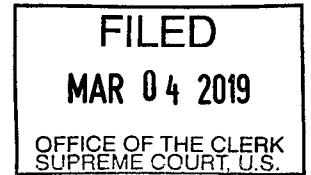


18-8428
No. 18-1073

ORIGINAL

16-CV-01138-MSK-KMT



IN THE

SUPREME COURT OF THE UNITED STATES

Samuel V. Martinez— PETITIONER

vs.

Travis Trani, Co. State Penitentiary/ Attorney General

RESPONDENT(S) ON PETITION FOR A WRIT OF
CERTIORARI TO

UNITED STATES COURT OF APPEALS, 10 CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Samuel V. Martinez
Colorado State Penitentiary
Living Unit D2
P.O.Box 777
Canon City, Co. 80215

QUESTION(S) PRESENTED

1. Should not the United States District Court of Colorado have granted the petitioner counsel after he informed them that he had an ongoing complaint against his retained counsel, prior to her filing his habeas Corpus w/o conferring with him, and her doing so on the deadline date (which happened to be the same date that the Supreme Court denied the writ of Certiorari), and then the court offers counsel the opportunity to withdraw, thus leaving petitioner w/o representation in such a pivotal and potentially detrimental hearing?
2. Did the 10th circuit court of appeals err in denying petitioner's COA / opening brief and petition for a rehearing?
3. Should the 10th circuit court of appeals have ignored Federal Rules of Evidence that were violated, specifically, Rule 106(6)?
4. Does not trial counsel have an obligation and an ethical duty to adhere to the rules of professional conduct when representing a defendant?
5. Does the petitioner, a United States citizen, not have constitutional rights (namely the 5th, 6th, + 14th amendments), that are to be protected and defended?

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 A to the petition and is

☐ reported at 10-26-18 Order Denying Cert / Opening Brief; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.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 ¹⁶⁻Cv-01138-MSK-Kmt 1-25-18; 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 C to the petition and is

☐ reported at Writ of Cert. 5-16-16; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

The opinion of the Colo. Court of Appeals court appears at Appendix D to the petition and is

☐ reported at 4-16-15; 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: 12-4-18, 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 5-16-16.
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

- Fifth Amendment of the United States of America
- Sixth Amendment of the United States of America
- Fourteenth Amendment of the United States of America
- Colorado Rules of Professional Conduct, Rule 1.4 Communication, 5, 5(b)
- Colorado Rules of Professional Conduct, Rule 1.2 Scope/Allocation between client/attorney
- Defense Function Part 1 Gen. Standards, Standard 4-1.2(h) Function of Counsel
- Colorado Criminal Practice and Procedures, Rules of Practice 18.105(d) DA Misconduct
- Colorado Revised Statutes 18-1.3-803(1) Verdict of Jury

STATEMENT OF THE CASE

Case no. 07 CR2069 out of Jefferson County, Co. Petitioner was appointed Counsel from the Public Defenders Office, Cobea Becker. Petitioner was charged with two Counts of Aggravated Robbery. Ms. Becker was quite diligent through the Preliminary Hearing held on 9-11-07. For an unknown reason, ms. Becker was transferred off the case, leaving Petitioner with Public Defenders, Rex Haggi + Kolony Fields. Brian Dominguez was the District Attorney. Petitioner was found guilty of two counts of simulated robbery (not crimes of violence), by a jury of twelve. The Direct Appeal was denied, as was the writ of Certiorari.

Petitioner retained Attorney, Allison Ruttenberg #17497, for his Post Conviction 35(c) Motion. However, Petitioner filed a complaint against Ms. Ruttenberg after the district ct. of Jefferson County denied the 35(c) motion w/o an Evidentiary Hearing. Ms. Ruttenberg would not correspond with the petitioner, in order for him to give his input. The Co. ct. of Appeals denied the appeal of the 35(c) denial, as did the supreme ct. (5-16-16).

Ms. Ruttenberg, knew of the investigation that the Attorney Regulation Counsel was performing and on the day the Colorado Supreme Ct denied the writ of Certiorari (05-16-16), She filed the Habeas Corpus 2254 (Evidently it was due by midnight)

Petitioner requested from Judge Gallagher, The United States District Court for the District of Colorado, a "stay" explaining the ongoing complaint and investigation with Ms. Ruttenberg. Judge Gallagher gave Ms. Ruttenberg Ten day to withdraw, thus leaving the Petitioner without Counsel and Forcing an "Amended" 2254 Petition, Pro se. Amended Application was denied on 01-25-18. The United States Court of Appeals for the Tenth Circuit denied the certificate of appealability on 10-26-18. Petitioner, again, lost and confused, filed a "Petition for Rehearing," which was denied on 12-4-18

Statement of Case (cont)

- ① Along the lines of Prosecutorial Misconduct, For improper closing argument during trial, Mr. Dominguez #35681, began his unethical tirades during the Preliminary Hearing on 9-11-07. He knowingly lied by stating that the (then) C.I. had had break-ins, threats, would move out of state if called upon to testify, etc, when all along, he knew of this particular C.I.'s habitual involvement with "Crime stopping", and how a Turkish Family (not me), were responsible for the threats, etc. (see "Motion To Reopen The Evidence Portion of the Continued Motions Hearing", Filed on 02-28-08, number 12(E)).

Throughout the district ct. proceedings, Mr. Dominguez echoed the C.I.'s involvement (transcripts-Motions Hearing, 2-22-08 pg. 103 lines 82-84). Then, during this particular hearing, the C.I.'s name is accidentally exposed/discovered and suddenly Mr. Dominguez says "She's merely a flipster" (Motions Hearing 2-22-08 pg. 5 lines 11-17)

Ms. Becker, my first court appointed Public Defender, had discussed with me, how critical calling this C.I. and my sister to testify was, as well as contacting the manufacturer of my Harley Davidson shirt, that was in evidence. For many months my newly appointed attorneys, Rex Heygi + Kelony Fields, were on board with ms. Becker's strategies. Then, suddenly, Rex Heygi, no longer wants to subpoena my witnesses? Only recently did I recognize why (transcripts, 2-22-08 motion hearing, pg. 5, lines 4-10!) Mr. Dominguez states that he and Mr. Heygi, "Conferred" and decided not to call the witnesses? My sixth (6th) Amendment rights to effective assistance of counsel and Compulsory process to have my witnesses, were violated, as well as, Prosecutorial Misconduct on Mr. Dominguez.

Statement of Case (cont)

During the trial's closing argument, Mr. Dominguez commented on my silence, violating not only my fifth amendment right but also Colorado Criminal Practice and Procedures Rules, specifically 18.105(d) Rule of Completeness. Missing from the record, is how I had been arrested six (6) hours earlier, prior to this interrogation, by the Denver Police Dept., and had already been mirandized, processed, and held in a holding tank.

The fact that the interrogation video had been spliced and cut, numerous times, and was not "unredacted" as ordered by Trial Judge, Randall Arp, is in itself a violation of F.R.E 106, specifically the "Rule of Completeness" which is also, state rule. Mr. Dominguez obviously "Mislead" the jury and stated personal beliefs. My Fifth Amendment and Due process/Equal Protection of the Fourteenth Amendments, were violated not only by Mr. Dominguez, ~~but~~ also the Jefferson County Courts.

- (2) Ineffective assistance of Counsel proved to be relevant in my case, especially after Cohen Becker, was transferred. Being a layman in criminal law, I trusted that Rex Heygi was looking for my best interest, while defending me. Initially, when he (the lead attorney) and Kolony Fields were appointed, he agreed to have the hotel surveillance subpoenaed, as I requested, as well as to contact the manufacturers of the Harley Davidson shirt, to prove to the jury that it wasn't a "one of a kind," nor as unique as the district attorney claimed. Mr Heygi

Statement of Case (cont)

appeared to have fight in him during motions hearings to suppress the C.I.'s statements (which initiated the entire case). However, somewhere between the February 06, 2008 motions hearing (that was continued until February 22nd) and the 2-22-08 hearing, he changed (transcript 2-22-08 motion hearing pg. 5 lines 4-10). This is where the DA stated that he and Mr. Heygi "conferred" and decided that neither the CI nor my sister would be subpoenaed. At that time, I didn't comprehend what had transpired. During the 2-22-08 hearing, Judge Arp actually postponed his ruling to suppress the C.I.'s statements, citing that there had not even been any corroboration between the CI and my sister (witnesses). The postponement was for the sole purpose of corroboration. Next hearing, 3-06-08, when the hearing resumed, a "Motion TO Reopen The Evidence Portion of the Continued Motions Hearing", had been successfully accomplished. It had been received and stamped by the court on 2-29-08. Motion denied ???

Mr Heygi also went into my representation without a full understanding of the habitual statutes, namely C.R.S 18-1.3-801 (2.5) (01-09-09 hearing pg. 80 lines 3-11). Colorado Rules of Professional Conduct, Rule 1.2(a) states that a lawyer shall abide by a client's decision, as long as it isn't detrimental. Rule 1.4(1) states that an attorney should promptly inform the client of decisions/circumstances, with respect

Statement of Case (cont)

to the clients informed consent. Mr Heygi and ~~NA~~ Dominguez "Conferred" concerning my sixth amendment Compulsory right to have witnesses on my behalf. Rule 1.4(5)(6) also state that the lawyer should consult with his client about any relevant limitation and should explain matters. Mr. Heygi's lack of knowledge with habitual statutes is contrary to Rule 41.2(h) of "Defense Function General Standards,

On 04-09-08, Mr Heygi mailed me a letter while I was in custody at the Jefferson County Jail. The first sentence read "I wanted to clear up a couple points that we discussed right after your trial. I gave you some incorrect information" Turns out, I wasn't convicted of agg. Robbery, but simulated robbery (no weapons),

On 12-02-08, during the bifurcated trial stage, Judge Phillip McNulty corrected Judge Arps minute order, showing guilty verdicts on counts 3+4, rather than counts 1+2. Colorado Revised Statutes 18-1.3-803(1) Verdict of Jury, Specifies that the original trial judge shall preside over a separate trial. I explained this to Mr. Heygi, when I saw Judge McNulty. Mr. Heygi told me that it was "routine" and that it was best to waive Judge Arps, since he denied our mistrial request. Therefore, I hesitatingly agreed (transcripts 12-02-08 pg. 21 lines 9-18)

REASONS FOR GRANTING THE PETITION

Petitioner's due process and equal protection of the 14th amendment of the United States of America were violated by the prosecuting attorney, Brian Dominguez, and Counsel, Rex Heygi, when they "conferred" to eliminate his compulsory process for obtaining witnesses both against and for him, also violating his 6th amendment. My privileges as a U.S. citizen were taken away from me, thus depriving me of life and liberty. The Confidential Informant, Victoria Gonzales, initiated the entire case, and by disallowing me my 6th amendment compulsory process, I was denied a fair and impartial trial.

Transferring my initial Public Defender, Cobea Becker, after the preliminary hearing and presenting me with Mr. Heygi, proved to be detrimental. Evidence within the record established that Mr. Heygi "conferred" with the district attorney to suppress evidence of Victoria Gonzales (C.I.). Her evidence was central to the accusation/arrest. Therefore, Mr. Heygi's actions deprived me of the due process right to confront evidence that was material to my defense, in violation of my 5th, 6th, + 14th amendments. Without Victoria Gonzales's accusations, the state has no case, and would make the district attorneys, "Proof beyond a reasonable doubt" much more difficult.

The lower courts decisions to deny Prosecutorial Misconduct for commenting on my silence during my "second" interrogation, does not mention anywhere in reports or records, that Denver Police, not Wheatridge, arrested me, Mirandized me, processed me, and held me for six hours, first.

Mr. Heygi's representation fell below the standards of professional conduct and prejudiced me to this guilty verdict. His failure to understand the habitual Criminal statutes and not seek a plea agreement, are contrary to his ethical duties. (Strickland v. Washington 444 U.S. 428). My initial defense strategies set by Ms. Becker, were "totally" ignored, despite my pleas. Judicial Misconduct was prevalent from trial to the bifurcated trial.

For these reasons, petitioner requests that this writ of Certiorari be granted and that he be given another opportunity

Opportunity at receiving a "fair and impartial" trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: 03-04-19