

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AHKEEM WIGGINS

PETITIONER

VS.

ROBERT TANNER, WARDEN

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AHKEEM WIGGINS

27268 HWY 21 N

ANGIE, LA 70426

QUESTIONS PRESENTED

1. The 1st Judicial District Court, Parish of Caddo, State of Louisiana was without jurisdiction to accept guilty plea to enhancement penalty under Louisiana Revised Statute 14:64.3, prosecutor never filed bill of indictment charging appellant with the enhancement penalty of Louisiana Revised Statute 14:64.3.
2. Conviction and sentence obtained in violation of the United States Constitution Amendment VI and Louisiana Constitution Article 1 Section 13, "Ineffective Assistance of Counsel"

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:

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STATUTES AND RULES

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

Petitioner respectfully prays that a writ of certiorari be issued 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 "A" to this petition and is:

reported at 17-30905; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States District Court appears at Appendix "B" to this petition and is:

reported at 5:16-CV-1088; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[X] For cases from state courts:

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

reported at 191 So. 3d 1081; 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 is unpublished.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 is unpublished.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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 20, 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: _____, 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. §1254(1).

[X] For cases from state courts:

The date on which the highest state court decided the case was May 20, 2016. A copy of that decision appears at Appendix “C”.

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

1. This Writ is filed in violation of the VI Amendment of the United States Constitution, in that the First Judicial District Court, State of Louisiana failed to file an indictment notifying the Appellant of the accusations against him under Louisiana Revised Statute 14:64.3.

STATEMENT OF THE CASE

July 26, 2011, Appellant appeared before the First Judicial District Court, State of Louisiana for the offense of Armed Robbery, in violation of Louisiana Revised Statute 14:64. The State in and for the Parish of Caddo, First Judicial District Court filed a Bill of Information charging the Appellant with the offense of Armed Robbery a violation of Louisiana Revised Statute 14:64, during the filing of the Bill, the State never filed a Bill of Information charging the Appellant with the enhancement penalty of Louisiana Revised Statute 14:64.3. The Bill of information filed by the State was for the offense of armed robbery only, there was no enhancement bill filed against the Appellant, therefore the First Judicial District Court lacked jurisdiction to accept the guilty plea under the enhancement penalty of an additional five (5) years under the provisions of Louisiana Revised Statute 14:64.3.

REASON FOR GRANTING THIS PETITION

QUESTION 1

THE 1ST JUDICIAL DISTRICT COURT, PARISH OF CADDO, STATE OF LOUISIANA WAS WITHOUT JURISDICTION TO ACCEPT GUILTY PLEA TO ENHANCEMENT PENALTY UNDER LOUISIANA REVISED STATUTE 14:64.3, PROSECUTOR NEVER FILED BILL OF INDICTMENT CHARGING APPELLANT WITH THE ENHANCEMENT PENALTY OF LOUISIANA REVISED STATUTE 14:64.3.

July 26, 2011, Appellant appeared before the First Judicial District Court for the offense of Armed Robbery. The State in and for the Parish of Caddo, First Judicial District Court filed a Bill of Information charging the Appellant with the offense of Armed Robbery a violation of Louisiana Revised Statute 14:64, during the filing of the Bill, the State never filed a Bill of Information charging the Appellant with the enhancement penalty of Louisiana Revised Statute 14:64.3. The Bill of information filed by the State was for the offense of armed robbery only, there was no enhancement bill filed against the Appellant, therefore the First Judicial District Court lacked jurisdiction to accept the guilty plea under the enhancement penalty of an additional five (5) years under the provisions of Louisiana Revised Statute 14:64.3.

Language of statute embodied in indictment or information is sufficient, except when offense is described in such general terms that accused is not informed of accusation against him. State v Prejean (1950) 216 La 1072, 45 So 2d 627.

The First Judicial District Court stipulated at the end of the proceedings that the State never filed a bill of indictment charging with the enhancement penalty of Louisiana Revised Statute 14:64.3, and stipulated the sentence was fifteen years, the trial court stipulated to disregard the enhancement penalty, but still allowed the Appellant to enter a guilty plea to the enhancement penalty. To do so made the plea entered constitutionally infirm, for the plea entered was not knowingly and intelligently entered, and the State admits in open court there was no valid bill of indictment filed. Therefore, this plea should not have been allowed. The Appellant by entering this plea was under the impression, by advice of his counsel; this was what he was being sentenced to by the Honorable Judge of the First Judicial District Court, the original sentence of ten (10) years for armed robbery and without the enhancement penalty under Louisiana Revised Statute 14:64.

QUESTION 2

CONVICTION AND SENTENCE OBTAINED IN VIOLATION OF THE UNITED STATES CONSTITUTION AMENDMENT VI AND LOUISIANA CONSTITUTION ARTICLE 1 SECTION 13, "INEFFECTIVE ASSISTANCE OF COUNSEL"

Appellant appeared before trial proceedings in the First Judicial District Court represented by counsel, Michelle A. André Pont. Counsel allowed the Appellant to enter a plea to a charge where there was no valid Bill of Indictment filed by the State. The State in and for the Parish of Caddo, never filed the Bill of Indictment charging the Appellant with the enhancement of 14:64.3 and the Appellant during the guilty plea colloquy entered a plea to this offense. Once the sentencing phase of the proceedings had begun, the State admitted there was no filing of the enhancement of the charge under 14:64.3 and the trial court stipulated the sentence would be

fifteen (15) years, This was not what the agreement was for, it was ten (10) for the armed robbery and five (5) for the enhancement, but since no bill was filed it should have only been for the ten (10). Counsel failed to object to the plea entered by the Appellant. The Appellant was under the impression by advise of his counsel that the sentence would be ten (10) years for the armed robbery and five (5) years for the enhancement, which is a total of fifteen (15) years, but since the State failed to file the Bill of Information charging Appellant with the enhancement, the sentence is only ten (10) years. Therefore Appellant's claim of ineffective assistance of counsel meets the two prong test required in Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), where counsel's performance fell below the standard required and counsel's performance prejudice the Appellant. To allow the Appellant to enter a plea to an enhancement charge without a valid Bill of Information and then withdrawing the sentencing phase of the enhancement penalty and still imposing a sentence of fifteen years even after the trial court was notified of there was no valid Bill of Information charging the Appellant with this enhancement penalty violated Appellant's constitutional rights and counsel should have objected to this sentence and clarified with the Appellant the reason for the fifteen (15) years. By counsel failing to object and advise the Appellant of the trial court's intentions was not in compliance with the advice given by counsel to what Appellant understood would be the sentence of the trial court, ten (10) years for the armed robbery and five (5) for the enhancement. In addition, by the state failing to file the Bill of Information changed the circumstances of the court and in failing to file the bill of indictment altered the plea offered by the State to an extent that the Appellant upheld his part of the plea and entered a plea to the bill charging the Appellant with armed robbery a sentence of ten (10) years. The State failing to file a bill is at fault for their end of the plea bargain was not met for a technically on their part, (not filing the bill for the enhancement

penalty) and the Appellant became prejudice by counsel allowing the Appellant to be sentenced to fifteen (15) years, when the Appellant was in agreement with the State that the sentence for the armed robbery would only be ten (10) years. Counsel's performance fell below the standard required under our constitution and clearly counsel's performance prejudice the Appellant and subject the Appellant to a greater sentence than agreed upon.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,


AHKEEM WIGGINS #586480

August 30th 2018
Date