

23-7358
NO. _____ **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Eric LaQuinne Brown- PETITIONER

VS.

MISSISSIPPI, et al. – RESPONDENT(S)

Supreme Court, U.S.
FILED

MAR 15 2024

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO

THE MISSISSIPPI SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Is it a Due Process violation,¹ to apply a 2023, decision (**Howell v. State.**)² case holding, that abolishment of the exception to Mississippi's procedural rule UPCCRA, to a pending case that was originally filed July 14, 2020?

The Mississippi Supreme Court refused to address the issue, despite Mississippi Supreme Court made the decision to abolish the exceptions to their Mississippi³ procedural bars. Brown argues: that he has been deprived of any avenue of review for correcting constitutional errors that would vitiate the validity of his conviction and sentence without a notice. Thus, this is a clear Due Process violation that Mississippi Courts caused,⁴

¹ “4 W. Blackstone, *Commentaries on the Laws of England* 197-198 (1769).” The Supreme Court of Mississippi abolished the procedural rule as it had existed at common law in Mississippi and applied its decision to petitioner to affirm his guilty plea. The question before this U.S. Supreme Court is whether, in doing so, the court denied petitioner due process of law by not notifying he of the changes before he filed his last Post-Conviction Motion in violation of the Fourteenth Amendment.”

² **Howell v. State**, 358 So. 3d 613 (Miss. 2023)

³ Mississippi's **UPCCRA**, (§ 99-39-5 (2), §99-39-23 (6))

⁴ **Brown v. State**, 2022-CT-00069-SCT, (Thursday, 18th day of December, 2024); also see **Silvia v. State**, 175 So.3d 533 (2015).

LIST OF PARTIES

Eric L. Brown, Pro Se' Appellant

James O. Ford, Court-appointed- defense-Attorney

Thomas J. Gardner III, retired senior Circuit Court Judge

Clay Joyner, Assistant District Attorney (no longer with Pontotoc)

Kelly L. Mims; Circuit Court Judge

John Weddle Pontotoc District Attorney

Mississippi Court of Appeals

Mississippi Supreme Court

Lynn Fitch, Attorney General, Appellee

RELATED CASES

Rogers v. Tennessee , 532 U.S. 451(2001)	1
Lindsey Et Al. Washington , 301 U.S. 397 (1937)	
Smith v. State of Mississippi , 149 So.3d 1027 (2014)	
Bouie Et Al. v. City of Columbia , 378 U.S. 347 (1964)	

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STATUTES AND RULES

M.R.A.P. rule 17 (a) (1)

Mississippi's UPCCRA, (§ 99-39-5 (2), §99-39-23 (6)

UCCC Rule 9.06 (adopted May 01, 1995)

OTHER

- 1) 4 W. Blackstone, Commentaries on the Laws of England 197-198 (1769)." The Supreme Court of Mississippi abolished the procedural rule as it had existed at common law in Mississippi and applied its decision to petitioner to affirm his guilty plea. The question before this U.S. Supreme Court is whether, in doing so, the court denied petitioner due process of law by not notifying he of the changes before he filed his last Post-Conviction Motion in violation of the Fourteenth Amendment."
- 2) Epilepsy: disorder of the nervous system, characterized either by mild episode loss of attention or sleeping or by sever convulsion with loss of consciousness
- 3) Dyslexia: a learning disability marked by difficulty in reading, writing, and spelling.
- 4) Schizophrenia, severe mental illness characterized by a variety of symptoms, including loss of contact with reality, bizarre behavior, disorganized thinking, and speech, decreased emotional expressiveness, and social withdrawal. Usually only some of these symptoms occur in any one person. The term schizophrenia comes from Greek words meaning "split mind." However, contrary to common belief, schizophrenia does not refer to a person with a split personality or multiple personality.

5) Speech Impediment: Because speech is a learned function, any interference with learning ability may be expected to cause a speech impairment. The most common interfering conditions are certain neuroses and psychoses, mental retardation, and brain damage, whether congenital or acquired. Articulation itself may be impaired by such physical disabilities as cleft palate, cerebral palsy, or loss of hearing; it may likewise deteriorate as a result of paralysis of any part of the articulating mechanism. Impairment may also be the consequence of unconscious imitation of poor speech models or inadequate perception of auditory stimuli.

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 **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "A"

Affirmed from Mississippi Court of Appeals from the Dismissal of Post- Conviction Motion,
Affirmed on Tuesday, 23rd day of May, 2023. Appendix "A"

Decision by Pontotoc Circuit Court, Pontotoc, Mississippi, Filed Post- Conviction Motion on
July 14, 2020. And denied the 20 day of December, 2021. Appendix "B"

Unpublished (Brown v. State,2022-CT-00069-SCT), PETITION OF WRIT OF
CERTIORARI, filed in Mississippi Supreme Court and denied on Thursday, 18th day of
December, 2023, Appendix "C"

A timely petition for rehearing through invoking the Mail Box Rule, while said petition was
granted said motion for Rehearing was Timely filed June 03, 2023. and thereafter denied on the
Tuesday, 10, day of October, 2023. Here attached as: Appendix "D"

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4 W. Blackstone, *Commentaries on the Laws of England* 197-198 (1769)." The Supreme Court of Mississippi abolished the procedural rule as it had existed at common law in Mississippi and applied its decision to petitioner to affirm his guilty plea. The question before this U.S. Supreme Court is whether, in doing so, the court denied petitioner due process of law by not notifying he of the changes before he filed his last Post-Conviction Motion in violation of the Fourteenth Amendment."

In **Melendez-Diaz v. Massachusetts**, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), this Court held that a forensic laboratory report stating that a suspect substance was cocaine ranked as testimonial for purposes of the Sixth Amendment's Confrontation Clause. The report had been created specifically to serve as evidence in a criminal proceeding. Absent stipulation, the Court ruled, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the statements made in the report.

Sanders v. State, 9 So. 3d 1132, 1136 (¶16) (Miss. 2009). "once the trial court has reasonable ground to believe the defendant is incompetent, Rule 9.06 mandates that the trial court shall order a mental evaluation followed by a competency hearing to determine whether the defendant is competent to stand trial." Smith, 149 So. 3d at 1033 (¶16). "In the face of this plain language [of Rule 9.06], it is evident that it would be error not to hold a competency hearing once a trial court orders a psychiatric evaluation to determine competency to stand trial."

Rowland v. State (Rowland II), 98 So. 3d 1032 (Miss. 2012),. The Supreme Court has also said that a claim of ineffective assistance of counsel "might be excepted from the procedural

bars" in some cases "in exceptional circumstances." **Conley v. State**, No. 2011-M-01006, 2020 WL 949240, at *1 (Miss. Feb. 26, 2020) (emphasis added); see also **Chapman v. State**, 167 So. 3d 1170, 1174 (¶12) (Miss. 2015) (stating that an ineffective assistance claim was excepted from the procedural bars due to that case's "extraordinary circumstances").

Rogers v. Tennessee, 532 U.S. 451 (2001) (affirmed because, the Court and legislation made the change to the murder (common law), five years before Rogers' trial.

STATEMENT OF THE CASE

On January 22, 1999, Eric and his ex-girlfriend had visited their child together at the daycare where Eric paid \$35.00 a week for daycare every week, and visit with his son, however, said child was not there the day of the offense. Shorelonda knew Eric had planes to go to Memphis, TN. for the weekend. Eric's ex-girlfriend (Shorelonda Moore), had repeatedly called him on his voice-mail through his pager, asking to ride with him to Memphis that weekend and leave their child with her mother, (what was later discovered) whom came and got their child from daycare without Eric's knowledge. Shorelonda and Eric had words and Shorelonda, ended up hitting Eric in the head a few times with wooden clogs. Shorelonda was hitting Eric, because he accidentally told Shorelonda; "to stop calling his wife a b—ch". Shorelonda, realized the rumors that Eric had secretly married Tennille in Memphis, TN, was true.

Eric attempted to restrain Shorelonda by forcing her against the set, he did this by; putting his right hand against her neck and pushing her back against the set. He cannot remember what happen after that. However, he never denied causing her death. That is the reason he plead guilty before he could understand the law. Eric does know that he was born with a few defects. Eric was born with epilepsy⁵, dyslexia,⁶ and schizophrenia⁷ in which he has seizures and he has

⁵ Epilepsy: disorder of the nervous system, characterized either by mild episode loss of attention or sleeping or by sever convulsion with loss of consciousness.

⁶Dyslexia: a learning disability marked by difficulty in reading, writing, and spelling.

⁷ Schizophrenia, severe mental illness characterized by a variety of symptoms, including loss of contact with reality, bizarre behavior, disorganized thinking, and speech, decreased emotional expressiveness, and social withdrawal. Usually only some of these symptoms occur in any one person. The term schizophrenia comes from Greek words meaning "split mind." However, contrary to common belief, schizophrenia does not refer to a person with a split personality or multiple personality.

no memory of them, he also has a speech impediment.⁸ Eric received monthly disability checks for his birth defects. His reason for attempting to restrain Shorelonda, due to the fact of what he saw her doing; she was trying to obtain a big knife from her glovebox. In which Eric knew she would hurt him or kill him with due to the circumstances. She kept said knife in her glovebox incase Tennille had a weapon when they fought.

When Eric asked Tennille "was Shorelonda alive or dead," Tennille told Eric that she was not breathing and the nobody would understand, and Tennille instructed Eric to drive Shorelonda's car with the deceased inside to Memphis, TN. Eric did exactly what Tennille instructed him to do.

A day later Pontotoc Police Department, forced both Tennille and Eric down to the office of Pontotoc police station, in his truck, without any warrant or handcuffs. And was told "that they were being detained for questioning by Memphis police Department.

While in Pontotoc County jail, the Sheriff had to take Eric to the local clinic (Dr. Wing, because Brown had to restart his psy-medication. Brown attempted suicide, by cutting he left wrist with a piece of glass that he took out of the broken window in the jail.⁹

⁸ Because speech is a learned function, any interference with learning ability may be expected to cause a speech impairment. The most common interfering conditions are certain neuroses and psychoses, mental retardation, and brain damage, whether congenital or acquired. Articulation itself may be impaired by such physical disabilities as cleft palate, cerebral palsy, or loss of hearing; it may likewise deteriorate as a result of paralysis of any part of the articulating mechanism. Impairment may also be the consequence of unconscious imitation of poor speech models or inadequate perception of auditory stimuli.

⁹ Dr. Lott's report states that Brown cut his wrists in jail prior to trial; however, this alleged suicide attempt was not discussed during the plea colloquy. P. 26, Brown v. State, NO. 2014-CP-00434-COA

On July 20, 1999, Eric's attorney (James O. Ford) filed a motion for psychiatric assistance. On the same day, the trial court entered an order for a psychological examination, compelling Eric to undergo an examination at the psychiatric department of the Mississippi State Hospital. The Court had sufficient cause to believe that a psychological report on the defendant would be helpful to the Court in determining what disposition should be made of the above stated case." The order requested that the "psychiatrists include in their report: (1) a psychological analysis of [Brown]; (2) an opinion as to whether [Brown] is mentally capable of standing trial; and (3) whether [Brown] is in need of in-patient hospitalization."

On October 25, 1999, a staff psychiatrist at the Mississippi State Hospital faxed a request for information to Eric's attorney, James O. Ford. The request included information such as the trial court's order for evaluation, the motion requesting the evaluation or statement giving reasons why the examination was sought, prior psychiatric/psychological examinations or treatment, a statement describing the defendant's behavior in jail, a list of the medications the defendant was taking, and names of family members. The request stated that once the information was received, the hospital would schedule the evaluation. Mr. Ford never forward the State Hospital any requested information on his client (Eric LaQuinne Brown) mental history.

That is the reason it appears that the Mississippi State Hospital never received the requested information, and the evaluation was not scheduled. However, it is clear that Pontotoc' court-ordered psychological examination never occurred. On November 12, 1999, the State filed a motion for a psychiatric examination. The State moved for a psychiatric examination of Eric for the purpose of determining whether, by reason of some defect, disease, or condition of the mind or memory.

The State alleged the cause in support of the motion was that "the defendant may claim in the past he has exhibited "a history of some degree of mental illness" and "that the defendant has indicated through his attorney that a mental type defense will be used in the trial of this matter." Further, the motion provided "that it is necessary for the State to examine the capacity of the defendant by a competent mental health professional in order to properly try this cause." On the same day, the trial court granted the State's motion and entered an order compelling Eric to undergo a competency exam. to be performed by Dr. Criss Lott. The Pontotoc county jail took several statements from the jailors, and forward them to Dr. Lott, to meet the legal requirements for the court-ordered mental exam. Unlike Eric's court-appointed defense attorney.

On November 14, 1999, Dr. Lott conducted a psychological evaluation of Eric and prepared a report of his findings. On November 19, 1999, Dr. Lott's report was sent to the circuit court judge. The Pontotoc circuit court never conducted a mandatory competency hearing under UCCC Rule 9.06 (adopted May 01, 1995)¹⁰ as mandated.

On November 29, 1999, the trial court conducted a plea hearing. The trial court asked Eric if he was under the influence of drugs or alcohol. Eric replied, "No, sir." As somewhat of an afterthought, the prosecutor read Dr. Lott's report to the court, while Dr. Lott was not present¹¹. The prosecutor read Dr. Lott's report to the Judge through the plea hearing.¹² The judge

¹⁰ **Sanders v. State**, 9 So. 3d 1132, 1136 (¶16) (Miss. 2009). "once the trial court has reasonable ground to believe the defendant is incompetent, Rule 9.06 mandates that the trial court shall order a mental evaluation followed by a competency hearing to determine whether the defendant is competent to stand trial." Smith, 149 So. 3d at 1033 (¶16). "In the face of this plain language [of Rule 9.06], it is evident that it would be error not to hold a competency hearing once a trial court orders a psychiatric evaluation to determine competency to stand trial."

¹¹ **Bullcomings v. New Mexico**, 564 US 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011)

¹² In **Melendez-Diaz v. Massachusetts**, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), this Court held that a forensic laboratory report stating that a suspect substance was

confirmed that he had “seen” Dr. Lott’s report. However, the prosecutor informed the court that the report had been filed and that he would file the report following the conclusion of the plea hearing. Without the report having been filed, the trial court accepted Eric’s guilty plea as knowingly, freely, understandingly, and voluntarily entered, and sentenced him to life in prison for murder and twenty years for manslaughter, to run concurrently with the life sentence.

On or around July 14, 2020, Brown filed another Post-Conviction Motion in the Pontotoc holding to **Rowland v. State**, 42 So. 3d 503, 506 (¶ 9) (Miss. 2010),¹³ which allows offenders to overcome the normal procedural bars through a showing of constitutional errors that occurred in their case and allows the Mississippi Courts to hear their case and grant them relief. It took some time to get ruled on. Brown had to file a Mandamus to the Mississippi Supreme Court to force Pontotoc Circuit to actually acknowledge the July 14, 2020, filing of his July 2020, Post-Conviction holding to **Rowland I**, and **Rowland II**. The Circuit court issued an order that commands the prosecutor to file a response to the Petition within forty-five (45) days of entry of this Order.

cocaine ranked as testimonial for purposes of the Sixth Amendment’s Confrontation Clause. The report had been created specifically to serve as evidence in a criminal proceeding. Absent stipulation, the Court ruled, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the statements made in the report.

¹³ **Rowland v. State**, 42 So. 3d 503, 506 (¶ 9) (Miss. 2010). In the first **Rowland v. State**, the Mississippi Supreme Court decided unanimously: “[w]e take this opportunity to hold, unequivocally, that errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA.” **Rowland v. State (Rowland I)**, 42 So. 3d 503, 506 (Miss. 2010) (emphasis added). Thirty years after the defendant had pled guilty to the underlying crime, we reversed and remanded for an evidentiary hearing on the question of whether Rowland had been placed in double jeopardy, recognizing that “[t]he comparison of a seven year sentence, as opposed to a life sentence, without probation or parole[,] is too significant a deprivation of liberty to be subjected to a procedural bar.”

The Pontotoc's District Attorney: John Weddle, refused to file a response twice. Brown filed a Motion for "SUMMARY JUDGEMENT", in which the prosecutor failed to answer. On October 28,2021, the circuit court issued an "ORDER TO SHOW CAUSE"¹⁴ to the prosecutor. After Pontotoc denied Brown's Post-Conviction, he Appealed to the Mississippi Court of Appeals. However, the Mississippi Court of Appeals erroneously applied **Howell v. State**, 358 So. 3d 613 (Miss. 2023), to Brown's 2020, filed Post-Conviction appeal. Where the Court said: "Finally, although Brown argues that his ineffective-assistance claims are not barred because, in his view, effective assistance of counsel quaiches as a "fundamental right," the Mississippi Supreme Court has recently overruled any precedent that has held "the fundamental-rights exception can apply to the substantive, constitutional bars codified by the Legislature in the [UPCCRA]; **Howell v. State**, 358 So. 3d 613 (Miss. 2023). Thus, based on the supreme court's holding in **Howell**, we conclude that Brown's claim of a fundamental-rights exception fails to apply to or overcome the UPCCRA's litigation bars."

Brow filed a timely notice of appeal. He claimed on appeal that an **Ex Post Facto violation** occurred and that Court of Appeals has rendered a decision which is in conflict with a prior decision of the Court of Appeals decision.¹⁵ Brown filed a timely petition for writ of

¹⁴ (here attached) "this Court has been advised that the State of Mississippi, by and through the Office of the District Attorney, has failed to respond to Petitioner's Motion for Post-Conviction Collateral Relief, as ordered by this Court on May 10, 2021, and filed on May 13, 2021. The Court notes that the State of Mississippi received an additional thirty (30) days in which to file its response on August 20, 2021. The time allowed for the State of Mississippi to respond to the Motion has passed, and based upon such information, the Court *sua sponte*, dose hereby order **District Attorney John Weddle**, or his assistant, to appear in person before this Court and show cause, if any he can, why he should not be held in contempt of this Court and duly punished for his failure to abide by the terms and conditions of said prior order."

¹⁵ M.R.A.P. rule 17 (a) (1): Cases in which it appears that the Court of Appeals has rendered a decision which is in conflict with a prior decision of the Court of Appeals or the published Supreme Court decision.

certiorari in the Mississippi Supreme Court; however, the petition was denied without any answer. Brown understands that the Mississippi Supreme Court is the ones who actually issued the decision in **Howell v. State**'s, however, that decision, took away the exceptions to overcome the procedural rules in **UPCCRA**. The ruling in **Howell v. State**, changed the procedural rules and procedural laws, years after Brown filed his Post-Conviction Motion in 2020. Thus, Brown had no way of overcoming any procedural bars.¹⁶

In 2021, the Pontotoc circuit court denied said Post-Conviction Motion. Brown filed an appeal to the Mississippi Court of Appeal, in which they erroneously applied **Howell v. State**, No. 2020-CA-00868-SCT. Supreme Court of Mississippi, January 26, 2023, to Brown's case that was pending at the time **Howell** was decide January 26, 2023. Brown filed a motion for rehearing through a motion invoking the "Mail Box Rule" and petition to extension of time through **M.R.A.P.41 (b)**, recalling the mandate that was issued June 13,023. On June 05, 2023, and the motion for rehearing was accepted as timely however, was denied on Tuesday, 10, day of October, 2023. Brown file a timely petition for a writ of certiorari to the Mississippi Supreme Court on. On December 18, 2023. Brown's petition for writ of certiorari was denied. (**Here attached**)

¹⁶ **Rowland v. State** (Rowland II), 98 So. 3d 1032 (Miss. 2012),. The Supreme Court has also said that a claim of ineffective assistance of counsel "might be excepted from the procedural bars" in some cases "in exceptional circumstances." **Conley v. State**, No. 2011-M-01006, 2020 WL 949240, at *1 (Miss. Feb. 26, 2020) (emphasis added); see also **Chapman v. State**, 167 So. 3d 1170, 1174 (¶12) (Miss. 2015) (stating that an ineffective assistance claim was excepted from the procedural bars due to that case's "extraordinary circumstances").

REASONS FOR GRANTING THE PETITION

This Petition for a Writ of Certiorari to the U.S. Supreme Court, should be granted, the facts and circumstances in this case makes out a clear Due-Process violation under “failure to notify”¹⁷, where the Mississippi Supreme Court acted like the legislative branch, and changed the procedural rules in Mississippi Uniform Post Conviction Collateral Relief Act (UPCCRA), without notifying the appellant or the public. In a time when the appellant was pending in the Mississippi Appeals Courts. this is a clear Due-Process violation, that should not have happened.

CONCLUSION

Petitioner prays that this U.S. Supreme Court answer this important question; is it a Due-Process violation when a State Supreme Court changes the procedural rules through over ruling a decade of law that allowed appellants to overcome the three-year bars and other procedural bars, and applies the new decision to a case that was pending years before the new decision was handed down? The petition for a writ of certiorari should be granted.

Respectfully Submitted by: Eric LaQuinne Brown on March 14, 2024.

¹⁷ **Rogers v. Tennessee**, 532 U.S. 451 (2001) (affirmed because, the Court and legislation made the change to the murder (common law), five years before Rogers’ trial.