

No. _____

IN THE
Supreme Court of the United States

KALAMICE PIGGEE,

Petitioner,

v.

GENA JONES, WARDEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Nearly two years after being restored to competency, Petitioner Kalamice Piggee's mental illness resurged and his trial counsel declared doubt as to his competency. When the trial court denied counsel's request for a competency hearing, trial counsel came back with an expert opinion that Piggee was incompetent, based on a recent jail visit where the expert observed that Piggee was significantly impaired and learned that he was no longer compliant with his medication and was nearing another involuntary medical hold. The trial court still refused to hold a competency hearing, citing concerns about courtroom management and wasted trial resources and denying the existence of a right to a retrospective competency determination, even by a matter of days, or to competency during all parts of the trial.

Despite the trial court's clear errors, the court of appeal affirmed without ever addressing them, instead independently searching the record and misapplying state law to find reasons one might have set aside the expert's opinion, *i.e.*, impermissibly weighing the evidence without a hearing. The federal courts then further insulated the trial court's errors by holding that, because a doubt is subjective, they could not hold that no fair-minded jurist would disagree with the trial court's subjective lack of doubt on the given record.

None of these courts actually applied this Court's precedent requiring a trial court to hold a competency hearing if substantial evidence of potential incompetency arises from any source. The question presented is thus whether the

Ninth Circuit's decision here sanctioned such a departure from this Court's precedent as to call for this Court's supervisory power.

LIST OF PARTIES

All parties to this proceeding are listed in the caption.

RELATED PROCEEDINGS

1. *Kalamice Piggee v. William Muniz*, case no. 22-55770 (9th Cir. Feb. 26, 2024)
2. *Kalamice Piggee v. William Muniz*, case no. 2:17-cv-07384-FLA-SK (C.D. Cal. Jul. 19, 2022)
3. *People of the State of California v. Kalamice Piggee*, case no. S235057 (Cal. Jul. 13, 2016)
4. *People of the State of California v. Kalamice Piggee*, case no. B260410 (Cal. Ct. App. May 18, 2016)
5. *People of the State of California v. Kalamice Piggee*, case no. YA089772 (L.A. Cty. Super. Ct. Nov. 6, 2014)
6. *People of the State of California v. Kalamice Piggee*, case no. YA083790 (L.A. Cty. Super. Ct. Mar. 6, 2014)

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OPINIONS BELOW

Kalamice Piggee (“Piggee” or “Petitioner”) petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit’s memorandum affirming the district court’s final judgment denying habeas relief is unreported. Petitioner’s Appendix (“Pet. App.”) A-1-6. The district court’s final judgment (Pet. App. B-7), order adopting the magistrate judge’s report and recommendation, denying relief, and granting a certificate of appealability (Pet. App. C-8-14), and said report and recommendation (Pet. App. D-15-51) are unreported. The California Supreme Court’s order denying Petitioner’s petition for review on direct appeal is unreported. Pet. App. E-52. The California Court of Appeal’s order denying rehearing (Pet. App. F-53) and order affirming the trial court’s denials of trial counsel’s requests for a competency hearing (Pet. App. G-54-67) are unreported.

JURISDICTION

The Ninth Circuit’s memorandum affirming the district court’s denial of habeas relief was filed on February 26, 2024. Pet. App. A-1-6. The district court had jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 2254. The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 2253. This Court has

jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed under United States Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. XIV, § 1

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.

28 U.S.C. § 2254 (a)

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254 (d)

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

I. Piggee's trial counsel raises a doubt as to his competency before trial.

Petitioner Kalamice Piggee's mental health issues were central to his case from the very beginning. In April 2012, approximately one month after being arrested and charged, he was evaluated by an expert who opined that he was not presently competent to stand trial. Pet. App G-57. At his first appearance for a preliminary hearing on April 23, 2012, his counsel declared a doubt which then trial court judge Hector Guzman joined. Pet. App. G-57; Pet. App. Q-159-61. Piggee was found incompetent and committed to Patton State Hospital for restoration of competency. Pet. App. G-57. His case was resumed via the filing of a certification of competency with the court on August 2, 2012. Pet. App. G-57.

Trial judge Eric Taylor took over Piggee's case on or about October 29, 2012. Pet. App. G-57. Piggee and Taylor had a difficult relationship, with Piggee often seeking the court's direct attention to his pleas that his conditions of confinement were untenable and that he was innocent in light of his mental illness, sometimes ensuring he was heard by talking over the court and his counsel or through

Marsden motions. *See* Pet. App. G-57-62. Piggee would also often be absent from court, requiring the court to have him forcibly extracted. *See* Pet. App. G-57-62.

At the same time, Piggee's arguments as to his mental state at the time of the offense were not unfounded. On February 27, 2013, Piggee entered a plea of not guilty by reason of insanity, and his counsel subsequently submitted two expert opinions in support of his defense. Pet. App. G-58; *see also* 3-ER-456-462; 3-ER-482-85.¹ But, on March 6, 2014, the court granted defense counsel's motion to dismiss the case for failure to prosecute after the state lost contact with the victim. Pet. App. G-58; 2-ER-262.

The state refiled its case approximately one month later, and Piggee appeared for his second preliminary hearing on April 17, 2014, now represented by a new attorney, Richard Ewell. Pet. App. P-149. Piggee was so incensed that he had to be removed from the courtroom, and Ewell proceeded over his objection as to Piggee's absence and pursuant to a California law allowing a preliminary hearing despite doubts of competency. Pet. App. P-149-58. As the parties prepared for trial, Piggee continued to speak freely on the record, make *Marsden* motions, and fail to appear for court. Pet. App. G-59. On June 27, 2014, Piggee was extracted under the understanding that he was going to enter an NGRI plea, but was instead preoccupied with getting Judge Taylor to allow him to speak. When Judge Taylor denied his request, he said he needed more time to think about the plea. 4-ER-659-

¹ The state's own probation report would also later state that "[t]he defendant was suffering from a mental or physical condition that significantly reduced his culpability for the crime." 4-ER-591.

663. The clashes between Piggee and Taylor continued, and escalated to such a degree that, on August 26, 2014, the clerk's transcript reported that Piggee was "very combative and proceeds to over talk the court/ yelling and so forth." 3-ER-344.

At a trial readiness hearing on September 3, 2014, Piggee again was not present. Pet. App. O-139. Ewell formally declared a doubt as to Piggee's competence, averring that Piggee was no longer "able to effectively communicate with counsel." Pet. App. O-139-40. Ewell specifically noted that, while Piggee had "always been very difficult . . . in court," he now "seem[ed] to be clearly delusional" outside of court. Pet. App. O-140. Ewell made clear that he was not saying Piggee has always been incompetent, but that things had "gradually gotten worse from the time [Ewell] first met him" and that things had "gotten to the point where [he did] have some serious concerns about [Piggee's] competency." Pet. App. O-140. The prosecution argued that, as a matter of state law, Piggee was not entitled to "a second competency hearing" unless he could "show a substantial change of circumstances or new evidence casting a serious doubt on the validity of [the first finding of competence]." Pet. App. O-140-41. He also argued that Piggee had "found a way to manipulate the system" and that, because the case was "a refile," he would not get another chance at trial. Pet. App. O-140-142. Ewell reiterated that, while the prosecution and the court may have seen Piggee's absence as par for the course, Ewell, who was engaging with Piggee between appearances for the past six months, had noticed the gradual deterioration of his faculties, to the point that he could no longer assist counsel, and that he, not Piggee, was the one seeking a competency

hearing, so it could not have been a delay tactic on Piggee's part. Pet. App. O-142-43.

Judge Taylor responded that he had "had a lot of time to evaluate and observe Mr. Piggee," that "the show starts" whenever Piggee comes into court, and that, because he and other judges had had similar problems getting Piggee to behave in court, and Piggee now appeared to be misbehaving for Ewell, that "it [didn't] seem anything has changed for him." Pet. App. O-143-44. He further stated that Piggee's absence was "his way of manipulating, but I will not be manipulated. The trial will start on time." Pet. App. O-145. Lastly, Judge Taylor told Ewell to communicate to Piggee that he would not be extracted for trial, so, if he did not come of his own accord, the trial would proceed without him. Pet. App. O-148.

II. Piggee is tried in absentia while counsel continues to assert that his absence may be due to his mental illness.

Despite counsel's best efforts, Piggee never made it to his trial, which took place from September 8, 2024, through September 10, 2024. Pet. Apps. L, M, N. Each day, Ewell renewed his request to have Piggee extracted, sighting his concerns about Piggee's worsening mental health and his need to be present to enter an NGRI plea. Pet. Apps. L, M, N. On September 8, the first day of trial, Ewell requested that Piggee be extracted so he could enter an NGRI plea; the court denied that request. Pet. App. N-134-37. The court in turn remarked that he already "went into [Piggee's] jail cell on one occasion" to tell him he needed to come to court, and "we just can't do this with every case, and everybody starts telling us to come in the hallway, come to their house. I'm not going to do that." Pet. App. N-136-37. The

court also stated: “we’ve been over the mental illness issue. . . . Things haven’t really changed at all, so, we’ll move forward.” Pet. App. L-123. On September 10, 2014, the prosecution rested, the defense did not present any evidence, counsel gave closing arguments and jury deliberations began. 3-ER-355.

III. Counsel renews his request for a competency hearing, this time equipped with an expert opinion that Piggee is incompetent to stand trial.

The next court day was September 15, 2014. Pet App. K. While the jury was still deliberating, Ewell renewed his declaration of doubt, this time equipped with a competency opinion by court-appointed expert Dr. Sara Hough. Pet. App. K-93-96. Hough evaluated Piggee over the weekend and Ewell received the report that morning. Pet. App. K-93-96. Hough opined that Piggee was not presently competent to stand trial, noting that his mental condition was significantly impaired when she saw him, and that he was no longer medication compliant and was nearing an involuntary hold. Pet. App. K-93-94; 3-ER-527-30. Ewell also reported that his supervisor Candace Glover independently harbored a doubt as to Piggee’s competency based on calls Piggee had made to her that sounded delusional and incompetent. Pet. App. K-95-96. Though Piggee had been calling Glover “on an ongoing basis for some time,” she thought “that this was a whole other level of Mr. Piggee suffering from some of sort [sic] delusions.” Pet. App. K-95-96.

The prosecution did not question the veracity or substance of Ewell’s evidence, instead arguing that a competency report post-dating the trial was not relevant to the lawfulness of the trial itself. Pet. App. K-94. Ewell responded that he was asserting, based on the report, that Piggee was incompetent throughout the

trial for which he was absent, as Ewell had reported he believed he was just before the trial began. Pet. App. K-94-95.

Rather than order a competency hearing based on Ewell's prior and continued declaration of doubt, now buttressed by Glover's declaration of doubt and Dr. Hough's expert report and opinion, Judge Taylor chided Ewell for seeking the expert evaluation without his permission. Pet. App. K-95-96. The court then adopted the prosecution's argument that Dr. Hough's report would only affect whether Piggee was competent for the upcoming trial on his strike offense. Pet. App. K-96-97. When Ewell again clarified that he was arguing that he was presenting new evidence sufficient to require a hearing as to whether Piggee was competent at the time of trial (Pet. App. K-99-100), the court insisted that Piggee could not have a right to a retroactive competency determination because such a law would be a "huge slippery slope" allowing defendants to later challenge their convictions on the grounds that they were actually incompetent during their trials. Pet. App. K-106-07. The court also questioned whether declaring a doubt would "risk . . . everything we've already done," as whether Piggee's competency was even necessary given the limited nature of a prior strike trial. Pet. App. K-107-08. The court once again denied Ewell's request to stop the proceedings for a competency hearing, and the jurors then delivered their guilty verdicts. Pet. App. K-111-15. The court then held the prior strikes trial, for which the jury's verdict was likewise guilty. 3-ER-416-18.

The next day, September 16, 2014, Piggee was forcibly brought to the courthouse but still failed to enter the courtroom. Pet. App. J-87. Ewell reported that Piggee had asked him if he (counsel) had killed Dr. Hough and said that he (Piggee) "had witches on his feet." Pet. App. J-87. Ewell renewed his request for a competency hearing. Pet. App. J-88. Judge Taylor again refused to declare a doubt, but stated:

I'm not sure if this continues to be manipulative behavior I've seen throughout this case or if it is something else, but in an abundance of caution and in the interest of justice, I think it's best to proceed this way. At least here, Mr. Ewell, since there's really nothing for us to lose at this point except a delay in sentencing. Mr. Piggee is in lockup so he's not a danger to the public. So, if you would like to have somebody examine him, I welcome you to if the people would like.

Pet. App. J-91. The people accepted the court's offer of an expert and Judge Taylor put off sentencing to hear from both sides at the next appearance on whether he should declare a doubt. Pet. App. J-91-92.

Six weeks later, on October 30, 2014, the parties appeared for Judge Taylor's follow-up proceedings to decide whether to declare a doubt. Pet. App. I. The prosecution secured a report from a Dr. Tumu, who opined that Piggee was competent when he saw him, and that he could exaggerate his symptoms, but also that Piggee had been forcibly hospitalized and medicated since Dr. Hough saw him. Pet. App. I-81-83; 3-ER-532-39. The court held that, since Dr. Tumu has most recently opined that Piggee was competent, he would not be holding a competency hearing. Pet. App. I-83.

A week later, on November 6, 2014, Ewell moved for a new trial on the grounds that Piggee was not competent during trial. Pet. App. H-70-71. Judge Taylor denied the motion for a new trial and sentenced Piggee to seven years plus twenty-five years to life, the sentence sought by the prosecution. Pet. App. H-72-79.

IV. The California Court of Appeal asserts that state rather than federal law controls in Piggee's case and impermissibly re-weights the evidence of incompetency before the trial court despite the fact that a competency hearing was never held.

Piggee argued on direct appeal that the trial court violated his federal due process rights by failing to hold a competency hearing as required by *Pate v. Robinson*, 383 U.S. 375 (1966). Pet. App. G-55. The court of appeal affirmed the trial court's decision, citing *People v. Jones*, 53 Cal. 3d 1151, 1153 (1991), for the proposition that “[w]hen a competency hearing has already been held and the defendant has been found competent to stand trial, however, a trial court need not suspend proceedings to conduct a second competency hearing unless it “is presented with a substantial change of circumstances or with new evidence” casting a serious doubt on the validity of that finding.” 1-ER-58. The court then held that the “prerequisites to [a] second competency hearing [were] not established,” holding that the court could have chosen to rely on its personal observations and Dr. Tumu's report because Dr. Hough's report did not speak specifically to California law's “elements” for requiring a second competency hearing, and because the court may have found Dr. Tumu's report more thorough and reliable than Dr. Hough's. Pet. App. G-64-67.

Piggee petitioned the court of appeal for rehearing, which it denied on May 18, 2016 (Pet. App. F-53), and then petitioned the California Supreme Court for review, which it summarily denied on July 13, 2016 (Pet. App. E-52).

V. The lower federal courts deny Piggee's claim based on arguments that AEDPA requires deference to the court of appeal's speculation as to the trial court's factual conclusions, even if neither were guided by federal law.

Piggee next filed his procedural competency claim in the Central District of California. The court denied the claim, providing reasoning in both the Magistrate Judge's Report and Recommendation (Pet. App. D.) and the order adopting it (Pet. App. C). Piggee then appealed the district court's holding to the Ninth Circuit, which affirmed the District Court's decision in a memorandum disposition. Pet. App. 1-6. All three decisions can ultimately be summed up as concluding that:

- The trial court's legal errors were of no moment if its factual conclusion was not patently unreasonable under clearly established federal law or were not controlled by clearly established federal law.
- Whether or not the trial court was presented with substantial evidence Piggee might have been incompetent, the ultimate question was, under AEPDA, whether the trial court was objectively unreasonable for not personally holding a bona fide doubt as to Piggee's competency.
- The courts could not say that no fair-minded jurist who, as the trial court had, had observed Piggee be contumacious and sophisticated from time to time, was objectively unreasonable for not believing that Piggee's failure to communicate effectively with his counsel in the weeks and days leading

up to the trial was willful, as opposed to being a result of his failure to take his medication and the concomitant increase in his clinically observed symptoms of mental illness.

Pet. Apps. A, C, D. This petition for a writ of certiorari now follows.

REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit's approach to state courts' reasoning absolved the state courts of any obligation to comply with this Court's precedent or protect Piggee's procedural competency rights.

This Court's precedent governing Piggee's procedural competency rights include *Pate v. Robinson*, 383 U.S. 375 (1966); *Dusky v. United States*, 362 U.S. 402 (1960); *Drope v. Missouri*, 420 U.S. 162 (1975); and *Godinez v. Moran*, 509 U.S. 389 (1993), as well as statutory law that is understood to reflect the minimum process required. In light of the trial court and the California Court of Appeal's marked departure from the principles espoused in these cases and laws, their denial of Piggee's procedural competency claim cannot be said to have reasonably applied clearly established federal law, and the federal courts failed to hold the state courts to that burden.

A. The trial court and court of appeal dismissed trial counsel's initial declaration of doubt based on an inapposite state case.

At trial counsel's first declaration of doubt, the court adopted the prosecution's suggestion that, because Piggee had been restored to competency earlier, *the court* had to observe some change in Piggee's demeanor or circumstances before a second competency hearing was allowed. Pet. App. O. The court of appeal in turn said it did not have to consider this declaration of doubt at all because "the

issue of a second competency hearing was not properly before the court” until counsel produced an expert report. Pet. App. G-64-65. This requirement does not comport with this Court’s holding that “evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but . . . even one of these factors standing alone may, in some circumstances, be sufficient.” *Drope*, 420 U.S. at 180. This Court has further held that, while counsel’s declaration of doubt is not determinative, “an expressed doubt in that regard by one with ‘the closest contact with the defendant’ . . . is unquestionably a factor which should be considered.” *Id.* at 177 n.13. State law cannot alter, delete or change the factors this Court has held to be relevant to a constitutional right’s violation. See *Price v. Vincent*, 538 U.S. 634, 640 (2003).

Second, the rule regarding “second” hearings that the prosecution asked the trial court to apply was neither factually apposite nor logically sound under this Court’s precedent, reasonably construed. As this Court held in *Drope*, “a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.” *Drope*, 420 U.S. at 181. There is no mention of relaxation of this standard merely because a defendant was competent before (indeed, all defendants were presumably competent up until the time that they were not). Plus, Piggee *did not* have a competency hearing at the time that he was declared competent and his trial proceedings were resumed -- he was merely declared competent by Patton State

Hospital. Piggee's case is like the Second Circuit case *United States v. Houston*, 603 F. App'x 7 (2d Cir. 2015), where "the district court did not make its prior competency determination based on a full competency hearing, but instead relied solely on the written report of the psychiatrists who examined [the defendant] at [the facility that restored his competency]." *Id.* at 9. In that case, the Second Circuit rightly held that such prior finding of competency deserved *less weight* because it "was never subjected to critical scrutiny at a competency hearing." *Id.*² The *Houston* court held that the trial court abused its discretion by weighing this prior finding of competency higher than trial counsel's declaration of doubt, and remanded the case for the district court to hold a retrospective competency hearing, if possible. *Id.* at 9-10.

Lastly, regarding the trial court's suspicion that Piggee's lack of effective communication with his counsel was a delay tactic, this Court considered that issue in *Droppe* as well. There, when the sentencing judge suggested that "motions for psychiatric examinations have often been made merely for the purpose of delay," the Court held that such a concern did not automatically outweigh counsel's declaration of doubt. *Droppe*, 420 U.S. at 177 n.13. Moreover, the court held that this

² Indeed, the California Supreme Court came to the same conclusion itself in *People v. Rodas*, 6 Cal. 5th 219 (2018), when it admonished courts that were misapplying its rule from *Jones* to cases like Piggee's. The Court clarified that "[t]he effect of the *Jones* rule is simply to make clear that the duty to suspend is not triggered by information that substantially duplicates evidence already considered at an earlier, formal inquiry into the defendant's competence; when faced with evidence of relatively minor changes in the defendant's mental state, the court may rely on a prior competency finding rather than convening a new hearing to cover largely the same ground." *Id.* at 235. "This rule does not, however, alter or displace the basic constitutional requirement of *Pate* . . . which require[s] the court to suspend criminal proceedings and conduct a competence hearing upon receipt of substantial evidence of incompetence even if other information points toward competence." *Id.*

only highlighted the need to hold competency proceedings sooner rather than later in “the interests of fairness” and “sound judicial administration.” *Id.*; *see also United States v. Ramirez*, 304 F.3d 1033, 1035 (11th Cir. 2002). The Court also praised the Circuit Attorney’s practice, at that time, of consenting to any requests for a psychiatric evaluation without regard for their merits so as to resolve the issue without extending any delay the defendant was believed to be seeking. *Drope*, 420 U.S. at 177 n.13.

In conclusion, the state courts’ rejection of Piggee’s trial counsel’s first declaration of doubt was based on reasoning that erroneously ignored federal law in favor of state precedent.

B. Trial counsel’s second declaration of doubt, accompanied by an expert declaration, was clearly rejected based on the trial court’s misapprehensions of a defendant’s competency rights.

When trial counsel returned to court during jury deliberations with an expert report and opinion that Piggee was incompetent, there was no justification consistent with clearly established federal law for not granting Piggee a competency hearing, as the report was substantial evidence of incompetency, and the court never gave any reason for believing it was not. Instead, the trial court asserted that Piggee did not have a right to have his competency considered during jury deliberations, that Piggee did not have a right to introduce evidence generated after his trial to have his competency at the time of trial revisited, and that the court had to consider whether holding a competency hearing would jeopardize the jury’s

verdict or availability for the prior's trial in the future. Each of these arguments is in direct contravention with federal law.

First, federal law provides that a defendant can call for a competency hearing “[a]t any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant.” 18 U.S.C. § 4241; *see also, e.g.*, 1 Third Circuit Criminal Handbook § 5.03 (“A defendant must be competent to stand trial, and must remain so through all proceedings, including sentencing.”). So, the trial court plainly erred in concluding that Piggee's competency was not relevant if the proceedings did not require his participation. Likewise, if a defendant must be competent at all times, it only stands to reason that a court cannot circumvent a defendant's right to competency by simply waiting until the defendant is competent to take evidence on the matter. On the contrary, courts can, and indeed, must, conduct retrospective competency hearings about a defendant's competency at some time in the past if (1) the court had sufficient cause to do so at the time but failed to or (2) the defendant is able to produce sufficient evidence after the fact to call into question his competency at the time. *See Pate*, 383 U.S. at 387.

Second, on the matter of a desire to conserve judicial resources, this Court wrote in *Drope*:

Whatever the relationship between mental illness and incompetence to stand trial, in this case the bearing of the former on the latter was sufficiently likely that, in light of the evidence of petitioner's behavior including his suicide attempt, and there being no opportunity without his presence to evaluate that bearing in fact, the correct course was to suspend the trial until such an evaluation could be made. That this might have aborted the trial is a

hard reality, but we cannot fail to note that such a result might have been avoided by prompt psychiatric examination before trial, when it was sought by petitioner.

Drope, 420 U.S. at 181-82. Thus, a trial court is not permitted not to hold a competency hearing because it wishes not to jeopardize its verdict, particularly where the delay in resolving petitioner's claim threatens to obviate relevant evidence like the petitioner's functioning at the time of the declaration of doubt as to competency.

Thus, here again, had the trial court properly applied federal law, it would have simply assessed whether counsel's doubt, his supervisor's doubt, and his expert's opinion in favor of incompetency, singly or in concert, constituted substantial evidence of incompetency triggering an evidentiary hearing. But we do not have this analysis to review because the trial court was not following federal law.

C. The state courts' adoption of Dr. Tumu's report over Dr. Hough's report was quintessentially impermissible weighing of evidence without an evidentiary hearing.

Finally, when, after verdicts but before sentencing, the trial court accepted a report from the prosecution's expert opining that Piggee was then competent, despite also acknowledging the change in circumstances from when Piggee was evaluated by Dr. Hough, the court continued to demonstrate its mistaken belief that a later finding of competency cured an earlier potential lack of competency, as opposed to the court being required to determine whether the evidence of incompetency available to the court at the time the petitioner raised a doubt was

substantial. Inherent in this error is also a failure to reasonably consider that competency waxes and wanes, such that Piggee may well have been incompetent when he was evaluated by Dr. Hough and competent when he was evaluated by Dr. Tumu. This just underscores the trial court's misapprehension that it was not required to make a retrospective competency determination regarding Piggee's need for a competency hearing at the time of trial. And the court of appeal's attempt to cure this error by suggesting the trial court had simply weighed the two reports against each other and found Dr. Tumu's more convincing is not availing because this Court's precedent reasonably counsels that the trial court's role was limited to making a threshold determination of substantiality and ordering a hearing if that threshold was reached by any one piece of evidence or the evidence presented collectively. *See De Kaplany v. Enomoto*, 540 F.2d 975, 981 (9th Cir. 1976) ("The function of the trial court in applying *Pate*'s substantial evidence test is not to determine the ultimate issue. . . . [Its] sole function is to decide whether there is any evidence which, assuming its truth, raises a reasonable doubt about the defendant's competency.).

In light of the aforementioned extreme departures from this Court's procedural and substantive competency jurisprudence, the Ninth Circuit gravely erred in not correcting the state courts' dereliction of duty to protect Piggee's right to a competency hearing, and this Court should exercise its supervisory power to right that wrong.

CONCLUSION

For the foregoing reasons, Petitioner Kalamice Piggee respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

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DATED: July 25, 2024

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