

18-7895

UNITED STATES SUPREME COURT

JERRY ANDERSON II

Petitioner

v

STATE OF MICHIGAN

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO MICHIGAN COURT OF APPEALS

PETITION FOR REHEARING
RULE 44.2

Jerry Anderson II

Pro Se Petitioner

2727 E Beecher St

Adrian, MI 49221

Gus Harrison Correctional

David S Leyton

Genesee County Prosecutor

Respondent

900 S Saginaw St

Flint, MI 48507

Jerry Anderson II 979199

2727 E Beecher St

Adrian, MI 49221

Gus Harrison Correctional

Pro Se

4-3-19

Petition For Rehearing

Petitioner Jerry Anderson ~~II~~ hereby moves this court to grant rehearing under rule 44.2 base upon intervening circumstances of a substantial /controlling effect

The following question was presented:

Was defendant denied his State and Federal Constitutional rights to effective assistance of counsel when his attorney failed to prepare for trial and coerced him to plead guilty when he wanted to go to trial?

STANDARD OF REVIEW

Constitutional issues are reviewed de novo.
Strickland v Washington, 466 US 668 (1984)
Hill v Lockhart, 474 US 52, 59-60 (1985)

INTERVENING CIRCUMSTANCES

The following confusing set of circumstances happened after petitioner filed his petition for Certiorari in this Court.

Petitioner filed Certiorari on 7-30-18 but had to re-serve the court corrected petitions on several occasions and was not allowed to make changes to such petition. (appx 1)

The petition was docketed on 2-14-19
The petition was denied 3-25-19 and this
petition for rehearing follows such.

On 9-20-18 The Michigan Supreme Court amended
MCR 6.302(B)(5) which now states: "if the
plea is accepted, the defendant may be giving
up the right to appeal issues that would other-
wise be appealable if she or he were convicted
at trial..."

So in between the filing of the petition
and the denial of such by this court, There
is a great standing for rehearing based upon
this rule change in the Courts, for this case
and any other case affecting petitioners in
similar circumstances because:

Petitioner fairly included such issue within
his pleadings in the lower court and in this
court. Petitioner contended that because his
counsel failed to advise him of the consequences
of a guilty plea and the rights and issues that
are waived on appeal by such plea constituted
ineffective assistance of counsel because
counsel should have known ancient case law.

Tollet v Henderson, 411 US 258, 265-266 (1973)

Petitioner contended that such waivers were not knowing, voluntary & intelligent because he was not informed of the pleas consequences on appeal. He never intended to abandon those rights or issues on appeal and would not have plead guilty if he was made aware.
Johnson v Zerbst, 304 US 458, 464 (1938)
Boykin v Alabama, 395 US 238, 243, HWS (1969)

Petitioner contended that "But for counsel's errors he would not have plead guilty and gone to trial"
Hill v Lockhart, 474 US 52, 59-60 (1985)

Due to the fact that such rule change occurred while pending Certiorari in this Court on direct review the amended MCR 6.302 (B)(5) applies to petitioner and similarly situated petitioners as the conviction is not final.
Griffith v Kentucky, 479 US 314, 328 (1987)

In Michigan it is custom to apply newly amended rules to all proceedings brought on or after the effective date, including pending cases. See MCR 1.102 "explained by" Reit meyer v Schultz Equip & Parts Co, 237 Mich app 332 (1999)
Retroactivity is thereby justified because:

(1) The purpose of the new rule is to insure that a attorney has advised a client of the complete waiver of issues on appeal under Tollet v Henderson, 411 US 258 (1973)

The rule also serves as a record for a voluntary, knowing and intelligent waiver under Boykin v Alabama, 395 US 238 (1969)

(2) The rule although not in existence in writing at the time of conviction or appeal was in fact implied by Constitutional Standards.

In Michigan "the understanding, voluntary, and accurate components of MCR 6.302 (A) are premised on the requirements of Constitutional due process, a trial court may, in certain circumstances, be required to inform defendant about facts not explicitly required by MCR 6.302"

People v Blanton, 317 Mich app 107, 119 (2016)

Petitioner contends that waivers of rights and issues on appeal should have been relayed to him before he pled guilty. It was the fact that the trial counsel failed to advise the petitioner of such which led him to raise this issue in lower court and this court. Counsel's performance was deficient & prejudicial

MCR 6.310(c) would authorize petitioner and similarly situated persons to withdraw their pleas because the guilty pleas violate U.S Const Amends VI, XIV requirements of effective assistance of counsel and due process.

(3) The administration of justice would be strengthened and serve a just purpose to correct an error. To deny such would say:

"The Courts told everyone since 1973 that you can't appeal most non jurisdictional defects if you pleaded guilty and it's ok if your counsel failed to tell you this before you plead guilty"

Relief Requested

Wherefore it is requested that this court
(1) vacate Petitioners illegal convictions; or
(2) Order a evidentiary hearing to make a record of these facts; and grant petitioner bail pending the outcome.

4-3-19

Jeany Anderson # 979199

2727 E Beecher St

Adrian, MI 49221

Gus Harrison Correctional

18-7895

UNITED STATES SUPREME COURT

JERRY ANDERSON II

Petitioner

V

STATE OF MICHIGAN

Respondent

CERTIFICATE PER RULE 44.2

I Jerry Anderson II, Petitioner In Pro Per hereby certify that the petition for a rehearing is limited to "intervening circumstances of a substantial/controlling effect" and such petition is in good faith and not for delay.

4-3-19

Jerry Anderson II 979199

2727 E Beecher St

Ann Arbor, MI 49221

Gus Harrison Correctional

18-7895

UNITED STATES SUPREME COURT

JERRY ANDERSON II
Petitioner

v

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Respondent

ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR REHEARING
JOINT APPENDIX

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Jerry Anderson II
Petitioner In Pro Per
2727 E Beecher St
Adrian, MI 49221

~~Jerry Anderson II~~
2727 E Beecher St
Adrian, MI 49221
Gus Harrison Correctional

David S Leyton
Respondent
900 S Saginaw St
Flint, MI 48502

4-3-19

APPENDIX 1

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

February 27, 2019

Jerry Anderson
#979199
Gus Harrison Correctional
2727 E. Beecher Street
Adrian, MI 49221

RE: Anderson v. Michigan
No: 18-7895

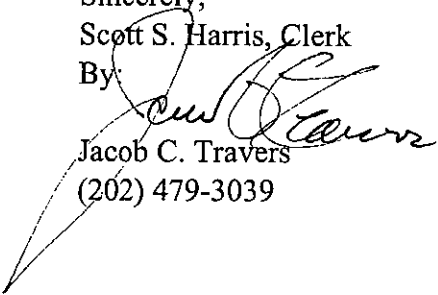
Dear Mr. Anderson:

The above-entitled amended petition for a writ of certiorari was postmarked February 20, 2019 and received February 26, 2019. The papers are returned for the following reason(s):

The Rules of the Court make no provision for the filing of an amended petition.

Sincerely,
Scott S. Harris, Clerk

By:


Jacob C. Travers
(202) 479-3039

Enclosures

APPENDIX 1

Case NO.

18-7895

Dear Clerk

Enclosed you will find 1 copy of Petitioners
"Petition for rehearing rule 44.2" and the
certificate attached to such
Proof of service below

Per Rule 34.2 This document is only 5
pages and does not require a table of contents
or table of authorities

Anderson II

v

4-3-19

Michigan

Jerry Anderson II 979199

2727 E Beecher St

Adrian, MI 49221

Gus Harrison Correctional

Proof of service

I hereby certify that all involved parties
have been served via U.S mail prepaid
postage 1st class mail on the date below

4-5-19

Jerry Anderson II
address above

RECEIVED

APR 16 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.