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ORIGINAL

No. 18-8960

IN THE SUPREME COURT OF THE UNITED STATES

In re Robert W. Winkel

PRO SE: PETITION FOR WRIT OF HABEAS CORPUS

Robert Winkel, #103141
PRO SE
Po Box 2
Lansing, KS, 66043-0002.

I. QUESTIONS PRESENTED

(a) Deprived of Advocacy (United States v. Cronic, 466 US 468 (1984)), and Speedy Trial (Barker v. Wingo, 407 US 514 (1972)), Instead of putting the State to its burden on the evidence my court-appointed ~~lawyer~~ trial lawyer actively PERSUED forcing me to relinquish my exercise of silence of "pertinent information regarding the crimes of which [I am] accused." (Appendix D, at ¶ 1, Competency Evaluation Report, by Sean Wagner, Feb. 14, 2011). I had no one to Advocate my in-court objections against the lawyer's adverse position and use of disputed information developed in the course of, and in furthurance of his incompetency evaluations (Estelle v. Smith, 451 US 454 (1981)), incompetency hearings (United States v. Collins, 430 F.3d 1260 (CA10, 2005)), mental hospitalizations (Vitek v. Jones, 445 US 480 (1980)), and forcible administration of drugs (Sell v. United States, 539 US 166 (2003)), without lawyer meeting burden against me (Addington v. Texas, 441 US 418 (1979)), and no court officer intervened. This lasted a year.

(1) Whether Government Can Deprived Accused of his Rights By Claiming/Finding Of Mentally Ill/Incompetent Because of his Exercise Of Those Rights —— Including Advocacy and Speedy Trial ?

(2) Whether Accused's Lack of Advocacy (Cronic, supra), Can Be Justified Through Factual Disputes Arising From Uncounseled Evaluations (Smith, supra) ?

II. PARTIES

(a) The opposing parties DO NOT appear in the caption of the case on the cover page. A list of ALL parties to the proceedings in the courts below whose judgments are the subject of this petition are:

(1) Dena Gartelman;

(2) State of Kansas; and

(3) Secretary of Kansas Department of Corrections (KDOC).

(b) These parties are ALL represented by the Kansas Attorney General – 120 SW TENTH AVE., 2nd FL. – Topeka, KS. 66612-1597.

III. CORPERATE LISTING

(a) Rule 29.6, does NOT apply (to me).

IV TABLE OF CONTENTS

V INDEX OF APPENDICES

APPENDIX D: Competency Evaluation Report, by Sean Wagner, Feb. 14, 2011.

APPENDIX E: Feb. 04, 2011, Transcript of Competency Hearing;

APPENDIX F: Feb. 23, 2011, Transcript of Competency Hearing;

APPENDIX G: Jan. 19, 2012, Transcript of Competency Hearing.

VI TABLE OF CASES

Winkel v. Heimgartner, 668 Fed.Appx. 344 (CA10, 2016) _____ iv, 1, 2, 4, 6, 8, 9, 10

VII OPINIONS BELOW

(a) The UNPUBLISHED opinion of the Kansas Supreme Court (highest state court) appears at APPENDIX B.

(b) The UNPUBLISHED opinion of the Kansas Appellate Court (intermediate ~~state court~~ court) appears at APPENDIX A.

(c) The UNPUBLISHED opinion of the Tenth Circuit Court of Appeals appears at APPENDIX C.

VIII JURISDICTION

(a) On 11-APRIL-2014, the intermediate appellate court decided State v. Winkel, 322 P.3d 1026 (Winkel I) (APPX A). Because the State's highest court – twice – refused to file my petition for review I went to the federal jurisdiction via 28 USC § 2254 habeas corpus where my first federal appeal said the state court should not have refused to file my petition for review (Winkel v. Heimgartner, 645 Fed.Appx. 729 (CA10, 2016) (Winkel II)). A subsequent appeal on merits was Winkel v. Heimgartner, 668 Fed.Appx. 344 (CA10, 2016) (Winkel III) (APPX. C) before the reopening of my direct appeal by the state's highest court, which ultimately denied review in State v. Winkel, 2018 Kan. LEXIS 688 (Oct. 30, 2018) (Winkel IV) (APPX B). This Ex Parte petition was originally timely filed in good faith via the prison mailbox rule on 28-JAN-2019; per Rule 20.4(b).

(b) On Feb. 13, 2019, this Court's clerk's letter accompanying the return of my UNFILED petition implied a continuance for "the 'corrected petition' [that] must be served on opposing counsel". (Emphasis and brackets added).

(c) This corrected Ex Parte petition clarifies previous one's Rule 20.1 elements as required by your clerk, complies with Rule 29.2, and mailed within the sixty (60) days of Rule 14.5.

(d) This Court has jurisdiction per US Const Art. I, § 9, cl. 2; US Const Amend I; Rule 20; 28 USC §§ 2101(d); 2241; and 2254.

IX IN AID OF APPELLATE JURISDICTION

(a) Use of Equitable habeas jurisdiction aids this Court's appellate jurisdiction by saving Direct Criminal Appeal Certiorari — which filing was prevented by opposing party KDOC. This Court has recognized EXCEPTIONS to the general rule that habeas cannot be used to substitute appeal/certiorari. (In re Chapman, 156 US 211 (1895); New York v. Eno, 155 US 89 (1894); Ex Parte Royal, 117 US 241 (1886)).

(b) This is also an appellate review of a collateral attack on the same merits (See, Winkel III, supra, APPX C), before end of direct appeal (Winkel IV, supra, APPX B), and is therefore last available authority.

X EXCEPTIONAL CIRCUMSTANCES

(a) See above IX. In Aid Of Appellate Jurisdiction.

(b) To file a petition for certiorari in my direct criminal appeal I need copies for service upon KDOC opponent (Rule 29). I CANNOT serve copies on KDOC, etc., if KDOC WILL NOT PERMIT me copies. I am a prisoner controled by them.

(c) The only EXCEPTIONS is found at the end of the last sentence of Rule 20.1, where it clearly says service required by Rule 29 is "(subject to subparagraph 4(b) of this Rule[20])". (Emphasis and brackets added).

(d) Throughout the eight (8) plus years every court has evaded facts sufficiently showing structural error, among others. (Hoffman v. United States, 341 US 479, 489 (1951) (ends of justice require consideration whenever facts appear to sustain claim of privilege)).

(e) Since leaving the Tenth Circuit in 2016, ALL my previous SIX (6) petitions to this Court on the same ~~merits~~ claims HAVE BEEN RETURNED UNFILED!!!!!!!! (Hoffman, supra (courts should be solicitous to invoke power when important constitutional objections are renewed)).

XI NO ADEQUATE RELIEF IN OTHER FORM/COURT

(a) Ironically the filing of Mandamus, Injunction, etc., require copies to be served by Rule 29, and cannot be used to correct prevention of copies that prevent the filing of certiorari, mandamus, etc., because copies are needed to do that (See above X(a), (b), and (c)). Therefore, the only exception is found in above X(c).

(b) these claims have already been presented to all lower courts. See next.

XII APPLICATION TO DISTRICT COURT

(a) These claims have ALREADY been processed through the lower federal district and appellate courts (see Winkel II, supra; and Winkel III, supra, APPX C)).

XIII CONSTITUTIONAL & STATUTORY PROVISIONS

(a) US CONST AMEND 1: "Congress [or Courts] shall make no law. . . . abridging the freedom of speech. . . . or the right of the people . . . to petition the government for redress of grievances." (Brackets added).

(b) US CONST AMEND 5: "No person shall. . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

(c) US CONST AMEND 6: "In all criminal prosecutions, the accused shall enjoy the right to a speedy. . . trial, by an impartial jury [or judge . . .]; to be confronted with witnesses against him; to have compulsory process for obtaining witneses in his favor, and to have the assistance of counsel for his defense."

(d) US CONST ART 1, SEC. 9, CL. 2: "——— The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. ———"

XIV STATEMENT OF CASE

(a) During the four hundred (400) days delay from arrest to Arraignment, I made in-court objections at every incompetency delay hearing instituted by my trial lawyer; i.e., incompetency hearings on February 04, 2011 (APPX. E); Frebruary 24, 2011 (APPX. F); October 07, 2011; December 02, 2011; January 19, 2012 (APPX. G). My speedy trial objections were on all these dates except February 04, 2011.

(b) Although my lawyers adverse position to me was represented twice by replacemented twice by replacement counsel during his absence (See, APPX F), I had NO ONE but ME to speak for ME.

(c) The immediately preceeding paragraph (above XIV(b)) also applies to the hearing my lawyer moved to have me forced drugs (October 07, 2011). (See also APPX. G); where lawyer present and sided by state.

(d) The trial court overrulled my objections and ordered three incompetency evaluations that were filed with the trial court, respectively, on February 14, 2011 (APPX. D); June 30, 2011; and November 08, 2011.

(e) On January 19, 2012, (APPX. G) the trial court held an evidentiary hearing, on my lawyer's motion to find me incompetent; the court rulled that I do not need to be forced drugs and that I am competent to stand trial. The court the scheduled Arraignment

(f) At ~~any~~ February 03, 2012, Arraignment the trial court denied my oral motion to dismiss case on speedy trial grounds. My subsequent oral motion to fire my lawyer and represented myself prompted the trial court to hold an evidentiary hearing as to whether I was competent to be Pro Se.

The trial court made it clear that hearing was not to determine lawyer problem and ruled that although I was competent to be Pro Se he was not going to let me be without said lawyer as Stand-by because I did not know evidence rules.

(g) At Arraignment the court granted my oral motion to be allowed legal research that the Sheriff admitted to refusing me.

(h) In March 2012, due to research granted, I discovered and filed a pretrial habeas on grounds of speedy trial violation. The court's denial was received around my June 01, 2012, Sentencing hearing.

(i) These claims were orally renewed both at trial and sentencing; at sentencing I added claim of ineffective lawyer; all overruled.

(j) On 11-APRIL-2014, the intermediate appellate court denied, inter alia, the above merits which included a more defined classification of judge's failure to intervene into conflict of interesting and abuse discretion of incompetency rulings (Winkel I, at APPX. A).

(k) the state's highest court — after twice refusing ~~to life~~ file my petition for review in 2014 — reopened my direct appeal in 2018, relying on a jurisdictional ruling in my interim 28 USC § 2254, habeas (Winkel II, supra)

(l) However, before going back to the State court was a second ~~appeal~~ federal appeal where I questioned federal jurisdiction AND briefed these claims. The Tenth Circuit assumed jurisdiction and denied on merits — without looking at merits (Winkel III, at APPX C).

(m) These claims were presented to this court but returned to me unfiled every time, i.e., January 10, 2017 (KDOC copy problems); March 24, 2017 (Same); May 25, 2017 (KDOC stole my legal documents); August 16, 2017 (clerk's ignoring Rule 20.6); and October 27, 2017.

(n) The Kansas Supreme Court granted my motion to reopen my direct appeal and, after allowing me to resubmit my petition for review, denied review in 30-OCT-2018 (Winkel IV, at APPX. B).

(o) These claims were — via direct appeal this time — presented to this Court. on January 28, 2019, but returned UNFILED on February 13, 2019 (See above X).

XV REASONS FOR GRANTING

(a) Important constitutional government duty(-ies) to protect rights of the disabled and allegedly disabled.

(b) It is a substantive violation of the US const Amend I, to prevent the allegedly mentally ill from petitioning the government for redress of his grievances of unconstitutional allegations of mental illness, its basis, development, entertainment, and ~~to~~ effects (see, e.g., Vitek v. Jones, supra (restrictions on government ability to classify and treat as mentally 'ill')).

(c) **COURTS DISAGREE** as to whether incompetency proceedings are an ABSOLUTE bar to Constitutional Speedy Trial Claim. To allow such effectively condones the shielding of purposeful governmental violations of Constitution (see, e.g., Addington v. Texas, supra (burden of proof needed to protect alleged disabled from wrongful civil committment); Vitek, supra

Barker v. Wingo, supra (Totality of circumstances for speedy trial analysis), and Jackson v. Indiana, 406 US 715 (1972) (Disabled pretrial detainee entitled to speedy trial considerations); and Estelle v. Smith, supra (Accused entitled to Advocate to help Accused DETERMINE WHETHER TO CONSENT to evaluation — Fifth Amendment violated when information developed via uncounseled evaluations used against Accused)).

(1) The courts applying this blanket ban are e.g.: Winkel I, supra (at APPX A); Winkel III, (at APPX C); Winkel IV, supra (at, APPX. B); Morris v. State, 60 So.3d 326, 355 (Ala., 2010); People v. Wartena, 156 P.3d 469, 473 n.5 (2007) (citing cases); State v. Woodland, 945 P.2d 665, 670 (1997); Keever v. Bainter, 186 NW.2d 133, 137 (Iowa, 1971); In re Writ of Habeas Corpus by Snyder, 308 Kan. 615, 619 (2018) ("ASSUMING [three of the Barker factors] weigh in Snyder's favor, his speedy trial claim is still foreclosed by the sole reason for the delay — his incompetency to stand trial.") (Emphasis and brackets added); and can you believe it? this Kansas case in 2018 cited with approval: Langworthy v. State, 46 Md.App. 116 (1980) (defendant not permitted presentee~~d~~ for purpose of contesting (A) accusation of incompetente by lawyer, (B) evidence of incompetence, (c) and HOLDING the one one charged with incompetency can-not contest it)!!!...

(2) The OPPOSITE is recognized or/and applied in the following courts, e.g.: Williams v. United States, 250 F.2d 19 (DC, 1957); United States v. Beidler, 417 F.Supp. 608, 614-616 (1976) (Exceptions); State v. Smith, 276 Md 521 (1976); Jones v. State, 279 Md 1, 14 (1976) (applying all Barker factors to OVERALL trial delay despite INITIAL delay attributed to Accused moving for committment to mental hospital for trial competency evaluation); Jolly v. State, 282 Md 353, 356 (1978); State

v. Dube, 2000 Kan.App.Unpub. LEXIS 757 (2000) (Speedy trial exceptions to competency statutes); State v. Boettger, 397 P.3d 1256 (Kan., 2017); State v. Cook, 2016-Ohio-2823, at P62-P85 (2016); State v. Tamayo, 280 Neb. 836, 2010 Neb. LEXIS 138 (as amended Nov. 09, 2016); State v. Tamayo, 18 Neb.App. 430 (2010); Nagi v. People, 2017 CO. 12 (Colo., 2017); and also Nail v. Slayton, 353 F.Supp 1013, 1018-1019 (WD. Virg, 1972) (State prisoner on federal habeas — state statute preventing review of state speedy trial claim due to confinement for competency evaluation (A) has no preclusive effect to review of a Sixth Amendment speedy trial issue; and (B) the proceedural application of the statute may result in the deprivation of the Sixth Amendment rights).

(d) There is **ALSO DISAGREEMENT** on the IMPORTANT issue(s) of whether a court-appointed lawyer can act AGAINST the client he is to Advocate for as long as the incompetency proceedings the lawyer institutes against his client produces — at some later point — evidence that can be used against his client at, or/and beyond the adversarial hearings between him and his client.

(1) Walking this unconstitutional path with Langworthy, supra, are e.g.: Winkel III, supra, at APPX. C, which relies on United States v. Boigegrain, 155 F.3d 1181 (CA10, 1998), which cites Bundy v. Dugger, 816 F. 2d 564 (CA6, 1987).

(2) The contrary position is held NOT ONLY in United States v. Collins, 430 F.3d 1260 (CA10, 2005), but also in the dissenting opinions in Bundy, and Boigegrain, supra. All of these apply Cronic, supra, defying harmless error. Let us not ~~forget~~ bypass United States v. Majkowski, 2017 US Dist. LEXIS 7799, at note 4 (D. Penn., January 17, 2017), who cites statutes and United States v. Nguyen, 962 F.Supp. 1221 (ND, Cal., 1997), who in turn relies on

Estelle v. Smith, supra, for the duty of the courts to protect Disabled's/Accused's right against self-incrimination by refusing to admit into evidence or rely on the information developed in course of incompetency examinations.

(3) Contrary to Estell v. Smith, Nguyen, and Majkowski, supra, the Tenth Circuit says that this information can be used to justify the lawyers efforts to have his client forcefully drugged (e.g.: APPX. G), because it is the states interest to do so (Winkel III, supra, APPX. C). But this morphs the Advocate into Adversary (Sell v. United States, 539 US 166 (2003) (to force drugs, the Accused's interests must be weighed against the states interests)). "[A]n attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecutions position is certainly worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition." (Rickman v. Bell, 131 F.3d 1150, 1159 (CA6, 1997). (citations omitted)).

XVI CONCLUSION

(a) Please count this as my direct appeal petition for certiorari; or/and help maintain integrity of judicial system by granting review, and remedy, and relief.

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