

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JAMES LAUDAT,

Petitioner,

v.

**RICK MULGRAVE, IN HIS CAPACITY AS
DIRECTOR OF THE BUREAU OF
CORRECTIONS, CALVIN HERBERT, IN HIS
CAPACITY AS WARDEN OF THE GOLDEN
GROVE ADULT CORRECTIONAL FACILITY,
AND CLAUDE WALKER, IN HIS CAPACITY AS
ATTORNEY GENERAL OF THE VIRGIN
ISLANDS.¹**

Respondents.

CIVIL NO. SX-15-CV-155

**PETITION FOR WRIT OF HABEAS
CORPUS**

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on the Petition for Writ of Habeas Corpus filed on March 26, 2015, by James Laudat ("Laudat"). Laudat is currently incarcerated pursuant to a jury verdict finding him guilty on multiple criminal charges. Laudat alleges that his conviction should be overturned based on the following: (1) failure of the People of the Virgin Islands to prove his sanity beyond a reasonable doubt; (2) violation of his Sixth Amendment right to trial by a jury due to the trial court's failure to give the jury proper

¹ The Petition lists the following individuals in the caption as individuals being sued in their official capacity: (1) Dwayne Benjamin, in his capacity as Acting Director of the Bureau of Corrections; (2) Diane Prosper, in her capacity as Acting Warden of the Golden Grove Adult Correctional Facility, and (3) Terri Griffiths, in her capacity as Acting Attorney General of the Virgin Islands. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, applicable to this proceeding through Superior Court Rule 7, Procedure, the Court will substitute the names of the persons who are currently serving in the respective official capacities. Fed. R. Civ. P. 25(d) ("An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.").

instruction regarding the concept of not guilty by reason of insanity consistent with that in *Petric v. People*, 61 V.I. 401 (V.I. 2014); (3) violation of his rights under the Eighth and Fourteenth Amendments by incarcerating a mentally ill individual; (4) violation of his rights under the Sixth Amendment based on ineffective assistance of counsel; (5) illegal conviction based on Petitioner's risk of deportation; and (6) violation of his due process rights secured by the Treaties Clause of the Constitution. For the reasons stated below, the Court will grant the writ.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts are drawn from the Petition which the Court will assume to be true for purposes of determining whether the writ should be granted. The facts that give rise to this case occurred between the evening hours of November 21, 2001, and the early morning hours of November 22, 2001. Pet. for Habeas Corpus, at 11. On November 21, 2001, Laudat warned his family members and an acquaintance that "judgment is coming" and that they would all die. *Id.* In the early morning hours of November 22, 2001, Laudat attacked his family and the acquaintance in their sleep, striking them repeatedly with a hammer and stabbing one with a pocket knife until it eventually broke off in the victim's back. *Id.* at 11-12. After he finished the attack he left the home on foot. *Id.* The victims described him as "wide-eyed" throughout the attack and silent but for making a "Hmmp, Hmmp" sound. *Id.* Laudat had no recollection of the attacks. *Id.*

Prior to trial, Laudat was evaluated by Dr. Norma Carillo who generated three reports based on her examinations of Laudat. *Id.* at 12. Dr. Carillo's reports were not entered into evidence at trial but Dr. Carillo did testify regarding the information in all three reports. *Id.*

At trial, she testified that when Laudat committed the acts in question he was suffering from a mental disease or defect. *Id.* at 13.

After conclusion of presentation of the evidence at trial, the jury was instructed as follows with regard to the insanity defense:

The defendant claims to have been insane at the time the crimes charged in all counts of the information were committed. Since the law does not hold a person criminally accountable for his conduct while insane, insanity is a defense to the crimes charged. The insanity-the sanity of a defendant, James Laudat, at the time of the alleged offense is, therefore, a question you must decide.

To be found insane, the defendant must introduce evidence that first, he had a severe mental disease or defect at the time that the acts constituting the crimes were committed; and second, as a result of this severe mental disease or defect he was not able to understand what he was doing or to understand what he-or to understanding that what he was doing was wrong.

The defendant has introduced some evidence that he was insane at the time of the crime to rebut the presumption of insanity. If such evidence does create in your mind a reasonable doubt as to his sanity, the legal presumption of sanity is rebutted. It is the government's burden to remove that reasonable doubt and prove that the defendant is sane beyond a reasonable doubt.

The test is whether the defendant has sufficient reason to know right from wrong. If you find that at the time of the crime the accused was laboring under such a defect of reason as to not know the nature and quality of the act he was committing, or that the act was wrong, then the defendant was insane and is entitled to an acquittal.

Id. at 14.

While deliberating, the jury requested additional clarification from the judge on the instruction for not guilty by reason of insanity, and in response, the judge merely re-read the prior instruction. *Id.* at 15. On December 18, 2003, the jury found Laudat guilty on all counts alleged in the Information. Laudat's sentencing was held on February 18, 2004, and on March 18, 2004, the trial judge issued a Judgment and Commitment sentencing Laudat to a term of years and remanding him to the custody of the Virgin Islands Bureau of Corrections ("BOC").² Laudat subsequently appealed his convictions, which were upheld by the Appellate Division of District Court of the Virgin Islands.³ *See Laudat v. Gov'n't of the Virgin Islands*, 48 V.I. 892 (D.V.I. App. Div. 2007).

Laudat filed the petition requesting that the Court issue a writ of habeas corpus, vacate the judgment and commitment sentencing him to a term of years, enter a judgment of not guilty by reason of insanity under *Nibbs v. People*, 52 V.I. 276 (V.I. 2009) and *Petric v. People*, 61 V.I. 401 (V.I. 2014), and order the Bureau of Corrections to identify and transfer him to a suitable facility for treatment and determination of his release. *Id.* at 41.

² On March 18, 2004, the trial judge sentenced Laudat to the following: (1) Count I – Assault First Degree – remanded to the BOC for a period of ten (10) years; (2) Count II – Assault First Degree – remanded to the BOC for a period of ten (10) years to run consecutive to Count I; (3) Count III – remanded to the BOC for a period of ten (10) years to run consecutive with Count II; (4) Count IV – Assault First Degree – remanded to the BOC for a period of ten (10) years to run consecutive to Count III; (5) Count V – Assault Third Degree – remanded to the BOC for a period of five (5) years to run concurrent with Count I; (6) Count VI – Assault Third Degree – remanded to the BOC for a period of five (5) years to run concurrent to Count II; (7) Count VII – Possession of a Dangerous Weapon – remanded to the BOC for a period of seven and one half (7 ½) years to run consecutive to Count IV and fined \$10,000; (8) Count VIII – Possession of a Dangerous Weapon – remanded to the BOC for a period of seven and one half (7 ½) years to run consecutive with Count VII and a fine of \$10,000. The Judgment and Commitment also orders that "defendant receive treatment for his mental illness. Judgment and Commitment dated March 18, 2004 in Case No. SX-2001-CV-350.

³ Prior to the establishment of the Virgin Islands Supreme Court in 2007, appellate jurisdiction over the Territorial Court (now Superior Court) "was vested in the Appellate Division [of the District Court] pursuant to § 23A of the Revised Organic Act of 1954, codified as 48 U.S.C. § 1613a."). *Hypolite v. People of the Virgin Islands*, 51 V.I. 97, 100-01 (V.I. 2009) ("The Supreme Court officially assumed appellate jurisdiction over appeals from the Superior Court on January 29, 2007).

II. STANDARD OF REVIEW

The authority of the Superior Court to hear writs of habeas corpus is conferred to it through the Revised Organic Act 48 U.S.C. § 1561 *et. seq.*, which “serves as a de facto constitution for the Virgin Islands,” and instructs that “all persons shall have the privilege of the writ of habeas corpus.” *Rivera-Moreno v. Gov’t of the Virgin Islands*, 61 V.I. 279, 296-97 (V.I. 2014). To grant a writ of habeas corpus, a court must find that the petitioner can state a *prima facie* case for relief. *Id.* at 311. A *prima facie* case is made when a petitioner states specific factual allegations which require habeas relief rather than mere conclusions or speculations. *Donovan v. Gov’t of the V.I.*, 2013 V.I. LEXIS 21, *7 (V.I. Super. Ct. Mar. 25, 2013).

Once a *prima facie* case has been made and the writ granted, the respondent must file a “return” responding to the allegations set out in the petition for habeas corpus. 5 V.I.C. § 1308. The petitioner is then allowed to file a “traverse” in response to the “return” which is analogous to an answer in a civil proceeding. *Rivera-Moreno*, 61 V.I. at 298. Once the return and traverse are filed, the Court must hold a hearing and the body of the petitioner must be brought before the Court for the matter to be heard on the merits. 5 V.I.C. §§ 1309-10.

III. DISCUSSION

Laudat has pled numerous contentions for entitlement to habeas relief in his petition. All of his arguments center around whether the trial court properly instructed the jury on the law regarding the proper test for determining whether a defendant is sane at the time of the offense. Thus, it appears that the legal issues that the Court must decide are: (1) whether Laudat is entitled to habeas relief because the trial court improperly instructed the jury on the test that it must apply in order to determine whether Laudat was sane at the time of the

offense; and (2) whether Laudat's conviction and confinement are unconstitutional because at trial he demonstrated some evidence of his insanity and the people failed to prove his sanity beyond a reasonable doubt. Fortunately, these exact issues were addressed and decided by the Supreme Court of the Virgin Islands in *Petric v. People of the Virgin Islands*, 61 V.I. 401 (V.I. 2014).

In *Petric*, neighbors reported hearing gun shots a few days prior to police arrival at the Petric family home. *Id.* at 404. Upon entering the home, officers found the bodies of three individuals and the family dog. *Id.* Petric was charged with three counts of first-degree murder, three counts of unauthorized possession of a firearm during the commission of a crime of violence, one count of first degree animal abuse, and one count of unauthorized possession of ammunition. *Id.* at 404-405.

Prior to trial, Petric was evaluated by a psychiatrist who determined that Petric was capable of assisting in his own defense, but he "likely suffered from an undiagnosed "psychotic disorder"" and on the day of the murders "Petric was in a "delusional state" such that he "thought that his actions. . . [were] correct" and "believed that his act was in self-defense."" *Id.* at 405. Defense counsel filed a notice of intention to assert the insanity defense. *Id.* The psychiatrist testified at trial that "Petric suffered from "an untreated psychiatric disorder" for years and that "his actions on [the day of the murders] were driven by delusional beliefs."" *Id.* Petric's mother also testified at trial that her family had a history of schizophrenia and that her son had been hospitalized in the past for a similar condition and she suspected he was also schizophrenic. *Id.* at 406. The People attempted to discredit the psychiatrist on cross-examination merely by pointing out that some of Petric's behavior

was inconsistent with that of someone suffering from a mental illness. *Id.* The People presented expert testimony regarding forensics on the deceased, but not on the issue of Petric's psychological status. *Id.* The jury returned a verdict of guilty on three counts of first degree murder, three counts of unauthorized possession of a firearm during the commission of a crime of violence, one count of first degree animal abuse, and one count of unauthorized possession of ammunition. *Id.* On appeal, the Supreme Court held that the People presented insufficient evidence for a jury to find that Petric was sane at the time of the offenses. *Id.* at 407.

The Supreme Court in *Petric* ruled that the trial court erred in instructing the jury to apply the *M'Naghten* test, or the premise that an insanity defense rests on whether the defendant has "sufficient reason to know right from wrong" at the time a crime is committed. *Id.* The Supreme Court opined that *M'Naghten* was specifically rejected by the Virgin Islands Legislature in 1957. Instead, as the Court points out, the Legislature enacted section 14(4) of title 14 of the Virgin Islands Code which states in pertinent part:

"all persons are capable of committing crimes and offenses except . . . persons who are mentally ill and who committed the act charged against them in consequence of such mental illness."
Petric, 61 V.I. at 408.

The Supreme Court went on to explain that section 14(4) parallels the "product test" set by the United States Court of Appeals for the District of Columbia Circuit in *Durham v. United States*, 214 F.2d 862, 874-75, specifically finding that the Legislature "statutorily adopted the product test for insanity in the Virgin Islands, specifically rejecting other formulations." *Id.* at 409. It summarized that because the statute was unambiguous and the scheme was clear and coherent, the "product test" remains the sole test for insanity in the

Virgin Islands. *Petric*, at 409. Consequently, the Supreme Court reversed Petric's convictions and directed the Superior Court to enter judgment finding Petric not guilty by reason of insanity with regard to the charges of murder in the first degree, first degree animal abuse, and unauthorized possession of a firearm while engaged in a crime of violence.⁴ *Id.* at 414-415.

Here, just as in *Petric*, Laudat alleges that the Superior Court instructed the jury on the wrong test for an insanity defense. Laudat claims that the trial court instructed the jury on the *M'Naghten* test as opposed to the "product test" pursuant to 14 V.I.C. § 14 (4). As explained above, unequivocally, the "product test" is the sole test for insanity and a trial court commits reversible error when it instructs the jury otherwise. Thus, because Laudat alleges that the Superior Court instructed the jury to apply the incorrect test to determine whether he was sane at the time of the offense, Laudat has alleged a prima facie claim entitling him to the issuance of the writ of habeas corpus.

IV. CONCLUSION

For the reasons stated above, the Court finds that Laudat has alleged sufficient facts warranting the issuance of a writ of habeas corpus. Accordingly, the Court will issue the writ and direct the Respondents to file a return, the Petitioner to file a traverse, and that a hearing be held on the merits of the Petition.

Dated: March 22, 2017



ROBERT A. MOLLOY
Judge of the Superior Court

⁴ The Supreme Court also reversed and remanded the conviction for unauthorized possession of ammunition and directed the Superior Court to enter a judgment of acquittal on that charge. *Petric*, 61 V.I. at 414.