

No. 19-5965

Supreme Court, U.S.
FILED

JUL 30 2019

OFFICE OF THE CLERK

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

Mr. Robert Jesse Hill — PETITIONER

vs.

The State of Washington — RESPONDENT

" ON A PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF WASHINGTON
STATE, DIVISION II. "

• PETITION FOR WRIT OF CERTIORARI

ORIGINAL

Robert Jesse Hill, pro se
inmate # 79173, @ the "T.C.C.F."
3491 FERGUSON ST SW
TUMWATER WA. 98512-6127
U.S. of A.

QUESTIONS PRESENTED

1(A). When a defendant pleads guilty to a charge, in addition to "direct" and "collateral" consequences does the Fourteenth Amendment require the party to be told by the court of "indirect" yet substantiated consequences of how his or her attorney(s) will, or may, act differently in the trial for remaining charges?

2(B). If so, is a court ^{then} required to ask such a defendant whether ^{her} his or attorney(s) have discussed such specific tactics or strategy that will, or may, be done differently? Actions may include: adding new jury instructions; striking jury instructions; proposing in limine ~~the~~ motions; presence or absence of direct examination questions; witnesses to be called or stricken.

1(C). Is it a violation of the Sixth Amendment's right to effective attorney, when that attorney fails to inform defendant of "indirect" yet substantiated consequences, when that party pleads guilty to one charge out of many remaining? And is it now necessary to conduct an evidentiary hearing to advance this relief?
to 11/11

1(D) Should Hill's convictions be vacated because he ultimately didn't make an intelligent, knowing, voluntary decision when pleading guilty to the DUI?

2. Does utilization of Double-Jeopardy analysis assist state courts in addressing when "lesser-included" or "inferior degree" jury instructions are proper?

3(A). Is it a violation of the Due Process clause of the Fourteenth Amendment for state courts to analyze and process "lesser included" offenses differently than "inferior degree" offenses; by intruding into the fact-finding of the jury in coming to conclusions of whether or not "only" the lesser or inferior was committed?

3(B) If so, should "inferior degree" offenses be treated as simply a large sub-category of "lesser included" offenses?

4(A) Were Hill's attorneys ineffective, thus violating his Sixth Amendment right, for failing to

submit the lesser included offense jury instruction on
Washington's "Unlawful Display of a Weapon" (RCW 9A.41.270)
in a trial where he was charged with three
"Assault in the Third Degree" counts (RCW 9A.36.031)?
against Sheriff's detention with a pre-arrest-spying?

4(B) If so, should ^{all of} Hill's convictions be vacated?

5(A) Were Hill's attorneys ineffective, thus violating
his Sixth Amendment right, for failing to submit
a "Voluntary Intoxication" jury instruction (9A.16.080)
when his BAC was 0.15?

5(B) If so, should ^{all of} Hill's convictions be vacated?

6(A) Were Hill's attorneys ineffective, thus violating
his Sixth Amendment right, for failing to submit
an "Unwitting Possession" jury instruction for his
"Unlawful Possession of Controlled Substance (RCW 69.50.403) charge?"

6(B) If so, should that conviction be vacated?

7. Should jurors be regularly informed & instructed that they can, and should, ask witnesses during trial; as opposed to asking the court questions after they've gone into deliberations?

TABLE OF CONTENTS

OPINION BELOW	-1-
JURISDICTION	-1-
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3-5
REASONS FOR GRANTING THE WRIT	
CONCLUSION	

INDEX TO APPENDICES

APPENDIX 'A': Unpublished opinion; of the court of appeals of WA state, division II, case #50386-7-II (Jan. 23, 2019)

APPENDIX 'B': Order denying petition for review; of the Washington Supreme Court, case #96952-7 (May 1, 2019)

APPENDIX 'C': R.C.W. 9A.41.270; Unlawful Display of Weapon

APPENDIX 'D': R.C.W. 9A.36.031; Assault in Third Degree

APPENDIX 'E': R.C.W. 9A.16.090, Intoxication Defense

APPENDIX 'F': Petition for Review of Marlene Cyr
~~APPENDIX~~

APPENDIX 'G' : R.C.W. 10.61.010, comprehensive inferior degree

APPENDIX 'H' : R.C.W. 10.61.003, short inferior-degree

APPENDIX 'I' : R.C.W. 10.61.006, "Looser Included" offense

TABLE OF AUTHORITIES CITED

FEDERAL	<i>Boyd v. Alabama</i> , 395 U.S. 238, 242, 243	6, 7
	<i>Beck v. Alabama</i> , 447 U.S. 625, 635	
	<i>Blackburn v. U.S.</i> , 214 U.S. 299, 304.	8
	<i>Carter v. McCloughry</i> , 183 U.S. 365, 395	8
	<i>Carter v. U.S.</i> , 530 U.S. 255, 260, 260 n. 2	9
	<i>Crace v. Herzog</i> , 798 F.2d 840 (Ninth)	
	<i>Ebeling v. Morgan</i> , 237 U.S. 625, 631	8
	<i>Gauvieser v. U.S.</i> , 220 U.S. 338, 342	8
	<i>Giles v. U.S.</i> , 144 F.2d 860, 861 (Ninth)	9
	<i>Hill v. Lockhart</i> , 474 U.S. 52, 58-60	6
	<i>Hopper v. Evans</i> , 456 U.S. 605, 611	
	<i>Keeble v. U.S.</i> , 412 U.S. 205, 208, 212-3	
	<i>Rutledge v. U.S.</i> , 517 U.S. 292, 297	9
	<i>Schnuck v. U.S.</i> , 489 U.S. 705, 715-6	9
	<i>Strickland v. Washington</i> , 476 U.S. 668	6

MASSACHUSETTS

<i>Morey v. Commonwealth</i> , 108 Mass. 433	8
--	---

WASHINGTON

<i>Clark v. Washington Territory</i> , 1 Wash. Terr. 68, 69	
<i>In re Personal Restraint of Andrews</i> , 147 Wn.2d 602, 613	10
<i>In re Personal Restraint of Crace</i> , 174 Wn.2d 835	
<i>State v. Berlin</i> , 133 Wn.2d 541, 545-6	9
<i>State v. Brown</i> , 127 Wn.2d 749, 754	

State v.	Byrd,	125 Wn.2d	707, 713	
State v.	Charles,	126 Wn.2d	353, 355	
State v.	Cordon,	182 Wn.2d	307, 316	10
State v.	Eastmond,	179 Wn.2d	497, 500	
State v.	Fernandez-Medina,	141 Wn.2d	448, 455	10
State v.	Foley,	174 Wash.	575, 580	9
State v.	Foster,	91 Wn.2d	466, 471-2	9
State v.	Fowler,	114 Wn.2d	59, 67	
State v.	Gallagher,	4 Wn.2d	437, 447	9
State v.	Gamble,	137 Wash App.	892, 905	10
State v.	Gottstein,	111 Wash	600, 602	9
State v.	Griner,	171 Wn.2d	17, 42	
State v.	Henderson,	182 Wn.2d	734, 742	
State v.	Lucky,	128 Wn.2d	727, 732	10
State v.	McPhail,	39 Wash	199	9
State v.	Meneses,	169 Wn.2d	586, 595	10
State v.	Mesner,	43 Wash	206, 211-2	
State v.	Peterson,	133 Wn.2d	885, 891	9
State v.	Roberts,	142 Wn.2d	471, 524	10
State v.	Snider,	70 Wn.2d	326, 326-7, 327	9
State v.	Spence,	115 Wn.2d	360, 362	
State v.	Sublett,	176 Wn.2d	58, 83	
State v.	Tamali,	134 Wn.2d	725, 732	10
State v.	Turner,	143 Wn.2d	715, 729	
State v.	Workmen,	90 Wn.2d	443, 447-8	9
State v.	Worzen	133 Wn.2d	559, 564	

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari
issue to review the judgment below:

OPINION FROM STATE COURT

The opinion of the highest state court to review
the matter appears at Appendix 'A' and is unpublished;
but decision is reported at 7 Wash. App. 2d 1027.

The order denying petition for review is Appendix 'B'
and is reported at 193 Wn.2d 1011.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. (257)(c)
The date on which the highest state denied review
of the lower state court's judgment is May First, A.D. 2019.
[APPENDIX 'B']

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fourteenth Amendment to the U.S. Constitution
2. Sixth Amendment to the U.S. Constitution
3. R.C.W. 9A.41.270 - Washington law 1994 S.P.S. c 7 § 426
4. R.C.W. 9A.36.031 - Washington law 2013 c 256 § 1
5. R.C.W. 9A.16.090 - Washington law 2011 c 336 § 355
6. R.C.W. 10.61.006 - 1891 c 28 § 96
7. R.C.W. 10.61.003 - 1891 c 28 § 75
8. R.C.W. 10.61.010 - 1909 c 249 § 11
9. Fifth Amendment to the U.S. Constitution

STATEMENT OF THE CASE

1. Petitioner Hill was arrested on Friday, Nov. 18, 2016 in Pierce county, Washington, one block south of the Tacoma city limits off of Pacific Ave. He was charged on Nov. 21, 2016, in case #16-1-04605-15 Superior Court, with three counts of Assault 3rd, one count of U.P.C.S., one count of D.U.I., and one Obstruction Law Enforcement.

2. At around 1500 ("3 p.m.") Petitioner had parked the car he was driving directly nose-to-nose (without making contact) with a cement truck at a construction site, turned off the ignition one click to allow the radio to stay on ("Accessories" setting), pushed the hazard lights on, and opened the rear door of the cement. Hill was protesting the failure of the owner & foreman to provide their identification after an incident earlier that day at 0800 that morning on the other side of the construction area. Hill expected the owner/foreman to call 9-1-1, and that Tacoma Police would respond. Then Hill would have a property rights discussion about "parcels" and "boundaries". Instead, Sheriff's deputies arrived, including two (Edwards and Holmquist) who had two prior encounters with Hill.

that day. Deputies didn't arrive until 4:15 PM... about ten of them. Hill had happened to return to the immediate vicinity because a female he was chaffering wanted to be dropped off just 100 feet, coincidentally, to the west of the cement truck. (She was unaware of the incident in the morning.) The three sheriff's deputies who responded first claimed that Hill waved or pointed a pepper-spray gun at them... from inside the car! They broke the driver window and dragged Hill out. They obtained a search warrant for a blood draw; the result was a BAC of 0.15. They claim the engine was idling and that Hill backed up in reverse three different times.

3. Trial commenced on June 5, 2017. The week prior the prosecutor, Roy Odell, said that the witnesses who would be testifying for the DUI would be unavailable for 3-4 weeks. Spontaneously, Hill told his two attorneys, Alex McDonald & Aaron Tolney, he would plea guilty to the DUI so that trial could start and he wouldn't be incarcerated in jail that much longer. They did not tell Hill how this action was inadvisable; or affected the way they would conduct the trial on the remaining charges.

4. Hill's attorneys failed to discuss with him whether or not to give the jury any instructions on: A) "Carry included" Display of a Weapon; B) Voluntary Intoxication; C) Unwitting Possession. "Assault Third Degree" is a class 'C' felony, "Unlawful Display" is a gross misdemeanor.

5. Hill was convicted by jury of all remaining counts, but after going to deliberations (as opposed to during trial) they asked multiple questions about the drugs & intoxication. Hill appealed to Division II of the Court of Appeals of Washington State. A three-judge panel affirmed the convictions in case # 50386-2-II. Hill submitted through an attorney a Petition for Review to Washington Supreme Court in case # 96852-2. Review was denied on Wednesday May 14th, 2014.

REASONS FOR CARRYING THE WEIGHT

RELEVANT QUESTIONS (A), (B), (C), & (D) :

Defendant pleads guilty to one count out of six.

And while all the colloquy was concerned about the "direct" or "collateral" consequences related to the

single out charge, the word one or more or indeed derived to me by the judge, a attorney, in relation

to the remaining charges.

It will be remembered by the attorney from the

public defender agency since County Dept of Assigned Counsel.

Therefore, according to Strickland v. Washington, 466 U.S.

661 (1994) he should have had "effective" counsel.

Furthermore, this court has said that Strickland applies

to such guilty-plea challenges that Hill v. Lockhart

472 U.S. 52, at 58. A new principle of due

process needs to be recognized, acknowledging the need for

counsel to inform a defendant of the possible things

they would do different is a trial for "remaining charges"

There are significant "inherent" consequences of pleading

guilty to a charge. Because several constitutional

rights are involved in the waiver that takes place,

Boykin v. Alabama, 355 U.S. 239, 243.

plead guilty to hurry up with the trial and stop waiting more than seven months. I was not told by the judge how the rest of my trial might be different, as per at Judge Aikens' colloquy. This should be marked in a new common law procedure, for due process.

"The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill et al 56 (citing North Carolina v. Alford, 400 U.S. 25, 31 (1970)). Imposing a few additional questions for the court to ask the defendant before pleading guilty in any future case will not be a significant burden on judicial resources.

RE: QUESTION 2

Judge Grey of the Supreme Judicial Court of Mass. wrote the original solid test for Double Jeopardy in Money v. Commonwealth, 108 Mass 433, according to Carter v. McClaughry, 193 U.S. 365, 395 (1902). This case was cited in 1944 by Greener v. U.S., also citing Judge Grey's language. Greener and Grey were subsequently cited in 1915 by Ebeling v. Morgan. Oh, and guess what: in 1932 is when Blockburger v. U.S. cites

Garcias, but not Ebeling or Carter. Basically, the prosecutor gets to convict on only one of two charges if the first is not. The second one may be a "lesser included" or "inferior degree". Therefore, what s/he doesn't get to charge is what gives a choice to the D to ask the jury to choose from! Using Gray/Garcias/Ebeling/Blockburger analysis is easily ~~transformable~~ to jury instruction inclusion. The language is simple. Rufledge v. U.S. at 297. It gets contorted in Giles v. U.S. The use of the term "subset" in Schmuck and Carter v. U.S. helps, too.

RE: QUESTIONS 3(A) & 3(B)

In 1978 Workman set out a simple, clear explanation of "lesser included" jury instructions discussion, using a legal pros and cons approach. Its ~~precursor~~ ^{precursor} ~~was~~ McPhail (1905), Gottstein (1920), Foley (1933), Collesette (1940), and Swice (1967). It was confirmed in 1997 by Berlin. There was another case, Folte (1978) that got twisted by Peterson (1997) where the word "only" got included in the second ring wrongly. This led to continued confusion:

- A - Tomellini (1988)
- B - Fernandez-Medina (2000) & Roberts (2000)
- C - Anders (2002)
- D - Grenble (2007)
- E - Meneses (2010)
- F - Corder (2015)

The use of "only" causes the preemption of consideration by juries of the POSSIBLE quality of the evidence for a lesser included or lesser degree offense; and should be expurged. Luft, in 1986 temporarily subverted the system.

RE: QUESTIONS in 4, 5, 6

Run out of time!

RE: QUESTION 7

Please consider at your own risk.