

No. 16-6173

ORIGINAL

FILED

NOV 21 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

James Louis Lance II — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES Louis Lance II

(Your Name)

9601 SPUR 591

(Address)

AMARILLO, TEXAS 79107

(City, State, Zip Code)

(806) 381-7080

(Phone Number)

QUESTION(S) PRESENTED

Did the Texas Court of Criminal Appeals err in denying Applicant's contention that the trial court did not conduct a proper competency inquiry because there was enough evidence to create a bona fide doubt regarding applicant's competency, thereby violating Applicant's rights to due process?

Did the Texas Court of Criminal Appeals err in denying Applicant's contention that the trial court should have empaneled a jury for a competency hearing because there was substantial evidence and applicant certainly provided more than none or a scintilla of evidence regarding applicant's competency, thereby violating Applicant's rights to due process?

LIST OF PARTIES

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

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

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-8
REASONS FOR GRANTING THE WRIT.....	9-13
CONCLUSION.....	14

INDEX TO APPENDICES

APPENDIX A	WHITE CARD DENIAL FROM TEXAS COURT OF CRIMINAL APPEALS
APPENDIX B	APPLICANT'S SUGGESTIONS PURSUANT TO RULE 79.2(d) TO COURT OF CRIMINAL APPEALS WITH ATTACHED EXHIBITS 1-7

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Boyette v State, 545 S.W. 3d 556, 563, (Tex. Crim. App. 2018).....	10
Droe v Missouri, 420 U.S. 162, 171 (1975).....	10

STATUTE AND RULES

Texas Code of Criminal Procedure Article 46B. 024 (2), (4), (5)....	11
--	-----------

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

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

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

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

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

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

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

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

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was 10/23/24.
A copy of that decision appears at Appendix 11.

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

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Petitioner, James Louis Lange II, (hereinafter Petitioner), was a forceps delivery with bruising of the left temple area. At the time Petitioner was two years old he suffered febrile seizures, but was later diagnosed with a seizure disorder. Petitioner suffered from Gran Mal seizures until the age of 20 or so. Starting in Kindergarten, Petitioner could not complete school work. A child psychologist diagnosed Petitioner as mental retardation possible caused by minimal brain damage. Petitioner was placed in special education throughout his years attending school. Petitioner worked at several jobs with others with mental illnesses but could not work at the speed or competence so he was granted disability insurance. Petitioner was a lifelong client of MHMR, several disability services, and for years a client of HealthMark Group. A download letter from BLUEBONNET TRAILS COMMUNITY SERVICES covering several years and spans over 1300 pages is available in the appendices for this court to access.

Petitioner was charged with sexual assault of a child by way of

indictment. During the time of his indictment Petitioner made a threat to solicit a murder and was also charged with that.

Petitioner was passed back and forth between 2 or 3 attorneys who worked under the Law Office of Alex R. Hernandez, Jr. All were a part of Petitioner's defense. Attorney, Gary Magnuson ,immediately recognized that Petitioner was mentally retarded and incompetent and filed three separate Motions: MOTION TO HAVE DEFENDANT EXAMINED FOR COMPETENCY; DEFENDANT'S MOTION TO DISCOVER EVIDENCE OF INSANITY, INCOMPETENCE OR DIMINISHED MENTAL CAPACITY OF DEFENDANT, AND NOTICE OF INSANITY DEFENSE.

The trial court ordered Petitioner to be examined by Raleigh D. Wood, Ph.D, a licensed psychologist who examined Petitioner and found him to be competent to stand trial. However, and it should be noted to this Court that Dr. Wood's Competency Evaluation in almost every category states that Petitioner was in the **Borderline Range, the 8th percentile and within**

the poor range. When asked by Dr. Wood on page 154 capacity to engage in a reasoned choice of legal strategies and options, Dr. Wood writes: “He is unsure of the plea of no contest and when this is explained to him states “I’m not sure I understand.” This exhibit is attached in the appendices.

Another attorney, Sam Fugate, advised Petitioner to plead guilty to a 50-year plea bargain and the trial court accepted the plea bargain. Petitioner through this writer, filed an Application for a Writ of Habeas Corpus alleging that the trial court did not conduct a proper competency inquiry because there was enough evidence to create a bona fide doubt regarding Petitioner’s competency, thereby violating Petitioner’s right to due process and that the trial court should have empaneled a jury for a competency hearing because there was substantial evidence and Petitioner certainly provided more than none or a scintilla of evidence regarding Petitioner’s competency, thereby violating Petitioner’s rights to due process.

The trial court denied the application for writ of habeas corpus.

However, upon review of the application for writ of habeas corpus the Texas Court of Criminal Appeals issued an ORDER back to the trial court to order trial counsel to respond to Petitioner's claims.

The trial court accepted attorney, James Kingman's affidavit stating that the Court finds him to be credible. The attorney asserted that Petitioner was able to assist him in the preparation of the defense and that Petitioner understood the nature of the proceedings well enough to answer Counsel's questions. However, the affidavit is signed by attorney, Sam Fugate, who presided over the plea hearing and not James Kingman. Nonetheless, the trial court in responding to the higher court's order states in part: "I do not intend to hold a hearing, if possible, but to rely on affidavits." I order counsel to provide a response to applicant's claim. If the affidavits are adequate I will make findings of fact and conclusions of law with them. If not, I will schedule a full hearing and subpoena witnesses.

The trial court made findings on one attorney's affidavit alone. The trial court ignored the affidavit of Petitioner and Petitioner's mother of Petitioner's mental health history.

The Texas Court of Criminal Appeals then denied the writ without written order. Petitioner filed Suggestions to Reconsider to the Texas Court of Criminal Appeals which is the basis of this request for certiorari to be granted. Had the trial court scheduled a full hearing and heard the evidence of Petitioner's competency through his mother but also by mental health experts who would have testified that Petitioner would not be competent to understand the charges against him or make any rational decision regarding his defense. Instead, the trial court relied on one attorney's affidavit alone and denies relief.

Petitioner, in his Suggestion's to Reconsider to the Texas Court of Criminal Appeals and request to this Honorable Court is that both the trial court and the court of criminal appeals never addressed Petitioner's Grounds for Relief in the writ of habeas corpus which will be discussed in the reasons why certiorari should be granted in this case.

REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. The Texas Court of Criminal Appeals, against their own case law have denied relief in this case, thereby denying Petitioner a matter of constitutional due process, because Petitioner was incompetent to stand trial. The Texas Court of Criminal Appeals in this case has so far departed from their accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

The two grounds Petitioner alleged in his initial writ of habeas corpus, or in Petitioner's suggestions to the Texas Court of Criminal Appeals have never been addressed. These grounds are as follows:

GROUND FOR RELIEF NUMBER ONE

(Petitioner) Applicant contends that the trial court did not conduct a proper competency inquiry because there was enough evidence to create a bona fide doubt regarding applicant's competency, thereby violating Applicant's rights to due process.

GROUND FOR RELIEF NUMBER TWO

(Petitioner) Applicant contends that the trial court should have empaneled a jury for a competency hearing because there was substantial evidence and applicant certainly provided more than none or a scintilla of evidence regarding applicant's competency, thereby violating Applicant's rights to due process.

A fundamental principle of our criminal justice system is that, as a matter of constitutional due process, an incompetent criminal defendant may not stand trial. **See Boyette v State, 545 S.W. 3d 556, 563 (Tex.Crim.App. 2018); Droe v Missouri, 420 U.S. 162, 171 (1975)**(“**It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial.”**).

Petitioner contends that the information Petitioner and his mother told the court and Dr. Woods about his mental condition during the competency inquiry was sufficient evidence to require a competency hearing before a jury. This is Petitioner's grounds for relief and the standard for requiring

a formal competency evaluation is not a particular onerous one. To determine whether the evidence in this case was sufficient to require a formal competency evaluation, three matters are considered. "First, the standard at the informal inquiry stage is whether there is 'some evidence from any source, that would support a finding that the defendant may be incompetent to stand trial.' Some evidence is "more than none or a scintilla." "Second, a trial court must consider only evidence of incompetency, and it must not weigh evidence of competency against the evidence of incompetency." "Third, some evidence must be presented at the informal inquiry stage to show that a defendant's mental illness is the source of his inability to participate in his own defense." **See Texas Code of Criminal Procedure Ann. Arts. 46B.024(2), (4), (5).**

Applying this standard, it is apparent that the trial court failed in its decision to forego a full competency trial by jury and failed to disregard all evidence of competency as the statute requires in making that determination. Petitioner has presented sufficient evidence that he

experiences irrational thoughts, was not able to effectively communicate with his trial counsel, and has a lifetime history of mental illness. This evidence would allow a rational inference that (1) Petitioner suffered "some degree of debilitating mental illness, "(2) Petitioner could not effectively communicate and understand the advice of his trial counsel to his detriment, "and (3) Petitioner's mental illness was the source of the condition which prevented Petitioner from participating in his own defense."

Petitioner, upon the advice of his counsel plead guilty. However, because plea agreements are conceptualized as rational bargains, it is important for courts to satisfy themselves that defendants have exercised free will. A mentally incompetent defendant is legally unable to enter a voluntary plea. In Petitioner's case the trial court's failure to make a serious inquiry deprived Petitioner of his constitutional right to a fair trial, because there was evidence presented that raised a "bona fide doubt" as to Petitioner's competence to stand trial, therefore the trial court in this case on its own motion should have impaneled a jury and conducted a sanity

hearing pursuant to statute. This omission by the trial court violated Petitioner's right to a fair trial and violated Petitioner's rights to due process of law.

This Court should determine that Petitioner's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial and certiorari should be granted. Petitioner would contend that since the trial court failed to hold a formal competency trial by jury, the Petitioner should have the opportunity to have all issues which may be determinative of his guilt tried by a state judge or a state jury under appropriate state procedures which conform to the requirements of the Fourteenth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Louis Lane II

Date: 11/22/2024