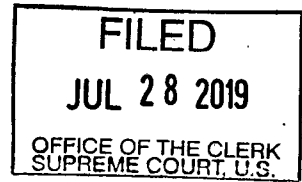


No. 19-5874

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

David Kirkland — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Kirkland Pro Se
(Your Name)

FPC-Schuylkill
(Address)

Minersville, PA 17954
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the petitioner's attorney was ineffective for withholding information that cost defendant a three - point sentencing reduction for acceptance of responsibility by advising the petitioner to vacate a favorable plea agreement of (77 - 96) months and proceed to trial resulting in a sentence of (216) months , can "jurist debate " that the petitioner has established prejudice under Strickland's second prong ?
2. Whether the United States Court of Appeals for the " Sixth Circuit " ruled where an inmate alleged that his attorney's ineffective assistance cost him a three - point sentencing reduction for acceptance of responsibility, a district court abused its discretion by declining to hold an evidentiary hearing , can the same procedural ruling apply to the petitioners underlying constitutional claims in the United States Court of Appeals for the Third Circuit ?

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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TABLE OF AUTHORITIES CITED

CASES :

SUPREME COURT

Strickland v. Washington , 466 U.S. 668 , 687 104 S.CT. 2052 , 80 L.ED 2d 674 (1984).

Lafler v. Cooper , 566 U.S. 156 , 162 (2012).

Missouri v. Frye , 566 U.S. 134 , 140 (2012).

COURT OF APPEAL

United States v. Booth , 432 f.3d 542 (3rd cir. 2005).

United States v. Day , 969 f.2d 39 , 43 (3rd cir. 1992).

United States v. Bui , 769 f.3d 831 , 835 (3rd cir. 2014).

STATUTES AND RULES

18 U.S.C. 2255

18 U.S.C. 1254 (1)

18 U.S.C. 2101 (C)

18 U.S.C. 2253 (C)

CONSTITUTIONAL PROVISIONS :

The Sixth Amendment to the United States Constitution provides in relent part :
In all criminal prosecutions , the accused shall have assistance of counsel for his defense. The Sixth Amendment right to effective assistance of counsel extends to the Plea - bargain process.

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 _____ to the petition and is

☐ reported at _____; 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 _____ to the petition and is

☒ reported at 2018 U.S. Dist. Lexis 14805; 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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ 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 February 7, 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: May 9, 2019, and a copy of the order denying rehearing appears at Appendix D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 90 day extension (date) on February 25, 2019 (date) in Application No. A C.

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 _____.
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

The sixth amendment to the United States constitution provides in relevant part : " In all criminal prosecutions , the accused shall have assistance of counsel for his defense. Claims of ineffective assistance of counsel in the plea bargain context are governed by the two - part test set forth in *Strickland v. Washington* , 466 U.S. 668 , 687 , 104 S.Ct. 2052 , 80 L.Ed 2d 674 (1984) . The sixth amendment right to effective assistance of counsel extends to the plea - bargaining process , this court ruled in *Lafler v. Cooper* 566 U.S. 156, 162 (2012) , and *Missouri v. Frye* , 566 U.S. 134 , 140 (2012) .

STATEMENT OF THE CASE

Trial counsel errors powerfully undermined and affected the fundamental fairness of the plea proceeding when he failed to properly advise the petitioner of the potential consequences of vacating a favorable plea agreement of [77 - 96] months. In particular, petitioner challenged the lawfulness of the sentence in light of the Third Circuit decision in *United States v. Booth*, 432 f.d 542 (3rd cir. 2005), *United States v. Day*, 969 f.2d 39, 43 (3rd cir. 1992), *United States v. Bui*, 769 f.3d 831, 835 (3rd cir. 2014).

The petitioner suffered substantial prejudice due to his counsel's erroneous advice by proceeding to trial resulting in a sentence of [216] months. Trial counsel misled the petitioner about his potential sentence by grossly miscalculating his maximum sentence exposure if convicted. Trial counsel failed to advise the petitioner that he had an option of entering a open plea and receiving a three - point reduction in his offense level for acceptance of responsibility. Trial counsel deprived the the petitioner of the opportunity to make a reasonable informed decision regarding all possible plea options.

REASON FOR GRANTING THE PETITION

The district court abused its discretion by failing to fully resolve the factual disputes and hold an evidentiary hearing. The petitioner's 2255 motion contains factual allegation about the deficiencies of his attorney's substandard legal advice that swayed the judgment of the petitioner to vacate a favorable plea agreement causing him to forego a "three point" sentencing reduction for acceptance of responsibility and likely a shorter prison sentence. The district court [e]rred in failing to address the prejudice prong in claims 1 and 2.

The "SIXTH CIRCUIT" holds just the opposite in *Martin v. United States*, 889 f.3d 827, 6th cir. 2018. In a reasoned approach, the sixth circuit concludes, base on the vary same circumstances as are involved in this case, where an inmate alleged that his attorney's ineffective assistance cost him a three - point sentencing reduction for acceptance of responsibility, a district court abused its discretion by declining to hold an evidentiary hearing because a factual dispute existed. The inmate presented factual allegations that supported his ineffective claim, and the inmate's allegation were not contradicted by the record and they were not inherently incredible.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

D. O. K. L. P.

Date: 7/28/2019