

18-8661

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ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAR 14 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

EDDIE LEE JACKSON

PETITIONER
VERSUS

STATE OF LOUISIANA;
S. W. 'SANDY' MCCAIN

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Eddie Lee Jackson #348513
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner was denied the right to assistance of counsel when the counsel representing Petitioner throughout the proceedings was in fact suspended from the practice of law in the state of Louisiana for misconduct?
2. Whether the Petitioner was denied the right to effective assistance of counsel when counsel performed his duties under ill medical condition causing his performance to fall well below the standard guaranteed by the 6th and 14th Amendments?
3. Whether the court erred by failing to appoint the Petitioner new counsel after his counsel passed away at a critical juncture in the proceedings?

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State v. Hearold, 603 So.2d 731- La. Supreme Court 1992

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State v. Bazile, No. 2012-KA-2243

Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560, pg. (1979)

State v. Ortiz, 96-1609, p. 12 (La. 10/21/97), 701 So.2d 922, 930, cert. denied, 524 U.S. 943, 118 S. Ct. 2352, 121 L.Ed.2d 72 (1998)

Maples v. Thomas, Commission, Alabama Dept. of Corrections

Constitutional Provisions

U.S. Const., Sixth Amendment

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La. Const. (1974), Art. I § 16

La. Const. (1974), Art. I § 17

La. Const. (1974), Art. I § 22

La. Const. (1974), Art. V § 5(A)

La. Const. (1974), Art. V § 10

U.S. Const. Art. 3, Sec. 2; Amend. 14, Sec. 1

Federal Statutes

28 U.S.C. § 2254

28 U.S.C. § 2255

28 USC 2254(d)(2)

Fifth Circuit Rule 28.2.1

Louisiana Revised Statutes and Articles

La. C. Cr. P. Art. 930.3(1)

La. C. Cr. P. Art 930.8

La. R. S. 44.1

La. R. S. 44:52

Appendix

Exhibit "A" – 1st Judicial District Court Ruling Denying Post Conviction Relief

Exhibit "B" – 2nd Circuit Court of Appeals' Ruling Denying Application for Writ of Review

Exhibit "C" - Louisiana Supreme Court Ruling Denying Application for Writ of Certiorari

Exhibit "D" – Eastern District of Louisiana's Ruling Denying Petition for Habeas Corpus

Exhibit "E" – United States 5th Circuit Court of Appeals' Ruling Denying Certificate of Appealability

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 Attached

The opinion of the Louisiana Supreme Court appears in attached hereto and is unpublished.

The order denying certificate of appealability issued by the United States Court of Appeals, for Fifth Circuit appears, is attached hereto.

The Opinion from the Louisiana First District Court appears in attached to the petition and is unpublished.

Jurisdictional Statement

The Jurisdiction of this Court is invoked under 28 USC §1254 (1).

Concise Statement of the Case

Petitioner was arrested by the Caddo Parish Sheriff's Department on or about January 24, 2011 and brought in for interrogation and interview by Detective Scroggins and Officer Hicks. Thereafter, on January 25, 2011, the district attorney charged him with a violation of *La. R. S. 14:52*, relative to "Second Degree Kidnapping". Subsequently, on June 29, 2011, the district attorney amended the bill of information and charged the defendant with a violation of *La. R. S. 14:44.1*, relative to "Simple Arson". Let it be noted that there is no initial police report in this record, but only a supplemental report.

On August 3, 2012, after a trial by jury, the defendant was found guilty as charged to the aforementioned charges and subsequently was sentenced on November 9, 2012 to serve (40) years at Hard labor for the count of second degree kidnapping and (10) years for the count of simple arson with credit for time served. These sentences were ordered to be run concurrently to each other.

Procedural History of the Case

Defendant filed his timely appeal and on January 29, 2014, the conviction and sentence were affirmed by the Second Circuit Court of Appeal listed under docket no: KA-13-48552. Oral arguments were granted by the court of appeal, but the district attorney failed to appear to argue the defendants appeal. Petitioner then

filed a writ of certiorari to the Louisiana Supreme Court which was denied on September 26, 2014 under case no: 2014-KO-0412.

Subsequently, Petitioner filed his timely Application for Post-Conviction Relief pursuant to *La. C. Cr. P. Art. 930.8* into the district court on September 29, 2016. The district court issued a ruling denying his application on November 13, 2016. (*See Exhibit “A” attached – District Court’s Denial of Application for Post-Conviction Relief*)

The Petitioner then filed a writ of review into the Second Circuit Court of Appeal contending that the district court used erroneous application of the law afforded to him by *La. Const. Art. 1, Sec. 22* and *Art. 5, Sec. 10* as well as *U.S. Const. Art. 3, Sec. 2; Amend. 14, Sec. 1*.

The appellate court denied Petitioner’s writ on April 27, 2016 under misapplication of law and governing jurisprudence. (*See Exhibit “B” attached – Second Circuit Court’s Denial of Writ of Review*) Following the state court of appeals ruling denying Petitioner’s application for writs, the then filed a timely application for writ of certiorari in the Louisiana Supreme Court, which was also denied on September 21, 2018 in case no. 2017-KH-1135. In the Louisiana Supreme Court’s ruling, that court found that “the application was not timely filed in the district court and petitioner fails to carry his burden to show that an exception applies.”

However, record evidence attached hereto shows that the his conviction and sentence became final for AEDPA purposes after his direct appeal was denied by the Louisiana Supreme Court on September 26, 2014. However, the Petitioner is entitled to a (30) day grace period before his conviction and sentence actually become finalized for AEDPA purposes, which would set the tolling period to begin for post-conviction relief on October 26, 2014. His post-conviction relief application was filed on September 29, 2016, as record evidence in this case will clearly show. In all actuality, however, that pleading was placed in the prison mailbox on September 26, 2016 and arrived to the court three days later, which meets the deadline set under *La. C. Cr. P. Art. 930.8*.

The petitioner then filed a petition for habeas corpus relief into the United State District Court for the Eastern District of Louisiana raising five claims for relief, but his primary claim stems around ineffectiveness of counsel on the part of his state trial counsel. Evidence that the petitioner has only recently discovered will prove that trial counsel was not even legally licensed to practice law in the state of Louisiana. Throughout the duration of his trial, the petitioner was represented by Gerald Bosworth, but at the time was not aware that Mr. Bosworth was not even licensed to practice law in Louisiana, which essentially meant that he was not represented by counsel at all.

The U. S. District Court for the Eastern District of Louisiana, Magistrate Judge Perez-Montes issued a ruling denying the petitioner habeas petition without prejudice on December 27, 2018 for lack of jurisdiction. The United States 5th Circuit Court of Appeals subsequently denied his motion for issuance of a certificate of appealability. It is based on the lower court's ruling that now forms the basis for the instant request for issuance of a certificate of certiorari.

Questions Presented for Review

1. Whether the Petitioner was denied the right to assistance of counsel when the counsel representing Petitioner throughout the proceedings was in fact suspended from the practice of law in the state of Louisiana for misconduct?
2. Whether the Petitioner was denied the right to effective assistance of counsel when counsel performed his duties under ill medical condition causing his performance to fall well below the standard guaranteed by the 6th and 14th Amendments?
3. Whether the court erred by failing to appoint the Petitioner new counsel after his counsel passed away at a critical juncture in the proceedings?

ARGUMENT IN SUPPORT OF QUESTION – 1

Was petitioner essentially denied the right to assistance of counsel when the counsel representing Petitioner throughout the proceedings was in fact suspended from the practice of law in the state of Louisiana for misconduct?

Merits Adjudication

The principal issue in this case is whether under the facts of this case petitioner Jackson suffered a *per se* denial of his Sixth Amendment right to counsel. In the ordinary case, a defendant raising a claim of ineffective assistance of counsel bears the heavy burden of establishing that his "counsel's representation

fell below an objective standard of reasonableness" and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 688, 694. However, in certain Sixth Amendment contexts involving the "actual or constructive denial of the assistance of counsel," prejudice is presumed.

The United States Second Circuit Court of Appeals have found such *per se* violations in two limited circumstances: where, unknown to the defendant, his or her counsel was, at the time of trial (1) not duly licensed to practice law because of a failure ever to meet the substantive requirements for the practice of law, *see United States v. Novak*, 903 F.2d 883, 890 (2d Cir. 1990) (*counsel fraudulently procured license by misrepresenting that he was entitled to a special dispensation from the bar examination*); *Solina v. United States*, 709 F.2d 160, 167 (2d Cir. 1983) (*counsel repeatedly failed the bar exam and was not a member of any bar*) or (2) implicated in the defendant's crimes, *see United States v. Cancilla*, 725 F.2d 867, 870 (2d Cir. 1984).

Federal appellate courts have advanced two rationales for applying the *per se* rule. The first is "jurisdictional" and applies in cases where the attorney is not duly licensed at the time of trial. It stems from the Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458, 468, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938), that the failure to provide a criminal defendant with counsel created "a jurisdictional

bar to a valid conviction." *See: Solina*, 709 F.2d at 168-69 (discerning no meaningful distinction between total absence of representation and representation by unlicensed counsel). The second rationale is based on notions of conflict of interest, and applies in cases both where the lawyer is not duly licensed, *see Novak*, 903 F.2d at 890; *Solina*, 709 F.2d at 164, and where the lawyer is implicated in the crimes of his or her client. *See: Cancilla*, 725 F.2d at 870. In these circumstances, the defense is necessarily compromised because the advocate ordinarily "cannot be wholly free from fear of what might happen if a vigorous defense should lead the prosecutor or the trial judge to inquire into his [or her] background and discover his [or her] lack of credentials[,"] *Solina*, 709 F.2d at 164, or own wrongdoing. Regardless of the facts presented, application of the *per se* rule must be justified under one or both of these rationales. *See Aiello*, 900 F.2d at 532.

Argument in Support

Petitioner's trial counsel had been suspended from practicing law in the state of Louisiana prior to trial, which resulted in the violation of several ethical violations as well as violating the Petitioner's right to due process of law as well as equal protection of law. *See: 19860 - La. State Bar Association V. Gerald A. Bosworth*, 481 So.2d 567, No. 84-B-1816. A formal investigative hearing was held

of law," or was implicated in the defendant's crimes. Bellamy v. Cogdell, 974 F.2d 302, 306 (2d Cir. 1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1383, 122 L. Ed. 2d 759 (1993) (*emphasis added*).

This honorable court has also held that an attorney's suspension from the practice of law for failure to meet technical requirements, such as paying bar dues and acquiring CLE, does not constitute a *per se* Sixth Amendment violation. United States v. McKinney, 53 F.3d 664, 675 (5th Cir. 1995) (*failure to meet continuing legal education requirements is not a per se violation*); United States v. King, 52 F.3d 1067, 1067 (5th Cir. 1995) (*same*); Beto v. Barfield, 391 F.2d 275, 275-276 (5th Cir.), cert. denied, 393 U.S. 888, 89 S. Ct. 205, 21 L. Ed. 2d 166 (1968) (*no entitlement to federal habeas corpus relief based upon fact that petitioner was represented by counsel suspended from law practice due to failure to pay bar membership dues*).

The instant matter, however, does not revolve around counsel's failure to pay fees or meet substantive requirements of law, but instead centered around his "...lack of moral fitness to practice law."

In any regards, it was defense counsel's duty to provide the petitioner with competent 'professional representation' by safeguarding petitioner's rights to a fair and impartial trial by jury. Counsel was required to "employ the skills and

knowledge" of a professional attorney throughout the adversarial process.

Strickland, Supra.

Based on these grounds, the petitioner now prays that this honorable court will grant him permission to submit the attached second or successive petition for habeas relief.

ARGUMENT IN SUPPORT OF QUESTION – 2

Was Petitioner denied the right to effective assistance of counsel when counsel performed his duties under ill medical condition causing his performance to fall well below the standard guaranteed by the 6th and 14th Amendments?

Merits Adjudication

In order to succeed in a post-conviction motion, a Petitioner must show that his constitutional rights have been violated. *La. C. Cr. P. Art. 930.3(1)*. The United States Constitution, as framework for which all federal and state law springs, must not be violated as applied to a criminal defendant.

One does not show a violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Kyles v. Whitley, *514 US 419 (1995)*. "The prudent prosecutor will resolve doubtful questions in favor of disclosure." United States v. Agurs, *427 US 97*. Such disclosures will serve to justify trust in the prosecutor as 'the representative... of a sovereignty... whose interest, in a criminal

prosecution is not that it shall win a case, but that justice shall be done.' Berger v. United States, 295 US 78, 88 (1935).

Argument in Support

In the instant case, the Petitioner's conviction was not 'the result of guile'. The question remains whether Petitioner was denied a fair trial when his hired counsel failed to subpoena witnesses who could have testified on his behalf. Petitioner was denied his right to counsel when his hired counsel died and the district attorney was fully aware that he was deceased, yet still allowed the Petitioner to be unrepresented by a lawyer, which is unconstitutional and a violation of Petitioner's 14th and 6th Amendment rights.

'A prosecuting attorney has a duty to be fair and see that all true facts, whether helpful to the case or not, should be presented.' 424 US at 413.

Petitioner avers that the evidence in this case does not support the crime or connect the Petitioner to these crimes and his counsel failed to challenge the state's evidence and the totality of the circumstances surrounding the case. If counsel would have challenged the criminal procedure of how the evidence was gathered and would have cross-examined the officers who gathered the evidence and the officer who tested the evidence to determine how it connected the Petitioner to the crime, the outcome of the proceedings clearly would have been quite different.

In any regards, it was defense counsel's duty to provide the Petitioner with competent 'professional representation' by safeguarding Petitioner's rights to a fair and impartial trial by jury. Counsel was required to "employ the skills and knowledge" of a professional attorney throughout the adversarial process.

Strickland, Supra.

ARGUMENT IN SUPPORT OF QUESTION – 3

Did the court err by failing to appoint the Petitioner new counsel after his counsel passed away at a critical juncture in the proceedings?

Petitioner was represented by counsel in this case, but unfortunately his counsel died and the Petitioner was forced to proceed in proper person in litigation of his case. The court did not appoint him another counselor, which he was entitled to have under the 6th amendment of the United States Constitution. That right was violated when defendant was not appointed another counselor to represent him throughout the proceedings in this matter.

However, the Petitioner must have been afforded a 'reason opportunity' to obtain counsel and due to this deprivation of his 6th Amendment Constitutional right, his right to be represented by counsel was violated. This violation and abandonment of his right to be represented by counsel now has caused the Petitioner a great suffering and under the abundance of caution it would be in the

interest of justice to reverse his conviction. See: Maples v. Thomas, Commission, Alabama Dept. of Corrections.

CONCLUSION

Wherefore, the petitioner respectfully moves the Court Grant the instant writ of certiorari based on the issues presented.

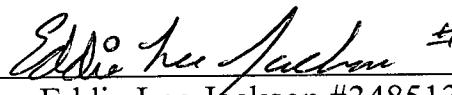
Respectfully,

/S/  #348513
Eddie Lee Jackson #348513
RLCC, Cajun 3, C-2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari has been furnished by U.S. Mail to all relevant parties in this matter, on this 13th day of March, 2019.

Respectfully submitted,

/S/  #348513
Eddie Lee Jackson #348513
RLCC, Cajun 3, C-2