

OCT 28 2019

OFFICE OF THE CLERK

No. 18-9147

In The Supreme Court of The United States

Donald Flint,

Petitioner.

v.

Lorie Davis,

Respondent.

TDCJ Correctional Division

Respondent.

On Petition For Writ of Certiorari To

The 5th Circuit Court of Appeals

Petition For Rehearing

Donald G. Flint

Prisoner ID 1509401

2665 Prison Rd #1

Lovelday, TX 75851

Table of Contents

Table of Contents	i
Table of Authorities	ii
Suggestion in Support of Rehearing	1
Statement of Facts	1
Reasons Meriting Rehearing	2 - 6
Conclusion	6
Certificate of Service	7
Certificate of Good Faith	8 - 9
Appendix	
Order Denying Certiorari.....	
Opinion of the 5th Circuit Court of Appeal	

Table of Authorities

Cases

Cronic cite as 104, S.Ct. 2039 (1984)	2
Strickland v. Washington, 104 S.Ct. 2052	2
William v. Taylor, 120 S.Ct. 1495 (2000)	3
Young v. Dretke, 356 F.3d 616, 627 (2004)	4
Boykin v. Alabama, 89 S.Ct. 1709 (1969)	5
U.S. v. Williamson, 183 F.3d	6

Rules

Supreme Court Rule 44	1, 8
-----------------------------	------

Petition For Rehearing and Suggestions

In Support

Comes now Petitioner, Donald G. Flint Pro Se and prays this Court to grant rehearing pursuant to rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of petition, Mr. Flint states the following.

Statement of Facts

Petitioner was arrested on December 15, 2004 after an interview with the Texarkana Police Department. On December 16, 2004 Mr. Flint hired attorney David Lashford. In February 2006, 14 months later, the Petitioner was indicted well after the statute of limitations had expired.

Petitioner was convicted on March 6, 2008. In the 202nd District Court of Bowie County, Texas of aggravated sexual assault of a child and received a 50 year sentence. The Texas Appeals Court for the Sixth District affirmed his conviction on August 7, 2009. The Texas Court of Criminal Appeals on May 5, 2010 refused his Petition for Discretionary Review. Petitioner filed a state habeas application challenging his conviction on January 27, 2011. The Texas Court of Criminal Appeals denied without a written order May 16, 2012. Petitioner filed his Federal habeas Petition on May 23, 2012. The District Judge denied the Federal habeas Petition on May 23, 2012. The District Judge denied the Federal Petition on October 7, 2014. Writ of Certiorari denied Oct. 7, 2019.

Reason Meriting Rehearing

I. The Fifth Circuit finding is clearly in conflict with *Strickland v. Washington* cite as 120 S.Ct. 2052 (1984). As well as this court holding *William v. Taylor* and *United States v. Cronin* cite as 104 S.Ct. 2039 (1984). First this petition for rehearing is Petitioner last opportunity to correct this unjust sentence. Second, all of Petitioner claims is based on the precedents of this Court. Third and last, if the Supreme Court want uphold it's on precedent. Then who will protect defendant's constitutional guarantees. The U.S.C.A. Amend 6 states the following: In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. In *Strickland* the Court declared that the purpose of the Sixth Amendment right to counsel is to guarantee a fair trial. Therefore, the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having a just result. The defendant must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In *Cronic* cite as 104 S.Ct. 2039 (1984), this Court states the following: Lawyer in criminal cases are necessities, not luxuries. Their presences is essential because they are the means through which the other rights the person on trial are secured. Without counsel, the right to a trial itself would be of little avail. This Court has recognized repeatedly of all the rights that an accused person has, the right to counsel is by far the most

pervasive for it effect his ability to assert any other rights he may have. The special value of the right to the assistance of counsel explains why it has longed been recognized that the right to counsel is the right to the effective assistance of counsel. In Petitioner case this Court explains why Petitioner lawyer was ineffective with his particular constitution injury. In *William v. Taylor* cite 120 S.Ct. 1495. In *Fretwell*, the Supreme Court stated that a Strickland prejudice analysis focusing solely on mere outcome determination without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective and may grant defendant a windfall to which the law does not entitled him. 529 U.S. at 369-70. Such unreliability or unfairness does not result if the ineffectiveness does not deprive the defendant of any substantive or procedural right to which the law entitles him. *Id.* a 372 *Fretwell*, however was further delineated by this court in *Williams*: *Fretwell* does not justify a departure from a straight forward application of Strickland when the ineffectiveness does deprive the defendant of a procedural or substantive right to which the law entitles him.

In petitioner case as he argued in his COA application as well as his Writ of Certiorari. The code of Criminal Procedure article 32.01 state the following: A defendant in custody and no indictment presented.

(a) When a defendant has been detained in custody or held to bail for the defendants appearance to answer any criminal accusation. The prosecution unless otherwise ordered by the court for good cause shown, supported by affidavit shall be dismissed and the bail discharged. If indictment or information be not presented against

the defendant, or before the last day of the next term of the Court which is held after the defendant comment or admission to bail on or before 180th day after the date of commitment or admission to bail whichever date is later.

(b) A surety may file a motion under subsection (a) for the purpose of discharging the defendants bail only. Art. 28.06 shall be fully discharged whereafter the motion or exception is sustained it is made known to the Court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented he shall be fully discharged. These are substantial procedural rights petitioner was and is entitled to so this Court clearly state for defendant attorney to not protect these rights is a violation of Strickland.

In the plain language of the Fifth Circuit Young v. Dretke 356 F.3d 616. The Court state the following: For the reasons we have stated we must conclude that Young's conviction cannot not stand because it [XX34] results specifically and directly from the consequence of the State denying him the right to effective counsel in violation of Young right to counsel under the Sixth Amendment to the United States Constitution. An effective counsel would have moved to dismiss the indictment and the State Court on the record before us would have been required to dismiss the prosecution against Young with prejudice. In short, if Young had been provided effective counsel as the State is required to do, Young never would have been prosecuted, convicted, and sentence all for the reason the State failed to timely indict him. These are exactly the facts and the law of petitioner case.

II. In Petitioner second issue, Petitioner argued that his plea was unintelligently made. Citing *Boykin v. Alabama* cite as 89 S.Ct. 1700 (1969). State the following: The requirement that the prosecution spread on the record the prerequisites of a valid waiver is no constitutional innovation. In *Carny v. Cochran* 369 U.S. 506 82 S.Ct. 884,890 L.Ed.2d 70. We deal with a problem of waiver of the right to counsel a Sixth Amendment right. We held presuming waiver from a silent record is impermissible. The record must show that there must be an allegation, an evidence which show that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not a waiver. We think the same standard must be applied to determining whether a guilty plea is voluntarily made. For as we have said a plea of guilty is more than an admission of conduct, it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats, might be a perfect cover up of unconstitutionality. The question of an effective waiver of a Federal constitutional right in a proceeding is ofcourse governed by Federal Standards. *Douglass v. Alabama* 380 U.S. 415,422. 85 S.Ct. 1074,1078 13 L.ED.2d 934. Several Federal Constitutional rights are involved when a plea of guilty is entered in a State Criminal Trial. First is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and application to the states by reason of Fourteenth. *Mally v. Hogan* 378 U.S. 184 S.Ct. 1489 12 L.Ed 653. Second is the right to trial by jury *Duncan v. Louisiana* 391 U.S. 145,88 S.Ct. 14 44,20 L.ED.2d 491.

III. Third is the right to confront one's accuser. *Pointer v. Texas* 380 U.S. 400 85 S.Ct. 1065 13 L.ED.2d 923. We cannot presume a waiver of these three important Federal rights from a silent record. What is at stake for an accused facing death or imprisonment demand the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of the consequences, when the judge discharges that function he leaves a record that may be adequate for any review that may be later sought. 5th Amendment Due Process U.S.C.A. Clearly the words of this court supports the facts, evidence and law Petitioner cited. The States finding that Constitutional admonishments are not required or contrary to the holding of this court.

CONCLUSION

For the reasons stated, this is petitioner last court of resort. For this court to not grant is Writ of Certiorari. A cert based on the precedents of this court as stated in *U.S. v. Williamson* 183F.3d would seriously affect the fairness, integrity and public reputation of judicial proceeding. For these reason I am asking you to live up to the motto on your building equal justice for all. Not just the elites who can afford the best Constitutional lawyers but people like me, indigent Pro-Se litigants. It would be a sad joke on the American people that our Constitution has no meaning. If the people charged with protecting and interpreting ignores it, then that a truly sad day for all Americans.

I will close with the words of one of the founders Alexander Hamilton quote. "I think the first duty of society is justice."

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed by postage prepaid this 22 day of October, 2019.

P.O. Box 12548, Capitol Station, Austin, TX

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

Donald G. Flint

Donald G. Flint
Prisoner ID #1509401
2665 Prison Rd #1
Lovelady, TX 75851

In The Supreme Court of The United States

Donald G. Flint,
Petitioner.

v.

Lorie Davis, Director, Texas Department
of Criminal Justice Correctional
Institution Division, Respondent.

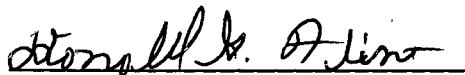
Certificate of Good Faith

Comes now Petitioner, Donald G. Flint, and makes certification that his Petition for Rehearing is presented to this Court in good faith pursuant to Rule 44. Mr. Flint further states the following: 1) This Court entered its judgement denying Petitioner Writ of Certiorari on October 7, 2019. It was received by Petitioner through his legal mail mailroom on October 11, 2019. Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said Petition is brought in good faith and not for delay. 2) Furthermore, Petitioner believes that based upon the law of this Court and facts of this case, Flint is entitled to relief which has been unjustly denied him.

He further believes that if the 5th Circuit Court of Appeals are continually allowed to ignore their onholding by misapplying the Strickland standard as defined by this Court a number of people will be denied their Constitutional right to due process.

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

Executed on this 22 day of October, 2019.

A handwritten signature in cursive script, appearing to read "Donald G. Flint", is written over a horizontal line.

Donald G. Flint