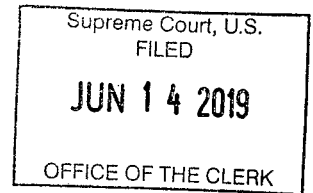


No. 18-9844

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

GARNER WOOD — PETITIONER
(Your Name)

vs.

LES PARISH — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court Of Appeals For The Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GARNER WOOD
(Your Name)

1500 Caberfage Hwy
(Address)

Manistee, Mi, 49660
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. The trial court denied Petitioner Wood's due process right under the Fourteenth Amendment by not granting his jail credit for 1930 days after assuring him during the plea hearing that such credit would be granted.
- II. Trial counsel was ineffective for failing to raise the due process claim in Wood's post-sentencing motion for additional credit.
- III. Appellate counsel was ineffective for failing to raise the due process claim on appeal, failing to raise the issue in a motion to correct an invalid sentence under MCR 6.249, and failing to raise trial counsel's ineffectiveness on appeal.

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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OTHER

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 Wood v. Les Parish 2019 U.S. App. Lexis 14703; 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☐ is unpublished.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 Wood v. Mackie 2018 U.S. Dist. Lexis 30612 (E.D. Mich.); 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☐ is unpublished.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 People v. Wood 877 N.W. 2d 884 (2016); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the State Trial court appears at Appendix E 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 courts**:

The date on which the United States Court of Appeals decided my case was May 16, 2019.

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 May 2, 2016. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the Witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

Fourteenth Amendment [1791]

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The conviction Wood challenges in this petition arose from his involvement with other individuals in the intentional setting of a fire on September 9, 2005, at an apartment complex in order to "flush out" Gregory Baines and then kill him. The fire did not kill Baines but resulted in the death of two other individuals. The following day, Baines was shot and killed. In January 2008 Wood was charged with multiple murder and fire arms offenses for Baines shooting only. On March 5, 2013, he plead guilty to second-degree murder in the shooting case. The court sentenced him to 100 months to twenty-two years of imprisonment with credit for 1930 days.

In 2010, Wood was charged with conspiracy, murder, and arson for the September 9, 2005, apartment fire. On June 5, 2013, after his conviction for Baines' murder, he plead no contest in the arson case to one count of second-degree murder in exchange for the dismissal of the other charges. Pursuant to an agreement under Cobbs, 505 N.W. 2d 208 (Mich. 1993) (per curiam), Wood's maximum sentence would not exceed twenty-two years' imprisonment. The court sentenced Wood to fourteen and two-third years to twenty-two years with credit for 1002 days, to run concurrently with the sentence imposed for Baines's murder. Wood sought additional credit for all the time he had been incarcerated since his arrest for Baines's murder in February 2008 - a total of 1952 days - arguing that both cases arose out of a single conspiracy to kill Baines and were therefore related. The court denied "all requests for additional credit." Trial counsel filed a post-sentencing motion for additional jail credits, asking the court to "correct the original sentence credit as requested" because Wood had "specifically relied on the assurances of the Court referencing full credit of almost 2000 days." The trial court denied the motion.

Wood filed a delayed application for leave to appeal, arguing that the trial court erred in denying his request for additional days of jail credit. The Michigan Court of Appeals denied Wood's application "for lack of merit in the grounds presented," and the Michigan Supreme Court denied leave to appeal. See *People v. Wood*, 847 N.W. 2d 625 (Mich. 2014) (mem).

Wood returned to the trial court and filed a motion for relief from judgment, again raising that the trial court failed to fulfill its "promise" of additional jail-time credit rendered his plea involuntary and deprived him of his right to due process, and that trial and appellate counsel were ineffective for failing to pursue the issue. The trial court denied the motion, explaining that (1) the jail-credit claim had already been considered and rejected in a pre-appeal motion for additional sentencing credit and on direct appeal, (2) the relevant statute, Michigan Compiled Laws § 769.11b, and case law did not allow for additional jail credit, and (3) contrary to Wood's assertion, the court made no promise to Wood that the additional credits would be granted at sentencing. Both the Michigan Court of Appeals and the Michigan Supreme Court denied leave to appeal. *People v. Wood*, 877 N.W. 2d 884 (Mich. 2016).

In his § 2254 petition, Wood argued that (1) the trial court denied him due process by denying him jail credit for 1930 days where it had previously assured him that such credit would be granted, (2) trial counsel was ineffective for failing to adequately pursue the due process claim in his post-sentencing motion for additional credit, and (3) appellate counsel was ineffective for failing to raise the due process claim on appeal, failing to raise the issue in a motion to correct an invalid sentence under Michigan Court Rule 6.429, and failing to raise trial counsel's ineffectiveness on appeal. The district court denied the petition, concluding that Wood's jail-credit claim challenged the interpretation and application of state statutory law and was therefore not cognizable on habeas review and that Wood failed to establish that either trial or appellate counsel was ineffective. The court declined to issue a certificate of appealability. In an August 20, 2018, order, we granted Wood's application for a certificate of appealability on all three issues raised in his § 2254 petition.

In his appellate brief, Wood argues that the district court misconstrued his claims. He asserts that, in his first claim, he was not arguing that he was entitled to additional jail credit under the state crediting statute; rather, he was arguing that the trial court's promise that he would receive the additional jail credit induced him to plead no contest to second-degree murder in violation of his due process rights. He contends that his ineffective-assistance claim concerned trial and appellate counsel's failure to raise the due process claim, not an alleged failure to challenge the denial of credit under state law.

Although the district court did not address the due process claim, the Court of Appeals review of the claim reveals that it lacks merit. Because Wood has not shown that the state court's adjudication of the claim was contrary to or involved an unreasonable application of clearly established federal law. Attachment 1

REASONS FOR GRANTING THE PETITION

The trial court should not be allowed to propose an offer of "being liberal as the law allows in giving additional jail credit," as a consideration to the petitioner; in order to induce or influence the petitioner to plea; when the offer of the benefit i.e. being liberal as the law allows in giving additional jail credit is not even attainable for the petitioner to receive as part of the plea agreement. Neither should the trial court be allowed to continuously place a benefit of additional credit in front of the petitioner in different forms (i.e. "If you [petitioner] accept the proposal I [trial court] will take five years off of your 14 year minimum, So frankly to me [trial court] it seems like a easy decision). And/OR when the petitioner asked the trial court "And we get our time credit that we already had in," to which the trial court responded "You get every day that you have spent unable to post bond on this case (referring to the 1930 days). Your lawyers are going to ask me, and I agreed with, giving the most liberal view of ~~accepting~~ their request for additional credit that have either proceeded your arrest and you were in Federal custody or there was some break in custody (referring to the 2295 days). I'm going to give that every consideration and we'll view it as openly as I can to the extent the law allows it. So that could mean additional credit (referring to the 2295 days). But you can't get anything less in credit than every day that you spent in jail unable to post bond. In your case, I think its up to 2000 days. Petitioner: 1930 days. Trial Court: Right.

In context the way that the trial court uses the word "But", means it used the word to introduce the 1930 days that the petitioner would receive; in contrast to what has already been mentioned - being liberal as the law allows for additional credit of 2295 day that the petitioner spent in Federal custody - that petitioner's lawyer could ask for,

The trial court should have known when it stated "But you can't get anything less in credit than... 1930 days" and/or "it would take five years off of the petitioner's 14 year minimum, if the trial court accept the proposal", that the petitioner would have relied solely on what the trial court literally said it would do for the petitioner as a promise the trial court would fulfill and/or as consideration that the petitioner could possibly benefit from accepting the plea.

REASONS FOR GRANTING THE PETITION

When in reality the additional jail credit, as part of the plea agreement, to the petitioner could never be granted, nor awarded to petitioner by law, which the trial court should have known in advance before it offered the additional jail credit to the petitioner as part of the plea agreement.

Therefore, the trial court and the United States Court of Appeals decision is in conflict with the decision of this Court's and another United States Court of Appeals decision on the same important matter as a violation of petitioner's 14th amendment and has departed from the accepted and usual course of judicial proceeding as it pertains to a promise being made to a petitioner by a judge.

And / Or the state court and the United States Court of Appeals has decided an important question of Federal law that has not been, but should be, settled by this Court as it pertains to the trial court being able to offer additional jail credit to the petitioner as an inducement to plea ~~agreement~~ that went unfulfilled.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harner Wood

Date: June 14, 2019