Supreme Court of the United States

JERRY CARTER,
Petitioner,

v.

Case No. 19-7228

United States of America,
Respondent.

PETITION FOR REHEARING

COMES NOW, the Petitioner, Jerry Carter, Pro-Se, and in duress requesting that court grant the Petitioner a rehearing of an order denying his petition for writ of certiorari for the following reason:

A.

1. At the outset, it should be noted that the trial court failed to provide any reasoning for the denial of the claim in the Petitioner's 2255 motion, 59(c) motion and 60(b) motion regarding this claim the Petitioner is seeking a rehearing for.

2. Petitioner was not given any analysis for the denial of the original claims.

3. Petitioner respectfully request that this Court not issue a summary order.

4. Summary orders are appropriate, "where the trial court clearly and correctly articulated it's ruling..." State v. Whipple, 177 Ariz. 272, 273, 866 P.2d 1358, 1359 (1993).

5. Such ambiguity may cause his federal claims under 28 U.S.C.

2255 to be precluded. Wainright v. Sykes, 433 U.S. 72, 80-88, 97 S.Ct. 2497, 2503-2507, 53 L.Ed.2d 594 (1977).

6. The 2255 report alleges that trial counsel was ineffective for failing to object to the issues of proof based on the confidential information did not testify.

7. The claim stems from the district court ruling that the issues of proof are different if the annonymous source does not testify.

8. The issues of proof are U.S. Const. Amend. VI Confrontation Clause Violations.

9. The Eighth Circuit has ruled that it sees nothing wrong with testimony they observed the Petitioner involved in what appeared to be hand to hand drug transactions with Ashley Chase on behalf of the DEA and the St. Louis Metropolitan Police Department without Ashley Case testifying to if she actually performed in the transactions as testified to the jury over the continuous objections of the defense team.

10. This decision conflicts with the Fifth Circuit and causes a double standard because in this case, the Eighth Circuit sees nothing wrong with the law enforcement testifying what they knew based on what they were told by a confidential informant performing in hand to hand controlled buys on behalf of the government that directly linked the defendant to the controlled buys without calling the confidential informant to testify over the objections of the defendant.

11. In the Fifth Circuit, this violates the confrontation clause of the U.S. Constitutions Sixth Amendment. See Gray v. Maryland, 523 U.S. 185, 193-194, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998).

12. The Petitioner is requesting a rehearing based on rather or not the Eighth Circuit is correct in allowing the officers to testify to what their anonymous source told them about the controlled buys linking the defendant directly to without calling the confidential informant to testify over the objections of the defense.

B.

13. The Petitioner request a rehearing on the second claim based on the Supreme Court's concerns regarding confrontation in Melendez-Diaz v. Massachusetts, and Bullcoming v. New Mexico, are present here with respect to the St. Louis Metropolitan Police Department laboratory report showing Bridgette Stewart receiving the evidence on May 29th, 2013 from Lawrence O'Toole.

14. Bridgette Stewart is documented as a laboratory analyst which is a "witness" for purposes of the Confrontation Clause. 557 U.S. 305, 310, 311, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009).

15. The government deceived the court and tainted the testing procedures by egregiously omitting the analyst, Bridgette Stewart violated Melendez-Diaz v. Massachusetts, holding and determined that the person who conducts a laboratory test--not merely a colleague knowledgeable about the testing procedures and equipment--must be available for cross-examination to satisfy the Sixth Amendment's confrontation requirement ___ U.S. ___, 131 S.Ct. 2705, 2116, 180 L.Ed.2d 610 (2011).

16. The government circumvented or went around the Sixth Amendment confrontation requirement by calling Allyson D. Seger

to testify live about her report. Allyson D. Seger testified live about her laboratory report once the objection to the chain of custody was made, but Allyson D. Seger omitted Bridgette Stewart's role in receiving the evidence from officer Lawrence O'Toole by testifying it appeared as if Lawrence O'Toole conveyed his evidence to a night drop box. Thus, a review of the St. Louis Metropolitan Police Department laboratory report chain of custody, signed by Allyson D. Seger, accurately depicts the entire chain of custody proving Lawrence O'Toole did not convey the evidence to a night drop box as testified to the jury to provide prima facie evidence of the composition, quality and the net weight of the analyzed substance. The Petitioner request a rehearing on this issue based on the government did not provide a fair enough opportunity for cross-examination of Bridgette Stewart.

C.

17. The Petitioner respectfully request a rehearing on the trial counsel's ineffectiveness. It is universally accepted among the defense bar that the first and foremost consideration in a possession of drugs case is the near reflex action of filing a motion to suppress the evidence. Here, trial counsel changed the strategy of prior trial counsel who initiated a motion to suppress the evidence and alleged his client sold drugs to the D.E.A.'s National Drug Threat Assessment program in conflict with the motion to suppress the evidence filed in behalf of the Petitioner. The new trial counsel forfeited the Petitioner's

right to be innocent of all crimes until proven guilty in a court of law.

18. Trial counsel stated during the pretrial in support of this claim, "More to the point, these are the very issues Mr. Carter is distraught about, that were part of the Franks hearing. These are the DEA, I don't want to go to far into it, but these are the very issues that he believed shouldn't have been included in the Franks hearing." Pretrial hearing transcript, DCD 155, page 30-31.

19.trial counsel never informed the Petitioner of the contents filed in the motion to suppress until after the motion was denied.

20. Trial counsel strategy of asserting in the suppression motion that the defendant sold drugs to the National Drug Threat Assessment Program deliberately went against the strategy used by the previous attorney's who took depositions of the officers to use for impeaching the officer's testimony accusing the Petitioner of being a drug dealer at trial. The new trial counsel assisted the government by causing the DEA Program, The National Drug Threat Assessment Program t be looked at in a probative aspect by the court against the Petitioner.

21. This conduct of trial counsel was in complete contradiction of the prevailing professional norms of effective assistance of counsel guaranteed by the Sixth Amendment.

22. The new trial counsel used the deposition took in behalf of the defendant for his personal allegation against the Plaintiff and created the National Drug Threat Assessment Program

against the Petitioner ultimately causing the denial of the suppression hearing and the destruction of the deposition defense of impeaching the officers who alleged the controlled buys led to their search warrant.

23. Trial counsel continued against the Petitioner and the previous attorney strategy by telling the court during the pretrial, "It actually is a part of the search warrant itself." The only reason trial counsel was so adamant that the controlled buys were actually a part of the search warrant itself is because he was abandoning his role of effective assistance of counsel guaranteed by the U.S. Constitution's Sixth Amendment. Further proof is the DEA Six Report made for prosecution by the DEA with the address 5400 Enright, instead of the address 5622 Delmar. The controlled buys that trial counsel adamantly stated, "It actually is a part of the search warrant itself," that allegedly occurred at 5622 Delmar was documented to have happened at 5400 Enright with an unknown individual on May 22, 2013. On of the two(2) days the controlled buys were alleged to occur at 5622 Delmar.

24. The fact trial counsel was adamant that the controlled buys occurred before the trial clearly shows he was not holding the government to its burden of proving the controlled buys actually occurred.

25. The government needed the controlled buy testimony in order to prove possession with intent to distribute.

26. Trial counsel's stating to the court, "it actually is a part of the search warrant itself," helped the government because the

author of the affidavit in support of the search warrant testified under oath that the controlled buys were not a part of the search warrant application. The deposition reads as following:

Q. "Now, are these controlled buys, are they documented in your warrant application?"

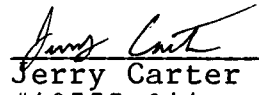
A. Not by me. Any documentation would have been done by the DEA.

Q. All right. So, when you applied for the warrant in state court, you didn't indicate anything there in that warrant application about a controlled buy. Is that--about two controlled buys on May 21st or May 22nd; is that correct?

A. No. Again, that was not my controlled buy and the DEA did not necessarily want every one to know they're doing these controlled buys for quality testing purposes." State of Missouri v. Jerry Carter, Deposition of Witness Lawrence O'Toole, taken on behalf of the Defendant, December 20. 2013.

27. Trial counsel's strategy of asserting the suppression motion that the Petitioner sold drugs to the National Drug Threat Assessment Program deliberately went against the strategy used by the previous attorney's assigned to this case who took depositions of the officers to use for impeaching the officer's testimony accusing the Petitioner of being a drug dealer at trial. The conduct of trial counsel was in complete contradiction of the prevailing professional norms of affective assistance of counsel guaranteed by the Sixth Amendment.

Respectfully submitted,



Jerry Carter
#40555-044
Jesup, Federal Satellite Low
2680 U.S. Highway 301 South
Jesup, GA 31599

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PETITION FOR REHEARING CERTIFICATE

COMES NOW, the Petitioner, Jerry Carter, Pro-Se, and in duress requesting the Court consider this hand written certificate stating that the grounds in the petition for rehearing in the above-entitled case are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

The petition is handwritten because of the institutions lock down, quarantine status and unavailability of the law library typewriters due to the corona virus.

The Petitioner also certify that the petition for rehearing is presented in good faith and not for delay.

Sincerely,
Jerry Carter
Jerry Carter
4-6-2020