

19-7356
No. 18-13193

Supreme Court, U.S.

FILED

NOV 16 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES H. GRIFFIN — PETITIONER
(Your Name)

vs.

Sec. Dept of Corr. ATT GEN. Fla — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts of Appeals: 11th Cir ATL, GA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES H. GRIFFIN
(Your Name)

8784 U.S. Hwy 27^W Mayo C.I. ANNEX
(Address)

Mayo, FL 32060
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Did the lower federal courts error in denying Appellant's § 2254 Petition without affording a full and fair hearing concerning the claim that his counsel was ineffective for failing to seek a downward departure based on sentencing manipulation by law enforcement?

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: *4th Jud. Cir. Courts for Duval county.*

*ATT. GEN for the State of FLA. Ms. Moody,
FLA. Fed. Middle Dist Courts of Appeal
11th Cir. Court of Appeal for FLA.*

RELATED CASES

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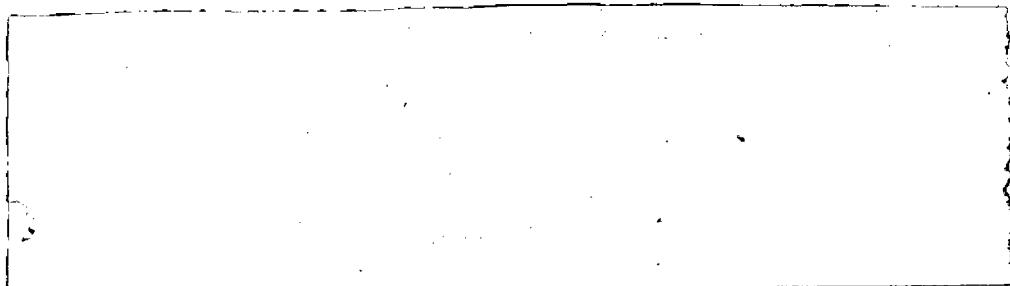


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STATUTES AND RULES

Fla. R. Crim. P. 3.850

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 A to the petition and is

reported at unknown; 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 is unpublished.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 unknown; 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 is unpublished.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 ;
 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 Sept 5, 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: Oct 23, 2019, and a copy of the order denying rehearing appears at Appendix B.

[] 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 1/17. A copy of that decision appears at Appendix 15.

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.C.A. Constitutional Amendment 6, 14

Article III of the U.S.

STATEMENT OF THE CASE

In 2011, Petitioner pleaded guilty to three counts of the sale or delivery of cocaine, in the State of Florida, in violation of Fla. Stat. § 893.13 (1) (a) (i). Based on these three convictions and Petitioner's history that included convictions and arrests for drug dealing, robbery and domestic batteries, his lowest permissible sentence was 35.55 months and the statutory maximum was 45 years imprisonment.

After Petitioner rejected the state's offer of a 10 year sentence, the state filed notice of its intent to classify Petitioner as a habitual offender. As a habitual felony offender, Fla. Stat. § 775.084 (1)(a), Petitioner would stand to receive a sentence of up to 30 years on each count, for a total of 90 years.

At Petitioner's sentencing hearing, the state requested a sentence of 20 to 30 years imprisonment. Petitioner's counsel argued for a 36 month sentence, in light of the state's earlier offer, the small amount of cocaine involved and Petitioner's acceptance of responsibility.

The state trial court imposed a total sentence of 20 years imprisonment: 15 years each on Counts One and Two, to run concurrently, and 5 years on Count Three, to run consecutively. However, the court did not sentence Petitioner as a habitual felony offender.

Petitioner pursued a state motion for postconviction relief, via Fla. R. Crim. P. 3.850, alleging that his lawyer was ineffective for not filing for a downward departure based on sentence manipulation by law enforcement. The state postconviction court denied relief, without affording Petitioner an opportunity to present evidence to support or prove the claim. The state trial court denied relief specifically stating that there was no evidence in the record to support such a downward departure and that there is no reasonable probability the court would have imposed the departure sentence if the lawyer would have requested it.

Petitioner timely appealed to the state's First District Court of Appeal and on May 4, 2016 was denied relief.

Petitioner filed a timely petition seeking federal habeas corpus relief under 28 U.S.C. § 2254 presenting the same claim presented to the state court, with the addition that the state court had denied federal due process rights by not affording a full and fair opportunity to prove his claim of counsel ineffectiveness for failing to move for a downward departure based on sentence manipulation by law enforcement.

The United States District Judge denied relief by adopting the same reasoning as the state trial court with no comment or opinion about denying Petitioner a full and fair opportunity to prove his claim.

Although the District Court did not grant a Certificate of Appealability, the Eleventh Circuit Court of Appeal did so on the following question:

"Whether the district court erred in denying Griffin's 28 U.S.C. § 2254 petition where Griffin's counsel failed to request that the sentencing court downwardly depart on sentencing manipulation because the undercover officers had sufficient audio and visual evidence to prosecute Griffin after the first of three drug purchases."

After briefing, on September 6, 2019, the Eleventh Circuit Court of Appeal affirmed the denial by the District Court. A timely motion for Rehearing was submitted to the Eleventh Circuit who, ultimately, denied it on October 23, 2019.

This petition timely follows. AN individual who challenges federal action on these grounds is, of course, subject to the Article III requirements, as well as, prudential rules, applicable to all litigants and claims. Individuals have "no standing" to complain simply that their Government is violating the law. As we have seen there is no objection to the Authority's operation by the states and if this were not so, the appellant, absent the states or their officers, have no "standing" in this case to raise any question under the Amendment. The quoted statement was in the context of a decision; the word "standing" can be interpreted in that sense. The statement explained that states, in which violates the regulations, the regulations were for the state to conduct a full and fair evidentiary hearing. The term "standing" elsewhere in its opinion to refer to - existence of a state-law cause of action. As explained like "BOND" GRIFITH, seeks to vindicate his constitutional interests. The individual is a proper case, assert injury from government actions taken in excess of the authority that - Federalism dictates, his rights in regard do not belong to a state. The Federal system rests on what might at first seem a counterintuitive in sight, that "Freedom is enhanced by the creation of two governments, not one. The Federal balance is in part, an end in itself, to ensure that states function as political entities in their own right. SEE: BOND v. U.S. 180 L.E.D.2d 219, 564 U.S. 211.

REASONS FOR GRANTING THE PETITION

The ruling that Petitioner's counsel was not ineffective for failing to argue for a downward departure sentence based on sentence manipulation by law enforcement is contrary to or an unreasonable application of Strickland v. Washington, 466 U.S. 668 (1984) and a blatant violation of Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992) where Petitioner was not afforded a full and fair hearing on his federal claim.

In Florida, a lawyer may move for a downward departure on the basis of law enforcement using sentencing manipulation against a defendant. See, State v. Steadman, 827 So.2d 1022 (Fla. 3rd DCA 2002), State v. Glover, 25 So.3d 38 (Fla. 1st DCA 2009) and Hines v. State, 817 So.2d 964 (Fla. 2nd DCA 2002).

On a postconviction motion, Petitioner asserted that his lawyer was ineffective for failing to move for a downward departure based on sentencing manipulation by law enforcement. The primary purpose of Fla.R.Crim.P. 3.850 is to give an applicant the opportunity to present evidence in support of the motion's allegations. See Baisuert v. State, 693 So.2d 652 (Fla. 5th DCA 1997).

Under Rule 3.850, if the record does not conclusively establish the movant is not entitled to relief, the stat court must conduct an evidentiary hearing. See, Nelson v. State, 73 So.3d 77 (Fla. 2011). However, in this case, the state court did not provide the Petitioner a fair opportunity to prove his claim.

Instead, the state court denied relief on the claim that there was no evidence in the record to support sentencing manipulation by law enforcement. Of course there wouldn't be when the courts have denied the opportunity to present evidence in the record.

In light of this situation, there can be no deference to the state court ruling which the federal court gave below. See, Keeney v. Tamayo-Reyes, 504 U.S. 1, 10 (1992). Moreover, the Eleventh Circuit Court of Appeal erred in affirming the District Court's denial of Petitioner's 28 U.S.C. § 2254 petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James L. Griffin

Date: 1-6-20 Jan 6, 2020