

21-7818

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 26 2022

OFFICE OF THE CLERK

Kenneth Jay Moore — PETITIONER
(Your Name)

vs.

State of Washington RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals Division III
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kenneth Jay Moore (Doc. # 417825)
(Your Name)

1313 N. 13th Ave.
Washington State Penitentiary
(Address)

Walla Walla, WA. 99362
(City, State, Zip Code)

N/A
(Phone Number)

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

As of the writing of this request for Certiorari, I have not filed a petition for Habeas Corpus, But I intend to. The time allowed for each Petition is significantly different, 90 day for Certiorari Vs. 1 year for Habeas.

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State Court opinion of the

Court of Appeals for Washington State

Appears at Appendix ~~D~~ F

Is not published, I have enclosed a copy.

Jurisdiction

The date on which the highest Court ~~decided~~ decided my case was Feb. 2, 2022.

A copy of that decision appears at Appendix C

A timely petition for rehearing was thereafter denied on the following date: Feb. 2, 2022, and a copy of the order denying rehearing appears at Appendix C.

Constitutional and Statutory

Provisions involved:

Revised Code of Washington (R.C.W. 2.42.010)

- See first page of "Statement of the Case"

Section 1 of the 14th Amendment of the United States

Constitution. "All persons born or naturalized in the U.S.,

and subject to the jurisdiction thereof, are citizens of

the U.S. 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 U.S.; 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.

Constitutional and Statutory Provisions involved:

Sixth Amendment of the United States Constitution:

; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fifth Amendment of the United States Constitution:; nor

be deprived of life, liberty or property without due process of law;

First Amendment of the UNITED States Constitution:

Congress shall make no law respecting an establishment of religion or prohibiting the free ^{exercise} ~~exercise~~ thereof; or abridging the freedom of speech

R.C.W. 2.42.120(1): hearing impairment interpreters are to be shouldered by the "appointing authority."

Questions Presented (page 1)

No 1)

Will this Court create a structural reversible error precedent thereby reversing my convictions in favor of a new trial that requires lower Courts and law enforcement agents to use an audiologist or other ~~requester~~ interpreter as requested to help the arrestee communicate after being attacked by law enforcement weapons specifically designed to contribute to the diminished perceivability of the vision or audio faculties regardless of duration when law proceedings of the United States Constitution are happening with said arrestee?

No. 2) Will this Court reverse my convictions in favor of a new trial due to the Trial Court Judge of my case

"abridging the freedom of speech" by ordering me to write my testimony responses from Counsels' questions

Questions Presented (page 2)

during my trial ?

No. 3) Will this Court reverse my convictions in favor of a new trial for Ineffective assistance of Counsel Claims?

No. 4) Will this Court reverse my convictions in favor of a new trial because the Trial Court of my case would not let me represent myself ?

Statement of the Case

The State of Washington has created a statute to inform this Court when a person is being excluded from Constitutional protections in legal proceedings. Said statute is the Revised Code of Washington (R.C.W. 2.42.010) using this language "It is hereby declared to be the policy of this State to secure the Constitutional Rights of deaf persons and of other persons who, because of Impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who ~~consequently~~ consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them."

Often, there is an intrinsic relationship between speech impairments and hearing impairments. Court

transcript records show on April 13, 2018, page 70,

(dialog begin ~~on~~ on line 3): ~~XXXXXXXXXX~~

(Court reporter assists with screen in front of defendant)

Judge: Now are you - Mr. Moore are you reading the transcription from the hearing here this morning?

Or this afternoon? Yes? Thumbs up means yes, right?

Okay. Can you state your name for the record?

(defendant writes ~~name~~ on paper.)

Judge: Your Honor - thats not your name. Can you state your name for the record?

Kenneth Moore: (guttural sound) Kenneth Moore.

Judge: Kenneth Moore? Okay. Thank-you very much.

(line 12 ends dialog). I suspect this was a speech impairment evaluation.

I am going to present transcript records in this

~~that is not a part of the evidence~~

~~that is not a part of the evidence~~ help. (Dialog begins June 10, 2019,

Line 3) (page 1350):

Judge: Okay. So I am trusting the - the protocol that we've put into place for this trial to inform you, Mr. ~~that~~ Moore that you have the right to testify. The State has rested their case and now the case-in-chief goes to the defense.

Your attorney will call witnesses if you have any ~~available~~ available. You may also testify after discussing whether or not you want to testify with your attorneys. Have you decided, Mr. Byrd, whether or not he wishes to testify?

Defense Counsel: I have not.

Judge: Do you plan to?

Petition that are not in chronological order. I believe the ~~most~~ method will emphasize the uselessness of a case's assigned Counsel when a speech or hearing impairment exists in the accused and the accused does not receive interpretation help with assigned Counsel or witnesses for the defense. I'll begin at my trial.

Rules of Professional Conduct 1.2 (a) inform defense Counsel that they have an affirmative obligation to advise the accused of their right to testify.

The Court transcript records show that my real time interpretation assistant was removed from me when I was moved to a conference room of the Courthouse to be ~~em~~ Counseled on my right to testify. I believe the Courthouse conference room is exempt from any "Jail Policy" that would prevent me from receiving Real Time interpretation

Defense Counsel: Yes

Judge: When?

Defense Counsel: Well as soon as we can have a - a conversation Your Honor with the - that has a degree of (inaudible).

Judge: Okay.

Defense Counsel: I can't -

Judge: Lets do it ~~now~~ now.

Defense Counsel: - I can't advise the Court of any prior communications but we're here now.

Judge: Mr. Moore your attorneys will likely tell you that if you do not testify I will instruct the jury that they are not to use the fact that you didn't testify to prejudice you in any way. You have the right to remain silent. You also have the right to testify. And we will

just have him - is that door still unlocked there counsel.

-or-

Deputy: This one?

Judge: - yeah.

Deputy: It's locked.

Judge: It is locked.

Deputy: We can go out this way.

Judge: Okay. Lets go ahead and take him and his attorneys - we won't have the - ne - never mind. We'll just turn ~~the~~ the record off - I'll ask ~~every~~ everyone to leave.

States Attorney: Right Your Honor. If - I don't think we need the -

Judge: Transcriptionist?

State Attorney: - transcriptionist - that's obviously what -

State's attorney Continued: what's discussed is attorney / client privilege and there should not be a record of that.

Judge: Okay

State's attorney: So there's a - they can write down notes -

Judge: Okay. So let's go ahead and take the - the attorneys

and Mr. Moore into that room over there. You do not need to

go to transcribe that. They can do that in written communication.

And we'll be back in about fifteen minutes. Okay.

(End dialog, page 1351, Line 21)

When they took the real time transcriptionist from me I lost

the legible writing created from phonetic language that I needed

"to have the assistance of Counsel for his defence" as stated by

the Sixth Amendment of the United States Constitution.

In the next excerpt from my trial while in the Courtroom

itself, the trial Court Judge limits my freedom of

speech by telling me I have to write my testimony on paper when the attorneys ask me questions while I am on the stand.

~~that was the request for~~ To compose this request for

Certiorari, I needed and used three dictionaries and three

General Education training ~~manuale~~ manuals. I believe I

dropped-out of highschool after attending a few months of my

sophomore year to take a job for family financial needs.

~~that was the request for~~ I asked the Trial

Court Judge for an audiologist because they have an acute

understanding of human speech impairment related to audio

faculty impairments. The Trial testimony of lieutenant

Williamis indicates a weapon specifically designed to impair

the audio faculties was used on me by Special Weapons

and tactical (S.W.A.T) team members. I still have

permanent damage from that weapon. ~~and to be seen~~

The Court record transcripts show on June 4, 2019, page 784, Line 20, a weapon specifically designed to effect the audio faculties was used on me. (begin dialog)

State attorney: ~~REDACTED~~ SO what is a NFTD. ?

Lieutenant Williams: NFTD is just a noise flash diversion device. It's kind of what we refer to is like a flash bang. It makes a - a loud noise and emits some light. (End dialog)

The N.F.T.D. is designed specifically to inflict tinnitus on its target. The Lieutenant says it is ~~an~~ a diversion device, ~~a~~ a better term for him to use would have been an incursion device. Tinnitus can have severe effects on the human audio faculties which includes permanent deafness. I suffer from tinnitus daily ~~because~~ because of the S.W.A.T. Team attack.

And tinnitus can be like any other medical condition, it can worsen with further abuse.

I would have been the only witness in my trial that was forced to write my testimony. That is an important factor because our power of speech is not limited to our vocabulary usage or sentence structure. A good example of that in the legal profession is what the lawyers call a sympathetic witness. Lawyers thrive when emotion is interlaced in speech because it has the power to inspire jury members. Limiting my testimony to my writing ability was totally un-called for, and a violation of the First Amendment of the United States Constitution that prohibits "abridging the freedom of speech." I respectfully ask this court for a reversal and a new trial that will allow me to speak for my testimony.

Court transcript records show on December 15, 2017,

another exchange happened between my ~~as~~ case's

assigned counsel and the State's attorney with the

Judge of my case. (Dialog begins Line 7) :

Defense Counsel Byrd: Well Your Honor - I can advise

the Court that today - Your Honor I'll - I'll incorporate

the last two hearings where there was a suggestion where he

needed the earphones and there was some problems with

communication. Today we have the real time typist.

Judge: Transcriptionist

Defense Counsel Byrd: Transcriptionist in Court. I doubt

very seriously if I will have that resource in the Jail

when I attempt to talk to Mr. Moore. I would like to

have that resource at the Jail. I've never seen that done

before.

State's Attorney K.V.: Yeah - Your Honor -

Judge: Yeah. I'm not wading into that. That's Jail Policy

- you have to go through your coordinator to get the funds to hire that. I just ordered the State to pay for the hearing transcriptionist. I am not ordering them to pay for a private Jail meeting transcriptionist. (End dialog)

State v. Fuentes, 179 Wn. 2d 808, 318 P.3d 257 (2014)

Defense counsel's reasonable suggestion that a "real time" transcriptionist be provided for his deaf or hearing impaired client in order to accommodate private conferences in the Jail. The Court denied the Motion by mistaken belief that it was not responsible for the costs of such transcription. I was entitled by statute and the Sixth Amendment of the United States Constitution to reasonable accommodations to allow me to communicate with my case's assigned counsel. I believe my case's ~~counsel~~ Counsel made a

reasonable request.

The State uses psychologists and psychiatrists to call detainees liars when said detainees complain ~~about~~ about ~~audio~~ audio faculty problems. That is a cruel practice after using weapons on said detainee. I can't ever remember learning about a psychologist or psychiatrist correcting a human's hearing ability.

I made a request for an audiologist ~~at~~ during my trial when I wanted to testify because audiologist have an acute understanding of sound as it relates to speech impairments due to audio faculty problems. Court records show the Judge of my trial could not understand my need to speak during my testimony. (The dialog begins from Court transcript page 1362 for June 10th, 2019, line 5, counsel Greg Schile is speaking for me from my note writing.)

Greg Schile: Your Honor your officer has changed my ability to reason and therefore my testimony.

Judge: Is there - is there something in particular you want me to do?

(defendant writes note)

Greg Schile: We need expert help as requested please Your Honor.

Judge: From whom?

(defendant writes note)

Greg Schile: Audiologist.

Judge: I think we've resolved any concerns about hearing by having a real time transcriber at every hearing that you have been involved in. There's been no allegations that you have been unable to review all the proceedings.

And you've got a pencil and you've got paper and you've spoken with your attorneys. You were out for

- I Think it was about an hour and Twenty minutes or so - something along that line talking to your attorneys about whether you wanted to testify.

I gave you that time to su - in the abundance of caution - to make sure you understand your rights.

So an audiologist isn't going to help as it relates to

the death of Lisa Holt. mis spelled (end dialog,

page 1362, Line 24)

I added this

The Judge is telling us that I am orally communicating this does not work with my counsel. Court transcript

records for September 7, 2018, Show a Motion to the Judge

for an order allowing counsel to withdraw per Rules of

Professional Conduct 1.16(b)(4)(6)(7). On the fifth page

of said Motion and pg. 89 of the Court transcripts, Line 10

is a portion of my case's assigned counsel Motion.

Defense counsel: The defendant appeared to not be able to speak - or at least appeared to suggest that he had the inability to speak. So he has the inability to hear - it appears he has an inability to speak as well. (end dialog)

The Court transcripts show on September 7, 2018,
page 85, Line 9: (begin dialog)

Clerk: Honorable Daniel Stahnke presiding.

Judge: Thanks. Have a seat. Okay. State of Washington
Versus Kenneth J. Moore 17-100380-8 and Mr. Moore is
here with real time interpretation. (end dialog)

~~[REDACTED]~~

The Court transcript records on December 15, 2017, page 41

(dialog begins line 19.)

Judge: Mr. Moore were having a - everything that's

Said here typed on the screen so you can read it. Go ahead

Mm Mm / end date: June 07

At this juncture, I would like to think I established the need for an interpreter when I need counsel. I will

try to cite another Court transcript. On September 26, 2017, the Court transcript shows, page 21, Line 11, (dialog begins.):

Defense Counsel: Do you want the headphones? I think It's ear plugs.

Judge: Are ear plugs causing you any trouble? (end dialog)

I'm stunned by the Judge's question. Ear plugs are used to protect the audio faculties. The State's S.W.A.T. team inflicted tinnitus on me and I'm wearing ear-plugs to try and prevent said medical condition from worsening or even possibly heal said medical condition. The Court's infinite wisdom was to place ear phones on my ears and blast my ears with sound, it is in the Court transcript as well.

The other matter I ask ~~ask~~ for this Court's

discretionary ruling on concerns police arrest procedure.

Five minutes before I was arrested, the S.W.A.T. team

impaired my audio faculties with a sonic grenade. The

police never informed me of my rights using a non-

verbal method. I believe this police practice can

impair the speech of the person being arrested also.

I ~~ask~~ respectfully ask this Court to find said

procedure (or lack thereof) to be a violation of the

Fourteenth Amendment of the United States Constitution

clause that uses this language "nor shall any state deprive

any person of life, liberty, or property, without due

process of law." If this Court deems this to be a

Constitutional violation, ~~ask~~ ~~ask~~ I respectfully

ask this Court to reverse my conviction and give me

a new trial.

I did file a motion with the Washington State Court of Appeals regarding my concern for the previously stated arrest procedure (or lack thereof) but, the Court of Appeals did not dignify my timely-said-motion with an opinion.

I will try to offer this Court a respectfully different perspective versus the opinion of my appeal from the Court of Appeals. Firstly, The Court of Appeals demands that I should have filed a "personal restraint petition." As I understand This restraint petition, it is designed to inform the Court of a problem that the Trial Court Judge was previously un-aware of. My intent is not to demean the craft of a transcriptionist, They are indeed a type of interpreter. Their importance dates back in time to the ancient

Egyptian hieroglyphs, or any other pre-historic writing.

The single essential function of a transcriptionist is to produce legible writing from an infinite number of sources.

My need for a transcription was identified by the Judge of my trial, it was no secret to the Judge of my trial.

The conflict for the Judge of my trial is plainly stated in pages of this request for Certiorari, money and Jail policy stopped the Judge from giving me a real time Transcriber.

The Court of Appeals' notion to use laptops, tablets and any other social media gadget offers no security of confidential information. Paper transcriptions have always offered a fully perishable product.

Hopefully I have established the fact that the State and the Trial Court have a transcriptionist to help me understand their witnesses. The transcriptionist I need for my purposes in the Jail is missing for critical meetings with my witnesses.

One such meeting was for a competency evaluation with the psychologist. The Court record transcripts show on September 7, 2018, page 106, (dialog begins line 4):

Defense Counsel: I mean - I - I - I'm limited in the ability to assist this man in a ~~the~~ defense because we Just - we can't communicate and there is no participation with things that could help. Arguably a relevant defense might be insanity and I can't even explore that because I don't have the professional involvement of a psychologist. I have him but no one is willing to use him. (end dialog)

My ^{competency} ~~competency~~ evaluation was ~~very~~ important in two ways.

The first reason my ^{Competency} ~~competency~~ evaluation was important is because I would have had ~~my~~ my case's legal counsel available to me, ~~but~~ I did not have my case's legal counsel available to me for the Washington State Hospital ^{Competency} ~~competency~~ evaluation. The second reason my ^{Competency} ~~competency~~ evaluation would have been important is that my Sixth Amendment to the United States Constitution would have been ~~is~~ applicable, specifically the last clause that states "to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. The Judge of my case refused to order me a transcriptionist for my Jail conferences due to Jail Police and money, It is ~~not~~ plain discrimination for the Judge not to order a transcriptionist for a ^{competency} ~~competency~~ exam that might consume an hour or two.

The State spent thousands of ~~dollars~~ dollars to send me to Washington State Hospital for a competency exam that refused to offer me an audiologist exam.

The Court transcripts show on September 7, 2018, page 85, Line 9: (begin dialog)

Clerk: Honorable Daniel Stahnke presiding.

Judge: Thanks. Have a seat. Okay. State of Washington versus Kenneth J. Moore 17-100380-8 and Mr. Moore is here with a real time interpretation.
(End dialog)

It is my understanding that I have the right to Counsel and so I ~~we~~ should have the right to fire counsel. When my case's assigned Counsel could not travel to Washington State Hospital to make himself available to me for my competency evaluation, I had had enough. Court transcripts for September 28, 2018, show that I asked the Court to "fire" Counsel on page 120, Line 18.
(begin dialog)

Defense Counsel: Mr. Moore is indicating he had asked that this lawyer be fired. (End Quote) (End dialog)

I believe Counsel's inability to make himself available to me is remarked upon in the Clerk's papers (probably page 37) but I do not have the money to get those papers. I was told by personnel from Clark County that my indigent status did not entitle me to free Clerk papers, they cost

a little less than a hundred dollars. See State vs. Hutchinson,
135 Wn.2d 863, 873, 959 P.2d 1061 (1998): (defendant
has the right to presence of counsel during psychological
evaluation.) The Counsel / ~~Client~~ Client relationship
deteriorated further. Court transcript records show on
page 320, May 30, 2019, (begin dialog on Line 20):

Judge: I need more specificity. Are you suggesting that ~~I~~
I get rid of both of them or just one of them?

Defense Counsel: Well he's indicating if that's what it
requires to make Mr. Byrd dismissed - yes.

Judge: And I don't understand.

Defense Counsel: Okay. He's indicating that the - I don't
want his lies representing me in Motions or at Trial.

(End dialog, page 321)

So I can't dismiss the assigned Counsel of my case.

Court transcript record 338 shows that I display a
LARGE PRINTED sign to the Court and Jury, I'm
sure it was legible to all three cameras of the Courtroom
wall. The Sign stated "I asked to represent myself" all in
capital letters.

There are actually three errors here. Firstly, the Judge
would not let me represent my self. If we consider my
request for Certiorari throughout this whole petition, We
see the emergence of Ineffective assistance of Counsel by
the two standards given to us in Strickland v. Washington,
166 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984);

(1) Counsel's performance was deficient when defense
Counsel denied his client counsel for the Western State
Hospital exam for competency. (2) Counsel's deficient
performance prejudiced the defense when he (Counsel)

did not hire Carin the Mitigation Specialist and by crippling attorney/client communication when he (defense Counsel) failed to make himself available for me during my competency evaluation as previously stated. The Judge of my case could not seem to wake-up defense counsel either as Court transcripts show December 7, 2017, page 35, Line 14.

(begin dialog)

Judge: Mr. Moore are you able to hear what's going on?

Defendant: (no oral heard)

Defense Counsel: Can I just go ahead Your Honor?

Judge: He can't hear you.

Defense Counsel: I said can I address the Court?

Judge: He can't hear you. What happened to the real time transcriptionist I ordered?

Defense Counsel: Well your Honor I obviously don't have one
Available today

Judge: Why?

Defense Counsel: (No oral response heard.)

Judge: None requested?

Defense Counsel: I can advise the Court that I didn't
make a independent request myself.

Judge: Mr. Moore can you hear us?

Defendant: (no oral response heard.) (End dialog)

I hope this excerpt properly demonstrates defense Counsel's
attitude towards the Court and the defense Counsel's client,
me. You wouldn't believe the abuse of said client behind the
jail wall. Regularly, defense Counsel's handwriting was not
legible to me and I believe the Court has successfully
identified the defendant's hearing problem, I'm the defendant.
If my requests to represent myself have failed to assist me

a reversal to my convictions and a new trial, I respectfully ask this Court to consider my Ineffective assistance of Counsel claim to reverse my conviction using 3 factors from the precedent In re Pers.

Restraint of Stenson, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001)

(1) Extent of the conflict: The excerpt from December 7, 2017 in this petition shows a complete disregard for defense Counsel's client (me). My case's assigned Counsel would not offer to write anything for me about what was being said after the Court told defense Counsel that I could not hear defense Counsel. Obviously ~~the~~ my case's defense Counsel could not write legibly for me hence one of the reasons the Court ordered a transcriptionist for me.

(2) The adequacy of the inquiry: When defense Counsel did not make himself available for my competency evaluation

at Western State Hospital it became clear he was uninterested in offering me Counsel. Defense Counsel would not hire the mitigator. Defense Counsel ~~did~~ did not order the transcriptionist for me when the Judge instructed him to. I believe this request for Certiorari is focused on my need for Counsel from the start to the finish.

(3) The timeliness of the requests and motions began in April of 2018, that was over a year before my trial began. The said requests and motion were related to replacement of Counsel if I could not represent myself.

I did use American Sign Language at Western State Hospital and in the Court but, the Court did not receive A.S.L. intelligently with response. Court transcript records show on January 26, 2018, page 51, Line 24 and 25 (begin dialog)

Defense Counsel: He's not commenting on anything. He did make

Some hand gestures periodically. (end dialog) (page 55, Line 21

Begin dialog) Judge: Would you like to talk to your attorney?

Your rubbing your chest. What's that mean? (end dialog)

The yes gesture for A.S.L. is a hand-palm rubbing the chest.

But my strongest method of communication is oral speech, not writing. According to R.C.W. 2.42.010 an interpreter

is required for speech impairments or deprivation of

Constitutional protections is the result. An Audiologist

would have preserved my vocal testimony at trial, and

my conference with Counsel.

Reasons for Granting the Petition

A new precedent from this Court would secure alternative forms of communication when ~~are~~ area-of-effect S.W.A.T. team weapons are used to diminish human faculty functions needed for communication.

A new trial would give me a chance to give a vocal testimony, presumably.

I might receive proper Assistance of Counsel and if not, I may be able to represent myself.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Jay Moore

Date: 4-25-22