

19-6454 **ORIGINAL**

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

OCT 25 2019

OFFICE OF THE CLERK

COREY MORRIS — PETITIONER  
(Your Name)

vs.

STATE OF NEW JERSEY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO THE

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

COREY MORRIS #462086  
(Your Name)

NEW JERSEY STATE PRISON P.O. BOX 861  
(Address)

SOUTH TRENTON, NEW JERSEY 08625  
(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

Whether defendants have a Sixth Amendment right to effective assistance of counsel when contemplating plea offers. Morris was charged at multiple indictments with crimes that provided for extended sentences. Morris's counsel believed that he faced a maximum of ten years imprisonment for anyone charge. That brief was stated verbally and in writing. Morris rejected a plea and subsequently was sentenced to a combined thirty-six years. Was Morris prejudiced by counsel deficient advice?

## 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:

Heather M. Hadley  
Senior Assistant Prosecutor  
Mercer County Office  
P.O. Box 8068  
Trenton, N.J. 08650  
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Attorney General of New Jersey  
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IN THE  
SUPREME COURT OF THE UNITED STATES

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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 N/A; 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[ ] is unpublished.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 N/A; 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[ ] is unpublished.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 D to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; 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 April 26, 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: August 2, 2019, and a copy of the order denying rehearing appears at Appendix C, which renders it final.

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).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution  
Amendment VI

STATEMENT OF THE CASE

The factual and procedural background in this appeal is complicated. Morris was charged by grand juries sitting in Mercer County, New Jersey in separate indictments with several crimes.

A. The charges Morris faced

1. Indictment No. 02-04-0512

Charged Burglary and Theft by Unlawful Taking. These

charges were later withdrawn.

2. Indictment No. 02-10-1464 charged

Second Degree Robbery and

Theft by Unlawful Taking (the

Spivak Robbery). The robbery

Victim in that case was Joseph

Spivak. The Spivak robbery

occurred on July 11, 2002.

3. Indictment No. 02-12-1658  
Charged Second Degree  
Robbery (NJ Rev. Stat. § 2C:15-1); Third Degree Theft by  
Unlawful Taking (NJ Rev. 2C:20-3(a)), Fourth Degree  
Resisting Arrest (NJ Rev. 2C:29-3(a)(2) and Fourth  
Degree Criminal Trespass  
(NJ Rev. Stat. § 2C:18-3(a)).  
Morris's conviction of the  
Keresztur robbery is the  
subject of this appeal.  
(see APP. A#1-13).

The third circuit affirmed the  
District Court's denial of habeas  
relief. (see APP. A13).

## ARGUMENT

Defendants have a Sixth Amendment right to effective assistance of counsel when contemplating plea offers. Morris was charged at multiple indictments with crimes that provided for extended sentences. Morris's counsel believed that he faced a maximum of ten years imprisonment for any one charge. That belief was stated verbally and in writing. Morris rejected a plea offer and subsequently was sentenced to a combined thirty-six years. Morris was prejudiced by counsel's deficient advice. (Appellant's Brief, p.10).

A defendant's right to effective assistance of counsel extends to his consideration of whether or not to accept a plea offer. Lafler v. Cooper 566 U.S. 156, 158 (2012). Caselaw was

already trending in this direction before Lafler.

This Court summarized this trend in U.S. v. Day, 969 F.2d 39, 43 (3rd Cir., 1992); Defendants have the right to make reasonably informed decisions whether to accept plea offers. Before trial a defendant has the right to rely upon his counsel to independently examine the "facts, circumstances, pleadings and laws involved" and for counsel to then offer his informed opinion as to whether a plea offer should be accepted. Day at 43. (Appellant's Brief, p.11).

When a defendant is considering a plea, his attorney is required to give him enough information to make a

"reasonably informed decision" whether to accept a plea offer. U.S. v. Bui, 795 F.3d 363, 367 (3rd Cir. 2015) (quoting Shotts v. Wetzel, 724 F.3d 364, 376 (3rd Cir. 2013)). When a defendant has raised "sufficient allegations" as to trial counsel's advice in deciding whether to accept a plea offer he is entitled to an evidentiary hearing on the merits of his habeas petition.

U.S. v. Booth, 432 F.3d 542, 549-550 (3rd Cir. 2005) (Appellant's Brief, p. 11).

The only evidence in the state court record concerning what trial counsel did or did not tell Morris concerning his sentencing exposure is in the March

31, 2003 Status Conference transcript and the related pre-trial Memorandum. Nowhere in the transcript or in the Memorandum is it established that trial counsel raised with Morris the possibility that he potentially faced consecutive extended sentences if convicted of both the Keresztur and Spivak robberies. Trial counsel told the Court that if convicted at all three indictments, he potentially faced "two ten-year sentences running consecutive, and then a five-year sentence if you take the ordinary terms and run them max and consecutive." Trial counsel was silent on the record about Morris's exposure as to extended sentences. The pre-trial

Memorandum prepared and signed by trial counsel made no mention of potential twenty-year sentences -- even though the form used asked if Morris qualified for an extended term. The maximum extended term sentence was said on that form to be 25 years -- a misleading statement. This was compound when trial counsel said in court that Morris faced a ten year sentence at each of the robbery charges and a five year sentence for the burglary charge in response to the court's query as to how he got to a maximum extended term sentence of 25 years. (Appellant's Brief, p. 12).

Mr. Morris never got the required notice of the extended term. However, under New Jersey law, a defendant must be specifically advised of the potential number of years he faces. "[A]n extended term cannot be imposed unless the defendant is specifically apprised at the time of the plea of the potential number of years to which he is exposed." State v. Mitchell, 2017 WL 1739633, at \*6 (N.J. Super. A.D., 2017) (emphasis added). While Mitchell was decided in 2013, it follows well established precedent. State v. Cartier, 210 N.J. Super. 379, 381-382 (1986).

The Cartier court acknowledged that New Jersey's Rules of

Court governing criminal practice made no provision for requiring that a defendant be advised of his possible enhanced sentence exposure, but that "common notions of fairness mandate" such advisement. Id. at 382-383; (Appellant's Supplemental Reply Brief, p. 3).

The duty to advise Mr. Morris fell on his attorney and the trial court. This requirement falls not just on trial counsel. It also is the court's responsibility. "[T]he responsibility for assuring a defendant's awareness of the increased custodial exposure under the extended term provisions should not be cast

exclusively on the shoulders  
of dense counsel. Bo 389-2 re-  
quires that the Judge determine  
whether a defendant fully under-  
stands the nature of the charge  
and the consequences of the  
Plea. We hold that the trial  
Judge should satisfy himself  
through specific question and  
answer that the defendant under-  
stands the increased number of  
years to which he is exposed  
under the extended term provisions.  
Id. at 381-382; (Appellant's Supple-  
mental Brief, p. 3).

Appellee's argument that Mr.  
Morris was warned about his  
exposure does not withstand scrutiny.

The January 31, 2003 hearing in which Mr. Morris was warned about his exposure to an extended term was for the case at No. 02-10-1464, the Spivak robbery. (SUPPLEMENTAL APPENDIX, Vol. II, pp. A-18-33). But this argument fails to consider that Mr. Morris was charged not just with the Spivak robbery, but with the Keresztury robbery at No. 02-12-1658. He faced and indeed was sentenced to an extended term for that robbery. D.E. 14-33, p. 9-10. The Keresztury robbery is the conviction for which he is serving the sentence now. (Appellant's Supplemental Reply Brief, p. 3).

Mr. Morris should have been informed that he risked extended sentences for both robberies. He was not. Nowhere in the record do Appellees point to any warning given to Mr. Morris that he faced extended for both the Spivak and Keresztury robberies. Appellees rely on the March 31, 2003 Status Conference to support their argument. Appellees' brief, p. 8. Yet an examination of that transcript belies Appellees' argument. During that status Conference the Court advised Mr. Morris that "If you're convicted, you could face an extended term because of

Your record. You could face imprisonment." D.E. 14-25, p. 3. NO mention is made of the potential number of years of incarceration Mr. Morris faced if an extended term sentence was imposed. NO mention is made at all of his exposure to an extended term specifically for the Keresztury robbery. As noted in the opening brief, the only discussion as to an aggregate term of imprisonment for both robberies and the subsequently dropped burglary charge was twenty-five years. Opening Brief, p. 9, D.E. 14-25, p. 4). And the minimal discussion concerning extended terms was for "one" of the

Robberies, not both. Id. And that discussion is devoid of any mention of how many years incarceration Mr. Morris faced if sentenced to extended terms. There was no "specific question and answer establishing whether Mr. Morris understood how many years incarceration he faced. Appellees fail to show anywhere in the record that Mr. Morris was advised by anyone about the potential number of years he faced if sentenced to extended terms. (Appellant's Supplemental Reply Brief, p. 4).

The Third Circuit erred in affirming the district court's denial of Morris's habeas petition. However, the Third Circuit acknowledged that "the record supports Morris's contention that he received similarly erroneous advice from counsel" (Appendix A 9) but in reality the Third Circuit disagreed with Morris's contention, which is why the United States Supreme Court should grant certiorari.

Similarly, the District Court erred in denying Morris's habeas petition without an evidentiary hearing. It acknowledged that the New Jersey PCR trial court "made

No specific factual findings directly contradicting Morris's claim. Id. It did not address the trial counsel prepared and signed pre-trial memorandum that stated, falsely and erroneously, that Morris's maximum extended sentence would be ten years for the robberies. The only way to establish what Morris understood and what he was told by counsel would be to have an evidentiary hearing (Appellant's Brief, p. 13), which again is why the United States Supreme Court should grant Certiorari.

## CONCLUSION

The petition for a writ of  
Certiorari should be granted

Respectfully submitted this  
day of October 24, 2019.

EDWARD  
COREY MORRIS  
PETITIONER/PRO SE