

No. 18-7885

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher VanGuilder-Petitioner

VS.

Daniel Martuscello, Superintendent-Respondent(s)

ON PETITION FOR REHEARING OF AN ORDER
ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI

UNITED STATES SUPREME COURT

PETITION FOR REHEARING OF AN ORDER DENYING A
PETITION FOR A WRIT OF CERTIORARI

Christopher VanGuilder

Washington Correctional Facility

72 Lock 11 Lane, P.O. Box 180

Comstack, New York, 12821-0180.

QUESTION(S) PRESENTED

Whether United States Supreme Court and or ALL Lower Court's
erred/Failed to grant petitioner's Ineffective Assistance Of
Counsel Claim/Argument regarding defense counsel (Stanclift)
"UnLawful/UnConsentable/Adverse Conflict Of Interest" and or
Safeguard petitioner's United States Constitution Sixth
Amendment Right to a lawyer "Unencumbered" by an actual Conflict
or Serious Potential for 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:

TABLE OF CONTENTS

OPINIONS BELOW.....	Pg.1.
JURISDICTION.....	Pg.2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	Pg.3.
STATEMENT OF THE CASE.....	Pgs.4-7.
REASONS FOR GRANTING THE WRIT.....	Pg.8.
CONCLUSION.....	Pg.9.
CERTIFICATE.....	Pg.10.

INDEX TO APPENDICES

APPENDIX (A)... <u>UNITED STATES COURT OF APPEALS ORDER</u>	_____
APPENDIX (B)... <u>U.S.DISTRICT-N.D.OF NY (MAY 23,2018) ORDER</u>	_____
APPENDIX (C)... <u>UNITED STATES COURT OF APPEALS REHEARING ORDER</u>	_____
APPENDIX (D)... <u>N.Y.S.COURT OF APPEAL (DIRECT APPEAL) AND</u> <u>(PRO SE) ORDER(S)</u>	_____
APPENDIX (E)... <u>N.Y.S.(3RD DEP'T) APPELLATE DIVISION (DIRECT</u> <u>APPEAL) AND (PRO SE) ORDER(S)</u>	_____
APPENDIX (F)... <u>SARATOGA COUNTY COURT C.P.L. 440.10 (PRO SE)</u> <u>MOTION ORDER</u>	_____
APPENDIX (G)... <u>UNITED STATES SUPREME COURT CLERK SLIP</u>	_____
APPENDIX (H)... <u>RESPONDENT(S) WAIVER</u>	_____
APPENDIX (I)... <u>TRIAL COURT'S CONFLICT OF INTEREST INQUIRY</u> <u>COLLOQUY (SCR 89-91)</u>	_____
APPENDIX (J)... <u>AUTHORITIES CITED</u>	_____

TABLE OF AUTHORITIES CITED

<u>UNITED STATES v. CORTEZ</u> , 205 F.3d 768.....	Pg. 6.
<u>WHEAT v. UNITED STATES</u> , 108 S.Ct. 1692.....	Pg. 6.
<u>ARMIENTI v. U.S.</u> , 313 F.3d 807.....	Pg. 6.
<u>UNITED STATES v. PERRY</u> , 30 F.Supp.3d 514.....	Pg. 6.
<u>LUIS v. UNITED STATES</u> , 136 S.Ct. 1083.....	Pgs. 6-7.
<u>CHAPMAN v. CALIFORNIA</u> , 368 U.S. 18, 87 S.Ct. 824, 827, 17 L.Ed.2d 705.....	Pg. 7.

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

[X] For cases from federal courts:

The opinion of the United States court of appeals 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.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; 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 D to the petition and is

reported at 27 N.Y.3d 1008/24 N.Y.3d 1221; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N.Y.S. (3rd Dep't) APPELLATE DIVISION court appears at Appendix E to the petition and is

reported at 130 A.D.3d 1247; 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 October 24, 2018.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 30, 2018, and a copy of the order denying rehearing appears at Appendix C.

[] 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 my case was 4-12-16/2-5-15. A copy of that decision appears at Appendix D.

[] 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

UNITED STATES CONSTITUTION SIXTH AMENDMENT.

The essential aim of the Sixth Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers, the right to counsel of ones choosing is "Circumscribed" in several respects, including: (1) A chosen attorney must be licensed to practice; (2) A defendant cannot insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant; and (3) A defendant cannot insist on an attorney who has an ongoing relationship with an opposing party, including the government.

The governing body of Law under which the Actual or Potential Conflict of interest of an attorney representing a defendant in a federal criminal prosecution should be assessed is the Sixth Amendment and Federal Decisional Authority interpreting it, for it is this Amendment that guarantees the right to Conflict-Free Counsel. U.S. Const. Amend. 6.

The Sixth Amendment guarantees defendants the right to a lawyer UnEncumbered by an Actual Conflict or serious Potential for Conflict. U.S. Const. Amend. 6.

STATEMENT OF CASE

Petitioner's trial attorney (Stanclift) was Ineffective Assistance Of Counsel for the following reason(s): He (Stanclift) was Lawfully Ineligible and or Prohibited by Law to represent Petitioner (VanGuilder) due to his unlawful ongoing relationship with the opposing party and petitioner's trial court's failed duty to conduct an "Adequate" Conflict Of Interest Inquiry regarding (Stanclift) unlawful/prohibited representation of petitioner at (APPENDIX (I)SCR 89-91).

The Substantial or Controlling Effect here in Petitioner's legal matter is established in the "Circumscribed" Sixth Amendment of the United States Constitution and The United States Supreme Court Law(s).

BOTH "FORBID/PROHIBIT" (Stanclift) to represent petitioner (VanGuilder).

Therefore,

All Court's, especially petitioner's trial court have erred/failed to Safeguard petitioner's United States Constitution Sixth Amendment right to a lawyer "UnEncumbered" by an Actual Conflict or Serious Potential for Conflict Of Interest.

STATEMENT OF CASE Con't.

Thus,

due to All court's failing to perceive that petitioner's trial court failed to conduct an "Adequate" Conflict Of Interest Inquiry Colloquy and or remove/disqualify (Stanclift) from representing petitioner due to (Stanclift) unlawful ongoing relationship and (Adverse) UnConsentable Conflict Of Interest with the opposing party, the prosecutions (KEY) Confidential Informant Witness. SEE:(APPENDIX (I)SCR 89-91); NOTE:The "RECORD" evidences/reflects (1)(Stanclift)unlawful ongoing relationship with the opposing party,(2)that (Adverse) Actual Conflict Of Interest existed between petitioner(VanGuilder)and(Stanclift),(3)that (Stanclift) denied a Conflict even existed,(4)that (Stanclift) failed to remove/disqualify himself from an unlawful conflicted representation,(5)MOREOVER,that "trial court" was "ENTIRELY" made Aware of (Stanclift) unlawful Conflicted representation/relationship and failed to remove/disqualify (Stanclift) and or Conduct an "Adequate" Conflict Of Interest Inquiry Colloquy at (APPENDIX (I)SCR 89-91).

Thus,

mirrors/makes a substantial showing of (Stanclift) Incompetent /InEffectiveness Of Counsel on petitioner's behalf and of All court's,especially trial court's failure to Safeguard petitioner's United States Constitution Sixth Amendment RIGHT to a lawyer "UnEncumbered" by an actual conflict or serious potential for

STATEMENT OF CASE Con't.

Conflict of Interest, Moreover, of trial court's failure to conduct an "Adequate" Conflict Of Interest Inquiry by failing to remove/ disqualify (Stanclift) due to his unlawful ongoing relationship with the opposing party and instead allowed/permited an unlawful/unconsentable conflicted representation to continue.

Therefore,

UNDERSTAND

Due to Petitioner's trial court's failed duty to conduct an "Adequate" Inquiry into defense counsel (Stanclift) Conflict Of Interest with the opposing party "CONSTITUTES A VIOLATION OF PETITIONER (VANGUILDER) UNITED STATES CONSTITUTION SIXTH AMENDMENT RIGHT TO COUNSEL THAT REQUIRES REVERSAL".U.S.C.A. Const. Amend. 6., at (Pg.3:) also See: (APPENDIX (J); LUIS v. United States, 136 S.Ct.1083) Compare.

The following established case law(s) relate, and or support the Substantial or Controlling Effect of the United States Constitution Sixth Amendment and United States Federal and Supreme Court Law(s): United States v. Cortez, 205 F.3d 768; Westheadnote:[1],[10],[11],[12]; Wheat v. United States, 108 S.Ct.1692; Westheadnote:[1]; Armienti v. U.S., 313 F.3d 807; Westheadnote:[3]; United States v. Perry, 30 F.Supp.3d 514; Westheadnote:[12];

STATEMENT OF CASE Con't.

LUIS v. United States, 136 S.Ct.1083; Westheadnote: [4] A defendant has no right to an attorney who is not a member of the bar, or who has a Conflict Of Interest due to a relationship with an opposing party. at (APPENDIX (J)) Compare to (APPENDIX (I) SCR 89-91).

The said above United States Constitution Sixth Amendment and established case Law(s) also relate and support petitioner (VanGuilder) (Appeal/petition) legal matter as well.

However,

up to this present point and time All Court's decisions/orders at (APPENDIX (A)-(G)) in petitioner's (Appeal/petition) legal matter have been "CONTRARY" to said Sixth Amendment Of The United States Constitution and Cited United States Federal and Supreme Court Law(s) above, which is "PREJUDICIAL" to petitioner, especially considering the fact Respondent signed a WAIVER to oppose petitioner's (Appeal/petition) legal matter at (APPENDIX(H)), those are "Extraordinary Circumstances" when Compared.

Assistance Of Counsel is among those Constitutional rights so basic to a Fair Trial that their infraction can never be treated as Harmless Error. SEE: CHAPMAN v. CALIFORNIA, 368 U.S.18, 875 S.Ct. 824, 827, 17 L.Ed.2d 705, at (APPENDIX (J)).

Reason for granting Petition

Petitioner (VanGuilder) was deprived/denied his United States Constitution Sixth Amendment right to the effective assistance of counsel, and the RECORD at (APPENDIX (I)SCR 89-91) and Constitutional Provision of the United States Constitution Sixth Amendment at (Pg.3) and cited United States Federal and Supreme Court case Law(s) at (APPENDIX (J)) clearly and or precisely evidence/prove and show All court officials involved with petitioner's (Appeal/petition) legal matter that defense counsel (Stanclift) representation of petitioner (VanGuilder) was UnLawful, Prejudicial, Prohibited, Ineffective, Assistance Of Counsel, Moreover, that petitioner's trial court failed to conduct an "Adequate" Conflict Of Interest inquiry and or Safeguard petitioner's United States Sixth Amendment right to the effective Assistance Of Counsel (by allowing/permitting (Stanclift) unlawful/unconsentable conflicted representation of petitioner to continue) that All said court's failed to preceive and or "requires reversal".

Petitioner (VanGuilder) has made a Substantial or Controlling effect "KNOWN" that his United States Constitution Sixth Amendment right to the effective assistance of counsel, Conflict-Free Counsel was violated, and the foregoing said above verifies/confirms it was.

Petitioner's relief sought after: Indictment be vacated in its entirety and Order for Immediate Release from N.Y.S. DOCCS' custody be issued.

CONCLUSION

The Petition for the Rehearing of an Order denying a petition for a Writ Of Certiorari should be granted.

Respectfully Submitted,

Christopher Van Guilder
Christopher VanGuilder
(Petitioner)
No. 18-7885

Date: April 29, 2019.

UNITED STATES
SUPREME COURT

Christopher VanGuilder, Petitioner,

VS.

CERTIFICATE

No. 18-7885

Daniel Martuscello, Superintendent,
Respondent.

I, Christopher VanGuilder, Petitioner in above caption matter swear or declare, certify, that on this date, April 29, 2019 as required by Supreme Court Rule 44 that the attached Motion to proceed In Forma Pauperis and Petition for the Rehearing of an Order denying a petition for a Writ Of Certiorari is restricted to the grounds specified in Supreme Court Rule 44.2 and is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 29, 2019.

Respectfully Submitted,

Christopher VanGuilder
Christopher VanGuilder
(Petitioner)
No. 18-7885

**Additional material
from this filing is
available in the
Clerk's Office.**