

IN THE
MISSOURI SUPREME COURT

STATE EX REL. MICHAEL KELLY,)	
)	
Petitioner,)	
)	
v.)	Cause No. SC97744
)	
JULIE INMAN,)	
REGIONAL EXECUTIVE OFFICER)	
SOUTHEAST MISSOURI)	
MENTAL HEALTH CENTER,)	
)	
Respondent.)	

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S STATEMENT, BRIEF, AND ARGUMENT

Gwenda Reneé Robinson
Missouri Bar No. 43213
District Defender, Office B/Area 68
1010 Market Street, Suite 1100
St. Louis, MO 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR PETITIONER

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JURISDICTIONAL STATEMENT

Petitioner, Michael Kelly, petitions this Court for a writ of habeas corpus to release him from his unlawful confinement in the department of mental health. In 1991, in Jackson County Cause No. CR91-0961, the State of Missouri charged Mr. Kelly with the class A felony of robbery in the first degree and the unclassified felony of armed criminal action.¹ The State moved for a mental evaluation of Mr. Kelly to determine Mr. Kelly's competency to proceed to trial and whether Mr. Kelly had a mental disease or defect excluding responsibility. The court granted the motion.

On June 20, 1991, the court entered an order finding Mr. Kelly to be incompetent, suffering from a mental disease or defect excluding responsibility, and not guilty by reason of mental disease or defect. The court committed Mr. Kelly to the department of mental health where he has remained since 1991.

Mr. Kelly previously sought relief through the filing of petitions for writs of habeas corpus in the St. Francois County Circuit Court in 2017 and the Missouri Court of Appeals, Eastern District, in 2018. Both petitions were denied.

Mr. Kelly filed his petition for writ of habeas corpus in this Court on March 12, 2019. This Court has jurisdiction pursuant to article V, section 4 of the

¹ The Jackson County Circuit Court's docket sheets reflect a cause number of 16CR91000961, whereas copies of documents from the criminal case file reflect a cause number of CR91-0961.

Missouri Constitution, Chapter 532 of the Revised Missouri Statutes, and Rule 91.²

² All statutory citations are to RSMo 2000 unless otherwise indicated. All rule citations are to Missouri Supreme Court Rules (2019) unless otherwise noted.

STATEMENT OF FACTS

On February 26, 1991, the State filed a complaint alleging that Mr. Kelly committed robbery in the first degree and armed criminal action, in that on or about December 6, 1990, he forcibly stole miscellaneous U.S. currency in the possession of a 7-11 store and, in the course thereof, threatened the use of what appeared to be a deadly weapon. (E1-2).³

The State moved for a mental evaluation of Mr. Kelly to determine Mr. Kelly's competency to proceed to trial and whether Mr. Kelly had a mental disease or defect excluding responsibility. (E5). The court granted the motion on April 5, 1991. (E8).

Dr. Steven A. Mandraochia, Director of Forensic Services at Western Missouri Mental Health Center, evaluated Mr. Kelly. (Resp. Ex. B at 6). He generated a report, dated June 3, 1991, in which he documented his opinions. (Resp. Ex. B at 5-6). He found that Mr. Kelly suffers from a mental disease or defect, namely chronic undifferentiated schizophrenia and polysubstance abuse or dependence (Resp. Ex. B at 5). He recommended that Mr. Kelly be held in a suitable hospital facility for treatment pending determination of his competency to proceed. (Resp. Ex. B at 5). In Dr. Mandraochia's opinion, Mr. Kelly lacked

³ Exhibits are referred to by their unique page number. Mr. Kelly will cite the exhibits as follows: "(E)."

the capacity to understand the proceedings against him or to assist in his own defense. (Resp. Ex. B at 6).

Dr. Mandraochia further concluded that at the time of the alleged criminal conduct, Mr. Kelly, due to his mental disease or defect, did not fully appreciate the nature, quality, or wrongfulness of his conduct and was incapable of conforming his conduct to the law. (Resp. Ex. B at 6).

On June 20, 1991, the court entered an order finding Mr. Kelly to be incompetent, suffering from a mental disease or defect excluding responsibility, and not guilty by reason of mental disease or defect. (E3-4).

Specifically, the order states:

Based on the evidence presented, the Court finds and determines that as a result of mental disease or defect, the defendant lacks capacity to understand the proceedings against him or to assist in his own defense, and that he lacks mental fitness to proceed with the charges against him.

(E3).

The order notes that the State had, in open court, accepted Mr. Kelly's defense of mental disease or defect excluding responsibility. (E3). Then, the order concludes as follows:

Base[d] upon evidence presented and the State's acceptance of the defense of mental disease or defect

ex[c]luding responsibility, the Court finds that, at the time of the criminal conduct charged in the information, the defendant did not know or appreciate the nature, quality or wrongfulness of his conduct and/or was incapable of conforming his conduct to the requirements of law, and was suffering from a mental disease or defect excluding responsibility for such conduct; and that the defendant is not guilty of the crimes charged in the information by reason of a mental disease or defect excluding responsibility.

(E3).

The court committed Mr. Kelly to the department of mental health where he has remained since 1991. (E3-4).

Mr. Kelly previously sought relief through the filing of petitions for writs of habeas corpus in the St. Francois County Circuit Court in 2017 and the Missouri Court of Appeals, Eastern District, in 2018. (E12-17; Resp. Ex. A at 1). Both petitions were denied. (E12-17; Resp. Ex. A at 1).

Mr. Kelly filed his petition for writ of habeas corpus in this Court on March 12, 2019. On June 4, 2019, this Court issued a preliminary writ of habeas corpus. Respondent filed his answer on July 3, 2019.

POINT

Mr. Kelly is entitled to habeas relief on his claim that the court exceeded its authority in accepting Mr. Kelly's plea of not guilty by reason of insanity ("NGRI") while Mr. Kelly was mentally incompetent and by committing Mr. Kelly to the department of mental health thereon because due process required that Mr. Kelly be mentally competent to enter his NGRI plea, and Mr. Kelly did not procedurally default his claim by failing to pursue other remedies in that habeas is the only viable remedy available to Mr. Kelly or, in the alternative, Mr. Kelly's mental illness and incompetency at the time during which he could have pursued post-conviction remedies for the unlawful commitment constituted cause and prejudice excusing any alleged procedural default. The failure to grant relief from Mr. Kelly's unlawful commitment would prejudice Mr. Kelly and result in manifest injustice and the continual violation of Mr. Kelly's due process right under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 10 of the Missouri Constitution, and § 552.020 not to be tried or proceeded against while incompetent.

State v. McKee, 39 S.W.3d 565 (Mo. App. S.D. 2001);

Medina v. California, 505 U.S. 437 (1992);

Godinez v. Moran, 509 U.S. 389 (1993);

Holt v. Bowersox, 191 F.3d 970 (8th Cir. 1999);

U.S. Const., Amend. V & XIV;

Mo. Const., Art. I, § 10;

§§ 532.010, 552.020, & 552.040;

Rules 24.035, 81.04, 81.07, and 91.

ARGUMENT

Mr. Kelly is entitled to habeas relief on his claim that the court exceeded its authority in accepting Mr. Kelly's plea of not guilty by reason of insanity ("NGRI") while Mr. Kelly was mentally incompetent and by committing Mr. Kelly to the department of mental health thereon because due process required that Mr. Kelly be mentally competent to enter his NGRI plea, and Mr. Kelly did not procedurally default his claim by failing to pursue other remedies in that habeas is the only viable remedy available to Mr. Kelly or, in the alternative, Mr. Kelly's mental illness and incompetency at the time during which he could have pursued post-conviction remedies for the unlawful commitment constituted cause and prejudice excusing any alleged procedural default. The failure to grant relief from Mr. Kelly's unlawful commitment would prejudice Mr. Kelly and result in manifest injustice and the continual violation of Mr. Kelly's due process right under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 10 of the Missouri Constitution, and § 552.020 not to be tried or proceeded against while incompetent.

Standard of Review

"Where an accused complains that his commitment pursuant to section 552.040 violates due process, a writ of habeas corpus is the appropriate remedy,

as habeas corpus affords redress for unlawful restraints of liberty.” *State ex rel. Koster v. Oxenhandler*, 491 S.W.3d 576, 593 (Mo. App. W.D. 2016).

“Any person restrained of liberty within this state may petition for a writ of habeas corpus to inquire into the cause of such restraint.” Rule 91.01(b); *see also* § 532.010 (stating “[e]very person committed, detained, confined or restrained of his liberty, within this state, for any criminal or supposed criminal matter, or under any pretense whatsoever . . . may prosecute a writ of habeas corpus as herein provided, to inquire into the cause of such confinement or restraint).

The consideration of a petition for writ of habeas corpus is limited to determining the facial validity of the confinement. *State ex rel. Koster v. Jackson*, 301 S.W.3d 586, 589 (Mo. App. W.D. 2010) (citing *State ex rel. Nixon v. Jaynes*, 73 S.W.3d 623, 624 (Mo. banc 2002)). The facial validity of confinement is determined on the basis of the entire record. *Oxenhandler*, 491 S.W.3d at 589. “The essential question to be determined is whether a review of the entire record establishes that a habeas petitioner is being deprived of his liberty without due process of law.” *Id.*

The habeas petitioner has the burden of proving he or she is entitled to habeas corpus relief. *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 76 (Mo. banc 2015). “Habeas corpus relief is available when the petitioner proves he or she is ‘restrained of his [or her] liberty in violation of the constitution or laws of the state or federal government.’” *State ex rel. Griffith v. Precythe*, 574 S.W.3d

761, 763 (Mo. banc 2019) (citing *State ex rel. Carr v. Wallace*, 527 S.W.3d 55, 59 (Mo. banc 2017)).

Argument

Mr. Kelly is entitled to habeas relief on his claim that the trial court exceeded its authority in accepting Mr. Kelly's plea of not guilty by reason of insanity ("NGRI") while Mr. Kelly was incompetent and by committing Mr. Kelly to the department of mental health thereon. To be competent to stand trial, the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him [or her]." *Zink v. State*, 278 S.W.3d 179, 183 (Mo. banc 2009) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). A person is legally incompetent if, as the result of mental disease or defect, he lacks capacity to understand the proceedings against him or to assist in his own defense. *State v. Howard*, 668 S.W.2d 191, 195 (Mo. App. S.D. 1984); § 552.020.1.

Prosecution of a person who is incompetent violates that person's right to due process of law. *Drope v. Missouri*, 420 U.S. 162, 172 (1975); *Pate v. Robinson*, 383 U.S. 375, 378 (1966). "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 proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *State v. Driskill*, 459 S.W.3d 412, 423 (Mo. banc 2015) (citing *Drope*, 420 U.S. at 171).

Section 552.020.1 provides: “No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.” § 565.020.1, RSMo 1986. If the court determines that a person is incompetent or lacks mental fitness to proceed, the court shall suspend criminal proceedings and commit him or her to the director of the department of mental health, where the person will then be subject to a review of his competence after six months. §§ 552.020.8 & 552.020.10, RSMo 1986. [Emphasis added.] The failure to observe such procedures to protect a defendant’s right not to be tried or convicted while incompetent to stand trial deprives the defendant of his due process right. *Driskill*, 459 S.W.3d at 423 (citing *Drope*, 420 U.S. at 172); *Pate*, 383 U.S. at 385.

Here, the court failed to observe the procedure in § 552.020.8, RSMo 1986. Instead, it permitted the State to proceed with its criminal prosecution of Mr. Kelly, and accepted Mr. Kelly’s plea of not guilty by reason of insanity (“NGRI”) while Mr. Kelly remained incompetent. The court’s actions were statutorily unauthorized and violated Mr. Kelly’s due process rights.

Although a plea of not guilty by reason of insanity and a plea of guilty are not synonymous, they are similar in significant respects. *Miller v. Angliker*, 848 F.2d 1312, 1319 (2d Cir. 1988). “Due process requires that a person who wishes to plead guilty must be competent to do so and must enter the plea knowingly and voluntarily.” *State v. Shafer*, 969 S.W.2d 719, 731 (Mo. banc 1998). This is so

because “a guilty plea is a waiver of several constitutional rights.” *Id.* Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is ‘voluntary’ and that the defendant must make the related waivers ‘knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.’” *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)).

A defendant’s plea of guilty to a criminal charge is not a knowing and voluntary act, however, if the defendant was incompetent at the time of the plea. *See Hubbard v. State*, 31 S.W.3d 25, 34 (Mo. App. W.D. 2000) (citing *Shafer*, 969 S.W.2d at 731 and *Bouchillon v. Collins*, 907 F.2d 589, 592 (5th Cir. 1990)). “[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right[s] . . .” *Pate*, 383 U.S. at 384.

“A plea of not guilty by reason of insanity resembles the plea of guilty in several significant respects, as it waives important trial rights belonging to the defendant, including his right to argue that he did not perform the acts with which he is charged, his right to urge through cross-examination of the State's witnesses that his confessions were not voluntary, and his right to introduce any other evidence tending to create a doubt that he actually performed the acts charged.” *Miller*, 848 F.2d at 1319.

Courts have held that “because NGRI pleas impose the consequence of involuntary confinement and operate as waivers of important constitutional trial

rights in the same way that guilty pleas do, the longstanding constitutional principles that obligate guilty pleas to be made knowingly, intelligently, and voluntary, attach with equal force to NGRI pleas.” *Duperry v. Kirk*, 563 F.Supp.2d 370, 388 (D. Conn. 2008); *see also State v. Brasel*, 623 P.2d 696, 701 (Wash. Ct. App. 1981); *People v. Rizer*, 484 P.2d 1367, 1371-73 (Cal. 1971) (requiring that the defendant be advised of his rights and admonished on the record prior to his entry of a NGRI plea).

To knowingly, intelligently, and voluntarily enter a plea of not guilty by reason of insanity, a defendant must be competent, just as the defendant who enters a traditional plea of guilty must be. The defendant’s constitutional due process right not to be tried, convicted and sentenced while incompetent “cannot be waived by the incompetent – by guilty plea or otherwise . . .” *Carroll v. Beto*, 421 F.2d 1065, 1067 (5th Cir. 1970).

“The entry of a plea of not guilty by reason of insanity . . . presupposes that the defendant is competent to stand trial and to enter a plea.” *Medina v. California*, 505 U.S. 437, 439 (1992); *Foucha v. Louisiana*, 504 U.S. 71, 97 (1992) (Kennedy, J., dissenting) (“[P]etitioner was competent at the time of his [NGRI] plea, and indeed could not have entered a plea otherwise.”) (citation omitted); *see also State v. English*, 424 P.2d 601, 607 (Kan. 1967) (“[A]n insane person cannot be required to plead to a criminal charge and cannot be tried.”).

Moreover, there is no distinction between the competency required to plead not guilty by reason of insanity and the competency required to proceed to

trial. *Godinez v. Moran*, 509 U.S. 389, 398-99 (1993); cf. *State v. Champagne*, 497 A.2d 1242, 1247-48 (N.H. 1985) (finding no distinction between the competency required to stand trial and the competency required to waive an insanity defense).

The same *Dusky* standard used to assess competence to stand trial applies when assessing competence to enter a plea of not guilty by reason of insanity. See *Moran*, 509 U.S. at 398-99. The defendant cannot be incompetent to proceed to trial but competent to plead not guilty by insanity. *Id.*; *Champagne*, 497 A.2d at 1247-48 (citing *State v. Faragi*, 498 A.2d 723, 729 (N.H. 1985)).

“[A] defendant cannot be competent for some trial proceeding purposes and incompetent for others.” *Champagne*, 497 A.2d. at 1248. “He is either competent or he is incompetent.” *Id.*

Consequently, the court exceeded its authority in accepting Mr. Kelly’s plea of not guilty by reason of insanity (“NGRI”) while Mr. Kelly was mentally incompetent and by committing Mr. Kelly to the department of mental health thereon. See generally *State v. McKee*, 39 S.W.3d 565, 570 (Mo. App. S.D. 2001) (finding appellant’s claim – that a finding of incompetency precluded acceptance of his NGRI plea and his commitment – was facially sufficient to entitle him to habeas relief).

The court’s abuse of its discretion resulted in a legally unenforceable judgment. “Because a defendant may not be proceeded against while incompetent to stand trial, a trial court’s order finding an incompetent defendant

not guilty by reason of insanity is void.” *McCroan v. State*, 148 So.3d 548 (Fla. Dist. Ct. App. 2014) (citing *Thompson v. Crawford*, 479 So.2d 169, 185-86 (Fla. Dist. Ct. App. 1985)).

Mr. Kelly has been prejudiced in that based on the court’s invalid order, he has been unlawfully confined in the department of mental health for 28 years, conceivably longer, or as long, as the term of imprisonment he would have received after a finding of guilt. He cannot ever obtain release from his confinement unless he carries the heavy burden of proving, by clear and convincing evidence, that he is no longer suffering from a mental disease or defect rendering him dangerous to himself or others. § 552.040.12.

This court must grant Mr. Kelly habeas relief as redress for his illegal commitment to, and unlawful confinement in, the department of mental health based on the court’s June 20, 1991 order. “Habeas corpus is available as a remedy for a person confined pursuant to Chapter 552 procedures if an application therefor is properly pleaded, filed in a court having jurisdiction, and facts are proven showing entitlement to relief.” *McKee*, 39 S.W.3d at 569 n. 6.

Mr. Kelly acknowledges that the relief available under a writ of habeas corpus is limited and generally, cannot be used to raise procedurally barred claims, such as those that could have been raised on direct appeal or in a post-conviction proceeding under Rules 24.035 and 29.15. *Larkins*, 475 S.W.3d at 76. Post-conviction motions for relief under Rules 24.035 and 29.15 are “designed to provide a ‘single unitary, post-conviction remedy, to be used in place of other

remedies,' including the writ of habeas corpus.” *State ex rel. Laughlin v. Bowersox*, 318 S.W.3d 695, 701 (Mo. banc 2010) (quoting *Wiglesworth v. Wyrick*, 531 S.W.2d 713, 715-16 (Mo. banc 1976)).

To counsel’s knowledge, Mr. Kelly did not file either a direct appeal or a post-conviction proceeding under Rule 24.035 in which he advanced the claim now raised on habeas. But the failure to timely raise a claim on direct appeal or in a post-conviction proceeding under Rule 24.035 or Rule 29.15 does not foreclose habeas relief on procedurally barred claims if the petitioner can show:

(1) a claim of actual innocence or (2) a jurisdictional defect or (3)(a) that the procedural defect was caused by something external to the defense—that is, a cause for which the defense is not responsible—and (b) prejudice resulted from the underlying error that worked to the petitioner’s actual and substantial disadvantage.

Larkins, 475 S.W.3d at 76 (citing *State ex rel. Zinna v. Steele*, 301 S.W.3d 510, 516-17 (Mo. banc 2010)).

Habeas relief may also be available on procedurally barred claims “in circumstances so rare and exceptional that a manifest injustice results.” *Id.* (citing *State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. banc 1993)).

Habeas relief is available to Mr. Kelly, notwithstanding his failure to raise his claim on direct appeal or in a timely filed Rule 24.035 post-conviction motion,

because neither was a viable remedy for him. At least one district of the Court of Appeals has observed that “habeas is . . . the only viable means by which the lawfulness of confinement as a result of the NGRI defense can be challenged.” *Oxenhandler*, 491 S.W.3d at 589 n. 21 (citing *McKee*, 39 S.W.3d at 569 n. 6); but see *State v. Lewis*, 188 S.W.3d 483 (Mo. App. W.D. 2006).

Most significantly, Kelly could not have filed a legally cognizable Rule 24.035 motion because “Rules 24.035 and Rule 29.15 apply only to felony convictions, and afford no recourse to challenge the acceptance of a NGRI defense which results in an acquittal.” *Oxenhandler*, 491 S.W.3d at 589 n. 21; Rule 24.035(a) (1991).

However, assuming for the sake of argument, that a viable remedy was available that was not taken, Mr. Kelly undertakes the following analysis. Arguably, Mr. Kelly’s claim challenging the trial court’s authority to accept his NGRI plea and commit him raises a jurisdictional defect because the defendant’s competency is central to the trial court’s authority to require the defendant to answer to the State’s charges. *Drope*, 420 U.S. at 172; see also *McKee*, 39 S.W.3d at 569; §§ 552.020.1 & 552.020.9.

Missouri law, however, recognizes only two types of jurisdiction, personal and subject matter. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252-53 (Mo. banc 2009). Mr. Kelly’s claim does not challenge the personal or subject matter jurisdiction of the trial court, but, rather, the “jurisdictional competence” of the trial court or the trial court’s authority to render a particular judgment in a

particular case. *Jackson*, 301 S.W.3d at 589 (citing *Webb*, 275 S.W.3d at 252-53). Such matters of “jurisdictional competence” are not recognized as issues of jurisdiction in Missouri. *Id.*

Recognizing this, Mr. Kelly argues that his mental illness and incompetency at the time during which he could have pursued post-conviction remedies for the unlawful commitment constituted cause and prejudice excusing any alleged procedural default. Under the “cause and prejudice standard,” “[t]o demonstrate cause, the petitioner must show that an effort to comply with the State’s procedural rules was hindered by some objective factor external to the defense.” *Larkins*, 475 S.W.3d at 76 (citing *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330, 337 (Mo. banc 2013)). The petitioner must also show that he is entitled to habeas review because this Court’s failure to review his claims would prejudice him. *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 126 (Mo. banc 2010).

Serious mental illness can constitute cause and prejudice excusing procedural default. *Holt v. Bowersox*, 191 F.3d 970, 974 (8th Cir. 1999). “[F]or mental illness to constitute cause and prejudice to excuse procedural default, there must be a conclusive showing that mental illness interfered with a petitioner’s ability to appreciate his or her position and make rational decisions regarding his or her case at the time during which he or she should have pursued post-conviction relief.” *Id.*

Cause is established by “[a] conclusive showing of incompetence.” *Nachtigall v. Class*, 48 F.3d 1076, 1081 (8th Cir. 1995). “[A] defendant is not competent to waive post[-]conviction remedies if he . . . is ‘suffering from a mental disease, disorder, or defect that may substantially affect his . . . capacity to appreciate his . . . position and make a rational choice with respect to continuing or abandoning further litigation.’” *Holt*, 191 F.3d at 974 (citing *Anderson v. White*, 32 F.3d 320, 321 (8th Cir. 1994)). “Mental illness prejudices a petitioner if it interferes with or impedes his . . . ability to comply with state procedural requirements, such as pursuing post-conviction relief within a specific time period.” *Id.*

Mr. Kelly’s mental illness and incompetency would necessarily have interfered with and impeded his ability to comply with the procedural requirements for pursuing post-conviction relief under Rule 24.035 and on appeal. In 1991, a Rule 24.035 post-conviction motion had to be filed within ninety days after the movant’s delivery to the custody of the department of corrections or the right to proceed under the rule was waived. Rule 24.035(b) (1991).⁴

To be timely, a notice of appeal had to be filed not later than ten days after the judgment or order appealed from became final. Rule 81.04(b) (1991). An appellant would be permitted to file an untimely notice of appeal only if he filed a motion in the appellate court, with notice to the adverse parties, within six

⁴ Notably, Mr. Kelly was delivered to the department of mental health (E4).

months from the date of the final judgment, and showed, by affidavit or otherwise, that the delay was not due to his culpable negligence. Rule 81.07(b) (1991).

But at the time during which Mr. Kelly could have filed his appeal and 24.035 motion, Mr. Kelly was mentally ill and mentally incompetent. The severity of his mental illness and his mental incompetency would have made it difficult, if not impossible, for him to comprehend his legal rights, comply with the procedural requirements, identify and assert his claims, and make informed judgments about pursuing legal remedies.

In 1991, Mr. Kelly already had an “extensive history of psychiatric treatment/hospitalization over approximately the past ten years.” (Resp. Ex. B at 2). He had had “nearly continuous involvement in mental health services since 1979.” (Resp. Ex. B. at 2).

He had had “multiple admissions at a variety of facilities,” and he had been consistently diagnosed as “suffering from schizophrenia and poly-substance abuse/dependency.” (Resp. Ex. B at 2). He had exhibited a “wide range of florid psychotic disturbances” and “psychotic symptoms” (Resp. Ex. B. at 2-3).

At the time of his mental evaluation by a court-appointed forensic psychiatrist in spring 1991, his “overall level of intellectual functioning” was “subaverage” (Resp. Ex. B at 4). His “verbal skills were limited” (Resp. Ex. B at 4). His “general memory functioning” was “poor,” and his “[j]udgment,

reasoning and particularly insight in terms of his psychiatric condition were impaired” (Resp. Ex. B at 4).

In a report, dated June 3, 1991, the court-appointed forensic psychiatrist opined that Mr. Kelly was incompetent, not guilty by reason of insanity, and suffering from a mental disease or defect, namely chronic undifferentiated schizophrenia and polysubstance abuse or dependence (Resp. Ex. B at 5).

On June 20, 1991, seventeen days after the date reflected on the report, the court entered its order committing Mr. Kelly to the department of mental health. (E3-4). The court found Mr. Kelly to be incompetent, suffering from a mental disease or defect excluding responsibility, and not guilty by reason of mental disease or defect. (E3-4). The contents of the court’s order and the forensic psychiatrist’s report conclusively show the mental incompetency required to satisfy the “cause and prejudice” standard.

Under the circumstances, the failure to grant relief from Mr. Kelly’s unlawful, indefinite commitment would prejudice Mr. Kelly and result in manifest injustice and the continual violation of Mr. Kelly’s due process right under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 10 of the Missouri Constitution, and § 552.020 not to be tried or proceeded against while incompetent.

CONCLUSION

WHEREFORE, Mr. Kelly respectfully requests that this Court grant a writ of habeas corpus, vacate Mr. Kelly's plea of not guilty by reason of insanity, set aside the order of commitment, and remand for proceedings on the underlying criminal case.

Respectfully submitted,

/s/ Gwenda Reneé Robinson

Gwenda Reneé Robinson, #43213
 District Defender, Office B/Area 68
 Missouri State Public Defender
 Eastern Appellate/Post-conviction
 1010 Market Street, Suite 1100
 St. Louis, MO 63101
 314.340.7662 (telephone)
 314.340.7685 (facsimile)
 Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that on Monday, August 05, 2019, a true and correct copy of Petitioner's Statement, Brief, and Argument was electronically filed with this Court. Also, a copy of Petitioner's Statement, Brief, and Argument was sent to Patrick J. Logan, Assistant Attorney General, at Patrick.Logan@ago.mo.gov the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102 via the Missouri E-filing System. In addition, I hereby certify that this brief includes the information required by Rule 55.03. This brief was prepared with Microsoft Word for Windows, uses Georgia 13 point font, and contains 5,402 words.

/s/ Gwenda Reneé Robinson

Gwenda Reneé Robinson, #43213
District Defender, Office B/Area 68
Missouri State Public Defender
Eastern Appellate/Post-conviction
1010 Market Street, Suite 1100
St. Louis, MO 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR PETITIONER