

APR 12 2019

IN THE SUPREME COURT OF THE UNITED STATES OFFICE OF THE CLERK

CH
BRANDON L. HAWKINS,
Petitioner,

v.

Case No.: 18-7558

THE STATE OF FLORIDA,
Respondent.

PROVIDED TO TOMOKA

ON 4/12/19 BY gj

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PETITION FOR REHEARING

COMES NOW the Petitioner Brandon L. Hawkins, *pro se*, pursuant to Rule 44(2), of the Supreme Court Rules, and petitions this Honorable Court for rehearing on the decision of this court rendered March 18, 2019, based upon intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

In support thereof the Petitioner would state as follows:

This court denied the Petitioner's certiorari petition on March 18, 2019, without addressing the merits of the claim.

The Petitioner argued in his petition for writ of certiorari that this court should exercise its jurisdiction regarding the Petitioner's claim, in that petitioner is entitled to discharge or a new trial based on the trial court at resentencing failing to conduct a competency hearing after it found reasonable grounds to believe that

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petitioner was incompetent for sentencing, and that petitioner is entitled to resentencing based on the trial court vindictively resentencing petitioner to a greater term of imprisonment after granting his motion to correct sentencing error, which is also in violation of double jeopardy.

1.) At commencement of Petitioner's sentencing hearing, defense counsel advised the trial court that the Petitioner had some serious mental health issues, which indicated that there may have been a substantial competency issue with the Petitioner.

It was reversible error for the court to refuse to conduct any inquiry into Petitioner's competence to be sentenced and/or whether the Petitioner had actually been competent stand trial.

This very own court established the federal standard here in *Dusky v. United States*. 362 U.S. 402, 80 S.Ct. 788 (1960), where this Court held that:

"Test of defendant's competency to stand trial is whether he has sufficient ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has rational as well as factual understanding of proceeding against him and it is not enough that he is oriented to time and place and has some recollection of events."

See also *Droepe v. Missouri*, 420 U.S. 162, 95 S.Ct. 896 (1975).

In the present case there is no dispute as to the evidence possibly relevant to the Petitioner's mental condition that was before the trial court at the time of the trial and sentencing hearing.

The conviction of a legally competent defendant, or the failure of a trial court to provide an adequate competency determination, violates due process principles by depriving a defendant of his constitutional right to a fair trial, *Drope*, *supra*, see also *Pate v. Robinson* 383 U.S. 375, 385-86 (1966).

Because the state trial court failed conduct a competency hearing prior to sentencing and to make a finding and to issue an order regarding the Petitioner being competent, a fundamental and/or structural error occurred, as the error here undermines the reliability and fairness of the proceedings.

2.) As to the Petitioner's second issue the trial court's sentencing alternatives on resentencing were limited by the United States Supreme Court's decision in *North Carolina v Pearce*, 395 U.S. 711 (1969), which held that due process requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial. *Id.* at 726. In order to ensure that vindictiveness plays no role in a resentencing, *Pearce* requires a trial court imposing a more severe sentence at resentencing to make the reasons for the more severe sentence affirmatively appear on the record. 395 U.S. at 726. “*Pearce* and its progeny established ‘a presumption of

vindictiveness, which may be overcome only by objective information in the record justifying the increased sentence.’ ” See *United States v. Goodwin*, 457 U.S. 368, 374 (1982). This standard was clearly violated in the case at bar by the state courts, and this Court, by denying certiorari clearly approves of the state courts’ refusal to apply federal law, which had been clearly established by this Court in the past.

3.) Additionally, the Petitioner argues that in accordance with Rule 44.2. of the Rules of the United States Supreme Court a motion for rehearing on a Petition for Writ of Certiorari “its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.” Based thereon, the Petitioner addresses two claims that were not previously presented, however, due to the fact that they were decided by this very own Court during the pendency of the Petitioner’s direct appeal and/or the instant certiorari proceeding the Petitioner submits that he should be entitled to have those claims addressed on the merits.

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The issue here is that the Petitioner was located as a suspect by the use of cell-phone records. However, on June 22, 2018 this Court in *Carpenter v. United States*, 138 S. Ct. 2206; 201 L Ed 2d 507; 2018 US LEXIS 3844 (Argued November. 29, 2017, Decided June 22, 2018; S. Ct. Case No. 16-402), that “the

Government's acquisition of cell-site records was a Fourth Amendment search", and that the government must generally obtain a warrant supported by probable cause before acquiring such records, which was not established in the case at bar, and as such the cell phone records obtained in this case, which led to locate the Petitioner, were unlawfully obtained and as such impermissible at trial.

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The issue here is that the Petitioner's record on appeal and the trial transcripts clearly reflecting that Petitioner's trial counsel conceded guilt over the Petitioner's express objection, which constitutes ineffective assistance of counsel from the face of the record which would have been cognizable on direct appeal. This Court in *McCoy v. Louisiana*, 584 US ___, 138 S Ct ___, 200 L Ed 2d 821, 2018 US LEXIS 2802 (Argued January 17, 2018, decided May 14, 2018; S. Ct. Case No. 16-8255) stated that "When a client expresses that the objective of his defense is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." Noteworthy here is that the Petitioner even told his appellate counsel about this very same issue, however counsel responded back to the Petitioner stating that the concession made by trial counsel cannot provide a basis for an argument on direct appeal that Petitioner's conviction must be reversed. (See Exhibit "A", on page 3).

Based on the two rulings rendered by this court intervening circumstances of a substantial or controlling effect to substantial grounds not previously presented clearly exists in this case, which justifies for this Court to accept jurisdiction upon this instant motion for rehearing.

The Petitioner understands that certiorari review rests entirely within the discretion of this court and there is absolute no entitlement to such review.

However, the Petitioner submits that his claim is one of exceptional importance because it revolves around a direct violations of the Fourth, Fifth, Sixth, and Fourteenth Amendment to the United States Constitution, and the fact that the issues at bar were not remedied by the State courts leaves this federal question on the table unresolved, which undermines confidence in the American justice system if not addressed on the merits by this Court.

WHEREFORE, the Petitioner asks this Honorable Court to grant rehearing and/or certiorari review on the merits of Petitioner's claim and thereupon to grant relief as this court may deem appropriate and just.

Respectfully submitted,

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CERTIFICATE OF PARTY

I HEREBY CERTIFY that the instant petition for rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and is presented in good faith and not as an abuse or to cause any unnecessary delays.

Date: April 12, 2019

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