

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 any one charge. That belief 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

Gurbir Grewal, Esq.
Attorney General of New Jersey
Office of the Attorney General
P.O. Box 112
Trenton, N.J. 08625-0112

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
ARGUMENT	6
CONCLUSION	20

INDEX TO APPENDICES

APPENDIX A U.S. Third Circuit	A1 to 13
APPENDIX B U.S. District Court	B1 to 12
APPENDIX C U.S. Third Circuit Rehearing Order of denial	C1 to 2
APPENDIX D Superior Court of New Jersey Appellate Division	D1 to 22

STATUTES AND RULES

NJREV. 2C:15-1 - - - - - 5

NJREV. 2C:18-3(a) - - - - - 5

NJREV. 2C:20-3(a) - - - - - 5

NJREV. 2C:29-2(a)(2) - - - - - 5

R. 3:9-2 - - - - - 13

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Lafley v. Cooper

566 U.S. 156, 158 (2012) - - - - 6

Shotts v. Wetzel

724 F.3d 364 (3rd Cir. 2013) - - - 8

U.S. v. Booth

432 F.3d 542, 549-550 (3rd Cir. 2005) - - 8

U.S. v. Bui

795 F.3d 363, 367 (3rd Cir. 2015) - - - 8

U.S. v. Day, 969 F.2d 39, 43 (3rd Cir. 1992) - - - 7

STATE CASES

State v. Cartier,

210 N.J. Super. 379, 381-382 (1986) - - - 11

State v. Mitchell

2017 WL 1739633, at *6

(N.J. Super. A.D. 2017) - - - - 11

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 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 back-
ground 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 with-
drawn.

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: 29-2(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. A1-13).

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 Lafley.

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 compounded 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. App. Div., 2017) (emphasis added). While Mitchell was decided in 2017 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. B. 3:9-2 requires that the Judge determine whether a defendant fully understands 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 understands the increased number of years to which he is exposed under the extended term provisions. Id. at 381-382; (Appellant's Supplemental 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. Appelles 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.

COREY MORRIS
COREY MORRIS
PETITIONER / PRO SE