No. 22 - 7608



IN THE SUPREME COURT OF THE UNITED STATES

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PHILLIP L. HORRELL,

Petitioner,

-vs-

STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

# PETITION FOR WRIT OF CERTIORARI

**Phillip Lee Horrell**
Reg. No. K58809
Henry Hill Correctional Center
P.O. Box 1700
Galesburg, IL. 61402

PRO SE LITIGANT

## QUESTIONS PRESENTED

1. Whether the plea of guilty but mentally ill in this case violated due process, due to no sanity examination conducted - or, alternatively, due to the false admonishments given at the Nov. 1, 2013, plea hearing, which falsely told the defendant that an unfavorable expert opinion, based on an examination, as to sanity at the time of the offense, had been rendered - when no such examination, or expert opinion on that issue had been given?

2. Whether due process was denied and/or violated; guilt-phase; pursuant to the requirements of Ake v. Oklahoma, 470 U.S. 68, (1985)?

3. Whether an exercise of this Court's supervisory power over federal Constitutional matters, in State Courts, should occur in this appeal; in light of the fact that all of the Courts in this case have failed to even acknowledge the federal Constitutional issues, or alleged United States Supreme Court caselaw, 14th Amendment violations; as argued at each stage (by retained counsel for the defendant) - and the fact that petitioner has been "erroneously convicted," and imprisoned by that, for nine (9) years and five (5) months?

## LIST OF PARTIES

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

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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

The Opinion/Order of the Illinois Supreme Court, appears at Appendix A-21, reported at People v. Horrell, 2023 IL 129220, and is published.

The Opinion/Order of the Third District Appellate Court of Illinois, appears at Appendix A-18 and A-20, reported at People v. Horrell, 2022 IL App (3d) 200417, and is published.

The Opinion/Order of the 21st Judicial Circuit Court of Illinois, Kankakee County, Illinois, appears at Appendix A-3 and A-10.

## JURISDICTION

The date on which the Illinois Supreme Court denied my Petition for Leave to Appeal was: March 29, 2023.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. Const., AMENDMENT XIV, § 1 (Due Process Clause)

All persons born or naturalized thereof, are citizens of the United States and of the State wherein they reside. No State shall enforce or make 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 any person within its jurisdiction the equal protection of the laws.

### Illinois Complied Statutes

725 ILCS 5/115-2(b) (See copy of statute in Appendix A-23).

725 ILCS 5/115-6 (See copy of statute in Appendix A-23).

720 ILCS 5/6-2(a), (d), and (e) (See copy of statutes in Appendix A-23).

## STATEMENT OF THE CASE

This appeal involves two primary U.S. Constitutional issues and/or violations, which are being presented here. Number One, is an involuntary, unintelligent Guilty but Mentally Ill ("GBMI") plea, in violation of due process (under **Boykin v. Alabama**, 395 U.S. 238, 242 (1969)); as it was entered without the requisite sanity examination, required by both State laws; and **Ake v. Oklahoma**, 470 U.S. 68 (1985) (as will be set forth below); and due to false admonishments given to this Petitioner, during the November 1, 2013, plea colloquy; which misled the defendant to believe he was both guilty; and defenseless; by "evidence" which is, in fact, false evidence of this Petitioner's criminal responsibility (see "report" in Appendix A-13). These plea issues have not been acknowledged, or addressed by the State Courts -though properly presented and proved - up, by retained counsel for this Petitioner (who has declined to file a Petition for Certiorari, in this appeal).

Issue Number Two, is a violation of due process under **Ake v. Oklahoma**, 470 U.S. 68 (1985). As is set forth below - this is a unique Ake claim; with a "preliminary Showing" that is clearly satisfied (in 2012 - 2013). Despite the retained (2019 - 2023) counsel asserting this violation at every stage of the proceedings; it has been wholly disregarded, and unaddressed by each judge in this case.

A detailed procedural history of this case is set out by said retained counsel, in the "Petition for Leave to Appeal" (i.e., in Appendix A-7) and in the "Opening Brief" (i.e., in Appendix A-4). Please refer to that, for clarity on the procedural course, and history of this case - which is People v. Horrell, Kankakee County Case No. 12-CF-541; as well as the specific convictions and sentences

Petitioner is convicted of, and sentenced to. (See also, Appendix A-26 and A-28). There are two plea convictions (felony murder, predicated on residential burglary (Count 3); and attempt murder (Count 5); and a natural life, plus thirty (30) year (consecutive) sentence.

On October 16, 2020, upon the close of the post-plea/remand proceedings; Petitioner (formally) professed his innocence for these two crimes, in his "Post-Conviction Petition", which asserted an Article I, § 2, of the Illinois Constitution of 1970 (due process IL. Const. deprivation), "actual innocence claim" based on "newly discovered evidence" (in the record on appeal at C 3236 - C 3517). The Illinois Courts did not allow merit-based review of that petition; however, and the appeal was dismissed (i.e., appeal #3-20-0488), with the appellate court stating that the new evidence proffered was "not new." Interestingly, there has never been any acknowledgment of the real evidence in this case, as it relates to sanity at the time of the offense; though the GBMI plea statutory scheme requires it, by statute (See Appendix A-23). Further, the U.S. Constitution's 14th Amendment's due process clause required that relative evidence to be addressed pursuant to the **Ake v. Oklahoma**, 470 U.S. 68 (1985) decision.

The examination (for "sanity") mandated by Ake, in this case, would have required the two Assistant Public Defenders (i.e., Larry Beaumont, and Robert Regas) to move for discovery, so that the physical evidence would be considered, and assessed, by the expert psychologist, or expert psychiatrist, who conducted that particular examination. They never moved for any discovery, however. The first discovery request, by defense counsel occurred in October of 2019 (see docket entry, in Appendix A-15, dated Dec. 6, 2019); a fact that is

stated in the pleadings, of which there has been no acknowledgment by State Court judges. That discovery request, by Thomas Brandstrader, occurred over six (6) full years, after the November 1, 2013, plea hearing. If **Ake v. Oklahoma**, had been followed by the Court (and counsel), in 2012 - 2013, this due process deprivation would not be present. Indeed, this Court's decision in Ake was designated to proscribe it (See Appendix A-16).

The remand Order given by the Third District Appellate Court in this case in November of 2015 (See Mandate in Appendix A-17), caused this Petitioner to be housed in the Kankakee County jail from 2016 to 2020; during the pendency of the IL. S.Ct. Rule 604(d) (post-plea motion) proceedings. This allowed for him to have a resource that is not available to State prisoners housed in the Illinois Dept. of Corrections, i.e., a tablet device with a "casemaker" law library App. This allowed Petitioner to spend up to 15 hours a day (for four years) studying caselaw in Federal District, Circuit, and the U.S. Supreme Court data bases - as well as State caselaw databases. **Ake v. Oklahoma**, was a focus for this Petitioner. This case presents an atypical Ake claim, for several reasons — and it is a well founded one, as well. There is a broader question involved here, due to the Ake claim having been the result of a clearly coerced GBMI plea; and by the deprivation of the panoply of trial rights — and the factual and legal determination of sanity at the time of the offense — that did not occur, as a result.

The question is, if a defendant (as here) is never even informed of his due process rights under Ake, or by the requirements of the GBMI statutory scheme, in this State's GBMI plea procedure — and he or she enters a guilty plea in total ignorance of those protections,

because he or she is simply never informed (as here); does that satisfy due process? And if it does not — should this appeal be used to revisit the Ake v. Oklahoma decision, to further tailor Ake's due process "guarantees" to further preventative requirements, tailored to insanity cases that result in guilty pleas? It's a first impression for this Court to address an Ake claim that is the result of an involuntary plea, where a defendant was misled to believe had been given that "access" at the start of the case (Appendix A-11, RP 169); during a guilty plea hearing, and later discovered he had not been so examined (Appendices A-22; A-25; A-12; A-8, RP 1052; A-9, RP 1135; and pleadings A-2, A-4, A-6, A-7); by admonishments that were false, and which deprived him of the "access" that is said to be "guaranteed" under **Ake v. Oklahoma**, 470 U.S. 68, 83 (1985).

A first impression also, in how the Ake claim in this case has not even been mentioned by the Cirucit, Appellate, or Supreme Courts of Illinois, upon review of the denial order on the "Amended Motion to Withdraw Plea (No. 2)" (Appendix A-2 and A-3). The Courts have also failed to acknowledge that there is real evidence demonstrating insanity at the time of the offense, under Illinois legal standards that defines evidence of insanity (as argued in the pleadings) (See e.g., **People v. Spears**, 63 Ill.App.3d 510, 519 (1979)). That evidence was present in the initial (2012 - 2014) proceedings (inter-alia); by counsel's representations; the mental health diagnosis and report of Isaac Ray (Appendix A-14); and evidence adduced at sentencing (Appendix A-24). This Petitioner was deprived of a meritorious insanity defense, by the real evidence.

And at the November 1, 2013, GBMI plea hearing, the Circuit judge took the plea without following the statutory law which mandates an expert sanity exam (among other statutory requirements - please see Appendix A-23); by an expert named by the State — but told the mentally ill defendant that that examination occurred, at the start of the case (i.e., at a fitness exam, in November of 2012; conducted by the "Isaac Ray Forensic Group, LLC" - and two women psychologists). And that, as a result, there was "no basis for a defense of insanity" as "opined" by "Isaac Ray" (See Appendix A-11, RP 169, 210). Those assertions (or admonishments) were false; as the Isaac Ray examination was only for "fitness." Those fitness examiners testified, in 2020, at the post-plea motion (Rule 604(d)) hearing, that they did not address "sanity at the time of the offense" nor render any opinion as to "sanity" (See Appendix A-8, RP 1052; and A-9, RP 1135). None of the so-called "evidence" utilized for the GBMI plea was actual "evidence" as to a mental state at the time of the offense; or expert opinion as to sanity at the time of the offense (see Appendix A-11, A-13; A-12; and A-14). There was no adjudication of guilt by law.

In this case, the only "evidence" utilized as evidence of sanity at the time of the offense were two fitness reports, and the "Wasyliw Report" (Appendix A-11, RP 204-210; A-13). There is a protection in Illinois law which is a caselaw - law, made by the Appellate Courts of Illinois, which requires a four prong inquiry to be given by the circuit judge, for possible insane defendants, who choose to forego an insanity defense against the advice of counsel (not the circumstances present in this case, exactly; as the viability of the defense in this case was concealed, by numerous false assertions,

both on, and off-record; now proven by testimony in 2020). That case-law, originated in **People v. Gettings**, 175 Ill.App.3d 920 (1988); and had that law been followed by the court, in this case - the involuntary and unintelligent plea would not have been entered - as it would have been learned that defense counsel was giving this Petitioner false advice, as per their (admitted) use of the "Dr. Wasyliw report" (See Appendix A-13); that the defendant, e.g., had been found "sane" by Dr. Wasyliw (a man this Petitioner has never even met); and e.g., that the felony-murder charge was barred by Illinois law, from the defense of insanity - two patently false (admitted) assertions, by defendant's own appointed attorneys; which denied him of due process (in several ways, including **Ake v. Oklahoma**); and of a lawful determination of his criminal responsibility for murder and attempted murder. They deliberately denied their own client of due process, under **Ake v. Oklahoma** — replacing Ake's guarantees with lies and false evidence (See Appendix A-8 and A-9; and the affidavit of Phillip Horrell, in A-22). **People v. Getttings**, 175 Ill.App.3d 920 (1988), however, does not rely on **Ake v. Oklahoma**, for its law, made to prevent an unknowing waiver of a viable insanity defense. It does not have the weight of a Supreme Court holding; and was not acknowledged by any State court, in this case - though argued in all of the pleadings, as error. The Gettings inquiry should be applied to Ake.

In **Schultz v. Page**, 313 F.3d 1010 (7th Cir. 2002), a similar Ake claim was litigated, which the Seventh Circuit granted the writ on. In Schultz, as in the instant case; there was a fitness examination conducted, which the trial judge deemed to (as in this case) have foreclosed the insanity defense. This decision (i.e., Schultz) was over ten (10) years old when the instant case began. Schultz was

deprived of any "access" to an expert on sanity - just as this Petitioner. Both cases due to how a fitness examination is somehow sufficient to determine sanity at the time of the offense - despite a body of caselaw that clearly renders any such idea legal fiction, at best.

The Court has made the distinction between fitness and sanity exams (See **Buchanan v. Kentucky**, 483 U.S. 402, 423 (1987). Appendix A-31). Counsel for Petitioner cited this in the pleadings and in open court (Appendix A-9, RP 1139). But in this case, the judge offered reasonable funds to the defense, for an expert examiner on the issue of sanity and granted the motion for same on January 9, 2013. (See Appendix A-30). That motion appointed the business that did the fitness exam (i.e., "Isaac Ray." Appendix A-1). On February 27, 2013, defense counsel (Larry Beaumont) reported that "Isaac Ray" had referred him to a "psychiatrist", which they suggested due to "medication issues and drugs involved." The State was granted two motions for an expert on sanity, pre-plea (Appendix A-1). None of those three motions, granted, resulted in a sanity (or any) examination or interview; or work by an expert whatsoever - yet, defense counsel later reported on July 10, 2013, that "Dr. Wasyliw" had rendered a "report" to him (Appendix A-13) which it now has been proven that they used to falsely foreclose the defendant's insanity defense in 2013 (See testimony of Phillip Horrell; Larry Beaumont; and Robert Regas, Appendix A-8 and A-9). They did an act of deception, the likes of which has never been seen, to my understanding; and perhaps that is why the State Courts have disregarded Ake, and ignored said false representations (of-record) in this case, i.e., to perhaps cover for the lawyers, while allowing an injustice to continue for this Petitioner and his loving family.

By granting the writ of certiorari, this Court could speak on the matter of Ake's Due Process gurantees, as it relates to guilty (GBMI) pleas – and correct a 14th Amendment violation that the State Court's ignored. The case of **Curry v. Zant**, 258 GA. 527 (S.Ct. GA. 1988) is also very similar to this case. In Curry (as here), the defense counsel failed to take upon the offer for funds for the expert on sanity, in violation of **Ake v. Oklahoma** - but the 6th Amendment right to effective assistance of counsel was said to have been violated (as per Ake), in that case. It does serve to act as a weighty precedent to consider, as it is a meritorious Ake claim by a plea conviction; and by a defense counsel who failed to take upon the offer of the Court, for funds to retain the expert examiner necessary to satisfy the laws of the **Ake v. Oklahoma**. In fact, its a closely aligned case as the circumstances are very similar to the instant case.

The expert who purportedly sent a letter (or "report") to defense counsel in July of 2013 (i.e., Dr. Wasyliw - see Appendix A-13) - testified on September 30, 2020, in the post-plea motion hearing, pursuant to Illinois Supreme Court Rule 604(d) (See Appendix A-9). His testimony did not corroborate defense counsel's testimony. He did not testify that he and defense counsel had ever spoken - he stated that he had "no memory" of ever speaking to any attorney about this case. He had no memory of this case at all - but made a claim that (that no one challenged) that he authored the "report" (entered in evidence on September 24, 2020, as State's Exhibit No. 1); though he also stated twice, that he had not read the "report" prior to that day or on that day. He'd never read it. So I ask this Court: If he'd never read the document, ever - how could he know if he'd authored it? My criminal responsibility was conceded, pursuant to (as is proven)

the utilization of that "report" prior to and during the plea hearing (see Appendix A-8; A-9; A-11; A-13; and A-22). The fitness examiner at Isaac Ray (the Director, Dr. Diane Goldstein), also testified. She stated (inter-alia) that she never spoke with Dr. Wasyliw about this case ("very specifically did not speak to Dr. Wasyliw about this case").

Dr. Goldstein also stated that the police reports (See Appendix A-9, RP 1050, LN 7-8, and other documents she'd received as part of her fitness evaluation) were never shared with Dr. Wasyliw or anyone else. Yet, lead defense counsel, Larry Beaumont, testified on the same date, September 24, 2020, just before Dr. Goldstein - and he stated that it was Dr. Goldstein who gave documents to Dr. Orest Wasyliw. He stated he'd spoken to Dr. Wasyliw several times in 2013, (as did Robert Regas) and that Dr. Wasyliw "agreed with Dr. Goldstein" that I had no viable insanity defense - and that he requested a "report" from Dr. Wasyliw, which is dated July 10, 2013, and is in Appendix A-13. But his testimony was 100% refuted, both by Dr. Goldstein and by Dr. Wasyliw's testimony. Who has a reason to lie? Whatever the case, the "report" bearing Dr. Wasyliw's information and e-signature, espouses only false "legal" conclusions, which in 2012-2014, was deliberately kept out of the record. Its "findings" were never stated on-record, in 2012-2014. Yet, the Illinois Courts are failing to acknowledge any of the aforementioned facts. Had the due process guarantees of Ake been afforded, this would not be.

As attached to my Post-Conviction Petition filed on October 16, 2020, I filed a copy of my entire mental health records (filed on October 15, 2020). The two initial assistant public defenders never tried to procure them (Appendix A-8; A-9, RP 1022, 1115-16). The diagnosis given by the fitness examiner at Isaac Ray (located in

Chicago, IL.) was "Bipolar I d/o, sévere, with psychotic features" (See report in Appendix A-14, pg 14, opinion #3). That qualifies me for an insanity defense (See, e.g., **Schultz v. Page**, 313 F.3d 1010, 1016 (7th Cir. 2002)). The fitness examiner for the Court (i.e., Dr. Simone) also gave a diagnosis of major mental illness (Axis I), at the start of the case (See report attached to filed affidavit, Appendix A-22).

Additionally, the Circuit Court judge learned that this Defendant had attempted suicide while at the scene of the offense, by a deep, self-inflicted knife wound to his throat; and had multiple commitments in mental health facilities prior to this offense, with long-standing mental health treatments in the five years preceding this offense; and at the time of the offense had been off his medications for psychosis (i.e., anti-psychotic Thorazine; Depakote; Vistaril; amd Paxil) - which he'd taken for six months prior to the offense, at an Illinois Dept. of corrections mental health facility and prison (called Dixon Special Treatment Center); and had self-medicated with cocaine (after leaving that mental health facility). Looking at involuntary confinement (to DHS) order appeals, in Illinois, by patients found NGRI (there are many); this combination of stopping psych medication cold turkey; and self-medicating with illicit drugs; is very common for NGRI acquittees, in Illinois. In this case, however - those facts (evidenced by the Isaac Ray Forensic Group Fitness Report, in Appendix A-14; and the discussion with the defendant, and the judge at the November 1, 2013, plea hearing, in Appendix A-11); not only provided a strong "preliminary showing" that triggered Ake's "guarantees" (along with the representations by counsel, in 2012, that they

believed their clients mental state would be the significant factor at trial - as well as in September of 2020, during the post-plea motion hearing, in Appendices A-8; and A-9; and the motions granted for that "access" in Appendix A-1); but it gave real evidence that the defendant may not be criminally responsible, as NGRI. That determination is generally "an issue of fact for a jury," as per Illinois caselaw. The Third District Appellate Court stated that the Appellant was "unable to point to a doctor who concluded that he had a viable insanity defense, [and how] he also cannot point to specific conduct that necessarily manifests insanity." (See the "Order" in Appendix A-18 at #32). This completely ignores **Ake v. Oklahoma**, and Due Process.

Petitioner's primary issue on appeal, was that he was denied "access" to an expert on that issue (i.e., sanity); which is pursuant to **Ake v. Oklahoma** — and which serves to provide the basic tools to "meaningfully participate in a judicial proceeding in which his liberty is at stake" (**Ake v. Oklahoma**, 470 U.S. 68, 76 (1985) - see copy in Appendix A-16). Instead, the Court and the parties, on Nov. 1, 2013, (during the plea hearing) - chose to deceive this Petitioner that the Isaac Ray fitness exam (at the start of the case, in November of 2012. See report in Appendix A-14), was a dual-purpose fitness and sanity examination (Appendix A-11, RP 210). As argued at every stage by retained counsel for Petitioner (See Appendices A-2; and A-9 (closing arguments); A-4; A-6;*;A-7); The "access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense", was required in this case, and didn't happen, in violation of due process (**Ake v. Oklahoma**, 470 U.S. 68, 83 (1985)); and that the inquiry

mandated by the Gettings line of cases (Illinois caselaw) surely would have served to reveal that defense counsel had given Petitioner false information, or "legal advice."

This case (or appeal) could be used to revisit Ake, and modify it to include waiver admonishments, which could be very similar to the 4-prong inquiry prescribed by the Getting's court. That type of modification (to the guidance of Ake) would ensure that when the Due Process protections (or "guarantees") of **Ake v. Oklahoma**, are triggered – and a seriously mentally ill defendant's liberty is at stake; and a trial with the affirmative defense of insanity is required to determine sanity and criminal responsibility (which is generally a "question of fact for a jury", see e.g., **People v. Knox**, 2011 IL App (1st) 083019, ¶11) – the mentally ill defendant is able to make an intelligent and knowing decision (and waiver, if he or she chooses); on the "guarantees" that Ake was designated to ensure that defendant, and defense. As opposed to an officer of the court (or a judge) withholding the correct information, about those Due Process rights – which is exactly what occurred and resulted in this case: an involuntary plea that did not include the "access" to the expert, as required by Illinois laws (i.e., 725 ILCS 5/115-2(b); and 115-6); and by **Ake v. Oklahoma**, 470 U.S. 68 (1985); because, as made clear in this case – when Ake's "guarantees" are not knowingly waived, due to an unintelligent, involuntary plea of guilty – guilt/innocence is not proven.

## REASONS FOR GRANTING THE PETITION

The importance to justice that the "access to a competent psychiatrist," that the Ake Court mandated, pursuant to this Court's "consistent theme" of "meaningful access to justice." See **Ake v. Oklahoma**, 470 U.S. 68, 77 (1985), (attached in Appendix A-16), is (in-part) the defendant's ability (i.e., "indigent" defendant; as Petitioner was in 2012-2014) to be afforded the basic tools to meaningfully present a defense of insanity. The "guarantees" Ake provides, includes help from a qualified psychologist or psychiatrist (in Illinois); both to determine if the defense is viable - and to help the defense marshal the evidence, and challenge the State's evidence at trial; when the trial becomes a "battle of the experts", in particular. Without such expert assistance, such defenses are rarely (if ever) brought in Illinois.

The Ake Court stated the importance of the "access", as follows:

> "When a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. this elementary principle, grounded in significant part on the 14th Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied his opportunity to participate where his liberty is at stake." **Ake v. Oklahoma**, 470 U.S. at 76.

The Ake Court decided Ake v. Oklahoma as a safeguard for possible insane defendants, to proscribe what has occurred in Petitioner's case (People v. Horrell, Kankakee County Case No. 12-CF-541). And to protect against "erroneous convictions."

In **People v. Bull**, 185 Ill.2d 179, 212 (1998), the Illinois Supreme Court states as follows:

"An important goal of the criminal justice process is the protection of the innocent accused against an erroneous conviction. Many would argue that it is the goal of the highest priority. The interest in the accuracy of a criminal proceeding that places an individual's life or liberty at risk is almost uniquely compelling. The many safeguards that the law has developed over the years to diminish the risk of erroneous conviction stands as a testament to this concern. **Ake v. Oklahoma**, 470 U.S. 68, 78, 84 L. Ed.2d 53, 63, 105 S.Ct. 1087, 1093 (1985)."

Of all the caselaw, the Illinois Supreme Court cited Ake in support of that.

But what good is that citation to Ake, when no judge in my case would even say "Ake"? Without this Court's intervention to correct the State Court's disregard of these violations of fed. constitutional law — this "innocent" accused likely will serve out a life sentence, unjustly. Another important (and relevant) quote from **Ake v. Oklahoma**, states: "...without the assistance of a psychiatrist to conduct a professional examination on issues relevant to the defense, to help determine whether the insanity defense is viable, to present testimony and to assist in preparing the cross-examination of a State's psychiatric witness, the risk of an inaccurate resolution of sanity issues is extremely high. With such assistance, the defendant is fairly able to present at least enough information to the jury, in a meaningful manner, as to permit it to make a sensible determination." **Ake v. Oklahoma**, 470 U.S. at 82 (See also Appendix A-16).

This case demonstrates exactly what the Ake Court stated there, i.e., due to the lack of "access to a competent psychiatrist", and an involuntary, and wholly coerced GBMI plea (in violation of State law) as well, due to no sanity exam - (See Appendix A-23), that did not voluntarily waive the defense, or Ake's guarantees — an "inaccurate resolution of sanity issues" has occurred. An "erroneous

conviction", has resulted. A read of the record will establish that, as fact, with nothing to the contrary. In his closing argument, on day two of the hearing (as per IL. Supreme Court Rule 604(d)) on the "Amended motion to withdraw plea (No. 2)" (See motion in Appendix A-2); the assistant State's Attorney (i.e., Mr. Joe Kosman) stated the following (inter-alia): "You heard Dr. Tilton testify. She did in fact find that the defendant suffered from mental illness. That's not in doubt. What is in doubt is whether he had insanity. Whether there was in fact a valid insanity defense." (See Appendix A-9, RP 1144). The first chair Assistant Public Defender Larry Beaumont, testified in that hearing on September 24, 2020. He testified (inter-alia) that: "I wanted ultimately to have a - wanted to know if we had a viable insanity defense - criminal responsibility defense." (See Appendix A-8, RP 1008, lines 18-20). Robert Regas testified on September 30, 2020, who was an assistant public defender with Larry Beaumont throughout the initial proceedings (2012-2014) in this case. He testified (inter-alia) that:

"Question: From the beginning of your representation of Mr. Horrell, I take it the focus was on sanity at the time of the offense? At least in part.

A: Yes, of course." (Appendix A-9, RP 1113).

"Q: Okay. And this psychiatric exam to prove or disprove sanity at the time of the offense never occurred?

A: Yes, sir." (See Appendix A-9, RP 1114).

"Q: So its fair to say Dr. Wasyliw never gave him any kind of a physical or mental examination?

A: No, that's the whole point. It wouldn't be

worth it according to the experts.

Q: Okay.

A: It was pointless to do so.

Q: It wouldn't be worth it based on the charges not Mr. Horrell's mental state at the time of the offense, isn't that what this letter says?

A: Say that again, sir. I'm not gonna - your interpretation of the letter may be different than everyone elses.

Q: Not the interpretation what it says.

A: Uh-huh.

The Defendant: read it." (Appendix A-9, RP 1117).

"Question: Okay. And Dr. Wasyliw's conclusion read like a legal determination. That because of the charges that Phillip faced he could not assert the affirmative defense.

A: That's correct.

Q: In your mind as a criminal defense attorney you don't equate fitness with sanity correct?

A: No.

Q: There's two different evaluations

A: Completely, yes, sir.

Q: And you would not go to trial and assert an affirmative defense of sanity - insanity at the time of the offense without a psychiatric examination proving that concept?

A: Yeah, one hundred percent that's correct." (Appendix A-9, RP 1118).

"Q: When you talked to Dr. Goldstein -

A: Yes.

Q: - did she tell you that she examined Phillip for sanity at the time of the offense?

A: No, that's not the - the reason for going up there for the two days from my understanding.

Q: It was for fitness?

A: Yes, that's correct, sir." (Appendix A-9, RP 1115).

And regarding the utilization of the Dr. Wasyliw "report" (or letter), in Appendix A-13, to foreclose the defense of insanity - Mr. Regas testified that:

"Question: You just were shown it?

A: Yeah, I was shown. But I remember the letter from back then.

Q: Dated July 10, 2013?

A: Yes, I remember it.

Q: And did you show this letter on your visits to Mr. Horrell prior to his plea?

A: Yes.

Q: Did you show him this letter?

A: Yes, Phillip seen that.

Q: Did you explain it to him?

A: Yes, I did.

Q: Okay.

A: If i remember, yeah.

Q: Did Phillip not tell you that he didn't know who Dr. Wasylin was?

A: That he didn't know who Dr. Wasyliw was?

Q: He did not -

A: He never met Dr. Wasyliw I don't believe.

Q: So its fair to say Dr. Wasyliw never gave him any kind of physical or mental examination?

A: No, that's the whole point. It wouldn't be worth it according to the experts.

Q: Okay.

A: It was pointless to do so." (Appendix A-9, RP 1116-17).

The report by Larry Beaumont on February 27, 2013, was that "Isaac Ray" advised him to "use a psychiatrist." The above testimony, about "the experts" telling defense counsel "it wouldn't be worth it", or that "it was pointless," is in fact - perjury. Their testimony does not corroborate that (See Appendices A-8 [testimony of Dr. Goldstein]; and A-9 [testimony of Dr. Tilton]). And more importantly, the testimony absolutely ignores **Ake v. Oklahoma**, 470 U.S. 68 (1985). It pretends (they pretend) that an examination for sanity at the time of the offense was simply unnecessary, in this case. "Pointless", in fact. the prosecutor even admitted that the question of insanity is what was in question, in this case (as stated/cited to supra). What in this case decided that important matter of criminal responsibility? The truth is, it has never been decided as a factual and legal matter, pursuant to the constitutional protections and adversarial safeguards of a trial — and of Due process under **Ake v. Oklahoma.**

The Third District Appellate court of Illinois stated that the "experts" involved in this case, satisfied any needs therein (essentially); and that because "counsel investigated a potential insanity defense by having defendant evaluated by multiple

psychological experts and counsel discussed the defense with defendant", and the "defendant fully understood the options available to him and voluntarily chose to plead GBMI. Defendant cannot now argue he received ineffective assistance of counsel because he did not know he could utilize an insanity defense when the topic was clearly broached with counsel." (Appendix A-18, at #37). That is not supported by the testimony or the record, whatsoever — and it ignores **Ake v. Oklahoma**, and the Due Process claim of Ake; and of the plea as "involuntary and unintelligent" due to the false, misleading admonishments, which are spelled out in the opening brief; and reply brief - the petition for rehearing (Appendices A-6, A-4, and A-27); as well as the Petition for Leave to Appeal (Appendix A-7).

Furthermore, it puts the onus on the defendant, concerning being afforded a sanity examination — as if a seriously mentally ill and heavily medicated (by five psychotropic medications) defendant, is who (apparently) is supposed to know that due process under AKe, is triggered; and requires that a sanity examination should occur - or must occur. The first time this Petitioner ever heard of Glen Burton Ake, was in 2017, at least three years after sentencing in this case. Illinois Courts failed to address this Due Process deprivation.

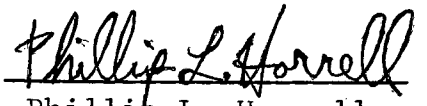
Also, Mr. Beaumont testified that he told defendant that "the experts at Isaac Ray would not - yeah, said he did not qualify for an insanity defense." (Appendix A-9, RP 1027). I testified likewise (Appendix A-8, RP 970); as to that "advice". The record on appeal in this appeal shows the fitness examiners did not address sanity. (Appendix A-9, RP 1135). The evidence proves every "contention of error," that has been advanced in the "Amended motion to withdraw plea (No. 2)," which is what this entire proceeding is based on (see

motion in Appendix A-2). Nothing in that motion was disproven, by evidence adduced by the seven (7) witnesses who testified in that (IL. Supreme Court Rule 604(d)) post-plea motion hearing (Appendices A-8 and A-9). That the trial court, and reviewing courts in Illinois have chose to not address, and not to even acknowledge the issues that were argued in closing, by the defendant's retained counsel, (See argument, in Appendix A-9, RP 1137-43; 1148-49) - is stunning, to this Petitioner; and very disturbing; as it appears that if this honorable Court does not allow this petition, the serious issues that my family and I have had so much hope on, in bringing relief — by a proper adjudication and review of them — may end up unaddressed; and if so, this petitioner will likely spend his natural life in prison, for crimes which he had no ability, whatsoever, to defend against - or even to have the basic rights to correct information, by counsel and by the judge.

## CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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