could spend the rest of his entire life in a mental hospital. The chances of Steven being subjected to Involuntary Commitment is very highly 'likely' to happen again, because the Office of Mental Health (OMH) has threatened Steven numerous times, that any time Steven takes any judicial action against them, they will respond and retaliate against Steven by initiating Involuntary Commitment proceedings against him. Once Steven files

a civil suit against (OMH), they are likely to keep true to their word of their threats, as evidenced with the multiple retention orders they have initiated in retaliation already. So there is a very high probability of "repetition and recurring", which also defeats 'mootness' in and of itself.

This court could prevent a tragedy from happening a second time in Steven's case. It can provide 'effectual relief' by 'reversing' and 'vacating' all of the retention orders, and by 'expunging' all of the hospital medical records. Then, if Steven were ever subjected to Involuntary Commitment judicial proceedings again, he could file a '**motion in limine**' in that court to prevent any mention or use of his 'prior history of medical records of his erroneous 10-year confinement'.

Without that 'prior history', the future courts would not be able to so easily and erroneously Involuntarily Commit Steven to a mental hospital, and would not be able to subjugate Steven to unnecessary and erroneous 'longer periods of retention' in a mental hospital.

See In re Alfred HH, 910 NE 2d 74 at 84, Illinois Supreme Court 2009 - "Though the appellate court is correct that the mere reversal of an adjudication will not, in itself, purge a respondent's mental health records of any mention of the admission or treatment, that is not the same as saying that there is no effect whatsoever. In fact, there are a host of potential legal benefits to such a reversal. For instance, a reversal could provide a basis for a motion *in limine* that would prohibit any mention of the hospitalization during the course of another proceeding."

The court in Alfred HH in the case above also stated that "When the facts of this specific case are considered, there are no collateral consequences that warrant an

exception to the mootness doctrine. In this case, respondent has had multiple involuntary commitments prior to the present case. In addition, respondent is a felon who has served a sentence for murder. Simply stated, there is no collateral consequence that can be identified that could stem solely from the present adjudication. Every collateral consequence that can be identified already existed as a result of respondent's previous adjudications and felony conviction."

In contrast to the Alfred HH case above, Steven does **NOT** have any history of prior Involuntary Commitments to a mental hospital! And Steven does **NOT** have any felony convictions! Steven has **NO** prior criminal history record at all! He has a **100%** perfectly clean criminal history record! This erroneous Involuntary Commitment Order in April of 2009, that's being challenged before this United States Supreme Court, is the one and only Involuntary Commitment that Steven has ever experienced in his whole entire life! So when we look at Steven's case on a case-by-case basis, this erroneous Involuntary Commitment in April of 2009 will have definitive 'Collateral Consequences' in any future Involuntary Commitment judicial proceedings.

This is a very substantial 'Collateral Consequences' exception that defeats the mootness doctrine. And this court can provide 'effectual relief' as described above.

See IN RE AB, Md: Court of Special Appeals 2019, No. 1680, September Term, 2017. Case No. 06-C-16-072378

(Patient that was discharged after completing Involuntary Commitment in mental hospital, case is **NOT** moot because of 'collateral consequences')

See also In the Matter of B.B., Alleged to be Seriously Mentally Impaired, B.B., Appellant. 826 N.W.2d 425 (2013)

(Patient that was discharged after completing Involuntary Commitment in mental hospital, case is **NOT** moot because of 'collateral consequences', it can be used against him in future court proceedings.)

See also In re Maurice AMEY, Appellant. 40 A.3d 902 (2012), District of Columbia Court of Appeals.

(Patient that was discharged after completing Involuntary Commitment in mental hospital, case is **NOT** moot because of 'collateral consequences'.)(at 909 **"*Ballay* is not binding on us, but the analysis on which it rests remains sound several decades later"**)

See, e.g., United States v. Battle, 510 F.2d 776 (D.C.Cir.1975) (appeal of defendant found not guilty for possession of stolen mail by reason of insanity and was ordered unconditionally released not moot because the adjudication of insanity remained on defendant's record);(collateral consequences of being adjudged mentally ill remain to plague defendant)

For all of the foregoing reasons, Steven's Federal Habeas petition claims are NOT moot. And this court can provide 'effectual relief' to redress the injuries demonstrated above, by reversing and vacating the Initial Commitment Order and Subsequent Retention Order's. And by expunging all of the hospital medical records.

CONCLUSION & RELIEF SOUGHT

The issues in Steven's Federal Habeas Petition are NOT moot. Because it is possible for a court to grant any effectual relief whatever to the prevailing party. Steven has made a substantial showing of the denial of many constitutional rights for all of the issues presented. Therefore, Steven requests that his Petition for 'Writ of Certiorari' be granted.

Furthermore, Steven strongly advises this U.S. Supreme Court, as Steven has advised this Court in the past (but this Court ignored Steven's warnings), that the lower state and federal courts have been proven to be 'incompetent and incapable' of fairly adjudicating the federal claims in this case. Any remands back to these courts for further proceedings will obviously be *futile*, and the same issues will end up cycling back up to this U.S. Supreme Court again. Therefore, it is strongly advised that this U.S. Supreme Court should adjudicate these issue right now so that we can conserve on the courts judicial scarce resources, and so that 'justice, law, and order' can be restored upon and within the lower state and federal courts.

Dated: December 04, 2022

Respectfully submitted by,

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