

NO. 18-5413

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE D. LEWIS
— PETITIONER

VS.

15TH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA
DOCKET NO. 130950
— RESPONDENT

ON MOTION FOR REHEARING ON THE APPLICATION FOR WRIT OF
CERTIORARI

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CLARENCE LEWIS
RLCC CAJUN 1 C2
1630 PRISON ROAD
COTTONPORT, LA 71327

GROUND PRESENTED

1. IN RENDERING THIS ILLEGAL PLEA, THE TRIAL COURT (15 J.D.C.) VIOLATED PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHT AGAINST SELF-INCRIMINATION, A FIFTH AMENDMENT RIGHT VIOLATION; U.S. CONSTITUTION AMENDMENT (5).
2. IN RENDERING THIS ILLEGAL SENTENCE, THE TRIAL COURT JUDGE AND PROSECUTOR, VIOLATED, FEDERAL RULE OF CRIMINAL PROCEDURE, RULE 11; WHICH PROSCRIBES ANY COURT PARTICIPATION IN PLEA NEGOTIATIONS REGARDLESS OF WHETHER PREJUDICE IS SHOWN OR NOT. ALSO THE COURT VIOLATED FEDERAL RULE 11 (C)(1), BY INSTIGATING, THE PLEA AGREEMENT WHEN IT ORCHESTRATED NEGOTIATION, TRYING TO CAUSE THE PETITIONER NOT TO EXERCISE HIS 5TH AMENDMENT. SEE: PLEA HEARING TRANSCRIPT.
3. IN RENDERING THIS ILLEGAL SENTENCE; THE STATE COURT'S PROSECUTION AND CONVICTION IS LIMITED BY SUBSTANTIAL AND CONTROLLING LAWS THAT AFFECT THE INDICTMENT ON SEX CRIMES, SUCH AS DNA TESTING OF ALLEGED OFFENDERS AND SAID ALLEGED VICTIMS, WHICH HAS TO BE PROVIDED AT THE DISCOVERY STAGE OF A PROSECUTION AND THE STATE PRODUCED NO EVIDENCE TO SUPPORT ITS ACTION MAKING THE CONVICTION AGAIN ILLEGAL. SEE: STATE'S DISCOVERY EVIDENCE, IN WHICH, U.S. W.D. CITED, THAT NO DISCOVERY OCCURRED THRU MOTION FILED BY PETITIONER. SEE: REPORT AND RECOMMENDATION, BY CAROL B. WHITEHURST, U.S. MAGISTRATE JUDGE.

CERTIFICATE AND AFFIDAVIT

I, Clarence Lewis, certify that under a certificate of affidavit that the foregoing is true and correct to the best of my knowledge. I certify under penalty of perjury that the foregoing is also correct.

Thus signed this the 21st day of November, 2018.

Clarence Lewis
Clarence Lewis

CERTIFICATE AND AFFIDAVIT

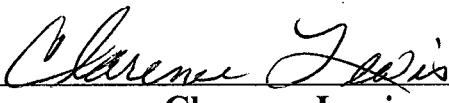
I do certify that this petitioner for rehearing is presented in good faith and not for delay.

I do certify that the grounds listed are limited to intervening circumstances of substantial or controlling effect that govern the laws of Louisiana and the United States Constitution.

I do certify that the 15th Judicial District Court has violated the laws of Louisiana and the United States Constitution, which would warrant intervention by this Honorable Court, United States Supreme, to cause correction by the court officers.

Thus signed this 21st day of November, 2018, by the petitioner, Clarence D. Lewis, #123525 at RLCC, 1630 Prison Road, Cottonport, LA 71327.

I do certify that this case has already been allotted under forma pauperis under the above docket No. 18-5413.



Clarence Lewis
Clarence Lewis

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Louisiana Circuit Court of Appeal, Third Circuit
2. Louisiana Supreme Court
3. United States District Court, Western District of Louisiana
4. United States Court of Appeals, Fifth Circuit

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1. Report and Recommendation under Magistrate Judge Carol B Whitehurst and Judge Richard T. Haik, Sr. See: Memorandum Order Ex. (7)
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3. Copy of Letter from United States Court of Appeals. 5th Circuit, stating that they docketed Petitioner's appeal, under No. 17-30372.
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Electronically certified record on appeal to U.S. Court of Appeals 5th circuit No. 17-30372. posted without viewing appeal filed by Petitioner.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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See: <u>U.S. v. Casallas</u> , 59 F. 3d 1173, 1178 (11th Cir. 1995).	
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix E to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was **February 21, 2018**.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **April 18, 2018**, and a copy of the order denying rehearing appears at **Appendix F**

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

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

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Constitution, 5th Amendment; 14th Amendment Federal Rule of Criminal Procedure; Rule 11
- U.S. Constitution. 5th Amendment; 14th Amendment Federal Rule of Criminal Procedure, Rule 11(c)(1)
- U.S. Constitution. 5th Amendment; 14th Amendment Federal Rule of Criminal Procedure, Rule 11(c)(5)
- U.S. Constitution. 5th Amendment; 14th Amendment Federal Rule of Criminal Procedure, Rule 11(e) and (e)4.
- U.S. Constitution. 6th Amendment;
- La. Constitution Article 1 § 2
- Louisiana Code of Criminal Procedure Article 882
- Louisiana Code of Criminal Procedure Article 862

INTRODUCTION

Petitioner respectfully prays that a writ for rehearing issue to review the judgment below.

On application for a Writ of Certiorari from the Fifth Circuit Court of Appeals, for the State of Louisiana.

Now into this Honorable Court comes the defendant, Clarence D. Lewis, moving this Honorable Court to review the trial court's action on a plea agreement that was not voluntary at the end of said case, had into the 15th J.D.C. parish of Lafayette, State of Louisiana, Docket No. 130950.

For the following reasons:

1. At the offset of this case, petitioner filed a Writ of Habeas Corpus into the trial court, and was denied due process for compulsory process. a 14th Amendment violation and a Louisiana Constitution Art. 1 § 2; for due process violation.
2. When this case hit the United States Western District Court, for Louisiana, that court cited all the motion in petitioner's file that went un-entertained and unanswered. See U.S. D.C. WD. No. 6-15-CV-2167, under § 2254, for a Writ of Habeas Corpus. Petitioner cited all Louisiana Codes of Criminal Procedure to arrest the trial court's judgment, including all relevant motions.
3. At the illegal rendering of the plea, petitioner again cited his U.S. Constitution 5th Amendment right against said plea and the trial courts actions and

still the trial court judge and prosecutor negotiated the plea that they wanted to enforce again, violating Fed. R. Crim. P. Rule 11(e); 11; 11(e)4.

4. And most importantly, the Louisiana Legislature put laws into effect that DNA must be taken from all alleged violators once a sex offense was committed or alleged committed to substantiate a charge indictment for a sex offense, and a set procedures to retrieve DNA samples from the alleged victim to match the offender with the victim samples. At the offset of the discovery, the prosecutor withheld any such evidence testing to prove her charges, because no such evidence exists. Again, violating the petitioner's liberty interest rights to know what evidence was going to be used to enforce her charges; "was it because the petitioner was black while his fiancée was white," she, maliciously prosecuted him?

Therefore, petitioner is asking this Honorable Court, "to order the prosecutor's evidence that would warrant a review of her actions in this case," and if the prosecutor cannot produce a hospital examination of the alleged victim, or a rape kit test, that was retrieved from the alleged victim at the scene or the hospital; or a hospital report filed by the alleged victim, showing that DNA was retrieved;" then I'm asking this Honorable Court to review petitioner's habeas corpus and order the appropriate relief.

CERTIFICATE OF SERVICE

I do certify that all of the information and motions has been sent to, 15th Judicial District Court; 3rd Circuit Court of Appeal; Louisiana Supreme Court; U.S.D.C. WD, for the State of Louisiana; and the 5th Circuit C.A. for preview under a § 2254, and appeals; and now through Writ of Certiorari.

I do certify that all the information contained in all motions' and entry's into these courts are true and correct, under a penalty of perjury, all mailed through the U.S. Postal service.

Thus signed this 21st day of November, 2018, and mailed to this Honorable Court, U.S. Supreme Court, Docket No. 18-5413.

Clarence Lewis
#123525, C-1, C-2

STATEMENT OF CASE

On 9-22-2011, an illegal plea was forced on the defendant, after he invoked his 5th amendment right not to incriminate himself, in statements, or signing of the plea. See: transcript of plea hearing. Pg. 123-132, 133-142. of the court's record. Appendix B.

On 9-26-2011, Petitioner filed a motion to withdraw that plea into the trial court. This motion went un-entertained by the trial court judge. Later, the trial court judge denied that motion without stating a reason for the denial. See: Appendix B, pg. 252-258

On 8-8-2012; defendant had his 1st post-conviction hearing, and had no counsel appointed to represent him and at that hearing no issues listed was entertained and that post-conviction application was denied also without a reason to collaterally attack. See Appendix B. Pg. 155-156; 44-58; 92; 174-189; 234-242; of the court's record.

On October 3, 2012, Petitioner filed a Motion to Correct an Illegal Sentence, and that motion was denied on 11-16-2012. Petitioner then filed into the 3rd Cir. C.A. on 11-28-2012 for a Writ of Certiorari, DKT. No. 12-KH-01368 and received a ruling on 12-3-2012. This ruling is incorrect and in error; see: Issue's cited by Petitioner. See Appendix A: Pg. 113; 114-122; 145; 94; 597-621; of the court's record.

On 5-22-2013, the 3rd Circuit Court of Appeal rendered a ruling stating that Petitioner's Motion to Withdraw Plea; Motion to Dismiss, and Petitioner's Writ of Habeas Corpus, bond revocation and presentation of the charges Petitioner was not arrested for, was not first asserted into the trial court. This ruling is also incorrect and in error. Id. in the record on arraignment, dated 11-30-2010, Petitioner's public defender Travis Moses made a statement to the courts in reference to Petitioner's Motion to Dismiss. This motion was filed on 10-26-2010 by Petitioner in pro se capacity, and when P.D. was appointed he reserved the right to re-file that motion. So the trial court was in attendance of that motion., because it granted re-filing, but public defender was recused by trial court later, and that motion was never re-filed by P.D. See: Appendix B; Pg. 146-149; of the court's records.

Id. in the court minutes dated 9-30-2011, the trial court also ruled on the Motion to Withdraw Plea Agreement, and again the 3rd Circuit's ruling "Writ Denied in Part" writ not considered in part" is also incorrect and in error. See: 3rd Circuit. DKT. No. KH-11-00101. In this ruling, the court stated that Petitioner's Motion to Dismiss and his Writ of Habeas Corpus was viewed, and the defendant failed to present proof that his claims at arraignment were first presented to the trial court. This ruling was dated 1-26-2011. Now See: 3rd Cir. Judgment on 5-22-2013, but filed on 8-27-2012, Docket No. KH-12-00985. Again, the court states that I did not first assert my claims regarding the invalid or defective bill of information; Motion

to Withdraw Plea; Motion to Dismiss; and petition for Writ of Habeas Corpus and the Presentation of Charges I wasn't arrested on for trial, and they were not considered by that court. Id. in the court minutes sent to River Bend Detention Center, dated 10-25-2011, the Motion to Withdraw Plea was presented, so the claims were first asserted into the trial court. See Appendix A; pg. 95; 145; pg. 252; 258.

Id. in the court minutes dated 11-3-2010, public defender, Travis Moses, indicates the Motion to Dismiss, and reserves Petitioner's right to re-file said motion. So again, the 3rd Cir. Ruling under Docket No. KH-12-00985, and Docket No. KH-11-00101, are in error. See Appendix A; pg. 95.

Id. in the 3rd Cir. Docket No. KH-12-00012, judgment rendered on 3-15-2012, dated filed 1-5-12, even the Petitioner's petition for Writ of Habeas Corpus was viewed by the trial court on 1-25-2012, so the 3rd Cir. cannot say the trial court did not view his claims or issues under presentation, and should have considered those motions under 3rd Cir. Docket No. KH-12-00985, making that ruling incorrect and in error. See Appendix A; pg. 95.

Petitioner has shown through proof of documentation how the trial court has caused the 3rd Cir. To commit constitutional errors in viewing his case, and these error's has caused the Louisiana Supreme Court Docket No. KH-2014-1917 App.

C; pg. 2; and the USDC WD Docket No. 6:15-CV-2167, to denied an evidentiary hearing that would have proved through documentation that the Petitioner did assert his claims into the trial court, the appellate court, and the Louisiana Supreme Court, along with the U.S.D.C. WD and should have received the relief sought in his § 2254.

See: Exhibits Attached See Appendix E; Pg. n/a; Exhibit F

1. Plea Hearing Transcript, dated: 9-22-2011, 10 pages, Exhibit (A)
2. Motion to Withdraw Plea, dated: 9-26-2011, 3 pages, Exhibit (B)
3. Motion to Correct An Illegal Sentence, dated: 10-3-12, 8 pages Exhibit (C)
4. Motion to Vacate Conviction and Sentence, 8 pages, Exhibit (D)
5. Copy of Louisiana Supreme Court, entry date: 9-12-14 Appendix C
6. Copy of USDC Wd. Report and Recommendation dated 4-2-17, Exhibits (F); Appendix E
7. Copy of U.S.C.A. 5th cir. Order on certificate of appealability; dated: 2-21-2018 Exhibit G
8. Copy of USCA 5th Cir. Order on Motion to Reconsider COA; Exhibit G, Dated: 4-18-2018
9. Copy of Defendant's Request for re-hearing. See: USCA record under: 17-30372 Appendix G

Post-conviction Hearing Transcript, 10 pages Exhibit (E)

REASONS FOR GRANTING THE WRIT FOR REHEARING

It is respectfully submitted that the trial court, 15th Judicial District Court caused reversible error, when it denied the defendant his 5th, 6th, and 14th Amendment protection against self-incrimination and has caused the 3rd Cir. To err in its ruling under Docket No. KH-12-00985; that went into the Louisiana Supreme Court, Docket No. KH-2014-1917 under a Writ of Certiorari.

A complete record was forwarded to the USDC Western District, under Docket No. 6:15-CV-2167 under a petition for federal Writ of Habeas Corpus § 2254, and that court denied his petition without stating a reason for denial so review is warranted under certiorari.

Petitioner then filed into USCA 5th Circuit for an appeal. The USCA accepted the filing fee of \$505.00 dollars, then told Petitioner to file a motion for a Court of Appeals, then denied his copy of the appeal, and COA.

The USCA 5th circuit, then granted Petitioner's motion for reconsideration on Motion for COA, then later, denied COA, without reason. Delineation is necessary to perfect an appeal going into U.S. Supreme Court. The lower courts has done everything it can to prevent the truth from being brought to light, and a review of this case, along with evidentiary hearings, will prove the truth!

SUMMARY OF ARGUMENT

Id. in the Federal Rules of Criminal Procedure, Rule 11(e): “A judge is prohibited in participating in a plea negotiation.” In the case at bar, when the Petitioner invoked his 5th amendment right not to incriminate himself, the State prosecutor said, “Absolutely not” and the judge said, “You can’t do that sir.” See: Plea Hearing transcript dated 9-22-2011, page 5, and page 137 of the record filings. Also see: Judge stated, “No you’re not,” at that point, the trial court judge impermissibly intervened, and was actually telling the Petitioner that he didn’t have a Fifth Amendment right against self-incrimination.

Now see: Plea transcript in its ending, where the trial court judge states, that the Petitioner has a right against self-incrimination which now contradicts what he did earlier in the transcript. Id. in U.S. v. Casallas, 59 F. 3d 1173, 1178 (11th Cir. 1995), the Judge impermissibly intervened by pointing out to the defendant the difference between potential sentence after trial and plea bargain and advising defendant to confer with his lawyer”: How can the trial court judge tell me “No, you’re not” “going to invoke my Fifth Amendment right against self-incrimination” when the Petitioner actually has that right not to incriminate himself by testifying or by signing a false statement, or by participating in a proceeding that would violate his due process rights that protect him from such injustices, then later, tell me that I have that right not to incriminate myself to justify enforcing the

illegal plea. Rule 11, proscribes any court participation in plea negotiations regardless of whether prejudice is shown or not. Also, according to Fed. R. Crim. P. Rule 11(e)4; Petitioner has a right to withdraw that plea once found illegal, and if the plea is illegal, the sentence is illegal also. Id. In Fed. R. Crim. P. Rule 11(C)(5), the court can reject a plea if: a fair and just reason existed to withdraw plea. Id. in U.S. v. Harrell, 751 F. 3d 1235, 1239 (11th Cir. 2004), judge violated Rule 11(C)(1), by instigating plea agreement, cautioning the defendant, orchestrating negotiation.

CONCLUSION

Id. in the Report and Recommendations that came from U.S.D.C. Western District, under magistrate judge, Carol Whitehurst, starting with the trial court, the 15th J.D.C. never gave any reasons for denying; 1st the Motion to Dismiss; the Habeas Corpus; the Motion to Withdraw Plea; the Motion to Correct An Illegal Sentence, or movant's 1st PCR application or his 2nd post-conviction on the issues listed for entertainment by the trial court.

Id. in the record, movant was charged with some very serious charges of forcible rape and home invasion, and the State's record doesn't show where any hospital reports were filed, or no DNA test was conducted on the alleged victim, nor was there any rape kit test performed on the alleged victim by the reporting officers who had taken statements or reports, and the law is firm on DNA testing,

so why wasn't any test conducted to prove innocence or guilt? Petitioner's claim is under the actual innocence doctrine.

The petition for a writ of certiorari should be granted.

PRAYER

Petitioner now prays, that this Honorable Court grant review under his application for Writ of Certiorari; and grant or order the appropriate relief and vacate the plea, the sentence, and the conviction.

Respectfully submitted,

Clarence Lewis

Date: 11-31-2018

**Additional material
from this filing is
available in the
Clerk's Office.**