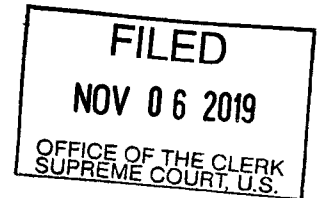


ORIGINAL

No. 19-6624



IN THE
SUPREME COURT OF THE UNITED STATES

Andre Derrell Lee — PETITIONER
(Your Name)

vs.

Jerry Goodwin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Andre Derrell Lee
(Your Name)

670 Bell Hill Road
(Address)

Homer, Louisiana 71040
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. Was the petitioner's right to counsel violated in the state trial court, thereby making the conviction and sentence completely void?
2. Did the state court(s) err in placing the burden of proof on the petitioner to prove that he did not knowingly and intelligently waived his right to counsel?
3. Did the state court(s) err by not having a hearing to determine whether the petitioner knowingly and intelligently waived his right to counsel?

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	PAGE NUMBER
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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☐ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.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 Louisiana Supreme Court court 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.

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 8/12/2019.
A copy of that decision appears at Appendix A.

☐ 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

U.S. CONST., AMEND. VI

In all criminal prosecutions, 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 defense.

U.S. CONST., AMEND. XIV, Section 1.

All persons 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

On July 7, 2015, the petitioner was found guilty, by a jury trial, of Possession With the Intent to Distribute Marijuana.

On August 31, 2015, the petitioner was sentenced to forty (40) years incarceration at hard labor.

On March 3, 2018, the petitioner filed a "Motion to correct an Illegal Sentence" claiming that he was not informed of his right to counsel by the trial court, and did not knowingly and intelligently waive his right to counsel. See "App.F"

The trial court denied the motion on April 18, 2018, without a response from the State or hearing. See "APP.E"

The petitioner sought review in the Second Circuit Court of Appeal and the Supreme Court of Louisiana Both of which denied review by placing the burden on the petitioner to prove that he did not waive his right to counsel. See "AppA,C"

The petitioner is now before this Honorable Court.

REASONS FOR GRANTING THE PETITION

Both *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 and *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530, landmark U.S. S.Ct. decisions, define the right to counsel when a defendant is tried for a felony or misdemeanor. These cases set the Constitutional standard or mandate: Absent a knowing and intelligent waiver, no defendant may be imprisoned if he is not represented at trial by counsel.

- (1) The petitioner claimed that he was never advised of his right to counsel, therefore he can not waive an unknown right.

The effectiveness of waiver of a constitutional right requires that the waiver must be an "intentional relinquishment of or abandonment of a known right." See *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461

- (a) The petitioner claimed that he was never advised of the nature of the charges or the possible penalties.

To knowingly and intelligently waive the 6th Amendment right to counsel, a defendant must be made aware of the nature of the charges and possible penalties. See *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562

There has never been a hearing to determine whether the petitioner knowingly, intelligently and understandingly waived the right to counsel.

The Chief Justice of the Louisiana Supreme Court agrees that there should have been a hearing to determine if the petitioner knowing and intelligently waived the right to counsel. See CJ dissent "App.A"

There is a presumption against waiver of the right to counsel. *Johnson v. Zerbst*, *Supra*. Doubts must be resolved in favor of protecting claim of Sixth Amendment right to counsel. See *Michigan v. Jackson*, 106 S.Ct. 1404, 475 U.S. 625, 89 L.Ed.2d 631.

Whether state prisoner waived his constitutional rights was not a question of fact, but an issue of federal law. The burden of establishing a valid waiver of the right to counsel falls upon the state. *Brewer v. Williams*, 97 S.Ct. 1232, 430 U.S. 387, 51 L.Ed.2d 423.

The state has never addressed the issue of waiver, therefore it has failed to meet its burden of proof. See "Ex's E, C, A"

The right to counsel is beyond question a fundamental right. See, e.g., *Gideon, Supra*. ("The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.") Without Counsel the right to a fair trial itself would be of little consequence, See, e.g., *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657, for it is through counsel that the accused secures his other rights. *Maine v Moulton*, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481

"The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance" See e.g. *Cuyler v Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d. 333

The paramount importance of vigorous representation follows from the nature of our adversarial system of justice. This system is premised on the well tested principle that truth as well as fairness is best discovered by powerful statements on both sides of the question. Absent representation, however, it is unlikely that a criminal defendant will be able adequately to test the governments case, even the intelligent and educated layman has small and sometimes no skill in the science of law. *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158

Actual or constructive denial of the assistance of counsel altogether is presumed to result in prejudice, so as to justify setting aside a conviction. *Strickland v Washington*, 104 S.Ct. 2052, 466 U.S. 668, 80 L.Ed 674.

The court has a duty to protect the right of accused to counsel. *Glasser v United States*, 62 S.Ct 457, 315 U.S. 60, 80 L.Ed 680.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andre Lee

Date: October 31, 2019