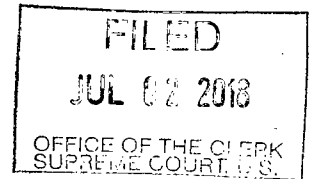


18-7877

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



Lester R. Decker

(Your Name) — PETITIONER

vs.

United States of America
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lester R. Decker

(Your Name)

P.O. Box 9000

(Address)

Safford, AZ 85548

(City, State, Zip Code)

(775) 374-0599

(Phone Number)

QUESTION(S) PRESENTED

Was defendant's attorney's role to fulfill his advisory position to his client ineffective, thus violating client's right to Due Process?

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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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 962 to the petition and is

☒ reported at 624 FED; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 October 26, 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: April 6, 2018, and a copy of the order denying rehearing appears at Appendix 959.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutes under which petitioner was convicted and sentenced -

"18 U.S.C. §§ 2241(A), 1151, 1153"

STATEMENT OF THE CASE

In District Court Proceedings in Nevada petitioner was found Not Guilty of 18 U.S.C. §§ 2241(A) Aggravated Sexual Assault, and convicted of 18 U.S.C. §§ 2241(A) Attempted Aggravated Sexual Assault. Petitioner filed claim of ineffective counsel in his 28 U.S.C. § 2255 motion to the District Court contending that counsel was indeed ineffective before trial in the plea process. Counsel argued stating the plea was a "very, very good plea bargain deal" (Stephenson Delc.2). Petitioner argue that counsel simply intended to take the case to trial, unprepared¹, as evidence by counsel's reference to his "countless hours"(Id) of preparation into going to trial of the convicted charge of "Attempted". However, in his second motion for acquittal (ECF Nos. 119 & 122) counsel was unaware of the intent of prosecution to add the charge of Attempted Aggravated Assault. On appeal the District Court over looked this fact and affirmed the coudition.

¹ Under rule Strickland v Washington, 466 U.S. 668, 687, 104 S. CT. 2052, 80 L. Ed. 2d 674 (1984) "In order to prevail on such a claim, the defendant must meet a two prong test. First, the defendant must show that his counsel's performance is highly deficient representation. Second, the defendant must show that the deficient performance prejudiced hid defense." This requires showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id at 649

REASONS FOR GRANTING THE PETITION

The Court should grant Certiorari to address the important issue, in the light of Sheppard v. Rees, 909 F. 2d 1234, 1236 (9th Cir. 1989) "Right to counsel... is next to meaningless unless counsel knows and has satisfactory opportunity to respond to the charges against which he or she must defend". Mr. Stephenson's lack of notice to the court of the last-minute addition of the charges of Attempted Aggravated Assault, violated Due Process.

Mr. Stephenson did not in any means discuss the rewards or perils to "Attempted Aggravated Sexual Assault". In fact, Mr. Stephenson asserted in a motion that it was not clear Mr. Decker "Would be prosecuted on the Attempt charge until the very end of trial". (See ECF No. 130 at 2-3). When it came to dealing with "Attempt", counsel was unprepared and highly ineffective before and during trial. Infecting the entire proceeding to the point of violating Mr. Decker's Due Process Right. "Structural error occurs when the court allows the defence to be ambushed with an instruction that changes the theory of the case at the last minute." Sheppard v Rees, 909 F.2 1234, 1237-38 (9th Cir. 1989).

In this instant case it would be essential to distinguish between Specific Intent and General Intent. Mr. Stephenson realized this in filing his first motion for acquittal in the Attempt conviction (ECF Nos. 104). Quoting United States v Carbajal, a case Focusing on "Specific Intent". United States v Sneezer, 900 F.2d 177, 180 (9th Cir. 1990)(Defendant was entitled to present defense of Voluntary Intoxication to negate specific intent element).

The Sixth Amendment guarantees a criminal defendant to be clearly informed of the nature and course of charges in order to permit adequate preparation of a defense. In a motion for reconsideration of the court's order, counsel represented that defendant was not reasonably and timely notified of the Attempt charge before trial. (See ECF No. 130 at 119-122) Mr. Stephenson's e-mail does little to inform Mr. Decker, via 3rd party, in assisting and weighing possible outcomes of a charge he was not on notice for. In fact Mr. Stephenson's "Countless Hours"(Id) evidence shows his determination for trial.

Mr. Stephenson does not and can not meet Mr. Decker's Right to Effective Counsel, not only Perils and Rewards but in failing to explain ramifications of the conviction of "Attempted Aggravated Sexual Assault 18 U.S.C. §§ 2241(A) 1151, 1153" and also in regards to the other responsibilities in properly defending and advising his client. "The Constitutional requirement of a fair trial is not satisfied merely by the existence in the record of sufficient evidence to establish guilt. To apply such a test as dispositive would be to ignore other mandatory components of a fair trial, and would defeat the purpose of the notice requirement. The court cannot regard as a fair trial in which the defendant's right to defend was impaired by lack of notice as to the nature and cause of the accusation. Under these circumstances, lack of constitutionality required notice necessarily denies a defendant the fundamental right to a fair trial. Such errors abort the basic trial process or deny it altogether" Sheppard v Rees, 909 F.2d 1234 ((th Cir. 1989)

This court should grant this petition in order to fulfill petitioner's Right to Due Process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: