No. 22-6942

ORIGINAL

In The
SUPREME COURT OF THE UNITED STATES

KWAME BURRELL,
Petitioner,

v.

WILLIS CHAPMAN, Warden
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Kwame Burrell, #280050
Petitioner, *in pro per*[*]
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[*] This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

QUESTIONS PRESENTED

THE TRIAL COURT FAILED TO PROTECT PETITIONER'S FUNDAMENTAL DUE PROCESS RIGHT TO SUBSTITUTE APPELLATE COUNSEL SUBSEQUENT TO HIS GUILTY PLEA WHEN ORIGINAL APPELLATE COUNSEL WITHDREW FROM REPRESENTATION AND THE TRIAL COURT REFUSED TO APPOINT SUBSTITUTE APPELLATE COUNSEL. US CONST, AMS VI, XIV; CONST, 1963, ART 1, §§ 17, 20?

PARTIES TO THE PROCEEDING

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

TABLE OF CONTENTS

PETITION APPENDIX INDEX

TABLE OF AUTHORITIES

Cases Page(s)

Constitutions

Statutes

Rules

PETITION FOR A WRIT OF CERTIORARI

Petitioner Kwame Burrell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The final order of the United States Court of Appeals, 6th Circuit, denying a certificate of appealability (December 27, 2022), appears at APPENDIX A to the petition and is reported at *Burrell v Stephenson*, 2022 U.S. App. LEXIS 35720, 2022 WL 18232725, No. 22-1618, (6th Cir., Dec. 27, 2022). The final opinion and order of the United States District Court - E.D. Mich., denying the petition for writ of habeas corpus and declining to issue a certificate of appealability appears as APPENDIX B to the petition and is reported at *Kwame Burrell v Shane Jackson*, 2022 U.S. Dist. LEXIS 108736, 2022 WL 2192925, Dk. No. 20-10161, (E.D. Mich., June 17, 2022). The final order from the Michigan Supreme Court is published at 2019 Mich. LEXIS 2261, 505 Mich. 871, 935 N.W.2d. 346. The final opinion of the Michigan Court of Appeals is published at 2019 Mich. App. LEXIS 3548, (Mich. Ct. App., July 2, 2019). (See Appendix, filed under separate cover).

JURISDICTION

The U.S. Court of Appeals for the Sixth Circuit issued its final order on December 27, 2022. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grant 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 offense 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.

U.S. CONST. AMEND. XIV: 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. The Sixth Amendment of the United States Constitution states in relevant part: "In all criminal prosecutions, the accused shall...have the assistance of counsel for his defense." "The Sixth Amendment right to counsel is applicable to the states through the Due Process Clause of the Fourteenth Amendment." *People v Williams*, 470 Mich. 634, 641; 638 N.W.2d 597 (2004) (citing *Gideon v Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)).

28 U.S.C. 1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party to any civil case, before or after rendition of judgment or decree.

28 U.S.C. 1915(a)(1): Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND STATEMENT OF FACTS

INTRODUCTION

SUMMARY

Petitioner pled guilty to second-degree murder on October 21, 2009 before the 3rd Judicial Circuit Court for the County of Washtenaw in the State of Michigan.

Sentencing took place on December 2, 2009, wherein Petitioner was sentenced to 26-years and 3-months to 50-years. Sentencing was based on the mandatory minimum calculated by the sentencing guidelines pursuant to ***M.C.L. 777.1, et seq.***

At sentencing, Petitioner requested appointment of appellate counsel, which was granted by the Court on January 27, 2010. Mr. James Daniel Shanahan was appointed as appellate counsel.

Said appellate counsel mailed Petitioner a document entitled "Affidavit Dismissing Application for Leave to Appeal" without any explanation why counsel wished Petitioner withdraw his appeal.

Petitioner refused to sign this document, as he wanted then and still wishes to appeal his case to the appellate courts of this State for adjudication on the issue of his unresolved mental competency via Defense Counsel's refusal to investigate his case prior to the criminal proceedings that culminated in his guilty plea.

Subsequently, the Trial Court on May 19, 2010, granted appellate counsel's motion to withdraw.

On July 22, 2010, Petitioner requested substitute appellate counsel. Petitioner did not receive a reply.

On December 27, 2010, Petitioner wrote MAACS Administrator Thomas M. Harp for new counsel. Petitioner was informed in a letter dated January 6, 2011, that he was not entitled to substitute appellate counsel.

Petitioner, who has mental health issues, was resigned to the fact that he would not be represented by an attorney, which he believed was his right, until another prisoner showed Petitioner the Michigan Supreme Court's case of ***People v. Atwood***, 499 Mich. 865; 875 NW2d 200 (2016), and which was directly on point with that of Petitioner's case.

It is the ***Atwood*** case, that gave Petitioner the information he needed to file this Motion for Relief from Judgment for the appointment of substitute appellate counsel. The Trial Court denied relief as did the Michigan Court of Appeals in an unpublished traditional one-liner on July 2, 2019, ***People v. Burrell,*** 2019 Mich. App. LEXIS 3548 (July 2, 2019). Petitioner appealed to the Michigan Supreme Court which denied relief on November 26, 2019 under SCt. No. 160039 in ***People v. Burrell***, 2019 Mich. LEXIS 2163.

It is for this reason that Petitioner filed his post-conviction pleadings in the State Courts. Moreover, the People objected to Petitioner's pleadings and argued that Petitioner's reliance on ***Halbert v. Michigan***, 545 U.S. 605, 610, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552, 559 (2005) and ***People v. Atwood***, 499 Mich. 865; 875 N.W.2d 200 (2016), is frivolous. Petitioner asserts that nothing could be further from the truth. Just because original appellate counsel did not find any issues, does not mean that none exist.

Petitioner asserts that all the Officers of the Court dropped the ball when Petitioner was allowed to plead guilty without first determining if he was even competent to plead guilty, let alone, assist Defense and Appellate Counsels in his defense. The Court Documents verify that instead of a competency hearing, all that took place was a stipulation to the forensic examiner's report – which in and of itself is not a part of the record.

The law in Michigan is clear. Once a prisoner is ordered to undergo forensic evaluation,

the Court must conduct a competency hearing within 5-days upon receipt of the written report. See specifically, ***MCL 330.2030***, [formerly ***MCL 767.27a***].

The case of ***People v. Livingstone***, 57 Mich. App. 726; 226 NW2d 704 (1975), is on all fours with Petitioner's case. There, the Defense informed the Court that it would stipulate to the report and waive the hearing. ***Livingstone,*** 57 Mich. App. at 735. The Court of Appeals in ***Livingstone*** further held:

> "We are constrained to conclude that this very brief reference to the report by the trial judge did not serve to adequately discharge her duty to 'immediately hear and determine the issue of competence to stand trial.' ***MCL 767.27a [now MCL 330.2030].*** Though the trial judge may base her judicial determination of competency solely on the forensic center report, ***People v. Chase***, 38 Mich. App. 417, 421; 196 NW2d 824 (1972), such a procedure is permissible only if neither the people nor Petitioner chose to introduce evidence. An opportunity for a formal hearing must be furnished by the trial judge before the forensic center report can become the exclusive determinant of competency. ***People v. Chase, supra, People v. Lucas,*** 47 Mich. App. 385, 390; 209 NW2d 436 (1973). ... No formal hearing into competency was ever conducted in this case. The people, however, ask us to consider defense counsel's 'stipulation' not to contest the findings in the report as a waiver, eliminating the need to obey the statutory mandate. ***Even if we were to conclude the defense counsel's agreement to refrain from challenging the findings 'at this time' constituted a waiver, we have repeatedly held that the right to have a competency hearing, conducted in accordance with the demands of the statute, cannot be waived either by Petitioner or his lawyer.*** ***People v. Lucas, supra*** at 389, ***People v. Anderson***, 53 Mich. App. 60; 218 N.W.2d 412 (1974). In view of the trial judge's failure to conduct a competency hearing, we follow the remedy adopted in ***People v. Lucas, supra***, and ***People v. Thompson***, 52 Mich. App. 262, 267-268; 217 N.W.2d 63 (1974). We remand for a competency hearing, to be held in accordance with the procedure outlined above. If the Petitioner is found to have been competent to stand trial at the time of his May, 1973 trial, then his conviction is affirmed. However, if the Petitioner is found to have been incompetent to stand trial, or if the court is unable to adequately determine his competency to stand trial at the time of his trial, his conviction shall be set aside and a new trial granted." ***Id.,*** at 735, 736-737. [Emphasis added].

It is well settled that a Petitioner can be competent to stand trial at one time and not

competent to stand trial at another. ***People v. Ponder***, 57 Mich. App. 94, 98; 225 NW2d 168 (1974). Because of this obvious fact and the fact that it is now years later since Petitioner was first evaluated, his case now falls under the mandate of ***People v. Ponder, supra***, where the Court of Appeals held:

> "Accordingly, we conclude that where more than three years have elapsed since the time of taking the plea, the better practice under the existing circumstances is to reverse and remand." ***Id.***, at 99.

Petitioner avers that this failure by these Officers of the Court to adhere to statue and conduct the requisite competency hearing is a serious problem because the end result is the fact that the State of Michigan might have very well convicted a Petitioner who was and who still is mentally incompetent to engage in a criminal trial proceeding. This a due process violation as argued in ***People v. Hardesty,*** 139 Mich. App. 124, 133; 362 NW2d 787 (1984), citing ***US Const., Ams. V, XIV; Const. 1963, art 1, § 17; Pate v. Robinson,*** 383 U.S. 375, 385, 86 S.Ct. 836, 842, 15 L.Ed.2d 815 (1966), and ***People v. Chambers,*** 14 Mich. App. 164, 174; 165 NW2d 430 (1968). See also, ***Godinez v. Moran,*** 509 U.S. 389, 396, 113 S.Ct. 2600, 2685, 125 L.Ed.2d 321 (1993), adopting ***Drope v. Missouri,*** 420 U.S. 162, 171, 95 S.Ct. 896, 903, 43 L.Ed.2d 103 (1975) and holding same.

The Trial Court, in conjunction with the Prosecution and Trial Counsel, all violated Petitioner's constitutional right to a fair criminal proceeding. As was held in ***People v. Sherman Williams,*** 38 Mich. App. 370, 376; 196 NW2d 327 (1972), adopting ***Pate v. Robinson, supra,*** a sanity hearing must be held where the evidence raises a bona fide doubt as to a Petitioner's competency to stand trial.

Due to a constructive denial of counsel at a critical stage of the proceeding, Defense Counsel missed the mark under the mandates of ***People v. Dixon,*** 263 Mich. App. 393, 397, 400; 688 NW2d 308 (2004), adopting ***Bell v. Cone***, 535 U.S. 685, 695-696, 122 S.Ct. 1843, 152

L.Ed.2d 914 (2002); ***United States v. Cronic,*** 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984) and ***Mitchell v. Mason***, 325 F.3d 732, 743 (6th Cir. 2003).

The Trial Court missed the mark, violating the well settled doctrine that Trial Judges are presumed to know the law and to apply it in making their decisions, ***Lambrix v. Singletary***, 520 U.S. 518, 522 n.4, 117 S.Ct. 1517, 1527 n.4, 137 L.Ed.2d 771 (1997). Moreover, since Defense Counsel abandoned Petitioner, it was incumbent on the Trial Court to protect Petitioner's constitutional rights. This is so because it is well settled that a Court is obligated to intervene when defense counsel accepts the confidence of the accused, and then betrays it by a feeble and heartless defense. ***People v. Pickens,*** 446 Mich. 298, 311; 521 NW2d 797 (1994). See also ***Hill v. People,*** 16 Mich. 351, 358 (1868), holding that the court must see that a Petitioner's constitutional rights are protected.

Appellate Counsel dropped the ball when he withdrew from representation in violation of the mandate espoused in the case of ***McCoy v. Court of Appeals of Wisconsin, Dist. 1,*** 486 U.S. 429, 438, 108 S.Ct. 1895, 1902, 100 L.Ed.2d 440 (1988). There, the Court held that appellate counsel had a duty to "MASTER" the record, thoroughly research the law, and exercise judgment in identifying the arguments to be advanced on appeal. To perform that task, Counsel had a duty to evaluate Petitioner's case and advise him as to the prospects for success.

The People were also duly bound to protect Petitioner's constitutional rights under the mandates of ***People v. Pfaffle,*** 246 Mich. App. 282, 288; 632 NW2d 162 (2001), and ***People v. Bahoda,*** 448 Mich. 261, 267; 531 N.W.2d 659 (1995). Also see, ***Berger v. United States***, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed 1314 (1935) and ***People v Dane***, 59 Mich. 550, 552; 26 NW 781 (1886).

Yet, the People steadfastly take the position that it is proper to deny a mentally incompetent Petitioner his constitutional protections and to then make that same Petitioner take responsibility for the actions of the Officers of the Court.

Petitioner only asks that this Honorable Court correct the fundamental Due Process wrongs committed by the State Courts and grant the proper relief as espoused in the seminal case of ***Marbury v. Madison***, 1 Cranch 137, 5 U.S. 137, 163, 2 L.Ed 60 (1803) where the United States Supreme Court, (quoting Blackstone's Commentaries), opined that where there is a legal right, there is a legal remedy by law.

NEED FOR EVIDENTIARY HEARING

Petitioner submits that even though he has presented bona fide issues before this Honorable Court, the issue of why the Trial Court refused to hold the mandated competency and instead, ordered Petitioner competent to stand trial by stipulation has yet to be resolved.

The disputed facts outlined herein require an evidentiary hearing to make a record, because without it, the reviewing Courts will decline to address the issue at all. ***People v. Whyte***, 165 Mich. App. 409, 415; 418 N.W.2d 484 (1988). Petitioner respectfully requests this evidentiary hearing pursuant to the precepts of ***Abdur'Rahman v. Bell,*** 226 F.3d 696, 706 (6th Cir. 2000), holding that a district court may order an evidentiary hearing to settled disputed issues of material fact. See also, ***Banks v. Dretke,*** 540 U.S. 668, 690-691, 124 S.Ct. 1256, 1272, 137 L.Ed.2d 1166, 1189 (2004), holding same.

CONCLUSION

The State Courts have repeatedly refused to afford Petitioner his fundamental right to a merits review. Moreover, even though the State Courts embraced ***Halbert, supra***, in their decisions, the same Courts did not render finding of facts and conclusions of law to satisfy the "contrary to" and/or "unreasonable application" of clearly established law under ***Williams v. Taylor***, 529 U.S. 420, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000). This is so, because the State Courts will not explain why they purposely ignore the law as it relates to Petitioner's case and the issues raised for adjudication on the merits.

As such, it is now incumbent on this Honorable Court to do so as the State Courts should have done, and then, to grant the appropriate relief under ***C.I.R. v. Estate of Bosh,*** 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967), where the Court held:

> "The underlying substantive rule involved is based on state law and the State's highest court is the best authority on its own law. If there be no decision by that court, then federal authorities must apply what they find to be the state law after giving 'proper regard' to relevant rulings of other courts of the State. In this respect, it may be said to be, in effect, sitting as a state court. Bernhardt v. Polygraphic Co., 350 U.S. 198, 76 S.Ct. 273, 100 L.Ed. 199 (1956)." ***Id.,*** 387 U.S. at 464-465, 87 S.Ct. at 1782-1783.

This mandate is further found in ***Fay v. Noia,*** 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), where the Court held:

> "Surely no fair-minded person will contend that those who have been deprived of their liberty without due process of law ought nevertheless to languish in prison. ... ***If the states withhold effective remedy, the federal courts have the power and the duty to provide it.***" ***Id.,*** 372 U.S. at 441, 83 S.Ct. at 850. [Emphasis added].

This Honorable Court is further guided by a score of published Eastern District cases, the most recent being ***Fremont Reorganizing Corp. v. Duke***, 811 F.Supp.2d 1323 (E.D. Mich. 2011), where Judge Lawson held:

> "[32] This Court's task in such a case is to determine from 'all relevant data' what the state's highest court would decide. See Garden City Osteopathic Hosp. v. HBE Corp., 55 F.3d 1126, 1130 (6th Cir. 1995) (quoting Bailey v. V. & O. Press Co., 770 F.2d 601, 604 (6th Cir. 1985)). '***Relevant data'; includes*** the state's intermediate appellate court decisions, ibid., as well as the state supreme court's relevant dicta, 'restatements of law, law review commentaries, and ***the 'majority rule' among the other states.'*** Angelotta v. American Broad. Corp., 820 F.2d 806, 807 (6th Cir. 1987)." ***Id.***, at 1342. [Emphasis added].

Furthermore, this Honorable Court has the inherent authority and power to look behind and beyond the record presented, and to makes its own independent examination of the facts presented to verify Petitioner's position that he suffers from a void judgment. ***Johnson v.***

Zerbst, 304 U.S. 458, 466-467, 58 S.Ct. 1019, 1023-1024, 82 L.Ed. 1461, 1467-1468 (1938), ***Brookhart v. Janis,*** 384 U.S. 1, 6, 86 S.Ct. 1245, 1248, 16 L.Ed.2d 314, 318 (1966).

The issue and specific question presented herein has never been answered by any State Court with findings of fact and conclusions of law to justify the refusal of the State Courts to grant Petitioner, a mentally ill individual, the appointment of substitute appellate counsel under ***Halbert, supra.*** As such, it is incumbent on this Honorable Court to make rule on the merits of the issue presented.

REASONS FOR GRANTING THE PETITION

I. THE TRIAL COURT FAILED TO PROTECT PETITIONER'S FUNDAMENTAL DUE PROCESS RIGHT TO SUBSTITUTE APPELLATE COUNSEL SUBSEQUENT TO HIS GUILTY PLEA WHEN ORIGINAL APPELLATE COUNSEL WITHDREW FROM REPRESENTATION AND THE TRIAL COURT REFUSED TO APPOINT SUBSTITUTE APPELLATE COUNSEL. US CONST, AMS VI, XIV; CONST, 1963, ART 1, §§ 17, 20.

STANDARD OF REVIEW

The applicable standard of review for the Trial Court's refusal to appoint substitute appellate counsel is found in ***People v. Evans***, 497 Mich. 1008, 862 NW2d 197 (2015), where the Michigan Supreme Court held that substitute appellate counsel is required when original appellate counsel withdraws, but does not accompany his motion with legal analysis. It should be noted that the ***Evans Court*** relied on ***Halbert v. Michigan***, 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 (2005) for its authority and further held that appointment of substitute appellate counsel is mandatory and not discretionary. See also, ***People v. Gilliard***, 496 Mich. 56; 847 NW2d 623 (2014) and ***People v. Goree***, 497 Mich. 926, 926-927; 856 N.W.2d 691 (2014), holding same.

More recently, ***People v. Atwood,*** 499 Mich. 865; 875 N.W.2d 200 (2016) holds that, pursuant to ***Halbert v. Michigan, supra***, it is the duty of the Trial Court to appoint substitute appellate counsel, especially where the trial court failed to make a finding whether the case was wholly frivolous.

ARGUMENT

Petitioner was denied a fair criminal proceeding as guaranteed under both State and Federal Constitutions ***[U.S. Const. Ams. V, VI, XIV; Const. 1963, art 1, §§ 17, 20].*** This vested

right, which is afforded all criminal Petitioners, was denied Petitioner when the Trial Court refused to grant Petitioner his right to have substitute appellate counsel appointed once original appellate counsel withdrew from representation. The State appellate courts co-signed the Trial Court's decision not to grant substitute appellate counsel

As evidenced by the outlined Statement of Facts and Procedural History, once original appointed appellate counsel withdrew from legal representation, the Trial Court REFUSED to grant substitute appellate counsel. This act violates the precepts of the Michigan Supreme Court and the United States Supreme Court, and relegates a mentally handicapped Petitioner to fend for himself.

All original appellate counsel did was to cajole a mentally ill Petitioner into withdrawing his plea to close the case and receive a paycheck. Petitioner submits that the original appellate counsel never took the time to examine Petitioner's case. Instead, said counsel merely filed a motion – paying lip service to the Court Rule – and relegated the motion to a meaningless ritual.

Petitioner takes this position at the direction of the United States Supreme Court holding in ***Halbert, supra.*** There the Supreme Court held:

> "One who pleads guilty or nolo contendere may still raise on appeal 'constitutional defects that are irrelevant to his factual guilt, double jeopardy claims requiring no further factual record, jurisdictional defects, challenges to the sufficiency of the evidence at the preliminary examination, preserved entrapment claims, factual basis claims, claims that the state had no right to proceed in the first place, including claims that a Petitioner was charged under an inapplicable statute, and claims of ineffective assistance of counsel.' Ibid (quoting Bulger, 462 Mich. at 561; 614 NW2d at 133-134 (Cavanagh, J., dissenting)." ***Id.,*** 545 U.S. at 621-622, 125 S.Ct. at 2593, 162 L.Ed.2d at 567. [Emphasis added].

People v. Atwood, supra, holds that:

> "The circuit court ... erred in failing to appoint substitute appellate counsel when the Petitioner's original appellate counsel did not accompany his motion to withdraw with legal analysis referring to

> anything in the record that might arguably support the appeal, and the trial court failed to make a finding whether the case is wholly frivolous." ***Id.*** at 865-866.

The Trial Court had the duty and obligation to appoint substitute appellate counsel pursuant to the authorities cited and quoted in this ISSUE. Moreover, the Trial Court had a duty to appoint substitute appellate counsel under ***MCR 7.208(G)*** which states:

> "**Matters Pertaining to Appointment of Attorney**. Throughout the pendency of an appeal involving an indigent person, the trial court retains authority to appoint, remove, or replace an attorney except as the Court of Appeals otherwise orders."

DISCUSSION

The Trial Court ruled that Petitioner's analysis of ***Atwood*** was inaccurate because appointed appellate counsel did file a motion to withdraw. What the Trial Court missed and did not discuss is the fact that Petitioner is mentally ill. Thus, his competency to stand trial – the same standard to take a plea – was not decided prior to his criminal proceedings. The problem here is that Petitioner, due to his mental illness, was unable to assist his Defense Counsel in his defense. As such, Petitioner was cajoled into a plea situation without any understanding of the proceedings against him much similar to that of the case of ***Gonzalez v. Phillips***, 195 F.Supp.2d 893 (E.D. Mich. 2001), where the District Court held:

> "A person who is physically present, but cannot understand the proceedings has been denied due process. See Drope v. Missouri, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1973); Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed2d 815 (1966). In Drope, the Supreme Court recognized that a person whose mental condition is such that he lacks the capacity to understand the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial. 420 U.S. at 171." ***Id.,*** at 902-903.

Rather than assist Petitioner in his request to appeal his guilty plea, and to resolve his issue of mental competency, appellate counsel attempted to cajole Petitioner into withdrawing

his appeal. Petitioner, feeling something very wrong, refused to sign the affidavit proposed by appellate counsel.

When Petitioner tried – to the best of his ability - to get appellate counsel to realize that there was an unresolved competency issue at hand which Defense Counsel never investigated, said Appellate Counsel refused to listen, and instead, filed a motion to withdraw. This act, in essence, abandoned Petitioner to fend for himself.

It is for this reason that Petitioner respectfully submits that the Trial Court and subsequent State Appellate Courts abused their discretion by refusing to appoint substitute appellate counsel.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Petitioner submits that he has presented the Court with compelling reasons for consideration and ask that this Court grant the petition for a writ of certiorari, further Petitioner ask that the Court reverse his convictions and remand this matter to the state court with appropriate instructions.

Respectfully submitted,

/s/ Kwame Burrell

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Dated: February 16, 2023