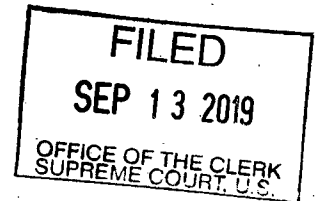


19-6192

No.

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

LAGENZA JUNIOUS

— PETITIONER

(Your Name)

vs.

SECRETARY, JOHN WETZEL

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPERIOR COURT OF PENNSYLVANIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LAGENZA JUNIOUS

(Your Name)

SCI-BENNER TWP, 301 INSTITUTION DRIVE

(Address)

BELLEFONTE, PA 16823

(City, State, Zip Code)

814-355-4874

(Phone Number)

QUESTION(S) PRESENTED

1. PETITIONER, LAGENZA JUNIOUS, ALLEGED THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE A DIMINISHED CAPACITY DEFENSE TO FIRST DEGREE MURDER DUE TO HIS MENTAL DEFECT/ILLNESS, PETITIONER DID NOT HAVE THE APPROPRIATE MENS REA HE WAS INCAPABLE OF FORMULATING THE SPECIFIC INTENT TO KILL BECAUSE PETITIONER FACULTIES WERE SO IMPAIRED AS THE RESULT OF INVOLUNTARY INTOXICATION
2. PETITIONER ALLEGED THAT HIS GUILTY PLEA OF TRIAL COUNSEL'S RENDERED INEFFECTIVENESS CAUSE HIM TO ENTER AN INVOLUNTARY AND UNKNOWING, PETITIONER ONLY ENTER A PLEA DEAL WHEREIN PLEA COUNSEL WOULD WITHDRAW FROM THE CASE IF PETITIONER INSIST ON GOING TO TRIAL, THESE THREATS INDUCED THE PLEA, AND THE FIRST PCRA COUNSEL WAS INEFFECTIVE FOR FILING A NO-MERIT LETTER BY NOT DEVELOPING THE FACTS OF **THESE** TWO ISSUES.

DID THE STATE SUPERIOR IN ITS OPINION OF PETITIONER SIXTH AMENDMENT CONSTITUTIONAL ARGUMENT IGNORES OR ERRED IN ITS FRAMING OF THE APPLICABLE LEGAL STANDARD UNDER THE CONTROLLING SUPREME COURT PRECEDENT OF STRICKLAND V. WASHINGTON, RENDERED A DECISION CONTRARY TO OR OBJECTION UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW ?

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 _____ 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 _____; 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 A 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 _____ SUPERIOR 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 7-9-2018.
A copy of that decision appears at Appendix A.

☐ 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 _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (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

U.S. CONST., AMEND. VI

IN ALL CRIMINAL PROSECUTION, 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.

U.S. CONST., AMEND. XIV

SECTION 1. ALL PERSON 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 CITIZENS 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

PETITIONER, LAGENZA JUNIOUS, TRIAL COUNSEL'S INEFFECTIVENESS CAUSED HIM TO ENTER AN INVOLUNTARY AND UNKNOWING GUILTY PLEA, TO THE EXTENT THAT TRIAL COUNSEL FAILED TO PROCURE AN EXPERT WITNESS TO DEMONSTRATE THAT AVAILABLE HISTORICAL EVIDENCE HISTORY OF PETITIONER'S MENTAL ILLNESS/DEFECT SHOWED PETITIONER WAS INCAPABLE OF FORMULATING SPECIFIC INTENT TO COMMIT FIRST DEGREE MURDER. PETITIONER PLEA COUNSEL'S PAUL W. MULLER, AND JESSICA BUSH, ESQUIRE, ACTION AND OR INACTION FAILURE TO INVESTIGATE, AND PREPARE OR PRESENT EVIDENCE REGARDING PETITIONER'S SERIOUS AND UNTREATED MENTAL ILLNESS WITH THE ASSISTANCE OF DR. DATTILIO, PH.D. ABPP, WHO WOULD HAVE BEEN ABLE TO DEMONSTRATE THAT AT THE TIME OF THE CRIME, WERE SO IMPAIRED AS THE RESULT OF INVOLUNTARY INTOXICATION DUE TO THE MENTAL DISORDER WAS A SUBSTANTIAL FACTOR IN CAUSING THE INCAPACITY WERE PETITIONER SUFFERED FROM DIMINISHED CAPACITY, PETITIONER WAS NOT IN HIS RIGHT STATE OF MIND, THE FACTS THAT TRIAL COUNSEL'S EFFECTIVE WAIVED ANY AND ALL CHANCES TO MITIGATE PETITIONER DEGREE OF GUILT FROM FIRST DEGREE MURDER TO THIRD DEGREE MURDER, SEE; COMMONWEALTH V. WALZACK, 360 A.2d 919 (Pa. 1976), COMMONWEALTH V. LEGG, 711 A.2d 430 (Pa. 1998), SEE; 18 PA. C.S. §§308, 314, PCRA COUNSEL WAS THE LEGAL CAUSE FOR ANY DEFAULT WHICH IMPEDED COUNSEL EFFORTS TO COMPLY WITH THE STATES PROCEDURAL, SEE, COLEMAN V THOMPSON, 501 U.S. 722, 750 (1991).

This is an appeal from the Order dismissing Appellant's timely filed first PCRA petition following PCRA counsel's 'no-merit' letter and without an evidentiary hearing. The substantive and procedural history is as follows:

On December 20, 2012, following several days and hours of drinking alcohol in excess, during the early morning hours of that date, Appellant—armed with a shotgun—broke into his girlfriend's, Adreanne Evans, apartment. Inside the apartment, it was occupied with Adreanne's mother, Sage Evans, Adreanne's lover, Sterling Brown, and Adreanne's and Appellant's infant son. The group was awakened by Appellant's forcible entry.

Upon entering the group's area in the apartment, Appellant observed Adreanne in bed with Mr. Brown. Upon viewing the pair, Appellant became enraged. Appellant still armed with the shotgun and aimed at Adreanne shooting her twice and shot Mr. Brown twice. Sage Evans eye-witnessed the entire incident unfolded. Thereafter, Appellant dropped the shotgun and exited the scene on foot.

Bleeding profusely from several deep lacerations to the face and hands, Appellant walked several blocks to an associate's home. Therefrom, Appellant immediately walked to the police station. While inside the police station, an off-duty police officer, Raymond R. Lyda, accosted Appellant and inquired what happened to him. Before being *Mirandize* warned, Appellant spontaneously and unsolicited replied that, "I caught my girlfriend cheating on me with another man and I got [sic] in the house and shot 'em [sic] both." Appellant was taken into police custody.

On April 11, 2013, Appellant was formally charged with murder¹, attempted murder², aggravated assault³, burglary⁴, persons not to possess firearms⁵, and three counts of recklessly endangering another person⁶. On April 16, 2013, the Commonwealth provided notice of aggravating circumstances, indicating its intent to seek the death penalty. Following months of delays and continuances, on February 17, 2015, Appellant reluctantly agreed to enter a negotiated guilty plea.

Under the terms of that agreement, the Commonwealth agreed to not seek the death penalty and withdrawal of aggravated assault and three counts of REAP charges. The plea court accepted the terms of the plea agreement and imposed a sentence of life imprisonment on the murder charge. Because no agreement was in place regarding the remaining charges, the plea court sentenced Appellant to twenty (20) years to forty (40) years imprisonment for Attempted Murder, ten (10) years to twenty (20) years imprisonment for Burglary, and five (5) years to ten (10) years imprisonment for Person not to Possess a Firearm. The Attempted Murder sentence was ran consecutive to life imprisonment and other sentences were ran concurrently.

On April 9, 2015, Appellant's attorneys filed Amended Post-Sentence motions regarding the non-negotiated sentences. On April 13, 2015, the post-sentence motions were denied. On May 11, 2015, Appellant's attorneys filed a timely appeal to the Superior Court of Pennsylvania. On June 15, 2015, Appellant's attorneys filed Concise Statement of Matters Complained of on Appeal. On February 12, 2016, the Superior Court of Pennsylvania by memorandum denied Appellant's direct appeal and affirmed the sentence.

Commonwealth v. Junious, 141 A.3d 593 (Pa. Super. 2016)(Table).

On March 11, 2016, Appellant's attorneys filed a Petition for Allowance of an Appeal to the Supreme Court of Pennsylvania. On August 17, 2016, the Supreme Court of Pennsylvania denied the appeal. Commonwealth v. Junious, 141 A.3d 479 (Pa. 2016).

On April 17, 2017, Appellant filed a timely *pro se* Post-Conviction Relief Act ("PCRA") petition to the Court of Common Pleas of Dauphin County ("PCRA Court") alleging, *inter alia*, ineffective assistance of counsel in connection with entry of his guilty plea. On May 15, 2017, the PCRA Court appointed PCRA counsel, Jennifer Tobias, Esquire, to prosecute the allegations set forth in the PCRA petition. On July 11, 2017, PCRA counsel filed a "no-merit" letter. On October 30, 2017, PCRA Court issued Notice of Intent to Dismiss PCRA. On November 15, 2017, Appellant filed *pro se* Written Objections to Notice of Intent to Dismiss the said petition. On January 18, 2018, PCRA Court denied Appellant's PCRA petition without an evidentiary hearing.

This timely *pro se* appeal follows.

ON JUNE 20, 2018 APPELLANT FILED APPEAL BRIEF TO THE PENNSYLVANIA SUPERIOR COURT. ON NOVEMBER 30, 2018 THE SUPERIOR COURT AFFIRMED THE JUDGMENT.

ON DECEMBER 13, 2018 APPELLANT FILED A PETITION FOR ALLOWANCE OF APPEAL TO THE PENNSYLVANIA SUPREME COURT IN THE MIDDLE DISTRICT. ON JULY 9, 2019 SUPREME COURT DENIED THE PETITION FOR ALLOWANCE OF APPEAL.

REASONS FOR GRANTING THE PETITION

THE PENNSYLVANIA SUPERIOR COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISION OF THIS COURT WARRANTS THIS COURT'S ATTENTION. THE STATE SUPERIOR COURT OPINION MISAPPLIED THE STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), PREJUDICE STANDARD TEST. IT IS CLEAR THAT THE STATE COURTS ALL DISREGARDED THIS PRINCIPLE, IT HAVE IN SEVERAL OTHER CASES, THE SUPERIOR BEGAN IT ANALYSIS BY STATING THERE IS NO ARGUABLE MERIT, THE STATE COURT'S CONTRARY CONCLUSION WAS NOT REASONABLE. THE CONVICTION WAS REVERSED SEE COMMONWEALTH V. LEGG, 711 A.2D 430 (PA. 1998). WHERE THE COURT FOUND INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PRESENT EVIDENCE OF DIMINISHED CAPACITY DEFENSE AND SEE, UNITED STATES V. POHLOT, 827 F.2d 889 (3d Cir. 1987); THESE CASE ILLUSTRATE THE FACT ~~THAT~~ THE STATE SUPERIOR OPINION IS OUT OF STEP WITH THIS COURT OF THE UNITED STATES SUPREME COURT IN ITS CONSIDERATION OF THE STRICKLAND V. WASHINGTON, 466 U.S. 668, OF THE PREJUDICE PRONG. CERTIORARI SHOULD BE GRANTED TO CORRECT THIS ERROR OF PETITIONER CONSTITUTION FEDERAL VIOLATION OF THE LAW, AND THE UNCONSTITUTIONALITY OF THE STATE COURT'S JUDGMENT WOULD VIOLATE ARTICLE III AND THE SUPREMACY CLAUSE, SEE; WILLIAM V. TAYLOR, 529 U.S. 362 (2000). ALL OF THE DECISION OF THE LOWER STATE COURT'S IN THIS CASE WAS ERRONEOUS. WHAT DOES MERIT REVIEW IS THE EMERGING PRACTICE OF THE SUPERIOR COURT OF IGNORING EVIDENCE WHILE PERFORMING

PREJUDICE ANALYSIS. THIS COURT WAS PRECISELY THE TYPE OF REVIEW THAT THIS COURT CONDEMNED IN WILLIAM (TERRY) V. TAYLOR, 529 U.S. 362, 397-398 (2000). THE SUPERIOR COURT HAS TRUNCATED THE SCOPE OF STRICKLAND PREJUDICE REVIEW.

PETITIONER FIRST PCRA COUNSEL WAS INEFFECTIVE FOR FILING A NO-MERIT AND NOT RAISING HIS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IT IS THE RESPONSIBILITY OF PCRA COUNSEL AND NOT THE PETITIONER TO RAISE FEDERAL CLAIMS. THE FACTS THAT THE APPOINTMENT OF COUNSEL SHALL BE EFFECTIVE THROUGHOUT THE POST-CONVICTION COLLATERAL PROCEEDING, PETITIONER WAS VIOLATED OF RULE ~~OR~~ 904 OF CRIMINAL PROCEDURE RULE (F)(2). ALL COUNSEL'S TRIAL AND PCRA REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND ALL COUNSEL'S DEFICIENT PERFORMANCE PREJUDICE PETITIONER. THERE IS A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME OF THIRD DEGREE MURDER, THIS WAS A SUBSTANTIAL CLAIM AND THIS HAD AN INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE VERDICT, THIS WAS A PLAIN ERROR. THESE ERROR'S AT TRIAL THEY WORK TO HIS ACTUAL AND SUBSTANTIAL DISADVANTAGE, INEFFECTING PETITIONER ENTIRE TRIAL WITH ERROR'S OF CONSTITUTIONAL DIMENSIONS, SEE, MURRAY V. CARRIES, 477 U.S. 478, 448 (1986). PCRA COUNSEL WAS THE LEGAL CAUSE FOR ANY DEFAULT WHICH IMPEDED COUNSEL EFFORTS TO COMPLY WITH THE STATES PROCEDURAL, SEE COLEMAN V. THOMPSON, 501 U.S. 722, 750 (1991). SEE, BAREFOOT V. ESTELLE, 463 U.S. 880, 893 (1983) THESE ISSUES ARE DEBATABLE AMONG JURISTS OF REASON, THAT THIS COURT COULD RESOLVE THE ISSUES IN A DIFFERENT MANNER, OR DESERVE ENCOURAGEMENT TO PROCEED FURTHER, SEE, SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAGENZA JUNIOUS

Date: AUGUST 31 , 2019