

No. _____

In The
Supreme Court of the United States

October Term 2017

Alonzo Marshall,
Petitioner,

v.

United States of America,
Respondent.

On Petition for A Writ Of Certiorari To The
District of Columbia Court of Appeals

Petition for Certiorari

Alonzo Marshall
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Question Presented

Alonzo Marshall Has vehemently challenged his guilt throughout these proceeding because he was not involved in the death of Michael Henry. Even though Marshall contested his guilt, he was convicted at trial. In the instant action, the issue is whether the court of appeals erred in affirming the trial courts decision to deny his section 23-110 following an evidentiary hearing. That is, in affirming the trial court the Court of Appeals determined that there was no abuse of discretion in finding that the witness called was not credible. Did the court below err in affirming the trial court where there is no evidence that Marshall's witness has reason to mislead the court where innocence is onthe table?

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To the Chief Justice and Associate
Justices of the Supreme Court:

Alonzo Marshall ("Marshall"), acting without counsel respectfully petitions this Honorable Court for a Writ of Certiorari to the District of Columbia Court of Appeals, and in support states:

I. Opinion Below

The District of Columbia Court of Appeals issued its opinion affirming the trial court on May 30, 2018, and is reproduced in Appendix-A.

II. Jurisdiction

This court has jurisdiction under 28 U.S.C. § 1254(1)

III. Constitutional and Statutory Provisions Involved

The Fifth Amendment In Pertinent Part:

A person shall not be denied due process. . . .

IV. Statement of the Case

Alonzo Marshall was convicted at trial of conspiracy to obstruct justice, and first degree murder with aggravating circumstances for his ostensible role in the August 30, 2008, killing of Michael Henry (Henry). As the Government acknowledges throughout this case and into the § 23-110 appeal below Marshall did not murder Henry, but, instead one of his co-horts carried out the killing. Since Marshall filed in the court below he was contacted by Jeffery Best (Best), the actual individual who fired the fatal shot that killed Henry. Best has informed Marshall that he will provide an affidavit to support his confession. More important, however, Best has informed Marshall that he will testify, if necessary, that Marshall had absolutely no connection or knowledge of his intentions to kill Henry. In addition, Best's admissions will shore-up the testimony of Eric Nibblins's that occurred in the trial, and support the idea that Nibblins was, indeed, credible, requiring the case to re-set for a new evidentiary hearing. Best's information is: U.S.P. Lee County, Reg. No. 06682-748. In that vein, this Court should GVR the case for further review to develop this information.

V. Reason For Granting Certiorari

This case requires this Court's intervention, in that, at the time of the evidentiary hearing one individual testified that Marshall had nothing to do with the death, killing, or murder of his best friend Michael Henry. The facts are undisputed, that is, the witness who testified at the hearing was with (Nibblins) was with the Henry on the day he was murdered. According to Nibblins he and Henry were approached by men with white painted faces, in which they were threatened. Consequently, Henry expressed to Nibblins that he should contact Marshall and the other regarding the white-face-painted mens' presence in the area. Henry asked to borrow Nibblins's phone, but Nibblins did not have his phone. This caused Henry to leave too soon to warn his friends, and it was then that Nibblins heard shots. Consequently, Nibblins saw a woman that he knew named Pinky, who informed him that Henry was dead and that Marshall had been shot. As Best will now attest, he was one of the individuals who wore the white-painted-face and shot Henry. This will substantiate Nibblins's testimony and fully exonerate Marshall.

Best's decision to get involved in the case establishes that the trial court was wrong in denying Marshall's § 23-110, and that the Court of Appeals abused its discretion in affirming the trial court.

This Court's decision in McCleskey v. Zant, 499 U.S. 467, 490 (1991), decides the "abuse of writ" doctrine, and whether Marshall has defaulted his claim. McCrimmon v. United States, 853 A.2d 154,

159 (D.C. 2004). In other words, according the Court of Appeals Marshall was faced with showing both "(1) 'cause' excusing his double procedural default, and (2) 'actual prejudice' resulting from the errors of which he complains." Shepard v. United States, 533 A.2d 1278, 1281-82 (D.C. 1987); See also United States v. Frady, 456 U.S. 152, 168 (1982).

The court below misapplied federal law in this case where Marshall satisfied these prongs but re-set the burden too high against the backdrop of ineffective assistance of counsel. First, Marshall's motion was not identical to his initial § 23-110 filed at the initial appeal stage. While it is true that Marshall pressed an ineffective assistance claim in that action they were based on different foundations, that is, trial issues. In the first motion Marshall not absolutely no basis to raise the current Nibblins-based ineffective assistance of counsel claim because Marshall only happened upon Nibblins after the trial exactly like the recent information that came by way of Best making contacting in the past few months.

The Court of Appeals failed to acknowledge that Marshall had established "cause" by showing that exceptional circumstances prevented raising the claim at the appropriate time. As this Court is aware "[i]neffective assistance of counsel . . . is cause" in the cause and prejudice inquiry. Murray v. Carrier, 477 U.S. 478, 488 (1986); see also McCleskey, 499 U.S. at 494. The court of appeals wholly overlooked this Court's decision in Davila v. Davis, 582 U.S. ___, No. 16-6219 (Slip Op. at 6) (June 26, 2017), that is, but for meeting Nibblins at U.S.P. Allenwood, Marshall

would have never known how Nibblins could have hepled him, like with Best who contacted Marshall from U.S.P. Lee County recently. The court of appeals decision to affirm the trial court's decision because Nibblins story that he spoke with an investigator, and there was no such person disregards the fact that Nibblins indeed spoke with someone on the phone and expressed his desire to tell his story. According to the the trial court this inconsistency was "major," based its credibility finding on this factual error; both courts were flawed in this reliance.

Then the trial court's decision to base its decision on the lack of frequency in seeing each other, and the sudden desire to help lessened Nibblins's credibility. This conclusion disregards the fact that Nibblins was locked-up in 2009, some months after Henry's death, for an unrelated case. The fact is once Nibblins learned that Marshall had been arrested and charged in Henry's death he made contact once he was released from jail.

Accordingly, if the trial court erred by concluding Nibblins did not talk to someone, the someone he spoke with was trial counsel, trial counsel was ineffective for not following up with him.

"The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Strickland v. Washington, 466 U.S. 668, 690-91 (1984). Accordingly, the defendant's burden is to show that "counsel's representation fell below an objective standard of reasonableness." Id. Such showing, however, is by less than a preponderance of evidence. Id. at 694. Marshall recognizes that "counsel is strongly presumed to have rendered

adequate assistance and make all significant decision in the exercise of reasonable professional judgment." Id. at 690. The proper functioning of the adversary process demands appropriate investigation and preparation by counsel. See Monroe v. United States, 389 A.2d 811, 817 (D.C. 1978). The presumptive deference that courts owe to fully informed decisions of counsel therefore is withheld from decisions that are inexcesably uninformed or under-informed.

"[S]trategic choices made after less than complete investigations are reasonable precisely to the extent that reasonable prefessional judgments support the limitations on investigation." Wiggins v. Smith, 539 U.S. 510, 521 (2003)(quoting Strickland, 466 U.S. at 690-691). As the record shows, that did not occur in this case.

"In any ineffectiveness case," therefore, "a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances," taking account "not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Wiggins, 529 U.S. at 527.

"even where an attorney's ignorance of relevant law and facts preclude a court from characterizing certain actions as startegic (and therefore presumptively reasonable), . . . the pertinent question under the first prong of Strickland remains whether, after considering all the circumstances of the case, the attorney's representation was objectively unreasonable." Cosio v. United States, 923 A.2d 1106, 1127 (D.C. 2007)(quoting Bullock v. Carver, 297 F.3d 1036, 1050 (10th Cir. 2002)).

Thus, this Court assesses, without presumptive reference, whether trial counsel's failure to followup with Nibblins was objectively unreasonable under the circumstances he confronted. At the time Nibblins contacted trial counsel, trial counsel would have known the Government's basic theory regarding Marshall's involvement. The major tie was the phone call Marshall was made to have made, and thus any information about Henry's last minutes would have been a very important investigative subject.

Even without knowing the phone call was the Government's link, in a multiple con-defendant conspiracy murder case, it would not have taken extensive guessing to forecast the need to prepare against Pinkerton or aiding and abetting liability. Nibblins's testimony would help the fight against either. Though it is not necessary that trial counsel would have been even presented the evidence, it seems highly likely competent trial counsel would have presented Nibblins's testimony. see Cosio, 927 A.2d at 1125 (Strickland only requires a showing of a reasonable probability counsel would have used the evidence). Therefore, the Court of Appeals mis-applied Strickland and Marshall established cause.

Marshall establishes "prejudice" by showing "actual and substantial disadvantage, infecting his entire trial with error of constitutional deminsions." Fraday, 456 U.S. at 170; see also McCrimmon, 853 A.2d at 161 ("prejudice . . . is shown if the defendant would have been entitled to relief, in this case, for ineffectiveness of trial counsel."). That is, whether there was a "reasoable probability" that, but for the allged errors, the result of proceeding would have been different. United States v. Pettigrew,

346 F.3d 1139, 1146 (D.C. Cir. 2003). The ineffectiveness of counsel prejudice analysis is the same. Strickland, 466 U.S. at 694. Because Nibblins' testimony would have changed the face of Marshall's defense so significantly, trial counsel's errors prejudice prejudiced Marshall.

In this case, the court of appeals failed to follow this Court's instructions that where "a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the factfinder would have had a reasonable doubt respecting guilt." Strickland, 466 U.S. at 695. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

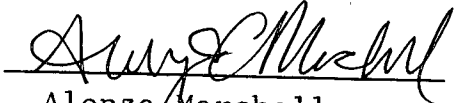
With Nibblins's testimony, two options would have presented themselves: Marshall may not have needed to testify to tell this story; or, if he testified, Marshall's denial of making the call would have comported with Nibblins's statement that Henry did not a phone. The latter would have created a more complete defense theory with better counterpoint to the Government's theory.

For this case, counsel's failure to pursue an investigation into Nibblins, has left an innocent man languishing in prison.

Conclusion

Marshall prays that the Court grant certiorari.

Filed this 13th day of August, 2018 under 28 U.S.C. § 1746.


Alonzo Marshall