

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN CORBAN OGLETREE, PETITIONER,

V.

LORIE DAVIS DIRECTOR, RESPONDENT.

TEXAS DEPARTMENT OF
CRIMINAL JUSTICE

CORRECTIONS INSTITUTION DIVISION.

ON PETITION FOR A	WRIT OF CERTIORARI TO
COURT OF CRIMINAL	APPEALS OF TEXAS
PETITION FOR	WRIT OF CERTIORARI

JOHN CORBAN OGLETREE
T.D.C.J. - C.I.D. #01608179
MARK W. STILES UNIT
3060 FM 3514
BEAUMONT, TX. 77705-7635

QUESTIONS

PRESENTED

WHETHER THE DECISION NOT TO ORDER A PETITIONER
A COMPETENCY HEARING WAS ITSELF REASONABLE?

WHETHER THE DECISION NOT TO ORDER A PETITIONER
A COMPETENCY HEARING PREJUDICED THE PETITIONER?

WHETHER THE DECISION NOT TO ORDER A PETITIONER
A COMPETENCY HEARING DENIED THE PETITIONER
DUE PROCESS OF LAW?

PARTIES TO

THE PROCEEDINGS

JOHN CORBAN OGLETREE
T.D.C.J.-C.I.D.#01608179
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PETITIONER

PRO SE REPRESENTATION
FOR PETITIONER.

AND

OFFICE OF THE ATTORNEY GENERAL
ATTORNEY GENERAL KEN PAXTON
PRICE DANIEL SR BLDG.
209 W 14TH ST. 78701-1614
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ATTORNEY FOR RESPONDENT.

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

PETITIONER JOHN CORBAN OGLETREE RESPECTFULLY
PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW
THE JUDGMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE
MERITS APPEARS AT APPENDIX A TO THE PETITION AND IS
UNPUBLISHED.

THE OPINION OF THE 258TH JUDICIAL DISTRICT OF POLK COUNTY,
TEXAS COURT TO REVIEW THE MERITS APPEARS AT APPENDIX I
TO THE PETITION AND IS UNPUBLISHED.

JURISDICTION

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED
MY CASE WAS 11-22-2017.

A COPY OF THAT DECISION APPEARS AT APPENDIX A.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER
28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION
"NO PERSON SHALL ... BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW ..."

SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION
"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT ... TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
"SECTION 1. ... NOR SHALL ANY STATE DEPRIVE ANY PERSON LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW..."

ARTICLE 1, SECTION 10. RIGHTS OF THE ACCUSED IN CRIMINAL PROSECUTIONS OF THE TEXAS CONSTITUTION

"IN ALL CRIMINAL PROSECUTIONS THE ACCUSED ... SHALL HAVE THE RIGHT OF BEING HEARD BY HIMSELF OR COUNSEL, OR BOTH ..."

ARTICLE 1, SECTION 13 EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW OF THE TEXAS CONSTITUTION

"... EVERY PERSON FOR AN INJURY DONE HIM, IN HIS LANDS, GOODS, PERSON OR REPUTATION, SHALL HAVE REMEDY BY DUE COURSE OF LAW."

ARTICLE 1, SECTION 19 DEPRIVATION OF LIFE LIBERTY ETC.; DUE COURSE OF LAW OF THE TEXAS CONSTITUTION

"NO CITIZEN OF THIS STATE SHALL BE DEPRIVED OF LIFE, LIBERTY, PROPERTY, PRIVILEGES OR IMMUNITIES, OR IN ANY MANNER DISFRANCHISED, EXCEPT BY THE DUE COURSE OF THE LAW OF THE LAND."

ARTICLE 1.04 DUE COURSE OF LAW OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES T.C.C.R.P. ART. 1.04

"NO CITIZEN OF THIS STATE SHALL BE DEPRIVED OF LIFE, LIBERTY, PROPERTY, PRIVILEGES OR IMMUNITIES, OR IN ANY MANNER DISFRANCHISED, EXCEPT BY THE DUE COURSE OF THE LAW OF THE LAND."

ARTICLE 1.05 RIGHTS OF ACCUSED OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES T.C.C.R.P. ART. 1.05

"IN ALL CRIMINAL PROSECUTIONS THE ACCUSED... HE SHALL HAVE THE RIGHT OF BEING HEARD HIMSELF, OR COUNSEL OR BOTH..."

ARTICLE 26.13(b) OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES T.C.C.R.P. ART. 26.13(b)

"NO PLEA OF GUILTY OR PLEA OF NOLLO CONTENDERE SHALL BE ACCEPTED BY THE COURT UNLESS IT APPEARS THAT THE DEFENDANT IS MENTALLY COMPETENT AND THE PLEA IS FREE AND VOLUNTARY."

ARTICLE 46B.003 INCOMPETENCY; PRESUMPTIONS OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES T.C.C.R.P. ART. 46B.003

"(a) A PERSON IS INCOMPETENT TO STAND TRIAL IF THE PERSON DOES NOT HAVE:

(1) SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE PERSON'S LAWYER WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING; OR

(2) A RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST THE PERSON.

(b) A DEFENDANT IS PRESUMED COMPETENT TO STAND TRIAL AND SHALL BE FOUND COMPETENT TO STAND TRIAL UNLESS PROVED INCOMPETENT BY A PREPONDERANCE OF THE EVIDENCE."

ARTICLE 46B.004 RAISING ISSUE OF INCOMPETENCY TO THE EVIDENCE OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES T.C.C.R.P. ART. 46B.004

"(a) EITHER PARTY MAY SUGGEST BY MOTION, OR THE TRIAL COURT MAY SUGGEST ON ITS OWN MOTION, THAT THE DEFENDANT MAY BE INCOMPETENT TO STAND TRIAL. A MOTION SUGGESTING THAT THE DEFENDANT MAY BE INCOMPETENT TO STAND TRIAL MAY BE SUPPORTED BY AFFIDAVITS SETTING OUT THE FACTS ON WHICH THE SUGGESTION IS MADE."

STATEMENT OF THE CASE

ON 9-13-2016 PETITIONER FILED A STATE WRIT OF HABEAS CORPUS TO THE TRIAL COURT WITH THREE GROUNDS; TAKEN INTO CONSIDERATION WAS GROUND ONE: "WHETHER RETAINED ATTORNEY COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL DEPRIVING APPLICANT HIS RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION?" PERTAINING TO THIS GROUND "WHETHER ATTORNEY FAILED TO RENDER REASONABLE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION: (1) FOR FAILING TO FILE A MOTION FOR A COMPETENCY HEARING (2) FOR FAILING TO ADEQUATELY INVESTIGATE APPLICANT'S COMPETENCY (3) FOR FAILING TO ADEQUATELY EXPLAIN TO APPLICANT THE CONTENTS OF THE STIPULATION AND WAIVER (4) FOR TELLING APPLICANT TO SIGN THE STIPULATION AND WAIVER CAUSE IT WAS GOOD TO DO SO (5) FOR FAILING TO TELL APPLICANT OF THE 20 YEAR OFFER (6) FOR FAILING TO ADEQUATELY INVESTIGATE ANY MITIGATING EVIDENCE (7) FOR TELLING APPLICANT TO PLEAD GUILTY."

ON 9-16-2016 STATE FILED MOTION REQUESTING DESIGNATION OF ISSUE AND STATE'S PROPOSED ORDER DESIGNATING ISSUE. SEE APPENDIX D AND E.

ON 12-14-2016 TRIAL ATTORNEY JOE D. ROTH FILED AN AFFIDAVIT WITH THE TRIAL COURT ANSWERING ONE ISSUE OF THE SEVEN. APPENDIX G.

ON 12-22-2016 STATE FILED STATE'S ORIGINAL ANSWER AND STATE'S PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER. WITHOUT ANY EVIDENTIARY HEARING, DENIED WRIT OF HABEAS CORPUS. APPENDIX F AND H.

ON 12-30-2016 STATE FORWARD PETITIONER'S WRIT OF HABEAS CORPUS TO COURT OF CRIMINAL APPEALS OF TEXAS.

ON 1-9-2017 COURT OF CRIMINAL APPEALS OF TEXAS RECEIVED PETITIONER'S WRIT OF HABEAS CORPUS, AND PRESENTED TO THE COURT.

ON 1-25-2017 COURT OF CRIMINAL APPEALS OF TEXAS ORDER TRIAL COURT TO DO FINDINGS OF FACT AND CONCLUSION OF LAW; BUT NOT A COMPETENCY HEARING. APPENDIX B.

ON 2-3-2017 TRIAL COURT APPOINTED ATTORNEY.

ON 2-9-2017 TRIAL COURT APPOINTED ANOTHER ATTORNEY.

ON 2-15-2017 TRIAL COURT FORWARD SUPPLEMENT CLERK'S RECORDS TO COURT OF CRIMINAL APPEALS OF TEXAS.

ON 2-21-2017 COURT OF CRIMINAL APPEALS OF TEXAS RECEIVED SUPPLEMENTAL CLERK'S RECORDS.

ON 5-17-2017 COURT OF CRIMINAL APPEALS OF TEXAS ORDERS AGAIN TO THE TRIAL COURT FINDINGS OF FACT AND CONCLUSION OF LAW; STILL NO COMPETENCY HEARING.

ON 9-15-2017 TRIAL COURT HAS A EVIDENTARY HEARING; AS ATTORNEY JOE D. ROTH AND PETITIONER WERE PRESENT, QUESTIONS WERE ASKED; BUT STILL NO COMPETENCY HEARING. APPENDIX I.

ON 11-22-2017 COURT OF CRIMINAL APPEALS OF TEXAS DENIED WITHOUT WRITTEN ORDER BASED SOLELY OFF TRIAL COURT'S SECOND FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER APPENDIX A.

REASONS FOR GRANTING THE PETITION

IT IS FIRST IMPORTANT TO KNOW THAT THIS PETITIONER IS BEING HELPED BY ANOTHER INMATE. FOR UNFORTUNATELY PETITIONER CAN ONLY READ AND WRITE ON A 3RD GRADE LEVEL AND ALSO HAS LIMITED MENTAL CAPABILITIES TO COMPREHEND HOW TO PROCEED IN HIS APPEAL FOR HELP IN THIS MATTER.

THE NATIONAL IMPORTANCE TO AND FOR THE PUBLIC IS FOR ALL AND ANY PEOPLE WITH MENTAL DISABILITIES AND WITH LIMITED MENTAL CAPABILITIES. NOW THE IMPORTANCE OF THIS CASE TO ME AND OTHERS THAT ARE SIMILARLY SITUATED IS "WHEN SHOULD IT BECOME EVIDENT TO A COURT THAT A NEED FOR A LICENSED PSYCHIATRIST SHOULD BE CALLED UPON TO DIAGNOSIS AND EVALUATE A PETITIONER TO JUSTIFY ORDERING A COMPETENCY HEARING?."

PETITIONER BELIEVES THE DECISION OF THE COURT OF CRIMINAL APPEALS OF TEXAS TO NOT ORDER A COMPETENCY HEARING FOR PETITIONER IS ERRONEOUS AND UNJUSTLY.

PETITIONER ALSO BELIEVES THE TRIAL COURT NOT GIVING PETITIONER A COMPETENCY HEARING BEFORE THE EVIDENTIARY HEARING WAS ERRONEOUS AND UNJUST.

AS EXPLAINED IN THE STATEMENT OF FACTS PETITIONER BROUGHT TO THE TRIAL COURT AND COURT OF CRIMINAL APPEALS OF TEXAS ATTENTION SEVEN ISSUES OF INEFFECTIVE ASSISTANCE OF COUNSEL. WHICH DEPRIVED PETITIONER HIS RIGHTS GUARANTEED BY THE 5TH, 6TH, AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION. ALSO ART. 1, SEC. 10, ART. 1, SEC. 13, AND ART. 1, SEC. 19 OF THE TEXAS CONSTITUTION; ART. 1.04, ART. 1.05, ART. 26.13(b), ART. 46 B.003, AND ART. 46 B.004 OF THE TEXAS CRIMINAL PROCEDURES - CODE AND RULES.

PETITIONER ASSERTS IN BOTH STATE COURT'S RECORDS THERE IS EVIDENCE THAT THIS PETITIONER CAN ONLY READ AND WRITE ON A THIRD GRADE LEVEL; PLUS RETAINED ATTORNEY'S WRITTEN COMMENT THAT "DEFENDANT IS SLIGHTLY RETARDED!!!" SEE APPENDIX I AND L.

PETITIONER POINTED OUT TO BOTH STATE COURT'S THAT COUNSEL FELL SHORT IN HIS PERFORMANCE OF HIS DUTY BY FAILING TO ADEQUATELY INVESTIGATE - FURTHER INTO THIS PETITIONER'S MENTAL DEFICIENCIES; AS TO FILE A MOTION FOR A COMPETENCY HEARING TO HAVE A LICENSED PSYCHIATRIST EVALUATE THIS PETITIONER.

PETITIONER POINTED OUT TO BOTH STATE COURT'S THAT HE DIDN'T HAVE A RATIONAL AND FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM. ALSO THAT HIS PLEA OF GUILTY WAS INVOLUNTARY, UNINTELLIGENT; AND HIS ATTORNEY COERCED HIM INTO PLEADING GUILTY, TELLING PETITIONER IF HE WENT TO TRIAL THE JURY WOULD MAKE FUN OF HIM AND ALSO GIVE HIM LOTS OF TIME; HIS SIGNING OF THE STIPULATION AND WAIVER WAS INVOLUNTARY AND UNINTELLIGENT AMONGST THE ALTERNATIVE COURSES OF ACTION OPEN TO HIM; IN ADDITION NEVER KNEW OF THE TWENTY YEAR OFFER OPENED TO HIM.

PETITIONER WOULD LIKE TO POINT OUT TO THIS HONORABLE COURT APPENDIX I. NUMBER 20 READS "THE COURT FINDS THAT THE APPLICANT WAS NOT CREDIBLE WHEN HE TESTIFIED THAT NO ONE READ OR EXPLAINED HIS PLEA PAPERS TO HIM PRIOR HIS SIGNING THE PAPERS." WHY SIGN AWAY YOUR RIGHTS TO APPEAL?

APPENDIX I NUMBER 39 READS "THE COURT FINDS THAT ROTH WAS CREDIBLE WHEN HE TESTIFIED THAT HE WAS AWARE OF APPLICANT'S LIMITATIONS AND THAT HE TOOK EXTRA PRECAUTIONS TO MAKE SURE THE APPLICANT UNDERSTOOD EVERYTHING." THERE WAS NEVER A COMPETENCY HEARING DONE AND ROTH IS NOT A LICENSED PSYCHIATRIST.

APPENDIX I NUMBER 42 READS "THE COURT FINDS THAT ROTH WAS CREDIBLE WHEN HE TESTIFIED THAT HE TOLD THE APPLICANT ABOUT THE TWENTY YEAR PLEA OFFER." SEE APPENDIX L ATTORNEY'S DISPOSITION SHEET DOESING SAY THAT HE TOLD THE APPLICANT.

APPENDIX I NUMBER 45 READS "THE COURT FINDS THAT ROTH WAS CREDIBLE WHEN HE TESTIFIED THAT HE WAS TERRIFIED OF WHAT A JURY WOULD DO IN THE APPLICANT'S CASE." THIS SHOULD SHOW COUNSEL'S UNWILLINGNESS TO GO TO TRIAL ON BEHALF OF PETITIONER.

APPENDIX I NUMBER 49 READS "THE COURT FINDS THAT ROTH WAS CREDIBLE WHEN HE TESTIFIED THAT HE BELIEVED THAT THE APPLICANT UNDERSTOOD WHAT WAS HAPPENING AT THE TIME OF HIS PLEA." THIS SHOULD OF PREJUDICED PETITIONER OF A FAIR PROCEEDING; TO COUNSEL'S BELIEF THAT PETITIONER UNDERSTOOD WHAT WAS HAPPENING.

APPENDIX I NUMBER 59 READS "THE COURT FINDS THAT THE APPLICANT HAS NOT PROVEN HE WAS INCOMPETENT AT THE TIME OF THE PLEA." NUMBER 60 READS "THE COURT FINDS THAT THE APPLICANT WAS NOT INCOMPETENT AT THE TIME OF THE PLEA." WHAT MORE OF INCOMPETENT CAN PETITIONER SHOW WHEN IN THE EVIDENCE OF RECORD HIS ATTORNEY COMMENTED IN NOTES THAT PETITIONER "DEFENDANT IS SLIGHTLY RETARDED !!!" BUT STILL NEVER A COMPETENCY HEARING DONE.

PETITIONER FOLLOWED THIS COURT'S PREREQUISITE UNDER ITS STANDARD STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). THIS HONORABLE COURT HELD; "A CONVICTED DEFENDANT'S CLAIM THAT COUNSEL'S ASSISTANCE WAS SO DEFECTIVE AS TO REQUIRE REVERSAL OF A CONVICTION ... HAS TWO COMPONENTS. FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT. THIS REQUIRES SHOWING THAT COUNSEL WAS NOT FUNCTIONING AS THE "COUNSEL" GUARANTEED THE DEFENDANT BY THE SIXTH AMENDMENT. SECOND, THE DEFENDANT MUST SHOW THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE. THIS REQUIRES SHOWING THAT COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT IS UNRELIABLE." AT 687.

PETITIONER FEELS ITS ESSENTIAL FOR HIS AND OTHERS THAT ARE SIMILARLY SITUATED WITH MENTAL DISABILITIES AND WITH LIMITED MENTAL CAPABILITIES TO HAVE CONSTITUTIONAL SAFEGUARDS ENACTED EVEN THROUGHOUT THE WRIT OF HABEAS CORPUS PROCEEDINGS. THUS ALSO IT SHOULD BE NATIONALLY ACKNOWLEDGED AND ACCEPTED AT ALL LEVELS OF COURTS.

PETITIONER ASKS THIS HONORABLE COURT THIS QUESTION; "WHAT POINT SHOULD A PETITIONER BE GIVEN A COMPETENCY HEARING BEFORE A EVIDENTIARY HEARING IS GIVEN?"

CONCLUSION

THE CONCLUSION IN THE MATTER AT HAND IS NOT ALL HUMANS HAVE THE SAME MENTAL CAPABILITIES AS OTHERS AND THERE SHOULD BE CERTAIN CONSTITUTIONAL SAFEGUARDS IN PLACE AT ALL LEVELS OF THE WRIT OF HABEAS CORPUS HEARINGS TO ENSURE THAT JUSTICE IS DONE JUSTLY. AS TO SEEK THIS HONORABLE COURT'S AUTHORITY, PRESTIGE, AND WISDOM. THIS PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

John Corlan Ogletree

DATED January 8 2018