

NO: 18-7607

IN THE
SUPREME COURT OF THE UNITED STATES

BRUCE WHITE- PETITIONER-APPELLANT

VS.

UNITED STATES OF AMERICA-RESPONDENT-APPELLEE

ON PETITION FOR WRIT OF CERTIORARI TO
SEVENTH CIRCUIT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

BRUCE WHITE 70768051

F.C.I. - P.O.BOX 23811

TUCSON ARIZONA 85734

ORIGINAL

Supreme Court, U.S.
FILED

JAN 04 2019

OFFICE OF THE CLERK

QUESTION(S) PRESENTED

I. IF A PLEA WAS NOT ENTERED VOLUNTARY, INTELLIGENTLY, OR KNOWINGLY WILL THAT BE CONSIDERED GROUNDS TO FILE A MOTION FOR WITHDRAWAL OF A PLEA AGREEMENT PRIOR TO SENTENCING UNDER FED.R.CRIM.P. 11(d)(2)(B) ?

II. HOW CAN A DEFENDANT ENTER A VOLUNTARY PLEA AGREEMENT WITHOUT BEING FULLY, AND OR SIGNIFICANTLY AWARE OF ALL THE CIRCUMSTANCES SURROUNDING THE CASE ?

III. WILL A COUNSEL ACTIONS BE CONSIDERED UNREASONABLY IF HE OR SHE DOESN'T FILE A MOTION AT THE REQUEST OF DEFENDANT ?

IV. WILL A COUNSEL ACTIONS BE CONSIDERED UNREASONABLE IF HE OR SHE DOES NOT ADVISE A DEFENDANT OF HIS OR HER RIGHTS?

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

1. FEDERAL CRIMINAL RULES PROCEDURES 11(d)(2)(B) PAGE

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. INEFFECTIVE ASSISTANCE OF COUNSEL IN THE FEDERAL CONTEXT IS GOVERNED BY THE RULES ESTABLISHED IN (STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)). THE STRICKLAND TEST REQUIRES THAT THE PETITIONER SHOW[S] (1) THAT COUNSEL PERFORMANCE FELL BELOW "AN OBJECTIVE STANDARD OF REASONABLENESS, AND (2) A "REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD OF BEEN DIFFERENT. (WARD 613 F.3D AT 698), (QUOTING STRICKLAND 466 U.S. AT 694)).

2. INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PLEA CONTEXTS USING THE STRICKLAND TEST SEE (HILL V. LOCKHART 474 U.S. 52 (1985)) REQUIRES THAT THE PETITIONER " SHOW THAT BUT FOR THE COUNSEL'S ERROR, PETITIONER WOULD NOT HAVE PLED GUILTY, BUT WOULD OF INSISTED ON GOING TO TRIAL. (WARD 613 F.3D AT 698) (QUOTING MOORE V BRYANT, 348 F.3D 238, 241 (7TH CIR. 2003)).

3. INEFFECTIVE ASSISTANCE OF COUNSEL WHEN REFLECTING ON THE WITHDRAWAL OF A GUILTY PLEA : THE 7TH CIRCUIT HELD THAT A DEFENDANT COULD WITHDRAW HIS OR HER PLEA PRIOR TO SENTENCING IF THERE IS A FAIR AND JUST REASON FOR REQUESTING THE WITHDRAWAL OF PLEA (UNITED STATES V REDMOND, 667 F.3D 863, 870 (7TH CIR. 2012) (QUOTING FED.R.CRIM.P 11 (d)(2)(B))).

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 _____ 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 _____ 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 _____ 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 _____ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/26/18.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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).

STATEMENT OF CASE

1. On October 15, 2013, petitioner files a 28 U.S.C. 2255.

2. On February 16, 2018, District Court Chief Judge Jane Magnus-Stinson denies petitioner 28 U.S.C. 2255.

3. In March of 2018, petitioner with the assistance of counsel Mario Garcia files for a Certificate of Appealability.

4. On October 26, 2018, the 7th Circuit Court of Appeals denies petitioner Certificate of Appealability.

5. In November of 2018, petitioner files a Motion for a rehearing on his Certificate of Appealability.

6. In December of 2018, the 7th Circuit Court of Appeals denied this petitioners request for a rehearing under 35 (b) (1) (A) of the Fed.R.App.P.

REASONS FOR GRANTING WRIT

1. Petitioners [Mr. White] compelling reasons for filing a petition for Writ of Certiorari is based on the following:

1. this petitioners 6th Amendment Constitutional Right to be represented by Effective Assistance of Counsel has been violated and,

2. the 7th Circuit District and Appeals Courts had made a ruling against this petitioner, that was indirect conflict with the established laws of the Supreme and Circuit Courts of the United States of America.

Pre-Trial counsel, Ms. Gwendolyn Bietz violated this petitioners 6th Amendment Constitutional Right, to be represented by effective assistance of counsel, when she failed to file a motion for withdrawal of petitioners "involuntary" guilty plea at the request of the defendant.

"Established Law" clearly states, In *Ward v. Jenkins* , "The decision of whether to plead guilty is a decision that ultimately rests with the client, and an attorney who disregards specific instructions as to this decision acts unreasonably. , "see (*Florida v. Nixon*, 543 U.S. 175,187 (2004), "the defendant has Ultimate Authority, over decisions involving Fundamental trial decisions including whether to plead guilty (quoting *Jones v Barnes* 463 U.S. 745 at 751 (1983) at "*Wallace v Davis* 362 F.3d 914 at 920 (7th Cir.2004) " many decisions during trial proceeding falls to counsel by default or virtue of superior knowledge, but the major ones,

may be exercised personally, if the accused wants to make, rather than delegate these vital choices". Strickland in the plea context (see *Hill v Lockhart*) requires that the petitioner "show that but for the counsel's error, petitioner would not have pled guilty, but would of insisted on going to trial. (Ward 613 F.3d at 698) (quoting *Moore v Bryant*, 348 F.3d 238, 241 (7th Cir. 2003)).

The District Courts entry in this decision stated, "that they would not have granted a motion to withdraw White's guilty plea because Mr. White had voluntarily entered his plea agreement." Mr. White claims otherwise....In the 7th Circuit a defendant could withdraw his or her plea prior to sentencing if there is a fair and just reason for requesting the withdrawal of the plea (*United States v Redmond*, 667 F.3d 863, 870 (7th Cir. 2012) (quoting *Fed.R.Crim.P.* 11(d)(2)(B))....White had a fair and just reason for wanting to withdraw his guilty plea, "he did not enter the guilty plea voluntarily, knowingly, and intelligently." The court held in (*Redmond* at 870) that a fair and just reason includes, "when the plea was not entered into voluntarily, knowingly, and intelligently, with sufficient awareness of relevant circumstances and likely consequences." Mr. White did not enter into the plea agreement with sufficient awareness of the relevant circumstances, because Ms. Bietz did not present him with all the evidence, until after he signed the plea agreement. Counsel had acted unreasonable when she advised petitioner to pled guilty without sharing all the relevant evidence and neglecting to inform petitioner of all relevant circumstances of the case....At White's Post-Conviction

hearing, White and his trial counsel both testified that he was not given an opportunity to see the video evidence until moments after he plead guilty on June 21, 2013. On June 21, 2013 after petitioner had finally seen the video evidence Mr. White advised the federal investigator (providing petitioner with access to the video evidence), that [petitioner], wished to talk to his counsel about withdrawing the guilty plea "..... at the Post-Conviction Hearing, White and his former Counsel also, testified that, the reviewing of video evidence, ["controlled buys"] was very important to establishing an defense, despite this mutually shared importance, counsel failed to provide Mr. White with all relevant evidence including the showing of the video evidence prior to advising petitioner to enter the plea agreement. After petitioner had finally seen the video evidence, this petitioner was "confused" on why Ms. Bietz had advised him to sign a guilty plea agreement. At that point, Mr. White was no longer in agreement with counsel about going along with the signing of a guilty plea. This petitioner claims the advise he was given prior to signing the guilty plea was unreasonable....." Why should petitioner forfeit his Constitutional Rights of being represented by effective assistance of counsel behind his counsels unreasonable behavior?" Mr. White, counsel had advised him to plead guilty without first establishing all of the relevant circumstances in the case with him [petitioner]. All of the actions before the petitioner became fully aware of the relevant circumstances and relevant evidence should not be considered voluntary, intelligent, or knowingly, when it was the counsel

who failed to reveal all the relevant circumstances and relevant evidence with defendant, before the signing of a guilty plea... (United States v. Redmond at 870). White counsel had testified at the post-conviction hearing that she had informed Mr. White that she had seen the video and that she felt that the video was damaging evidence against Mr. White [petitioner]. White contends that after viewing the video himself on June 21, 2013 (after the plea hearing), he didn't share "any of" the same views as Ms. Bietz did. The [petitioners], independent findings was based on his significant awareness of all the relevant circumstances of his case, and not the independent findings of his counsel. This petitioner believes that his right to either "go to trial" or "take a plea" was some how abandoned by his counsels separate, and independent opinion. By the petitioner counsel negating him the opportunity to decide for himself, if the relevant evidenced or relevant circumstances was damaging enough to negate his right go to trial and plead guilty is considered unreasonable. (see Wallace v. Davis at 920) Those errors by petitioners counsel had created a mis-understanding between the petitioner and counsel, furthermore making the signing the plea agreement "Involuntary." Nonetheless establishing a fair and just reason to file a Fed.R.Crim.P. 11(d)(2)(B) in which counsel failed to advise petitioner "of". (see United States v Redmond at 870) (Wallace v Davis at 920). Once petitoner became fully aware of all relevant circumstances, a competent, and effective assistance of counsel would of informed petitioner of that, "option" moving forward.

The entire plea process was tainted by the counsels

independant opinion on the circumstances involving the case. (under Florida v Nixon " the defendant has the ultimate Authority over decisions involing Fundamental trial decisions including whether to plead guilty.(quoting Jones v Barnes at 751.)) That Fundamental right was overlooked by the 7th Circuit District Court and the 7th Circuit Court of Appeals when they ruled that the petitioner counsels indivdual, yet independant opinion trumped petitioner seperate opinion on the context of the relevant circumstances surrounding the case. By petitioners counsel withholding certain details and relevant circumstances of the case should of deemed the signing of the plea "involuntary".see (United States v Redmond at 870). In (Wallace v Davis at 920), "many decisions during trial proceeding falls to counsel by default or virtue of superior knowledge, but the major ones, may be exercised personally, if the accused wants to make them, rather than delegate these vital choices".....The entire "plea process", was based on the possibility of petitioner being an candidate for the A.C.C.A. enhancement. The actual video inwhich triggered the possibility of the A.C.C.A. enhancement, wasnt considered by this petitioner, to be as damaging as counsel proclaimed it to be when she spoke to petitioner about the video context. When reflecting on "just" the context of the video, Ms. Bietz acted unreasonable and unprofessional when she failed to take into consideration that once White had viewed the most important piece of evidence [video of the controlled buys,], that there was a "strong possibility" that Mr. White would of exercise his right to go to trial after acknowledging all of the relevant circumstances of the case.

How could Mr. White had made a voluntary, intelligent or knowingly decision during any of the pre-trial proceeding when his counsel wasn't being precise, or detailed about the video context and relevant circumstances revolving around the context? Mr. Whites counsel failed to make available the video evidence, and advise petitioner precisly of all the relevant circumstances, inorder, to determine if petitoner wanted to proceed to trial, or plea out. Those actions should have been considered unreasonable, and the signing of the guilty plea should of been considered an invalid involuntary act. (see Wallace v Davis at 920),and (United States v Redmond at 920).....During the post conviction hearing White testified that Ms. Bietz had explained that he should not pursue a withdrawal of plea hearing because it would be problematic for him at sentencing. Mr. White counsel never informed him of his right to pursue a withdrawal of plea hearing prior to sentencing under the Fed.R.Crim.P. 11(d)(2)(B). White claims his decision to not pursue the withdrawal of his plea agreement at his Sentencing Hearing was based on [Ms. Bietz] (1) unwillingness to provide the necessary help, (2) establish an suitable argument, and (3) justify the proper reasons for presenting a fair and just reason, for the filing of the withdrawal of Plea under Fed.R.Crim.P. 11(d)(2)(B), at the request of the petitioner. White's Counsel Ms. Bietz was well aware of Mr. White's intentions on wanting to have his case heard, during a jury trial, [based on a letter White sent to his counsel in April of 2013,]. White's counsel acted unreasonable when she failed to provide him with all the relevant, and necessary evidence, that would of created an

intellectual yet sound decision on how Mr. White shall proceed moving forward. White claims that if he would of received all of the discovery and relevant evidence prior to his change of plea hearing, he would of never accepted the guilty plea agreement and instead insisted on going to trial. During the testimony at the Post-Conviction Hearing former counsel testified that she was informed by the federal investigator moments after White had finally seen the video, that he Mr. White wanted to speak with his counsel about withdrawing his Plea agreement. Based on the same testimony Ms. Bietz acknowledged that petitioner had made multiple attempts to contact her prior to sentencing. And only after those multiple attempts were unsuccessful in trying to contact Ms. Bietz via phone, that when White decided to write a letter to the District Court on September 16, 2013 and inform the courts about his concerns of challenging the plea agreement and his lack of communication with Ms. Bietz. The District Court forwarded White's letter to withdraw his guilty plea, and remove counsel from his case to Ms. Bietz. "[I]ssues between Ms. Bietz and petitioner had came to a head in May of 2013 [see May 22, 2013 letter], when White had accused Ms. Bietz of pressuring him into signing a 180 month plea bargain without showing him all the evidence, refusing to investigate the confidential informants credibility, and refusing to provide him with all the discovery. All of those concerns were addressed in the letter White had written to the District Court, dated May 22, 2013 [in which a hearing for the Removal of Counsel was conducted on June 4, 2013] in which the Magistrate Judge Baker had denied petitioner motion for the

removal of counsel.

The 7th Circuit, in *United States v Graf*, 827 F.3d 581, 586 (7th Cir. 2016) noted that "a defendant is not entitled to withdraw his guilty plea simply because he later discovered a weakness in the government's ability to prove it's case at trial. White did not wish to withdraw his guilty plea based on the discovery of weakness in the government's case, but instead, only after the available evidence was made available did he wished to withdraw his guilty plea, after being aware of all of the facts and the evidence that the government had against him did he wish to withdraw his plea. Both White and his former counsel testified that it was important that White view the evidence as part of formulating his defense and deciding whether to proceed to trial. White maintains that he would not have entered into the plea agreement if his counsel would have made the video available to him. The petitioners counsel made an error in her judgement when she fail to not only provide the petitioner with all the evidence prior to advising him accept a guilty plea, counsel also made an error by assuming that the petitioner would have remained in agreement with signing a guilty plea after reviewing all the evidence himself. And counsel acted erroneously when she failed to advise defendant that he had a right to file under the Fed.R.Crim.P. 11(d)(2)(B) if he could show a fair and just reason to file it. Those actions by Ms. Bietz are considered unreasonable, erroneous, and violated this petitioners 6th Amendment Constitutional Right to be represented by effective assistance of counsel. Theres reasonable probability that if not for that error by counsel, the petitioner never would of

signed the plea agreement on June 21 2013, but instead
insisted on going to trial. (Hill v. Lockhart).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bruce White

Date: January 4th 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS PETITION FOR WRIT OF CERTIORARI AND MOTION FOR LEAVE TO PROCEED FORMA PAUPERIS IN THE UNITED STATES SUPREME COURT OF APPEALS WAS SENT PRE-PAID FIRST CLASS U.S. MAIL TO THE FOLLOWING:

1). THE OFFICE OF THE CLERK OF:

THE UNITED STATES SUPREME COURT

1 FIRST STREET, N.E.

WASHINGTON, D.C. 20543

2). SOLICITOR GENERAL OF THE UNITED STATES

DEPARTMENT OF JUSTICE

950 PENNSYLVANIA AVENUE, N.W. ROOM 5616

WASHINGTON, D.C. 20530-0001

SWORN THIS 4 DAY OF January, 2019.

PRO-SE, BRUCE WHITE, 70768051,

F.C.I. TUCSON

PO BOX 23811

TUCSON, ARIZONA 85710