

19-5703 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 15 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ERIC MASSEY

Petitioner

VS.

DARREL VANNOY

Respondent

ON PETITION FOR WRIT CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF THE COURT THAT LAST RULED MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC MASSEY
YOUR NAME

LOUISIANA STATE PENITENTIARY
(ADDRESS)

ANGOLA, LA. 70712
(CITY, STATE, ZIP CODE)

(225) 655-4411
(PHONE NUMBER)

QUESTION(S) PRESENTED

AFTER PETITIONER MADE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT; SEE MILLER-EL V COCKRELL, 537 U.S. 322,336 (2003) HE WAS GRANTED BY THE UNITED STATES COURT OF APPEAL, FIFTH CIRCUIT, A CERTIFICATE OF APPEABILITY UNDER 28 U.S.C.§ 2253, WHERE THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT:

WENT OUTSIDE CONGRESS INTENT UNDER 28U.S.C.§2253 AND FAILED TO GRANT PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS BY APPLYING THE INCORRECT RULE OF LAW, THAT WOULD CLEARLY BE DEBATABLE AMONG JURISTS OF REASON AND CONTRARY TO UNITED STATES SUPREME COURT HOLDING IN UNITED STATES V CRONIC, 466 U.S. 648, 104 S.CT.2039, 80 L.ED.2D 657 (1984).

WAS THE REAL QUESTION BEFORE THE COURT COUNSEL'S EFFECTIVENESS? WHERE PETITIONER'S COUNSEL DECIDED TO TAKE OFF FROM A CRITICAL STAGE, WAS NOT PRESENT AT PETITIONER'S SENTENCE, THE UNITED STATES COURT OF APPEAL DETERMINE PETITIONER HAD EFFECTIVE ASSISTANCE OF COUNSEL, APPLYING STRICKLAND VS WASHINGTON, 466 U.S. 668, 104 S.CT.2052, 80 L.ED.2D 674 (1984)

WHERE PETITIONER'S COUNSEL DECIDED TO NOT ATTEND SENTENCING PROCEEDING, WAS NOT PRESENT AT A CRITICAL STAGE OF CRIMINAL PROCEEDINGS, STRICKLAND COULD NOT BE THE CORRECT STANDARD TO DETERMINE WHETHER PETITIONER WAS CONSTRUCTIVELY DENIED COUNSEL.

PETITIONER REQUEST IN PROTECTION OF HIS PRO SE 6th and 14th AMENDMENT(S) RIGHT THAT HIS "*WRIT OF CERTIORARI*" BE GRANTED AND THE STATE OF LOUISIANA NOR THE UNITED STATES COURT OF APPEAL, FIFTH CIRCUIT BE ALLOWED TO DEPRIVE ANYONE THEIR CONSTITUTIONAL RIGHT TO COUNSEL AT A CRITICAL STAGE.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[xx] 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:

Michael Riehlmann, Indigent Defender Board
4603 S. Carrollton Ave.
New Orleans, La. 70119-6024

Calvin Flemming, Indigent Defender Board
235 Derbigny St. Ste 100
Gretna, La. 70053-5809

Jefferson Parish District Attorney
Paul Connick Jr.
200 Derbigny Street 5th floor
Gretna, La. 70053

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OTHER

United States Supreme Court rule 10

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

[XX] For cases from federal courts:

The opinion of the United States court of appeals appear at Appendix "A" to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[XX] is unpublished. United States Fifth Circuit Court of Appeals Case cite No. 17-30195

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,
[] is unpublished. U.S. Eastern District Court 15-3701

[X] 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

- [X] State ex rel Eric Massey v State of Louisiana, 174 So 3d 1142; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the 24th JDC appears at Appendix "D" to the petition and is

- [] _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished, State ex rel Eric Massey v State of Louisiana

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 12, 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 writ of certiorari was granted to and including date N/A on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

For cases from state court:

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 writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO UNITED STATES CONSTITUTION

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT

28 U.S.C. § 2253

28 U.S.C. § 2254

STATEMENT OF THE CASE

In the 24th Judicial District Court of Jefferson, Louisiana, August 30, 2010, the petitioner was convicted of LSA-R.S. 14:30.1, relative to Second degree murder. On September 9, 2010, petitioner was sentenced to life imprisonment at hard labor, to run consecutively with any other sentence currently serving. His conviction and sentence was affirmed on appeal. State v Massey, (La. App 5 Cir. 3/27/12), 91 So 3d 453; writ denied, State ex rel. Massey v State, (La. 9/21/12), 98 So 3d 332.

On November 25, 2013, petitioner filed an application for post conviction. The State district Court denied relief on May 28, 2014. On July 18, 2014, the Louisiana Fifth Circuit Court of Appeal denied writ. On July 31, 2015, the Louisiana Supreme Court denied petitioner's supervisory writ.

On August 20, 2015, petitioner filed the instant federal application seeking habeas corpus relief in the United States District Court, Eastern District of Louisiana. On February 6, 2017, the United States District Court denied petition. C.O.A. was denied in the district court. On April 06, 2018, the United States Court of Appeals, Fifth Circuit granted a C.O.A. to single issue, "*counsel not present at petitioner's sentence.*" On July 12, 2019, the United States Court of Appeals, affirmed the District Court denial.

REASONS FOR GRANTING THE WRIT

The circumstances surrounding the petitioner's attorney *not showing up* at his sentence and the circumstances of *stand in counsel* at sentencing, are as follows:

State: Your Honor, with respect to Eric Massey, he is represented by Mike Riehlmann. I haven't seen Mr. Riehlmann yet this morning. I'm sure he's on his way.

Court: Okay, I think we need to wait for Mr. Riehlmann. So that matter has to wait. (Another matter was handled).

Mr. Fleming: yes, your Honor... Calvin Fleming standing in for Mike Riehlmann.

State: Your Honor, I spoke to Mr. Riehlmann yesterday concerning this case. He's advised me he does not have any post verdict motions. The matter is set for sentencing...

Court: Mr. Eric Massey... It is a mandatory life sentence, and I'm sentencing you to life in prison without benefit or probation, parole, or suspension of the sentence, and that is to run consecutive with any other sentence you are currently serving...

Mr. Fleming: Your Honor, note our objection not only to the jury's findings but the sentence imposed.

The Louisiana State Court adjudication to the above set of facts were adjudged under **Strickland**. The United States District Court for the Eastern District denied petitioner's habeas Corpus application however, the United States Court of Appeal, Fifth Circuit granted C.O.A., and affirmed the district court decision. Now petitioner assisted by Offender Counsel Arthur Carter Jr. #125211, Camp C Wolf-[2] request this Honorable Court grant "*Writ of Certiorari*" for the following reasons.

The entire scope of the 6th amendment United States Constitution, specifically effective assistance of counsel, is to assist defendant, here counsel owes client a duty of loyalty to avoid conflicts of interest, duty to advocate defendant's cause and more particular duty to consult with defendant on important decisions and to keep defendant informed of important developments in the course of the prosecution. What happened to Eric Massey is a long continued process in Louisiana. To remove a basic right and protection the constitution provide, then justify its void. Eric Massey is a young black,

poor, kid. That was just convicted of second degree murder. His attorney was appointed. He had no money and now its sentencing time. His attorney calls the district attorney. He does not inform his client, nor the co-counsel. He contacts the district attorney and inform him, "*I'm not going to defend my client anymore!*" "*I'm not going to subject the state case within the meaning of the adversarial process any longer.*" *That's it and I'm done!*

If petitioner right now list all the possibilities that an effective attorney would do for a better situated client. This would fall under **Strickland**. However, the question on the table is not whether petitioner had a bar licensed person next to him during sentencing, or counselor's unprofessional errors, the result of the proceeding would have been different. This is what the state, the United States District Court and the United States Court of Appeal, Fifth Circuit, resolved petitioner claim under, **Strickland**. The question here is whether petitioner's counsel not showing up is a complete denial of counsel under United States v Cronin! Then petitioner would get the **Cronic presumption of prejudice because petitioner would have suffered a complete denial of counsel at a critical stage!** Cronin himself had a ABA bar license attorney next to him. The United States Court of Appeals, Fifth Circuit erred in their affiance of the United States District Court decision.

Petitioner fully understand the hardships of AEDPA. However, this is a practice in Louisiana that should be taken more serious. Sentencing issues are limited on post conviction application in Louisiana, see La.C.Cr.P. Art 930.3. Only claims that were objected to can be presented on direct appeal, La.C.Cr.P.art 920. Petitioner was found guilty of second degree murder and faced with a mandatory life. Counsel not show up, present no motions, make no objections, petitioner know is a matter of highight, Strickland. To not show up at a critical stage is Cronin!