

18-7477

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

NOV 05 2018

OFFICE OF THE CLERK

Ja' Juan A. Williams — PETITIONER
(Your Name)

vs.

Dean Minor — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Unites States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ja' Juan A. Williams
(Your Name)

5201 S. Morley, PO Box 7/Moberly, Missouri 65270
(Address)

Moberly, Missouri 65270
(City, State, Zip Code)

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QUESTION(S) PRESENTED

- A. WAS TRIAL COUNSEL INEFFECTIVE FOR NOT RAISING ISSUE OF ACTUAL INNOCENCE?

- B. DID COUNSEL LABOR UNDER A CONFLICT OF INTEREST?

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:

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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix H 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☒ is unpublished.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 United States district court appears at Appendix D, E, F to the petition and is

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☒ is unpublished.

☐ 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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the RANDOLPH CIRCUIT COURT, 14th JUDICIAL CIRCUIT appears at Appendix A to the petition and is

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☒ is unpublished.

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Clay v. Dormire, 37 S.W.3d 214 (Mo. banc 2000)

State v. Sandes, 126 S.W.3d 5 (Mo. App. W.D. 2003)

State v. Wise, 879 S.W.2d 459, 510 (Mo. banc 1994)

State v. McKay, 459 S.W.3d 450, 458 (Mo. App. E.D. 2014)

State ex rel Koster v. McElwain, 340 S.W.3d 221, 249-250
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State v. Harding, 528 S.W.3d 362 (2017, Mo.Lexis 322)

Glass v.State, 227 S.W.3d 463 (Mo. banc 2007)

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State v. Benedict, 495 S.W.3d 185 (Mo. App. E.D. 2016)

Beets v. Scott, 65 F.3d 1258, 1272 (5th Cir. 1995)

Guyler v. Sullivan, 100 S. Ct. 1708 (1989)

SEE ATTACHED

STATUTES AND RULES

Missouri Bar and Judiciary Rule 4-1.7(b)

OTHER

Cases- Con't

Mickens v. Taylor, 122 S. Ct. 1237, 1244, n-5 (2002)
Kenly v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991)
Taylor v. State, 755 S.W.2d 253, 255 (Mo. App.W.D. 1988)
State v. Walden, 861 S.W.2d 182 at 185 [3-6] (Mo.App. W.D. 1993)
Yoakum v. State, 849 S.W.2d 685, 689 (Mo. App. 1993)
Miranda v. Arizona, 86 S. Ct. 1602 (1966)
State v. Seibert, 103 S.W.3d 295 (Mo. App. S.D. 2003)
Arizona v. Fulminante, 111 S. Ct. 1246, 1257 (1991)
Bruton v. United States, 88 S. Ct. 1620, 1629 (1968)
Moore v. State, 934 S.W.2d 289, 292 (Mo. banc 1996)

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 2, 2017.

☒ 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 Nov. 14, 2018 (date) on Jan. 18, 2018 (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 Jan. 20, 2017.
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 Nov. 14, 2018 (date) on Jan 28, 2018 (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, Amend. 4

U.S. Constitution, Amend 5

U.S. Constitution Amend. 6

U.S. Constitution, Amend. 14

Missouri Constitution, Art. 1, sec. 10

Missouri Constitution, Art. 1, sec. 15

Missouri Constitution, Art. 1, sec. 17

Missouri Constitution, Art. 1, sec. 18(a)

Missouri Constitution, Art. 1, sec. 19

Missouri Constitution, Art. 1, sec. 21 and

Missouri Constitution, Art. 1, sec. 22(a)

STATEMENT OF THE CASE

Background

On June 22, 2015, Petitioner pleaded guilty to two counts of second degree robbery and unlawful possession of a firearm. On August 10, 2015, Petitioner was sentenced to concurrent terms of fifteen years and seven years imprisonment in the Circuit Court of Boone County, Missouri. Pursuant to Mo. Sup. Ct. R. 91.01, Petitioner filed a petition for state habeas corpus relief, alleging (1) ineffective assistance of counsel due to attorney abandonment and conflict of interest; (2) ineffective assistance of counsel and plea counsel due to a failure to prepare a defense of present mitigating evidence; (3) actual innocence; (4) jurisdictional defect due to a plea based on false premises and evidence; and (5) prosecutorial misconduct by presenting known false evidence that illegally obtained. The Circuit Court of Randolph County, Missouri denied Petitioner's Rule 91.01 petition and on December 22, 2017, Petitioner appealed to the Missouri Court of Appeals. On February 3, 2017 the Missouri Court of Appeals for the Western District denied Petitioner's state habeas corpus relief without further explanation. On February 14, Petitioner sought a Writ of Habeas Corpus under 28 U.S.C. § 2254 in the Eastern District of Missouri. The case was transferred to the Western District of Missouri on February 10, 2017 and ultimately denied. On November 6, 2017, Petitioner submitted his application for Certificate of Appealability in the Eighth Circuit Court of Appeals. Petitioner's COA was denied and Petitioner sought review in the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT
1. ACTUAL INNOCENCE

Trial Counsel was ineffective for failing to argue the issue of "Actual Innocence."

Petitioner assert a jurisdictional claim, resulting in a "Manifest Injustice" and "Miscarriage of Justice." The Missouri Supreme Court in Clay v. Dormire, 37 S.W.3d 214 (Mo. banc 2000), provided countour to the principle and held that manifest injustice is essentially the same as miscarriage of justice as that phrase if used in federal habeas cases.

Petitioner informed his attorney, Keli Campbell that there was an eyewitness to the crime and that petitioner was not the one who committed the crime and that this eyewitness would be able to tell her who actually committed the crime.

Petitioner informed his attorney of; the eyewitnesses' name, address and the fact that she would testify, as well as being available to testify. Instead of his attorney pursuing this information that would prove his actual innocence, his attorney did nothing to get it.

Had this evidence of another perpetrator other than petitioner had been sought and obtained, petitioner would have elected to go to trial in reliance on this evidence. Once petitioner realized his attorney was not going to investigate this witness and evidence of another person being the one who actually committed this crime, petitioner believed that he would be railroaded if he went to trial in light of the threats made to petitioner regarding his girlfriend and children.

The arresting officer and prosecuting attorney told petitioner that if he didn't plead guilty, his girlfriend would be arrested

and his children taken away in violation of his Fifth Amend. right, stating in relevant part, "...nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process."

Petitioner state tha because his counsel had divided loyalties, counsel failed to investigate his alibi witness and obtain the truth that another person had committed this crime to prove that petitioner was actually innocent, in violation of Sixth Amend, stating in relevant part, "... the accused shall enjoy the right to a fast and speedy trial by an impartial jury..., and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Here, petitioner was denied the right to compulsory process of obtaining this witness in his favor and the effective assistance of counsel in that, had counsel obtained this witness's testimony, she would have testified that another individual had actually committed this criime and not petitioner and that counsel's failure to do so was her apprehension about being eleced/appointed as Judge.

Had counsel investigated this this witness, he would have been able to lay the foundation for introducing evidence to show that another person committed the offense. State v. Benedict, 495 S.W.3d 185 (Mo. App. E.D. 2016): State v. Sanders, 126 S.W.3d 5 (Mo. App.W.D. 2003).

In State v. Wise, 879 S.W. 2d 494, 510 (Mo. banc 1994) the defendant must show and establish a clear link between the alleged alternative perpetrator and a key piece of evidence in the crime.

(citing, State v. McKay, 459 S.W.3d 450, 458 (Mo. App. E.D. 2014); State ex rel Koster v. McElwain, 340 S.W.3d 221, 249-250 (Mo. App. W.D. 2011); State v. Harding, 528 S.W.3d 362 (2017 Mo. App. Lexis 322)).

In Glass v. State, 227 S.W. 3d 463 (Mo. banc 2007) ("To prove ineffective assistance of counsel for failure to call a witness, the defendant must show that: (1) trial counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness' testimony would have produced a viable defense."), Hutchinson v. State, 150 S.W.3d 292, 304 (Mo. banc 2004).

In the instant case, counsel was aware of this witness, what this witness would have testified to, where this witness could be located and this witness's testimony would have proved that petitioner did not commit this crime. This witness would have identified the other person who committed the offense. The Fourteenth Amendment states in relevant part, "...; nor shall any State deprive any person of life, liberty or property without due due process of law; nor deny any person within the its jurisdiction the equal protection of the laws."

This Court should grant Certiorary to resolve the conflict among state and federal courts as to whether counsel's failure to investigate a witness who would have proven that his client was actually innocent of the offense he is charged with and whether counsel's ineffectiveness resulted in the conviction of an innocent person.

REASONS FOR GRANTING THE WRIT

2. TRIAL COUNSEL LABORED UNDER A CONFLICT OF INTEREST

Petitioner informed counsel, Keli Campbell, that he was never mirandarized; there was an eyewitness who would testify that petitioner did not commit the offense; that petitioner's confession was the product of threats and coercion; that the firearm taken from petitioner's house was an illegal search and seizure in violation of the Fourth Amend. and the "Poisonous Tree Doctrine"; and that the firearm was used against petitioner as evidence to prove the truth of the matter.

It wasn't until the day before trial that petitioner learned his trial counsel intended on closing her private practice to become a Federal Judge.

As hard as one might try, it would hardly be possible for one to wear the hat of an effective advisor to a criminal, while at the same time, wearing the hat of a law enforcement authority. Sixth Amend. Id.. Accordingly, regardless of whether or not, the accused actually understands the legal and factual issues involved and the State's role as an adversary party, advice offered by a lawyer or his/her attorney agents with such an evidentiary conflict of interest cannot help but create a public perception of unfairness and unethical conduct.

Under Missouri law, "Missouri bar and Judiciary Rule 4-1.7(b) 'conflict of interest' states in relevant part, '(b) A lawyer shall not represent a client if the representation of the client may be materially limited [b]y the lawyer's own interest.'"

It is well established law that counsel owes duty to avoid conflict of interest but that is just one of many duties, which

also include, advocating defendant's case, consulting with him and keeping him informed and employing skill and knowledge on defendant's behalf. Beets v. Scott, 65 F.3d 1258, 1272 (5th Cir. 1995). Additionally, the court has presumed prejudice when counsel labors under a conflict of interest. Cuyle v. Sullivan, 100 S.Ct. 1708 (1980); Mickens v. Taylor, 122 S.Ct. 1237, 1244, n-5 (2002). Conflict of interest has been defined to mean a division of loyalties that affected counsel's performance, Id..

In the instant case, counsel failed to make a reasonable investigation in the preparation of this case or make a reasonable decision not to make a particular investigation. Kenly v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991). As held in Taylor v. State, 755 S.W.2d 253, 255 (Mo. App. W.D. 1988)("[s]trategy depends on information."), whereas, petitioner's counsel failed to gather any information and therefore, counsel cannot rely on trial strategy for her not choosing not to go to court, knowing that there was an actual eyewitness who would have testified that petitioner did not commit the offense. Failing to employ eyewitness testimony to prove actual innocence of her client, preventing him from being convicted of a crime he did not commit, is not trial strategy.

Petitioner informed counsel of who this witness was and where she lived. This witness could have easily been located and made available for trial to give testimony. State v. Walden, 861 S.W.2d 182 at 185 [3-6], (Mo. App. W.D. 1993)citing, Yoakum v. State, 849 S.W.2d 685, 689 (Mo. App. 1993)).

Through an adequate investigation, counsel would have learned and presented the defense of the violation of petitioner's miranda rights, in that he was never mirandarized in violation of the Fourteenth

Amend, where there was conclusively, insufficient information/evidence to sustain that petitioner was mirandarized and at no time did petitioner sign a waiver or waive his rights otherwise to any miranda warning, clearly leaving the record void of miranda procedural safeguards. Miranda v. Arizona, 86 S.Ct. 1601 (1966); State v. Seibert, 103 S.W.3d 295 (M. App. S.D. 2003); Michigan v. Mosley, 96 S.Ct. 321 (1975).

A confession is like no other evidence, Arizona v. Fulminante, 111 S.Ct. 1246, 1257 (1991) and probably the most probative and damaging evidence that can be admitted against a criminal defendant, Bruton v. United States, 88 S.Ct. 1620, 1629 (1968).

Some statement by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession, disclosing the motives for and the means of the crime may tempt the jury to rely upon that evidence alone in reaching their decision.

In this case, petitioner was threatened and coerced into giving a confession or face the alternative of having his girlfriend sent to prison and his children taken away.

During the guilty plea and sentencing, petitioner maintained his innocence to the charges of Class B felony and the Class C felony of unlawful possession of a weapon. In the charge of Class B felony, petitioner was charged with robbery in which there was no adequate factual basis established for the trial court to accept defendant's pleas of guilty. Petitioner informed the court that the other person had the gun and that petitioner did not know that the other person had a gun and that petitioner never admitted to accepting any money off the alleged victim. (Sent. & Plea Tr. 7-9)

This confession was prejudicial in that it resulted in the conviction of one who is actually innocent but threatened and coerced into pleading guilty.

Had counsel not labored under a conflict of interest, where loyalties were divided and counsel's only concerns were, (1) disposing her case load, and (2) taking on her new job as a law enforcement authority (Judge), counsel would have taken the necessary steps to resolve conflict situations and the appearance of impropriety, Moore v. State, 934 S.W.2d 289, 292 (Mo. banc 1996).

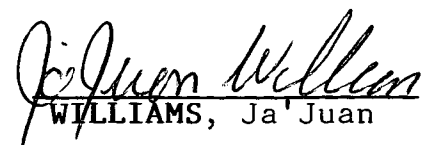
As a result, petitioner was denied; effective assistance of counsel; a fair trial by an impartial jury; rights as the accused in a criminal prosecution; the right not to be subjected to self-incrimination; right to due process; the right to be free from unreasonable search and seizure; the right to compel the attendance of witnesses; and the right to equal protection of the laws as guaranteed by the 4th, 5th, 6th and 14th Amendments to the United States Constitution and Article 1, Secs. 10, 15, 17 18(a), 19, 21 and 22(a) of the Missouri Constitution.

This Court should grant certiorary to resolve this conflict and rule on this important question.

CONCLUSION

This Court should grant certiorary to decide the issues of whether or not Counsel labored under a conflict of interest and whether or not, this Court's decisions, that Counsel is ineffective for failing to investigate a witness who would have produced evidence of petitioner's "Actual Innocence".

DATE: 12/27/18


WILLIAMS, Ja' Juan

Certificate of Service

I, Ja'juan A. Williams, hereby certify that on this
27 day of Dec, 2018, I placed a true
copy of the foregoing, "Writ of Certiorary" within the
institutional mail, addressed to:

Mr. Stephen D. Hawke
Attorney General
P. O. Box 899
Jefferson City, Missouri 65102

and was sent first class postage pre-paid through the
United States Postal system.

Respectfully:

Ja'juan Williams