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DAVID P. TAYLOR *v.* COMMISSIONER OF CORRECTION
(AC 26158)

DiPentima, Gruendel and Dupont, Js.

*Argued January 17—officially released April 11, 2006*

(Appeal from Superior Court, judicial district of Tolland, Fuger, J.)

*Emmet P. Hibson, Jr.*, special public defender, for the appellant (petitioner).

*Melissa Streeto Brechlin*, assistant state's attorney, with whom, on the brief, were *Matthew C. Gedansky*,

state's attorney, and *Linda N. Howe*, senior assistant state's attorney, for the appellee (respondent).

*Opinion*

DUPONT, J. The petitioner, David P. Taylor, appeals following the habeas court's denial of his petition for certification to appeal from the judgment denying his petition for a writ of habeas corpus. The habeas petition was comprised of two claims, either or both of which, he argues, required as relief that he be allowed to withdraw his *Alford*[1] plea as having been made involuntarily. The petitioner first claims that the trial court, on the basis of the facts known to it at the time of his plea to murder in violation of General Statutes § 53a-54a, should have, sua sponte, ordered a competency hearing pursuant to *Pate* v. *Robinson*, 383 U.S. 375, 385, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966), and *State* v. *Watson*, 198 Conn. 598, 605, 504 A.2d 497 (1986).[2] His second claim is that he received ineffective assistance of counsel in connection with his decision to plead guilty, given his mental state at the time of the plea.

The state filed a return to the petition, asserting the procedural default of the petitioner in not raising these issues by direct appeal or by filing a motion to withdraw his plea before sentencing.[3] The state argues that a procedural default would require a demonstration of cause and prejudice, as established for federal habeas proceedings by *Wainwright* v. *Sykes*, 433 U.S. 72, 90–91, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977), and adopted by our Supreme Court for state habeas proceedings in *Johnson* v. *Commissioner of Correction*, 218 Conn. 403, 409, 589 A.2d 1214 (1991), prior to any review by the habeas court in this case. In his reply, the petitioner denied this defense. The court, in its memorandum of decision, did not discuss cause and prejudice or the claim of the petitioner as to the need for the trial court to order a competency hearing. We hold that the court properly denied the petition for certification to appeal to challenge the court's denial of the petitioner's claim of ineffective assistance of counsel, but we remand the matter to the habeas court as to the petitioner's *Pate* claim in order to obtain the court's finding as to whether cause and prejudice existed.

The facts of this case are tragic for everyone involved. In 1994, the petitioner, his then wife of fifteen years and two children resided in England, where the petitioner was employed as a production engineer for Thermatool Corporation (Thermatool), a United States company. In February, 1995, the petitioner's wife announced that she wanted a divorce. The divorce had been precipitated by his wife's extramarital affair. The petitioner gained full custody of their children during the pendency of the divorce. Shortly after being awarded custody, the petitioner hired the victim, Milena Pitkova, as an au pair, to help him care for the children. Some time after his divorce, the petitioner became

romantically involved with the victim.

In the summer of 1996, Thermatool offered the petitioner a job in the United States. His divorce became official in May, 1997, and by June, 1997, the petitioner, his two children and the victim relocated to Michigan for his new position at Thermatool. In May, 1998, Thermatool closed its Michigan operations and offered the petitioner a job at Thermatool headquarters in East Haven. By August, 1998, the petitioner, his children and the victim were living in Madison. To earn some extra money and keep busy while the petitioner was at work and the children were at school, the victim took a part-time job at a local coffee shop.

In December, 1998, the petitioner asked the victim to marry him, and she accepted. They planned a wedding and obtained a marriage license. In a few short weeks, however, the victim asked to postpone the marriage. In February, 1999, the victim informed the petitioner that she wanted to end their romantic and professional relationships. The victim gave the petitioner one month's notice to find a new au pair for the children. The victim's decision triggered the same feelings of shock, depression, loneliness and despair that the defendant had felt when his wife left him exactly four years earlier.

On Sunday, March 28, 1999, the victim informed the petitioner that she had become romantically involved with a gentleman she had met while working at the local coffee shop. In a fit of anger, the petitioner threw the victim's clothes down the stairs of the house and told her to call her boyfriend to come and collect her. The next day, the victim agreed to return to the petitioner's house to cook the family a meal and to gather the rest of her belongings. That evening, after learning of the intimate details of the victim's new relationship, the petitioner struck the victim in the head with a hammer. After checking that the victim had no pulse, the petitioner moved her body to the basement. The petitioner then called 911, told the operator what he had done and asked for the police to come and take him into custody. The petitioner then was taken into custody and charged with murder in violation of § 53a-54a.

The court appointed counsel from the office of the public defender.[4] Counsel for the petitioner immediately began to investigate whether the petitioner had any viable mental health defenses to the charge. Specifically, counsel hired a psychiatrist to evaluate the petitioner and to review his department of correction medical records. Counsel also viewed the crime scene, interviewed the petitioner's employer and coworkers, and traveled to England to interview the petitioner's former wife, family and friends. Prior to the trial date, counsel met with the petitioner in the correctional facility in which he was being held. Between arrest and trial, the petitioner was confined continuously in the

mental health unit of the correctional facility in which he was being detained. Throughout the two and one-half years during which he was represented by counsel, the petitioner had numerous opportunities to communicate with counsel via mail and telephone. Because it did not appear that the state would agree to allow the petitioner to plead to a lesser offense, the petitioner and counsel prepared to proceed to trial. During the summer of 2001, the state discussed an offer with defense counsel under which the petitioner would plead guilty to murder and receive the mandatory minimum sentence. At that point, the petitioner did not want to plead guilty to murder.

On September 12, 2001, the day trial was scheduled to begin, the petitioner pleaded guilty, under the *Alford* doctrine, to one count of murder in violation of § 53a-54a.[5] After canvassing the petitioner, the trial court found that his plea was made in a knowing, intelligent and voluntary manner. As such, the court accepted the plea and entered a finding of guilty. On November 30, 2001, the court sentenced the petitioner, in accordance with the plea agreement, to twenty-five years to serve in prison.

As a preliminary matter, we identify the relevant legal principles and the applicable standard of review that guide our resolution of the petitioner's appeal. The denial of a petition for certification to appeal is reviewed to determine whether the habeas court abused its discretion. A conclusion that its discretion has been abused requires a showing that the particular claim ''involves issues that . . . are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'' (Internal quotation marks omitted.) *Faust* v. *Commissioner of Correction*, 85 Conn. App. 719, 721, 858 A.2d 853, cert. denied, 272 Conn. 909, 863 A.2d 701 (2004); see also *Simms* v. *Warden*, 230 Conn. 608, 616, 646 A.2d 126 (1994).[6] If a habeas court is found to have abused its discretion, then an appellate court may review the rectitude of the denial of the writ of habeas corpus. See *Faust* v. *Commissioner of Correction*, supra, 721. Therefore, before we may reach the merits of the petitioner's claim that the court improperly decided the issues raised in his petition for a writ of habeas corpus, he first must show that the court abused its discretion in denying the petition for certification to appeal. See *Sadler* v. *Commissioner of Correction*, 90 Conn. App. 702, 703, 880 A.2d 902, cert. denied, 276 Conn. 902, 884 A.2d 1025 (2005).

## I

## INEFFECTIVE ASSISTANCE OF COUNSEL

We first address whether the habeas court abused its discretion in denying the petition for certification

to appeal with respect to the petitioner's claim that he received ineffective assistance of counsel. According to the petitioner, his attorneys knew the specific medications, as well as the dosages, that he was being prescribed, were aware that he was being treated for mental health issues by psychiatrists and psychologists from the department of correction, believed that he had a viable defense for extreme emotional disturbance and knew he was being held in psychiatric units of the department of correction institutions. The petitioner asserts that, despite having this information, his attorneys failed to bring it to the attention of the court, thereby preventing the court from determining whether a competency hearing was necessary. The petitioner claims that, in failing to provide the court with this information, his attorneys' conduct fell below the objective standard of reasonableness because they failed to protect his constitutional rights. We disagree.

The habeas court found that the petitioner's attorneys prepared adequately to represent him at trial. According to the court, the attorneys went to great lengths to prepare a defense of extreme emotional disturbance by having the petitioner evaluated by a psychiatrist, a psychologist and a neurologist. The court reviewed the psychologist's report, as well as the department of correction's medical records. Further, the court found that the attorneys explained the definition of an *Alford* plea and the ramifications of the plea to the defendant. The court heard testimony from one of the petitioner's attorneys. The attorney stated that, although she prepared the extreme emotional disturbance defense and was aware that the petitioner was being held in mental health units in the department of correction's institutions, as well as the fact that he was being prescribed medications for his mental health issues, she believed that none of this affected the petitioner's ability to plead guilty and to understand the nature of the proceedings. On the basis of this evidence, the court found that there was no basis on which it could conclude that the attorneys' conduct fell below the objective standard of reasonableness. On the basis of those determinations, the court denied the petition for a writ of habeas corpus. Thereafter, the court denied the petition for certification to appeal, concluding that the petition was without merit.

As previously stated, ''[f]aced with a habeas court's denial of a petition for certification to appeal, a petitioner can obtain appellate review of the dismissal of his petition for habeas corpus only by satisfying the two-pronged test enunciated by our Supreme Court in *Simms* v. *Warden*, 229 Conn. 178, 640 A.2d 601 (1994), and adopted in *Simms* v. *Warden*, [supra, 230 Conn. 612]. First, he must demonstrate that the denial of his petition for certification constituted an abuse of discretion. . . . Second, if the petitioner can show an abuse of discretion, he must then prove that the decision of

the habeas court should be reversed on its merits. . . .

"To prove an abuse of discretion, the petitioner must demonstrate that the [resolution of the underlying claim involves issues that] are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. . . .

"We examine the petitioner's underlying claim of ineffective assistance of counsel in order to determine whether the habeas court abused its discretion in denying the petition for certification to appeal. Our standard of review of a habeas court's judgment on ineffective assistance of counsel claims is well settled. In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary. . . .

"In *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the United States Supreme Court enunciated the two requirements that must be met before a petitioner is entitled to reversal of a conviction due to ineffective assistance of counsel. First, the [petitioner] must show that counsel's performance was deficient. . . . Second, the [petitioner] must show that the deficient performance prejudiced the defense. . . . Unless a [petitioner] makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversarial process that renders the result unreliable." (Citations omitted; internal quotation marks omitted.) *Santiago* v. *Commissioner of Correction*, 90 Conn. App. 420, 423–25, 876 A.2d 1277, cert. denied, 275 Conn. 930, 883 A.2d 1246 (2005). "For ineffectiveness claims resulting from guilty pleas, we apply the standard set forth in *Hill* v. *Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985), which modified *Strickland*'s prejudice prong. . . . To satisfy the prejudice prong, the petitioner must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." (Internal quotation marks omitted.) *Hernandez* v. *Commissioner of Correction*, 82 Conn. App. 701, 706, 846 A.2d 889 (2004).

"The first component, generally referred to as the performance prong, requires that the petitioner show that counsel's representation fell below an objective standard of reasonableness. . . . In *Strickland*, the United States Supreme Court held that [j]udicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a [petitioner] to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel

was unreasonable. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . . [C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'' (Internal quotation marks omitted.) *Santiago* v. *Commissioner of Correction*, supra, 90 Conn. App. 425.

Both the trial transcript and the habeas transcript reveal that the petitioner's counsel believed that he understood the proceeding at which he pleaded guilty and was mentally capable of pleading guilty. Furthermore, the trial transcript indicates that the trial court was well aware of the petitioner's extreme emotional disturbance defense and that he was being prescribed medication. Although the petitioner asserts that his counsel should have requested a competency hearing or alerted the trial court to his mental health issues, there is no evidence in the record on which a court could conclude that counsel's performance fell below the objective standard of reasonableness imposed by *Strickland*. Our review of the petitioner's claim of ineffective assistance of counsel leads us to conclude that he has not demonstrated that the issue is debatable among jurists of reason, that a court could resolve the issue differently or that the issue deserves encouragement to proceed further. We therefore conclude that the habeas court did not abuse its discretion in denying the petition for certification to appeal on this issue.

II

VALIDITY OF GUILTY PLEA

Next, we address the petitioner's claim that the trial court, on the basis of the facts known to it at the time that the petitioner pleaded guilty, should have, sua sponte, ordered a competency hearing pursuant to *Pate* v. *Robinson*, supra, 383 U.S. 385, and *State* v. *Watson*, 198 Conn. 605. The state claims that his procedural default in not filing a motion to withdraw his plea prior to sentencing or filing a direct appeal to raise the issue of his competency precludes him from raising the issue by way of a petition for a writ of habeas corpus.

As with the petitioner's ineffective assistance of counsel claim, we first must address whether the habeas court abused its discretion in denying certification to appeal. Because the habeas court failed to make a finding of cause and prejudice, we cannot determine whether it abused its discretion in denying the petition for certification. As a result, we remand the matter to

the habeas court for a finding as to whether cause and prejudice existed.

The petitioner's principal, substantive claim is that the habeas court abused its discretion when it denied the petition for a writ of habeas corpus, rejecting his claim that his guilty plea was not knowing, voluntary and intelligent. In support of his claim, the petitioner makes two subordinate claims. First, the petitioner claims that there was substantial evidence of mental impairment, requiring the trial court to undertake an independent judicial inquiry into his competency to plead guilty. In support of his claim, the petitioner asserts that substantial evidence of mental impairment exists as a result of the following facts: (1) he was taking four separate medications for mental health issues, (2) his responses regarding whether he was taking medication were inconsistent, (3) he was being held in psychiatric units of the department of correction, (4) he stood accused of a crime that indicated irrational behavior and (5) he filed notice of a defense putting his mental health in issue. Second, the petitioner argues that even though the trial court conducted the standard plea colloquy, it was insufficient to establish that he made a knowing, voluntary and intelligent plea.[7] The petitioner asserts that the colloquy was insufficient because the trial court failed to determine what medication he was taking, the dosage of the medication or the effect the medication had on his ability to enter a knowing, voluntary and intelligent plea.

In her return to the petition for a writ of habeas corpus, the respondent, the commissioner of correction, raised as affirmative defenses that the petitioner's claims were in procedural default because he had failed to file a motion to withdraw his plea prior to sentencing, pursuant to Practice Book § 39-26, and did not file a direct appeal. The respondent claimed that in order for the habeas court to review the petitioner's claim, the petitioner first would have to demonstrate cause and prejudice, as required by *Wainwright*. In his reply, the petitioner denied that his claim was in procedural default. The respondent again raised the issue of procedural default in her brief filed with this court. The petitioner, in his reply brief, asserts that the cause and prejudice standard was met. The petitioner argues that by addressing the merits of his claim regarding whether the plea was knowing, voluntary and intelligent, the habeas court implicitly determined that the petitioner had satisfied the cause and prejudice requirements.

We examine the petitioner's underlying claim that his plea was not knowing, voluntary and intelligent in order to determine whether the habeas court abused its discretion in denying the petition for certification to appeal. The validity of a guilty plea can be challenged before sentencing pursuant to Practice Book § 39-26 and on direct appeal. See *Bowers* v. *Commissioner of*

*Correction*, 33 Conn. App. 449, 450–51, 636 A.2d 388, cert. denied, 228 Conn. 929, 640 A.2d 115 (1994). Here, the petitioner failed to raise his claim regarding the validity of his guilty plea before sentencing or on direct appeal. The petitioner raised the claim for the first time before the habeas court. In habeas proceedings, the appropriate standard for reviewability of a constitutional claim not raised before sentencing or on direct appeal is the *Wainwright* cause and prejudice standard. *Jackson* v. *Commissioner of Correction*, 227 Conn. 124, 133–34, 136, 629 A.2d 413 (1993). ''The petitioner must show good cause for his failure to preserve a claim at trial and actual prejudice resulting from the alleged constitutional violation.'' *Daniels* v. *Warden*, 28 Conn. App. 64, 71, 609 A.2d 1052, cert. denied, 223 Conn. 924, 614 A.2d 820 (1992). Here, the habeas court made no finding regarding whether the petitioner had met his burden of establishing cause and prejudice.

This court is permitted to review the record to determine whether any evidence of cause and prejudice was provided by the petitioner. See *Giannotti* v. *Warden*, 26 Conn. App. 125, 128, 599 A.2d 26 (1991), cert. denied, 221 Conn. 905, 600 A.2d 1359 (1992). ''Where . . . there has been evidence presented on the issues of cause and prejudice and the habeas court does not make a finding on the record that the petitioner has either met or failed to meet his burden of establishing cause and prejudice, we will not review the inadequately preserved constitutional claim on the merits. Rather, we will remand the case to the habeas court for it to determine whether the petitioner has satisfied his burden of establishing cause and prejudice.'' *Daniels* v. *Warden*, supra, 28 Conn. App. 72. As our Supreme Court noted in *Johnson* v. *Commissioner of Correction*, supra, 218 Conn. 419, it is the duty of the habeas court to make such a determination.

Our review of the record reveals that the petitioner presented some evidence to the habeas court regarding his failure to raise this issue before sentencing or on direct appeal and the alleged prejudice arising therefrom. Throughout the proceedings, the petitioner was held in mental health units of the department of correction's facilities. The petitioner's medical records for the eight month period leading to his guilty plea indicate that he had suicidal ideations. The petitioner initially rejected the prosecution's offer of a plea bargain. Counsel testified that the petitioner previously had decided to proceed to trial because ''his feeling was that he did not intentionally murder [the victim].''

Immediately following his arrest and incarceration, the petitioner was prescribed various dosages and combinations of Remeron, Ritalin, Prozac, Zyprexa, Zoloft and Cogentin. According to both the petitioner and his counsel, his emotional state fluctuated throughout the proceedings. According to counsel, the petitioner was

distraught at their first meeting. At times, he clearly was depressed, but his demeanor was much more calm or level as time elapsed. Nevertheless, he was very emotional at sentencing. On the day that he accepted the plea arrangement, the petitioner, by his own account, was anxious and overwhelmed by everything.

The petitioner, off medication by the time of the habeas hearing, described a newfound ability to understand the proceedings more clearly. He also testified that, with a clear mind, he was capable of understanding how clouded his judgment was at the time of his plea. It is undisputed that had the petitioner not pleaded guilty, counsel would have presented an extreme emotional disturbance defense, attempting to prove a mitigating circumstance reducing the charge of murder to manslaughter in the first degree. The viability of the defense is evident in the trial court's remarks that the crime was committed in a monumental rage, which, according to the habeas court, might warrant a manslaughter conviction. Had the petitioner prevailed, his sentence would have been less than the twenty-five years that he received under the plea agreement.

Evidence was presented on the issues of cause and prejudice, but the habeas court did not make a finding on the record that the petitioner had either met or failed to meet his burden of establishing cause and prejudice. We therefore cannot review the inadequately preserved constitutional claim on the merits. Rather, we must remand the case to the habeas court for the determination of whether the petitioner has satisfied his burden of establishing cause and prejudice. See *Daniels* v. *Warden*, supra, 28 Conn. App. 72.

The judgment is affirmed as to the habeas court's denial of the petition for a writ of habeas corpus on the petitioner's ineffective assistance of counsel claim; the case is remanded for findings as to whether the petitioner (1) had cause for failing to raise prior to sentencing or on direct appeal his claim that the trial court should have ordered, sua sponte, a competency hearing pursuant to *Pate* v. *Robinson*, supra, 383 U.S. 385, with respect to his guilty plea, and (2) suffered prejudice as a result of the alleged constitutional violation; in the event that the court finds no cause and prejudice, and no timely appeal is taken challenging that factual determination, the judgment is affirmed; in the event that the court finds that cause and prejudice exists, and no timely appeal is taken challenging that factual determination, the judgment is reversed only as to the petitioner's claim that the trial court should have ordered a competency hearing, and a new trial is ordered on that issue.

In this opinion the other judges concurred.

[1] *North Carolina* v. *Alford*, 400 U.S. 25, 35, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] The competency hearing, sought by the petitioner, related to his mental health at the time of his plea, unlike the evaluations of the psychiatrist,

psychologist and neurologist obtained by defense counsel that related to his mental health at the time of the murder. There is a distinct difference between the affirmative defense of extreme emotional disturbance, or the affirmative defense of mental defect or disease, as opposed to the due process standard that requires a criminal defendant to be competent to enter a valid guilty plea. Specifically, in order to prevail on a defense of extreme emotional disturbance, the defendant must prove, by a preponderance of the evidence, that ''at the time the defendant intentionally caused the death of [another], he acted under the influence of an emotional disturbance . . . that such emotional disturbance was extreme . . . [a]nd . . . that under all of the circumstances as the defendant believed them to be, there was a reasonable explanation or excuse for such extreme emotional disturbance influencing his conduct.'' (Internal quotation marks omitted.) *State* v. *Person*, 60 Conn. App. 820, 826 n.8, 761 A.2d 269 (2000), cert. denied, 255 Conn. 926, 767 A.2d 100 (2001). On the other hand, ''[a]s a matter of constitutional law, it is undisputed that the guilty plea and subsequent conviction of an accused person who is not legally competent to stand trial violates the due process of law guaranteed by the state and federal constitutions. Conn. Const., art. I, § 8; U.S. Const., amend. XIV, § 1; see *Pate* v. *Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966). . . . This constitutional mandate is codified in our state law by [General Statutes] § 54-56d (a), which provides that [a] defendant shall not be tried, convicted or sentenced while he is not competent. For the purposes of this section, a defendant is not competent if he is unable to understand the proceedings against him or to assist in his own defense.'' (Internal quotation marks omitted.) *State* v. *Monk*, 88 Conn. App. 543, 548–49, 869 A.2d 1281 (2005).

[3] Practice Book § 23-30 (b) provides in relevant part: ''The return [to the petition] shall respond to the allegations of the petition and shall allege any facts in support of any claim of procedural default . . . .'' An ineffective assistance of counsel claim is not subject to the usual rule requiring a direct appeal and is properly raised by way of a subsequent habeas corpus petition. *State* v. *Leecan*, 198 Conn. 517, 541–42, 504 A.2d 480, cert. denied, 476 U.S. 1184, 106 S. Ct. 2922, 91 L. Ed. 2d 550 (1986).

[4] Consistent with the policy of the office of the public defender in cases where a defendant is charged with murder, cocounsel was assigned. His counsel were attorneys Mary M. Haselkamp and Beth A. Merkin.

[5] Prior to entering the courtroom, the petitioner and counsel discussed the earlier plea offer, and the petitioner, changing his mind, expressed his intent to accept the offer.

[6] *Simms*, like this case, involved two discrete bases for the writ. In *Simms*, the petitioner claimed that the trial judge should have recused himself because of prior judicial contacts with the petitioner and that the petitioner had received ineffective assistance for counsel's failure to pursue the recusal issue. *Simms* v. *Warden*, supra, 230 Conn. 611.

[7] The transcript reveals the following colloquy regarding the petitioner's prescribed medication and his competency:

''The Court: As you stand before the court right now, are you under the influence of any drugs, alcohol or medication, any substance at all?

''[The Petitioner]: No, I am not.

''The Court: There is no medication or anything that would affect your ability to understand the proceedings?

''[The Petitioner]: I am under medication.

''The Court: For the record, what is the medication?

''[The Petitioner]: Prozac, and I think there is another one. I just can't remember.

''The Court: Do you understand what you are doing today?

''[The Petitioner]: Yes.

''The Court: The medication is not affecting your ability to understand what you are doing today?

''[The Petitioner]: No.

''The Court: Do you understand the nature of this proceeding?

''[The Petitioner]: Yes.

''The Court: Attorney Merkin, do you believe the defendant understands the nature of this proceeding?

''[The Petitioner's Counsel Merkin]: Yes.

''The Court: Ms. Haselkamp?

''[The Petitioner's Counsel Haselkamp]: Yes.

''[The Petitioner's Counsel Merkin]: I think that the record should reflect that throughout the time of our representation, he has been on medication for most of the time, and there has been no difficulty communicating with

him throughout these proceedings.

"The Court: There has been no difficulty communicating with him throughout the proceedings?

"[The Petitioner's Counsel Merkin]: No.

"The Court: Nor for him to understand what is going on?

"[The Petitioner's Counsel Merkin]: No."