

No. 18A319

IN THE
SUPREME COURT OF THE UNITED STATES

ALVIN STANLEY BRIGGS-PETITIONER

vs.

UNITED STATES OF AMERICA-RESPONDENT(S)
ON PETITION FOR WRIT OF CERTIORARI TO

DISTRICT COURT NORTHERN DISTRICT OF IOWA

PETITION FOR WRIT OF CERTIORARI

Alvin Stanley Briggs, *Pro Se*
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P.O. BOX 4050, POLLOCK, LA, 71467

QUESTION(S) PRESENTED

- 1.) WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.**
- 2.) WHETHER THE DISTRCIT COURT ERRED IN NOT CONDUCTING AN EVIDENTIARY HEARING.**

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:

Mr. Noel J. Francisco
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Clerk
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 S. 10th Street, Room 24.329
St. Louis, MO 63102-1125

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<u>Hill v. Lockhart</u> , 474 U.S. 52 106 S. Ct. 366 370-71 88 L. Ed. 2d 203 (1985)	
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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 A to the petition and is

[] reported at _____: or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.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,
[X] is unpublished.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[] is unpublished.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[] is unpublished.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 court**:

The date on which the United States Court of Appeals decided my case was May 25, 2018.

[] 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: July 25, 2018, 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 December 5, 2018 (date) on September 26, 2018 (date) in Application No. **18A319**.

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. 18A_____.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) The Fifth Amendment of the United States Constitution provides:
"No person shall be...deprived of life, liberty, or property without due process of law: nor shall private property be taken for public use, without just compensation."
- 2.) The Sixth Amendment of the United States Constitution provides:
"In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and cause of the accusation;...and to have the assistance of counsel for his defense."
- 3.) The statute under which petitioner sought habeas corpus relief was 28 U.S.C § 2255 which states in pertinent part: "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct sentence." "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the courts finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment aside and shall discharge the prisoner or re-sentence him or grant a new trial or correct the sentence as may appear appropriate."

STATEMENT OF THE CASE

Petitioner was charged in a five count indictment filed on March 20, 2013. Petitioner's charges were: count 1, distribution of heroin resulting in death, a violation of 21 U.S.C. § 841 (a)(1), (b)(1)(C); and counts 2-5, distribution of heroin within 1000 feet of an elementary school and a playground, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(c) and 860. In May 2013, petitioner filed a motion for a ruling on the standard of proof required for count 1 (distribution of heroin resulting in death). Relying on Eighth Circuit precedent, the court relied that "under 21 U.S.C. § 841(b)(1), there is no proximate cause or foreseeability requirement—that is, the government need only prove that the heroin was a contributing cause of Stephen Rech's (S.R.) death."

Petitioner conditionally pleaded guilty to count 1, reserving the right to appeal the standard-of-proof ruling. In the plea agreement, the parties stipulated: "An autopsy determined the cause of S.R. death was 'acute application of heroin.' S.R.'s use of the heroin distributed to S.R. on or about July 3 was, at a minimum, a contributing cause of S.R.'s death." The court sentenced petitioner to 360 months imprisonment.

Petitioner appealed his conviction and sentence. While his appeal was pending, this Court decided *Burrage v. United States*, 571 U.S. __, 134 S. Ct. 881 (2014). Relying on *Burrage*, the Eighth Circuit Court of Appeals concluded that the court erred in ruling the government "need only prove that the heroin was a contribution cause of S.R.'s death," reversed the judgment and remanded the case for further proceedings. *United States v. Briggs*, 559 F.App'x 604 (8th Cir. 2014).

On remand, and advised by counsel, petitioner pled guilty to count 1 of the indictment-distribution of heroin resulting in death, a violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). There was no plea agreement. The court enhanced petitioner's sentence pursuant to 21§ 841(b)(1)(C) and sentenced petitioner to 360 months imprisonment. Petitioner did not appeal his conviction or sentence.

In June 2015, petitioner filed a §2255 challenging the performance of his counsel, specifically petitioner alleged that counsel induced his plea of guilty and as such sought to withdraw his guilty plea. The Government responded to petitioner's collateral appeal asserting that counsel provided professionally competent assistance to petitioner and did not make objectively unreasonable choices regarding the appropriate action to take or refrain from taking that prejudiced petitioner's defense or sentencing on remand. Trial counsel thoroughly explained his strategy in his affidavit and such explanation is consistent with what occurred during plea and sentencing proceedings on remand.

Relying heavily on the government's resistance the district court denied petitioner's collateral appeal. Petitioner then filed for a certificate of appealability from the Eighth Circuit court of appeals. The court of appeals, after reviewing the record of the lower court, dismissed petitioner's request. Petitioner now seeks a writ from this Supreme Court.

REASONS FOR WRIT:

I. THE COURT OF APPELS ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

Petitioner asserted in his § 2255 motion as grounds for relief: Counsel was constitutionally ineffective for advising petitioner that "he had not a chance of being found not guilty and he had no other choice but to plead guilty but for a second time" after this Court's holding in *Burrage*, 134 S. Ct. 881 (2014), determining that "at least where use of the drug distributed by the defendant is not independently sufficient cause of the victim's death or serious bodily injury a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(B)(1)(C), unless such use is a but for cause of the death or injury." *Id.* 134 S. Ct. at 892.

Claims of ineffective assistance of counsel are governed by the two prong test set forth in *Strickland v. Washington*, 466 U.S. 668 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). In the plea bargaining context a petitioner seeking to establish ineffective assistance of counsel must demonstrate that 1.) Counsel's advice and performance fell below an objective standard of reasonableness and 2.) Petitioner would not have pleaded guilty and would have insisted on going to trial in the absence of his attorney's error. See *Hill v. Lockhart*, 474 U.S. 52, 58-59 106 S. Ct. 366 370-71 88 L. Ed. 2d 203 (1985). In this case counsel induced petitioner's guilty plea by advice after *Burrage*. Petitioner explained in his affidavit to withdraw guilty plea and was amended to his §2255, that appointed counsel told him, after reviewing the autopsy report and expert opinion, that "he had not a chance of being found not guilty and would be 'dead in the water' if he did not plead guilty," a second time.

This case involves erroneous advice from counsel during a critical stage of the proceedings in which counsel's ineffectiveness deprive[ed] [petitioner] of a substantial [and] procedural right to which the law entitles him," *Williams*, 529 U.S. at 391-93, that right is having the option to go to trial.

Contrary to the district court's conclusions petitioner asserts that he would not have pleaded guilty and would have insisted on going to trial had counsel correctly advised him that he could seek to withdraw his guilty plea and proceed to trial in light of *Burrage* to determine if his drug in fact was the sole reason to S.R.'s¹ death, considering the fact that the expert opinion explained that, "there is a very real possibility that S.R.'s death reflects the combination of the oxycodone, heroin, and ethanol[.]"

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF PETITIONER'S §2255 MOTION WHERE THE DISTRICT COURT FAILED TO CONDUCT AN EVIDENTIARY HEARING TO RESOLVE THE FACTUAL DISPUTE, THUS DENYING DUE PROCESS.

The Fifth Amendment guarantees petitioner due process throughout the criminal process. Section §2255 provides that "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall... grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." *Fontaine v. United States*, 411 U.S. 213,

¹ S.R. stands for Stephen Rech, the decedent in which petitioner received the death results enhancement.

215 (1973)(reversing summary dismissal and remanding for hearing because “motion and the files and records of the case [did not] conclusively show that petitioner is entitled to no relief”); *Sanders v. United States*, 373 U.S. 1 (1963).

Petitioner’s §2255 petitioner alleged facts that, if proved, entitle the petitioner to relief. *Hill v. Lockhart*, 474 U.S. 52, 60 (1985); *Blackledge v. Allison*, 431 U.S. 63, 82-83 (1977). Petitioner asserted that he sought to withdraw his guilty plea based on the erroneous advice of Court appointed counsel advising him that he “had not a chance of being found not guilty if he go to trial” and “that he had no other choice but to plead guilty but for a second time.” Because the record and files could not contradict the specific allegations made by petitioner, the district court erred in denying petitioner an evidentiary hearing and the court of appeals erred in affirming that denial by dismissing petitioner’s motion for a certificate of appealability. See *United States v. Birdwell*, 887 F.2d 643, 645 (5th Cir. 1989)(evidentiary hearing warranted if petition contains “specific factual allegations not directly contradicted in the record.”)

CONCLUSION

Petitioner, Alvin Stanley Briggs, has been deprived of basic fundamental rights guaranteed by the United States Constitution and seeks relief in this court to restore those rights.

Respectfully submitted,

Alvin Stanley Briggs, Jr. #12594-029

Date: November 29, 2018