

No. _____

19-7098

IN THE
SUPREME COURT OF THE UNITED STATES

Antonio Anthony Shaw
(Your Name)

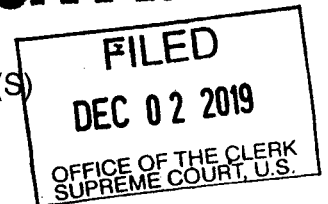
PETITIONER

vs.

UNITED STATES of AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORIGINAL



UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio Anthony Shaw
(Your Name)

U.S. PENITENTIARY P.O. Box 1000
(Address)

Lewisburg, PA 17837
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- (1) Whether defense Counsel's performance in "failing to inform client of important witness against him" fell below an objectively reasonable standard of representation;
- (2) if so, whether Shaw was prejudiced

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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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 NA 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JULY 25, 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: September 25, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

The Sixth Amendment, which provides, in relevant part, that "in all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation; and to have compulsory process for obtaining witnesses in his favor."

U.S. Constitution Amendment VI. In this regard, the Due Process clause and the Six Amendment provide essentially the same protection to Movant.

American Bar Association Defense Function standards.

Rule 16(a)(1)(C)

STATEMENT OF THE CASE

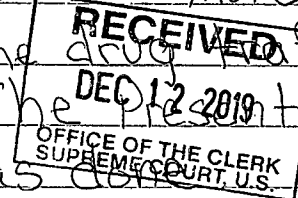
This case found its genesis in the filing of a criminal Complaint on August 27, 2010. Pretrial litigation, including the filing of a multitude of pretrial motions, resulted in a two-year evolution of charge(s) with the filing of three superseding indictments, the third containing the three charges tried to a jury.

On the fourth day of Shaw trial the government called Darnell Lathan A.K.A "111 Red" to testify, Shaw Counsel had not informed, warned, told, or briefed Movant about Lathan being a witness or potential witness against Movant. Darnell Lathan being called to testify in Movant trial was a total surprise to Shaw. Before Lathan was called to testify he had not been discussed by Movant Counsel. Shaw Counsel did not inform Shaw of what Lathan was saying without using Lathan name, Counsel did not review, provide, or inform Movant of any discovery on Lathan accusations, or evidence that would be introduced through Lathan. Movant was in trial for: Count 1- Conspiracy to possess with the intent to distribute Cocaine base, (MDMA) also known as ecstasy and Marijuana; Counts 2 and 3 where Possession, brandish or discharge of one or more firearms in furtherance of the drug trafficking crime charged in Count 1

4,

STATEMENT OF THE CASE

The government did not allege quantity in the indictment. Shaw objected to Lathan being able to testify. The objection was overruled. At trial, Lathan testified extensively for the government. His testimony was that during the same time period that the indictment alleges, he regularly purchased pounds of marijuana to resell from Shaw, and that Shaw had guns on him everytime Lathan supposedly bought drugs from Shaw. The government asked Lathan to come up with his own calculations on a piece of paper right before trial. There Lathan assigned hundreds of pounds of marijuana to Shaw as well as the numerical amounts for each pound. The government introduced that piece of paper in trial as government's Exhibit 32. Lathan self-serving information to agents came years following Shaw's arrest and in the midst of his own case. Shaw Counsel never informed him before trial of Lathan's statements to agents or of the index card of information. Shaw was found guilty of two counts: 1 - Conspiracy to possess with the intent to distribute cocaine base, and Marijuana; 2 - Possession one or more firearms in furtherance of the drug trafficking crime charged in count 1. The presentence Investigation Report ("PSR") was done



STATEMENT OF THE CASE

Lathan testimony was used for drug quantity, firearms in furtherance and A two point enhancement for a bullet proof vest lathan say shaw wore. At Sentencing Shaw objected to these things, but his objections was over ruled. The District Court gave Shaw an Upward departure and an Upward Variance and Sentenced Him. Shaw Counsel Appealed the convictions and sentence. Shaw Convictions was affirmed, but his sentence was vacated. Movant was remanded for resentencing on a Sentencing issue. The District Court went on record saying HE corrected the issue, but was Sentencing Shaw to the Same Sentence. Shaw Counsel Appealed; Movant Appeal was denied. Counsel filed an Anders Brief. The District Court granted it. Shaw filed a motion to vacate his sentence. One of the Issue's in Movant § 2255 motion, was Counsel ineffective assistance for failing to communicate with Movant by not informing shaw before trial that Darnell lathan was a witness for the Government. The District Court only gave an opinion on one part of the Issue. The issue was that Counsel failed to inform Shaw in advance of trial that Darnell Lathan was a witness for the government, and because Movant did not know Lathan was going to testify, he was persuaded by Counsel to Sign

STATEMENT OF THE CASE

A stipulation that took away [his] rights to ask the prosecutor's expert questions about a shooting that would have shown [Movant] and Darnell Lathan did not get along. Shaw was also denied a chance to give Counsel A list of evidence, reports, phone calls, and witnesses to prove Darnell Lathan was lying about buying Marijuana or Any drug and being an Associate of Shaw. Movant was denied his Sixth Amendment

"to have Compulsory process for obtaining witnesses" in his favor because Counsel never informed Shaw that Lathan was a witness against Him. The District Court said in there opinion on this Issue, "Even if the Court assumes that Counsel did not timely inform Movant that Lathan was to testify, it cannot be concluded that Counsel was Unreasonable for not introducing evidence of the shootings."

The District Court took a small part of the whole issue and focused only on that Small part in the Opinion. The District Court Saying even if the court assumes that Counsel did not timely inform Movant that Lathan was to testify was deficient is unreasonable under and at odds with Strickland v. Washington, 466 U.S. 688, If the Court assumes that Counsel did not timely inform Movant of A Key witness against Him. Then Movant Counsel violated Movant Constitutional Rights that only defendant himself.

STATEMENT OF THE CASE

MAY Waive because they are "personal."
The District Court did not opinion on the lost of Movant Right to be informed, and to have Compulsory process for obtaining witnesses in his favor, because Counsel failed to inform Shaw of Lathan being a witness against him. Movant Appealed to the 8th Circuit Appeals Court. It was denied, they did not issue an opinion with the judgement dated 7-25-2019. Shaw petitioned for en banc rehearing and also for rehearing by panel but it was denied September 25, 2019

Reason for Granting Petition

The Opinion of the District Court judge and the Eight Circuit of Appeals Court in this case is in conflict with *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Opinion of the District Court is in conflict with *United States v. Gore*, 154 F.3d 34, 42 (2d Cir. 1998) the plain error standard should have applied to this issue because the error affected defendant's substantial rights and it seriously affected the fairness, integrity, and public reputation of judicial proceedings. It can not be said that the attorney decision was a legitimate trial tactic or part of a prudent trial strategy, Counsel abandonment cannot be construed as a strategic decision on the part of defense counsel. Cf. *McDade*, 699 F.3d at 507. Counsel did not and could not know what would have happened or what he would find out had he informed Movant that Lathan was a witness against him; he was thus in no position to make informed tactical decisions. *Barbour*, 813 F.2d at 1234. In *Brady* the Supreme Court held that suppression by counsel of evidence favorable to an accused... Violates due process where the evidence is material either to guilt

Reasons for Granting Petition

Or to punishment. That Apply to Counsel for both sides, so Counsel could not be functioning under the prevailing professional norms failing to inform the accused of a critical witness against him. The Law is Morant must receive adequate notice, so as to permit appropriate preparation for trial, and to minimize the danger of surprise at trial. The Jencks Act, Brady, and all the rules of discovery are for the Accused. Morant Counsel did not inform morant of Iathan being a witness against him, so Counsel could not have determined all relevant facts known to morant. [A lawyer who fails adequately to investigate and introduce evidence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance."

Lord v. Wood, 184 F.3d 1083, 1093 (9th Cir. 1999) Although trial Counsel is typically afforded leeway in making tactical decisions regarding trial strategy, Counsel cannot be said to have made a tactical decision without first procuring the information necessary to make such a decision. see Riley v. Payne, 352 F.3d 1313, 1324 (9th Cir. 2003). This Circuit Opinion is in conflict with the decision in Morant case. Counsel failure to inform morant before trial

Reasons for Granting Petition

of Lathan or his accusations deprived Morant of a fair opportunity to defend against Lathan accusations. The Chambers Court states, "The right of an accused in a criminal trial to due process is in essence, the right to a fair opportunity to defend against the Government accusation" Id. The disclosure of a witness identity, or of the contents of his communication is relevant and helpful to the defense of an accused, and it is essential to a fair determination of a cause. In Morant case an open-file policy was in place, Shaw still was not provided with pre-trial notice that Lathan would be called at trial. Morant not being informed before trial that Lathan was a potential witness against him prejudiced Morant defense. It caused Morant to proceed to trial unprepared and without full knowledge of the true evidence against him. The purpose of the Sixth Amendment, due process, Jencks Act, Brady, and Rule 16(a)(1)(C) is to protect an accused from this kind of unfair surprise at trial.

REASONS FOR GRANTING THE PETITION

This case warrants the Supreme Court of the United States intervention, because it is critically important for the Accused to know what Counsel must inform the defendant of, to be sure that he/she provide adequate legal assistance. If the Accused do not know in what way Counsel must assist him under the Sixth Amendment, then the Accused will not know if he received effective assistance of Counsel and that would convert the appointment of Counsel into a sham and nothing more than formal compliance with the requirements of the Constitution. It has been held, that the right to Counsel must be more than just the right to have some attorney physically present with the accused at criminal proceedings, as that in itself is insufficient to protect the accused rights; such a limited view would render the Sixth Amendment an empty formality.

Representation of a criminal defendant entails basic duties, but the basic duties neither exhaustively define the obligations of Counsel nor form a checklist for judicial evaluation of attorney performance, so the Accused "do not" know what specific requirements Counsel have to perform and without that knowledge Accused will not know if Counsel failed to exercise the customary skills and diligence that a reasonably competent attorney would exhibit under similar circumstances.

Counsel denial of Critically Important information to defendant here, belies The bedrock principle in our justice system that a defendant has a right to effective assistance of trial Counsel, and undermines the protections this Court has recognized are necessary to protect that right.

For the foregoing reasons, Defendant - Appellant, Antonio Shaw, respectfully Ask this Honorable Court to exercise the court's discretionary Jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antonio Anthony Shaw

Date: December 1, 2019