

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GREGG MCNAMARA — PETITIONER
(Your Name)

vs.

THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, 2nd APPELLATE DISTRICT, DIVISION 2
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregg McNamara

(Your Name)

P.O. Box 8750

(Address)

Medford, Oregon 97501

(City, State, Zip Code)

(541)690-2911

(Phone Number)

QUESTION(S) PRESENTED

- 1) If a person is incapable of understanding the nature and cause of an action against him and is unable to assist in his own defense due to mental illness, defects and disabilities, can he be forced to accept a guilty plea?
- 2) Did the failure of the trial court to order a competency exam for a person who had been under psychiatric care for the preceding eight years to decide if he was competent to stand trial for make a plea deprive said person of this right 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:

1. Los Angeles County District Attorney's Office..
2. California Office of the Attorney General.

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STATUTES AND RULES

OTHER

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Los Angeles County Superior court appears at Appendix B 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 3/21/2018_____. A copy of that decision appears at Appendix C_____.

☐ 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

4th Amendment - United States Constitution

6th Amendment - United States Constitution

14th Amendment - United States Constitution

California Penal Code 211 PC - Robbery

STATEMENT OF THE CASE

Comes now petitioner Gregg McNamara, coerced and forced to accept a guilty plea in the Los Angeles County Superior Court, Case No. A341999 for the crime of 211 p.c., robbery. The crime was alleged to have occurred on or about February 23, 1978. The guilty plea was entered on September 28, 1978.

On the evening of February 23, 1978, Christine Scara and Richard Balteskonis were arrested near the scene of the crime, discussed supra. The arresting officers allegedly believed they were fleeing the scene, at least, according to documents acquired under the original discovery motion in 1978, documents now allegedly unavailable, according to the police.

At the police station they allegedly told police they weren't responsible for the crime, they falsely claimed that they knew that I had done it with somebody else. This of course was a lie.

They knew I had resided in the Starlight Board & Care Home at 11825 Ventura Blvd. (Appendix E) that housed persons that had been in mental hospitals (Appendix D). It must be ascertained that they figured I would be incapable of defending myself, in that, they were right, I was incapable of defending myself.

I was arrested June 17, 1978 and charged with said crime and housed at the Los Angeles County Jail under a warrant that had been issued. I was subsequently horrifically mis-represented by L. Rob Werner, 27257 1/2 Camp Plenty Rd., Santa Clarita, Ca. 91351-269.

Harassment immediately began with threats from Los Angeles County Sheriff's Deputies. I told my attorney and he did nothing to mitigate these issues.

Though I expressed my innocence, my attorney also threatened me and told me plead guilty, even though doing so would wave my rights to due process, thereby denying me of my liberty and property without due process of law.

My recent hospitalizations and life in the board & care home due to a diagnosis of paranoid schizophrenia had been designed to make me passive and accepting of what others had in mind for me.

I completely lacked the mental capacity to fight back. My attorney, Judge Francis Rotschild and the District Attorney would end up joining forces against me, a helpless, childlike individual, incapable of aiding in my own defense and incapable of understanding the nature and causes of the accusations.

No one had ever requested any form of psychiatric examination for me at the time as this presumably would have run counter to their agenda.

Therefore it can be said that I lacked the assistance of counsel, I was denied the right of a compulsory process to obtain witnesses in my favor and the right to confront the witnesses against me.

REASONS FOR GRANTING THE PETITION

INSANITY

I had been diagnosed as chronically mentally ill, having undergone shock treatments and numerous therapies at the former State Mental Hospital (now closed) in Camarillo, California. At the time of my arrest I had lived in the Starlight Guest Home, located at 11825 Ventura Blvd., Studio City, a halfway house for persons with such disorders, as shown by an early bail report (Appendix E), although the owner states I would not be living there in the future as a result of this shameful and wrongful arrest.

The Los Angeles County Superior Court, the California Courts of Appeal and the California Supreme Court all allege that I'm not do any relief under such circumstances, such injustice would open the doors for even more miscarriages of justice by making it legal and acceptable to convict anyone lacking the mental capacity to defend themselves, thus injuring the innocent, countless others and me.

I not only lacked the mental capacity to have committed the said crimes, but also I was insane at the time I accepted making a guilty plea.

FIFTH AMENDMENT - Self Incrimination

In no criminal case shall an person be compelled to be a witness against himself and I was forced to plea guilty to crime of which I was innocent do to my inability to comprehend the situation mentally and in so doing I was a witness against myself

My Fifth Amendment to not self-incriminate was therefore violated.

FIFTH AMENDMENT - Due Process Clause

"Nor shall any person be deprived of life, liberty or property without due process of law." In that in my disabled state I was forced by my attorney et al to take a guilty plea in spite of my innocence, I was denied due process by being denied the right to trial and present my case.

My Fifth Amendment Right to due process was therefore violated.

SIXTH AMENDMENT -

"The accused shall be told of the nature and cause of the action against him." The People will claim that I was informed as such. Considering my overall mental state at the time, and my psych history, it is quite clear that I could not fully comprehend the nature and the cause of the action against me. In addition I failed to meet the requirements of the ability to aid my attorney, even if I'd had an honest one, in my own defense as discussed in *Dusky v. United States*, 362 U.S. 402 (1960).

Therefore I didn't understand the nature and cause of action against me.

The rights "to be confronted with the witnesses against him and to have a compulsory process for obtaining witnesses in his favor, and to have assistance of counsel in his defense. These 6th Amendment Rights were violated.

In that through the aforementioned violations I would not be able to cross examine the witnesses at trial, nor obtain witnesses on my behalf, especially as my lawyer didn't want to bother with this, I lacked the ability and presence of sanity to state my case.

Therefore, I wasn't properly aware of the nature or cause of action against me, I couldn't question the integrity of Any who would bear witness against me, nor could I present a defense and I lacked an attorney willing to help me do so, thus violating my Sixth Amendment Rights.

FOURTEENTH AMENDMENT

The Fourteenth Amendment to the U. S. Constitution makes all rights mentioned supra applicable to each state and therefore those hurt by the states infidelity, such as myself.

In that I have been horribly aggrieved and wronged by the state of California, and afterwards, forced to live with the traumatizing disabilities incurred by these wrongs as a convicted felon, in spite of my innocence and because of the mental disabilities I lived with prior, I pray for relief from these encumbrances.

Justice and society would be greatly served if my conviction were to be lifted and a clear set of requirements was set set forth as to the legal rights of persons with psychiatric disabilities.

Law professor Daniel Medweb states in his law journal "California Dreaming? The Golden States Approach to newly Discovered Evidence of Innocence",

"The presence of high hurdles for proving innocence through newly discovered evidence in California derives, in part, from the state courts' historic skepticism of the validity of such evidence, and the bulk of other states share this cynical view. Still, the lessons learned from the DNA revolution indicate that wrongful convictions occur with greater frequency than previously imagined, and suggest that courts should put aside their traditional wariness and display greater openness to the potential legitimacy of innocence claims, whether based on scientific or non-scientific evidence. After all, justice for an innocent prisoner should not depend on the off chance that the actual perpetrator left biological evidence at the crime scene that was found by the investigating officers and properly inventoried and preserved over time."

STATE ACTION

In order to strengthen my showing of a nexus between state actions and the violations of my Constitutional rights and while fulfilling the state action requirement I have added some court history designed to mitigate such discrimination against the mentally ill in our community, such as myself.

In Dusky v. United States, 362 U.S. 402 (1960) the prestigious court affirmed a criminal defendant's Constitutional right to have a competency evaluation before proceeding to trial and a standard was set for determination of such competence. Subsequently those standards would be made applicable to having the competence to plead guilty.

Pate v. Robinson, 383 U.S. 375 (1966) had issued that a hearing was required under the due process clause of the Constitution of the United States. This was further emphasized in *Drope v. Missouri*, 420 U.S. 162 (1975).

I had never received any such hearing. The mentally ill, including myself in 1978, can be very pliable and easily manipulated by persons of a saner standing. Any court, any cop, judge or lawyer who is too tired to do due diligence, or perhaps lacking the morals to do as such, can take any open case and find a person to forcibly pin this on. This doesn't do any good for society as a whole, the alleged victims or the innocent pliable mentally ill person.

Therefore, I believe the state requirement is met in this case and pray the court to overturn said conviction. Serious rules for standards of conduct and protocol for dealing with such persons are needed and only this court can implement such standards.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregg McNamara

Date: *May 31, 2018*