

NO. _____
IN THE
SUPREME COURT OF THE UNITED STATES

Darnell Wilkins,
Petitioner

v.

DISTRICT ATTORNEY FOR THE
STATE OF PENNSYLVANIA,

Mark Capozza

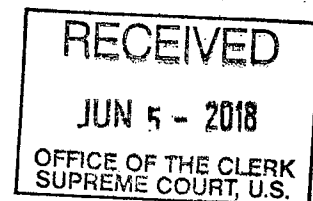
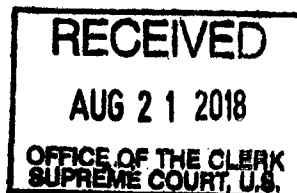
SUPERINTENDENT, SCI FAYETTE,

ATTORNEY GENERAL
Respondents

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The Third Circuit

Petition For Writ Of Certiorari

Darnell Wilkins
Pro, Se Petitioner
SCI Fayette
PO Box 9999
LaBelle, Pa 15450



QUESTION PRESENTED

I. DID PETITIONER'S MENTAL INCAPACITY DID NOT ENTITLE HIM TO EQUITABLE TOLLING?

II. WERE THE PETITIONER'S PCRA AND APPELLATE RIGHTS VIOLATED AS HIS GUILTY PLEA WAS NOT VOLUNTARY, KNOWING, OR INTELLIGENT BECAUSE PETITIONER SUFFERED FROM MENTAL HEALTH INFIRMITIES AND THE SIDE-EFFECTS OF PSYCHOTROPIC MEDICATIONS?

LIST OF PARTIES

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

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Decision of the Third Circuit Court of Appeals

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TABLE OF AUTHORITIES CITED

CASES

~~Hill v. Lockhart~~, 474 U.S. 52
Santobello v. New York, 92 SCt 495 (1971)
McCarthy v. United States, 89 SCt 1166 (1969)
Boykin v. Alabama, 395 US 238
Marshall v. Lonberger, 459 US 422 (1983)
Brady v. United States, 397 US 742
Henderson v. Morgan, 426 US 637
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United States v. Isaac, 141 F3d 477
Lockhart v. Fretwell, 506 US 364
Strickland v. Washington, 466 US 668
Kimmelman v. Morrison, 477 US 365
Hill v. Lockhart, 474 US 52
Dooley v. Petsock, 816 F2d 885
United States v. Day, 969 F2d 39

STATUTES AND RULES

28 U.S.C. § 2254.
28 U.S.C. § 2254(D)(2)
28 U.S.C. § 2254(e)(1)

OTHER

U.S. Const., Amend. VI, VIII, XIV

JURISDICTION

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

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

The opinion of the United States Court of Appeals for
the Third Circuit appears at (pet. App.) is
unpublished but found at United States Court of
Appeals for the Third Circuit (C.A. No. No. 17-3388)

The opinion of the United States District Court
appears at (pet. App. B) and is published and could be
found at Darnell Wilkins v. Superintendent Fayette
SCI, et al, 2-16-cv-05845)

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED^z**

Constitutional Provisions

United States Constitutional Amendments 5, 8, and
14

Statutory Provision

28 U.S.C. 2254
28 U.S.C. 2254(D)(2)
28 U.S.C. 2254(e)(1)
28 U.S.C. 1254(1)
18 U.S.C. 2703(c)(1) Stored Communication Act
18 U.S.C. 2703(D) Stored Communication Act

STATEMENT OF THE CASE

On March 17, 2008, Petitioner appeared before the Hon. Judge L.W. Tucker in the Philadelphia Court of Common Pleas. Petitioner pled guilty to seven counts of robbery, one count of aggravated assault, and eight counts of possession of an instrument of crime; under Nos. CP-51-CR-0000782-2008; 0000745-2008; 0000703-2008. Petitioner's aggregate term is for fifteen to thirty years.

Counsel for the negotiated plea failed to file a direct appeal though Petitioner requested that one be filed on his behalf.

On July, 12, 2010, Petitioner filed a pro se PCRA, where he first raised the claim that his guilty plea had been unlawfully induced. Counsel was appointed, and after reviewing the record, filed a No merit letter under Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988).

On April 16, 2012, the PCRA court dismissed Petitioner's PCRA. Petitioner appealed to the Superior Court on October 31, 2012. The Superior Court affirmed the decision of the PCRA Court on March 21, 2013.

Petitioner sought Leave to Petition for Allowance of Appeal with the Pennsylvanian Supreme Court on May 13, 2016, which was denied on July 5, 2016.

Petitioner filed a Petition for Writ of Habeas Corpus with the United States District Court for the Eastern District on November 3, 2016.

REASON FOR GRANTING WRIT

This case regards a guilty plea accepted under mental infirmity, and where there was no factual basis to establish petitioner's guilt.

I. THE CIRCUIT COURT'S DENIAL OF PETITIONER'S MENTAL INCAPACITY CLAIM THAT HE IS ENTITLED TO EQUITABLE TOLLING IS IN ERROR. (B) THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S CLAIM THAT HIS PCRA AND APPELLATE RIGHTS WERE VIOLATED AS HIS GUILTY PLEA WAS NOT VOLUNTARY, KNOWING, OR INTELLIGENT BECAUSE PETITIONER SUFFERED FROM MENTAL HEALTH INFIRMITIES AND THE SIDE-EFFECTS OF PSYCHOTROPIC MEDICATIONS.

In the present case, Petitioner's mental infirmities followed from the acceptance of his guilty plea. Jurists of reason would debate on whether petitioner's mental incapacity hindered his ability to file his appeals timely. Because of said mental infirmities, petitioner had to seek assistance for each pro se effort in appeal. Thus proof of incompetence remains evident in his reliance on fellow inmates for assistance in drafting his claims at each level. *Santobello v. New York*, 92 SCt 495 (1971). *Hill v. Lockhart*, 474 U.S. 52, formulated a merger of the *Strickland* test for ineffective assistance and the traditional requirements for a valid guilty plea. In *Hill*, the Court held that the *Strickland* two-prong test applied where counsel's alleged ineffective assistance was erroneous plea advice. *Id.* at 57, specifying that "[w]here ... a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether

counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" The prejudice prong focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Id.* at 59. Pennsylvania Rule of Criminal Procedure 590 requires that before a judge accepts a plea of guilty, a full inquiry be made of the defendant on the record to determine whether 'the plea is voluntarily and understandingly tendered.' See also *Commonwealth v. Ingram*, 316 A2d 77, 80-81 (1974). Cf. Federal Rules of Criminal Procedure, Rule 11, and *McCarthy v. United States*, 89 SCt 1166 (1969), wherein the United States Supreme Court held that the failure to comply with Rule 11 per se vitiates a plea of guilty.

Most pertinent to the instant appeal is the requirement that when counsel for both sides enter into a plea agreement, the terms of that agreement must be stated in open court. See Pa.R.Crim. P. Rule 590; *Commonwealth v. Alvarado*, 276 A2d 526, 528 (1971); *Commonwealth v. Wilkins*, 277 A2d 341 (1971); *Commonwealth v. Barrett*, 299 A2d 30, 31 (1972).

Here, PCRA Counsel found not record of a plea colloquy. Because petitioner strongly protested his innocence and sought to withdraw his plea at the earliest opportunity, petitioner should be allowed to withdraw his plea of guilty. This court should deem that 1) the Petitioner has demonstrated a substantial showing of a constitutional violation and that

reasonable jurists would have determined differently; and 2) that the Pennsylvania state court application and ruling was "contrary to" and an "unreasonable application of" clearly established federal law.

In the case at bar, Petitioner argues that his counsel's representation was deficient because petitioner made plea counsel aware of the side effects of his psychotropic medication (Thorazine) which clouded his understanding of the terms of the plea. Counsel insisted petitioner agree to the terms. Counsel compelled petitioner to enter a plea for crimes he did not commit.

Petitioner's challenge to the voluntariness of his guilty plea remains. Jurists of reason would debate over whether petitioner's mental infirmities, and side effects of psychotropic medication compromised his ability to comprehend the plea he accepted, and to timely file each petition thenceforth; as a waiver of several of his constitutional rights against self-incrimination, the right to trial by jury, and the right confront his accusers. As with any waiver of a constitutional right, the Due Process Clause of the United States Constitution requires that a guilty plea be made "knowingly, voluntarily, and intelligently." **Boykin v. Alabama**, 395 US 238, 243 (1969). The constitutional standard is one that asks whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.

Whether a plea of guilty is voluntary for purposes of the federal constitution is a question of federal law. **Marshall v. Lonberger**, 459 US 422, 432 (1983). To determine whether a guilty plea represents a voluntary and intelligent choice, a reviewing court

must examine the totality of the circumstances surrounding the plea. *Brady v. United States*, 397 US 742, 749 (1970). To ensure that a plea is both knowing and voluntary, it cannot have been induced through misrepresentation or coercion, *Brady*, 397 US at 750, the defendant must have notice of the nature of the charge(s) against him, *Henderson v. Morgan*, 426 US 637, 645 (1976), the defendant must have an understanding of the law in relation to the specific facts at issue, *McCarthy v. United States*, 394 US 459, 466 (1969), and the defendant must appreciate the consequences of the plea, i.e., he must understand the rights he is surrendering through his plea. Once entered, a defendant does not have an absolute right to withdraw a guilty plea. *United States v. Isaac*, 141 F3d 477, 485 (3d Cir. 1998). Rather, a plea of guilty entered by one fully aware of the direct consequences must stand unless induced by threats, misrepresentation, or improper promises.

Petitioner asserts that his trial counsel rendered ineffective assistance of counsel by advising him to plead guilty. The Sixth Amendment right to counsel exists "in order to protect the fundamental right to a fair trial." *Lockhart v. Fretwell*, 506 US 364, 368 (1993) (quoting *Strickland v. Washington*, 466 US 668, 684 (1984)). See also *Kimmelman v. Morrison*, 477 US 365, 374 (1986) (holding that the essence of a claim alleging ineffective assistance is whether counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect.)

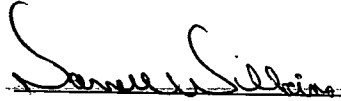
The two-part Strickland test applies to ineffective assistance of counsel claims arising out of the plea

process. *Hill v. Lockhart*, 474 US 52, 57 (1985); *Dooley v. Petsock*, 816 F2d 885, 889 (3d Cir.) The first prong may be satisfied where the plea offer is never communicated to the client or where the plea information is communicated so incorrectly that it undermines the ability of the client to make an intelligent decision whether or not to accept the offer. *United States v. Day*, 969 F2d 39, 42-42 (3d Cir. 1992). To satisfy the second "prejudice" prong, a defendant must show that there is reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Hill*, 474 US at 58-59. A federal habeas petitioner seeking to withdraw a guilty plea based upon ineffective assistance of counsel must show that counsel's advice was not within the range of competence demanded by attorneys in criminal cases; only serious derelictions on the part of counsel entitle a petitioner to relief. *Siers v. Ryan*, 773 F2d 37 (3d Cir. 1985).

CONCLUSION

Petitioner has maintained his innocence through the entire proceeding and humbly request this court exercise its jurisdiction and grant Certiorari.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Darnell Wilkins", written over a horizontal line.

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