

NO: 17-6748

In The
Supreme Court of the United States

ANTOWAN THORNE

Petitioner,

VS.

UNITED STATES of AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

- I. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL OR EVIDENTIARY HEARING WHEN COUNSEL FAILED TO INTERVIEW POTENTIAL WITNESS AND CALL ADDITIONAL WITNESSES TO TESTIFY IN THORNE'S DEFENSE?
- II. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THORNE A HEARING TO ADDRESS THE FRANKS HEARING ISSUE?
- III. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THORNE AN EVIDENTIARY HEARING WHEN COUNSEL FAILED TO SUPPRESS THE SEARCH?
- IV. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR A C.O.A. OR §2255, AN EVIDENTIARY HEARING, OR NEW TRIAL WHEN COUNSEL FAILED TO FILE MOTION TO SUPPRESS TESTIMONY USE IN SEARCH?
- V. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR AN EVIDENTIARY HEARING OR C.O.A. TO DETERMINE IF COUNSEL ERRED WHEN HE FAILED TO OBJECT TO THE INADMISSABLE EVIDENCE?
- VI. SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE IF THE DISTRICT COURT ERRED IN DENYING THE §2255/C.O.A., TO DETERMINE IF COUNSEL ERRED WHEN HE FAILED TO CALL ADDITIONAL WITNESS TO SUPPORT THE ENTRAPMENT DEFENSE?
- VII. SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE IF THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT MAKES AN ERROR OF LAW?
- VIII. SHOULD A WRIT OF CERTIORARI BE GRANTED TO ADDRESS THORNE'S CLAIM UNRELATED TO INEFFECTIVE OF ASSISTANCE.
- IX. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW THORNE'S PRETRIAL MOTION FOR PROSECUTOR MISCONDUCT?

PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Fourth Circuit.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR WRIT OF CERTIORARI

Antown Thorne, the Petitioner herein, respectfully prays
that a writ of certiorari be issued to review the judgement of
the United States Court of Appeals for the Fourth Circuit, entered
in the above entitled cause.

OPINION BELOW

The opinion of the Court of Appeals whose judgement is herein sought to be reviewed, is a denial of a motion for evidentiary hearing or new trial via an unpublished opinion Thorne v. United States, Docket No. 16-6748 is dated March 9, 2018 and is reprinted in the separate Appendix to this Petition.

CONSTITUTIONAL PROVISIONS, TREATIES,
STATUTES AND RULE INVOLVED

The Fifth Amendment to the Constitution of the United States provided in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime, inless on a presentment or indictment of a Grand Jury.. not shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, or property, without due process of law...

Id. Fifth Amendment U.S. Constitution

The Sixth Amendment of the Constitution of the United States provide:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment U.S. Constitution

Title 28 U.S.C. §2255 provides in pertinent part:

The prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or ;aws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside or correct the sentence.

* * * * *

STATEMENT OF THE CASE

May 8, 2014, a grand jury sitting in the Eastern District of Virginia, Alexandria Division returned a two count Indictment (the "Indictment") with Mr. Thorne being the sole defendant named in the indictment. Count One charged Mr. Thorne with a conspiracy to violate the Controlled Substance Act under 21 U.S.C. §841(a)(1); and 21 U.S.C. §846 with his actions leading to the death of Emylee Lonczak. Specifically, the grand jury charged that from in or about 2012 until 2013, Mr. Thorne conspired with others known and unknown persons to distribute in excess of 100 grams of heroin. It was alleged that heroin caused overdoses, and in one case death.

Also in the Indictment against Mr. Thorne was Count 2, a count alleging he possessed a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §924(c)(1)(A). Mr. Thorne was also named in a forfeiture allegation. Mr. Thorne and trial counsel had a contentious relationship, as shown by the fact that Mr. Thorne requested new counsel prior to his arraignment.

On May 30, 2014, the defense filed a motion for change of Venue, seeking that venue be transferred to the United States District Court of the District of Columbia, as the alleged drug sale that led to Ms. Lonczak's death allegedly occurred in Washington D.C. The motion also stated that most of the alleged activities in furtherance of the conspiracy took place in Washington D.C. The defense also filed a motion for a Bill of Particulars. Mr. Thorne also filed a pro se Motion to Suppress and a Motion to Dismiss too.

Thorne also filed a motion requesting a Franks Hearing, included with the motion to suppress were phone records provided by the Government to the defense in discovery. At a hearing on the

motions, the Motion to Suppress was granted due to the affidavit being stale, and the Motion to Dismiss to Transfer Venue were denied as well, the Motion requesting a Franks Hearing and to Suppress statements filed pro se not adjudicated. On July 11, 2014, Mr. Thorne waived his right to a jury trial, which meant the previously schedule jury trial was converted to a bench trial.

On July 14, 2014, trial counsel for Mr. Thorne filed a motion to withdraw, which the Court ultimately denied. Mr. Thorne had a bench trial on August 20, 2014 presided over by the Honorable Judge Leoni Brikema, United States District Judge, At the close of the Government's case, the defense made a motion for judgement of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, which the District Court granted as to the drug conspiracy leading to the death of Emylee Lonczak. However, the lesser included offense of conspiracy to distribute more than 100 grams of heroin pursuant to 21 U.S.C. §841 survived the motion, as did Count 2, the 18 U.S.C. §924 Count. Mr. Thorne took the stand in his own defense, and after that his Rule 29 motion was renewed as Count 2 of the Indictment. The District Court denied the motion as to Count 1 and granted it with regard to Count 2. The Court then found Mr. Thorne guilty of the lesser offense, a conspiracy to distribute in excess of 100 grams of heroin.

On September 10, 2014, Mr. Thorne filed pro se motion to remove attorney. He also filed a motion to Dismiss alleging Prosecutorial Misconduct amongst other arguments challenging the sufficiency of the evidence to convict.

On October 3, 2014, the motion to remove attorney was denied at sentencing. On November 14, 2014, after denying Mr. thorne's

objection to the Presentencing Report (PSI) as the Government's objection, the District Court sentence Mr. Thorne to a total of 300 months in prison. The Court also entered a restitution order on November 14, 2014, but no forfeiture was ordered. Mr. Thorne filed a Notice of Appeal. At that point, trial counsel again filed a Motion to Withdraw, which was granted.

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FORTH CIRCUIT AND THE DISTRICT COURT HAVE DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW
ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. a petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or had decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a... United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court... Id.

Id. Supreme Court Rule 10.1(a),(c)

QUESTIONS PRESENTED

I. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE MOTION, C.O.A. OR §2255 FOR AN EVIDENTIARY HEARING OR NEW TRIAL WHEN APPEAL COUNSEL FAILED TO CALL ADDITIONAL WITNESSES.

The fact that Thorne has alleged that a witness could have been used to impeach a Government witness and was not considered, opens the door to the possibility that additional witnesses were available for impeachment purposes but not called. The key word as counsel alleges is "considered." Considered reaches the level of "available" witness existing. See Ex.Rel. Hampton v. Leidback, 347, F.3d, 219, 249-51 (9th Cir. 2003). Just a complete failure to interview a potential witness. Since counsel's affidavit directly conflicts with Thorne's Title 28 U.S.C. §2255 further establish the need to grant Thorne a Writ of Certiorari.

Also, counsel's affidavit at a minimum supports Thorne's position, since counsel did not disagree with Thorne about him having knowledge of potential witnesses to present in Thorne's defense at trial. Coupled with, counsels failure to call the expert on heroin addiction prejudiced Thorne's case, and grounds within themselves to grant Thorne a Writ of Certiorari.

QUESTIONS PRESENTED

II. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THORNE A HEARING TO ADDRESS THE FRANKS HEARING ISSUE?

As a threshold matter, it appears that the Judge and the government have conceded that counsel might have been ineffective

QUESTIONS PRESENTED

for failing to file for the Franks Hearing request in their response to Thorne's Title 28 U.S.C. §2255. The theory that Thorne cannot demonstrate any prejudice, is, in, essence, a concession to the ineffective portion of the allegation and is premature at best.

Thorne did not have an opportunity to litigate whether the Franks Hearing would have been sufficient or not. Since Thorne was the person whose rights were violated by the illegal search and seizure, and Thorne filed pro se motion requesting a Franks Hearing that was never heard or adjudicated, Thorne prays that this Court will grant him a Writ of Certiorari to address the false testimony used in the search warrant. The prejudice that Thorne is suffering as a result of the alleged use of the false testimony, this Court must agree that the granting of a Writ of Certiorari is required in order to address the ineffective assistance of counsel raised in this case.

Therefore, the District Court Judge erred when it did not grant Thorne an evidentiary hearing to address a Frank's Hearing issue, coupled with the motion filed pro se during pretrial for a Frank's Hearing that was never adjudicated since Thorne never waived his right to have legal representation during pretrial phase.

QUESTIONS PRESENTED

III. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THORNE C.O.A. AND §2255 FOR AN EVIDENTIARY HEARING OR NEW TRIAL WHEN COUNSEL FAILED TO FILE MOTION TO SUPPRESS THE SEARCH WARRANT?

Thorne and his attorney were having a conflict of interest which

was his reason for filing a motion to withdraw. See counsel's affidavit. Thorne never waived his right to counsel. After Mr. Stambaugh told Thorne if he wanted a motion filed, he encouraged Thorne to file the motion himself. Thorne filed a motion to suppress the search warrant pro se and on June 26, 2014, the motion to suppress the search warrant was granted. Thorne lost trust and confidence in his attorney from that point on. Since Thorne did not waive his right to have legal representation in the pretrial phase, counsel's failure to file a motion to suppress the search warrant prejudice Thorne and denied him his Sixth Amendment right to have counsel to represent him.

Therefore, the District Court Judge erred when it did not grant Thorne an Evidentiary Hearing to address this issue.

QUESTION PRESENTED

IV. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED BY DENYING THE C.O.A. AND THE \$2255 FOR AN EVIDENTIARY HEARING OR NEW TRIAL?

The District Court erred when it did not grant Thorne an evidentiary hearing to suppress the testimony as for the product of the search. The Court's decision was based on the van title that was excluded. However, even though the van title was excluded, it still led to an independent investigation to the DMV where the prosecutor was able to learn more about the 1998 Dodge Caravan. Exhibit No. 4. See motion hearing June 26, 2014. Exhibit #4 arrive from the search and once the van title was found in the search, the fact that it was discovered, everyone who was exposed will never forget the hearing and what was discovered. Even though there was a picture of a van taken from the side, that van could have belonged

to anyone, but because of the illegal search of the residence which led to the van title of the 1998 Dodge Caravan, officers for the government was able to say for certain that Thorne owned a "green 1998 Dodge Caravan." See Jack Payner's 1972 tax return, exhibit 1, and the testimony relating to the document was excluded.

The independent investigation and illegal search could also be the reason Thorne confessed that the 1998 Dodge Caravan seen in the picture was his van when he took the stand. The picture of the green van could have been anyone's since there was no picture of the tag number. Thorne was prejudiced by the introduction of evidence that came from the independent investigation from the search.

QUESTIOND PRESENTED

V. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE MOTION FOR C.O.A. OR EVIDENTIARY HEARING TO DETERMINE IF COUNSEL ERRED WHEN HE FAILED TO OBJECT TO THE INADMISSIBLE EVIDENCE?

The District Court erred when it did not grant Thorne an evidentiary hearing to address the authenticity of the recorded phone conversation of the government witness Zack Power, recorded December 4, 2013, and the person Power claim was Thorne. The recorded call was not sufficiently authenticated under federal Evid. 901(b)(6), could not be used to establish that the recorded call was Thorne's voice (There was no evidence that the recorded call was Thorne's voice)(There was no evidence that the telephone number the witness called, came from, was assign to Thorne). Admitted in violation of 901(b)(6) and 801(d)(2)(e). Counsel failed to address this issue of the recorded phone conversation being who and what the government witness said it was in his affidavit concerning the authenticity of the recorded phone call exhibit #7 recorded December 4, 2013.

Thorne took the stand in his own defense and testified that

the person on the other end talking with the government witness Power was not him. It appears that the government conceded to this issue since they failed to respond. The recorded phone call prejudiced Thorne, the mere assertion of his identity by a person talking on the phone is not sufficient evidence of the authenticity of the conversation and that additional evidence of his identity is required. The calling of a number assigned by the telephone company reasonably supports the assumption that the listing is correct and that the number is the one reached. If the number is that of a place of business, the mass of authority allows an ensuing conversation if it relates to business reasonably transacted over the telephone. On the theory that the maintenance of the telephone connection is an invitation to do business without further identification. Otherwise, some additional circumstances of identification of the speaker's required.

Therefore, counsel rendered ineffective assistance of counsel when he failed to object to the recorded phone conversation of the government witness Zack Power December 4, 2013, and the person on the other end. The District Court erred by not granting Thorne an evidentiary hearing to address the authenticity of the recorded phone conversation.

QUESTIONS PRESENTED

VI. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED IN DENYING THE C.O.A. OR §2255 MOTION FOR AN EVIDENTIARY HEARING OR NEW TRIAL WHEN COUNSEL FAILED TO CALL WITNESSES TO SUPPORT THE ENTRAPMENT DEFENSE?

Trial counsel did not offer a tactical decision defense to the

case. There is no justification or support of the record that counsel's action in failing to call the additional witness was any trial strategy whatsoever. The government may set decoys to entrap defendants but it may not provoke or create a crime from start to finish and then punish the criminal for its creature. At Thorne's motion hearing the prosecutor admitted that Emylee Lonczak's death started an investigation, which is the reason for the August 21, 2013, date is the only date mentioned in this entire case. See *Casey v. United States*, 276 U.S. 413 (1928).

The DEA agents started investigating Ms. Lonczak's death from a story Neemah, Power, and Alifom told of a purchase that took place in D.C., however, the phone data map sheet shows that this story was fabricated and lifted uncorrected. When the DEA agents started investigating Ms. Lonczak's overdose, they learned that Ms. Lonczak was with three adults, Power, Zedah and Alifom. Alifom was the first person interviewed, he led agents to Zedah, and Zedah led agents to Power. Alifom told a deputy sheriff what had happened to Ms. Lonczak on August 21, 2013. Counsel failed to interview Ms. Nolloff, and interview and call the case agent to support the entrapment defense. Thorne's counsel rendered ineffective assistance of counsel for failing to interview these witnesses to see what information that could be used in securing Thorne's release if any, just a complete failure on trial counsel part to not consider the witness Thorne had brought to his attention during pretrial phase.

Therefore, the District Court erred when it did not grant an evidentiary hearing to address this claim.

QUESTIONS PRESENTED

VII. SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW IF THE DISTRICT COURT ERRED WHEN HIS PRETRIAL MOTION WAS NOT ADJUDICATED?

As mentioned herein, Thorne filed several pro se, motions requesting a Franks hearing was one of the motions filed. See Thorne's exhibits filed with with his Title 28 U.S.C. §2255 petition. The Courts acknowledged the motion filed for a Franks Hearing during the pretrial phase, however, the judge and the prosecutors response was that Thorne can't show he was prejudiced by Stambaugh failure to file a Franks Hearing is, in essence, a concession to the ineffective of assistance claim raised in the Thorne's §2255 and is premature at best.

The judge side steps a constitutional right by not hearing the motions filed, than justifying its denial of that constitutional right by saying that Thorne could not show that he was prejudiced. For that reason, Thorne appeal process, in this case, is not actually final because of the unaddressed motions filed during the pretrial stage.

QUESTIONS PRESENTED

VIII. SHOULD A WRIT OF CERTIORARI BE GRANTED TO ADDRESS THORNE'S ADDITIONAL CLAIMS UNRELATED TO INEFFECTIVE OF ASSISTANCE?

1) The Court's erred by placing the burden of proving the warrantless search since Thorne was represented by an attorney on his appeal and it was the appeal attorney that failed to address the burden being placed on him to prove the warrantless search of his residence is "cause." See United States v. Chavis, 48 F.3d 871 (5th Cir. 1995)(court improperly placed the burden of proving the warrantless search on him, Thorne can't be held accountable for

his trial counsel failure in not requesting a Franks Hearing in the pretrial and appellate phase. Thorne was prejudiced by his attorney's failure to not address the motion or motions that have not been adjudicated during the pretrial and raised on appeal. These issues is reversible. The court's can't hold Thorne accountable for his attorney's failures. See Martinez v. Ryan, 566 U.S. 1.

QUESTIONS PRESENTED

IX. SHOULD A WRIT OF CERTIORARI BE GRANTED TO ADDRESS THORNE'S PRETRIAL MOTION FOR PROSECUTORIAL AND POLICE MISCONDUCT?

Thorne raised due process violation, He alleges that the statements used in the illegal search and seizure were allowed in his trial. Since his appellate attorney failed to raise this issue on appeal, Thorne cannot be held accountable for his attorney's failure which is "cause" and since Thorne's claims is of perjury testimony and entrapment and the phone data map sheet show that the government's witness testified falsely and under oath at Thorne's trial about them being together during the car ride to D.C. to purchase heroin from a guy named Smooth.

Thorne shows he was prejudice and his conviction were procured through a deliberate deception by the presentation of testimony known to be perjured. And the action of the prosecutor officers on behalf of the government failed to correct this perjured testimony, Thorne was prejudiced by the decision made by his Attorneys in the pretrial and appellate phase. The prosecutor knew their witness was not being truthful, and also has a duty to inform the Court of such. The prosecution failure to respond at all stages of Thorne's appeal process as to why these witnesses testimony

don't match with the phone data map sheet August 21, 2013. The fact that, Thorne is the person accused of Ms. Lonczak's overdose, Thorne has use the preponderance of the evidence to show, Mr. Power Mr. Zedah, and Mr. Alifom alibi was false. Thorne has been the face of Ms. Lonczak's death, Thorne urges the Court by way of his innocence to Ms. Lonczak's death to grant a writ of certiorari so he can be given justice. Thorne took the stand in his own defense at trial and testified to not being the person who sold Mr. Power heroin on August 21, 2013.

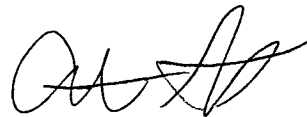
CONCLUSION

Based on the foregoing, this Court should GRANT this request for a Writ of Certiorari, and order the Court of Appeals for the Fourth Circuit and the District Court to address the matters of the issues filed herein.

Done on this 15th day of March 2018.

I hereby do certify that pursuant to penalty of perjury Title 28 U.S.C. 1747 that on this 15th day of March 2018 I signed and mailed this document via Federal Bureau of Prison's Legal Mail System.

/s/



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