

19-7644

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE JONES

— PETITIONER

(Your Name)

vs.

CINDY GRIFFITH

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. 8TH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

GEORGE JONES #1243266

(Your Name)

POTOSI CORRECTIONAL CENTER  
11593 STATE HIGHWAY 0

(Address)

MINERAL POINT, MO 63660

(City, State, Zip Code)

573-438-6000

(Phone Number)

## QUESTION(S) PRESENTED

1. Has prejudice been shown where defense counsel fails to investigate the credibility of the Defense's expert witness, causing said expert witness to be eliminated as a credible expert witness for the Defense.

2. Has prejudice been shown where the trial court has abused its discretion and trial counsel has been ineffective in each erroneously misadvising Petitioner that he could not take a direct appeal from his Alford plea to appeal his conviction and sentence.

3. Has prejudice been shown where trial counsel has assured Petitioner that he would be sentenced between a range of 20 to 25 years for the crimes charged. However, Petitioner was sentenced to a term of life imprisonment.

4. Has prejudice been shown where the trial court erred in failing to advise Petitioner pursuant to Mo. Sup. Ct. R. 29.07(b)(4), at the conclusion of final sentencing, of his right to file for post-conviction remedies pursuant to Mo. Sup. Ct. R. 24.035.

## 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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### 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 & C to the petition and is

☒ reported at Case No. 19-1717; 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☐ is unpublished.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 Case No. 4:15-CV-01865-NAB; 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 August 05, 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: October 23, 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 to the United States Constitution provides, in relevant part, that "In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that "No State shall ... deprive any person of life, liberty, or property, without due process of law."



## STATEMENT OF THE CASE

### GROUND ONE

TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE THE CREDIBILITY OF THE DEFENSE'S EXPERT WITNESS HE HAD RETAINED FOR TRIAL, RESULTING IN A GUILTY PLEA THAT WAS NOT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED, AND PETITIONER, JONES WAS DENIED HIS RIGHTS TO DUE PROCESS OF LAW, AND TO EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §§ 10 AND 18(a) OF THE MISSOURI CONSTITUTION, IN THAT, THE TRIAL COURT'S REFUSAL TO ALLOW JONES TO DISMISS/FIRE HIS ATTORNEY, FORCED JONES TO GO TO TRIAL WITH AN ATTORNEY WHO HAD FAILED TO PROPERLY VET THE ONLY DEFENSE WITNESS, FORENSICS EXPERT, CHRISTOPHER ROBINSON WHO HAD BEEN DISCHARGED FROM THE ATLANTA POLICE DEPARTMENT FOR MISAPPROPRIATION OF FUNDS, AND THEREFORE, MR. ROBINSON WAS ELIMINATED AS A CREDIBLE EXPERT WITNESS FOR THE DEFENSE. THE SUDDEN LOSS OF MR. ROBINSON PREJUDICED JONES, AND THUS, JONES WOULD NOT HAVE PLED GUILTY, BUT FOR HIS ATTORNEY'S FAILURE TO CONDUCT A REASONABLE INVESTIGATION AND HIRE AN EXPERT WITNESS THAT DID NOT HAVE CREDIBILITY ISSUES.

### ARGUMENT

In this case, Jones entered an Alford plea that was not knowingly, voluntarily, and intelligently made. Jones would not

have pled guilty and insisted on going to trial, but for his attorney's failure to conduct a reasonable investigation and hire an expert witness that did not have credibility issues. That if Jones' attorney had conducted a reasonable investigation into the expert witness' background, he would have discovered the credibility issues and been able to secure another expert witness without credibility issues who could provide the same expert testimony.

"[T]o demonstrate a claim of ineffective assistance of counsel for failure to call an expert witness, [Petitioner] must show that: (1) such an expert witness existed at the time of the trial; (2) the expert witness could be located through reasonable investigation; and (3) the expert witness' testimony would have benefitted the defense." Johnson v. State, 388 S.W.3d 159, 165 (Mo.banc2012).

In this case, it is indisputable that Jones was in the second day of trial, engaged in voir dire proceedings, and selecting a petit jury. It is only due to trial counsel's blunder that Jones felt compelled to enter an Alford plea. This plea does not admit guilt, but simply admits that Jones could not refute the State's case, because trial counsel had botched his only defense.

If the defense enters a plea because his/her attorney is unprepared for trial, it renders the plea involuntary. United

States v. Moore, 599 F.2d 310, 313 (9th Cir. 1979). In the case of Colson v. Smith, 438 F.2d 1075, 1079-80 (5th Cir. 1971), which is strikingly similar to Jones' case, the plea was found to be involuntary because counsel was unprepared on the day of trial. This last minute breakdown was found to have forced the defendant into entering a guilty plea ...

Any reasonably competent counsel would have asked Christopher Robinson, Forensics Expert about any possible credibility issues as a matter of course. To accentuate the unreasonable nature of counsel's failure to properly vet expert witness, Robinson, information was discovered via LEXIS.com that Mr. Robinson has been discharged from the Atlanta Police Department due to misappropriation of funds. See Daughtie v. State, 297 Ga. 261, 265 (773 S.E.2d 263) (2015).

Expert witness, Robinson was Jones' only defense. He had revealed his anticipated trial testimony during a deposition taken on July 20, 2012 (Deposition of Christopher Robinson). The following is a synopsis of that deposition:

Expert witness, Robinson said that, in researching his facts and conclusion about Jones' case, he relied on photos, reports and notes from the police department, reports from the crime lab, and Jones' medical records (Depo.20-21).

According to these reports, Jones was shot in the head and torso while standing at the top of a flight of outside stairs, by two police officers (Depo.46-47). These officers claim that Jones first fired upon them causing them to return fire

(Investigative Report #10-18577 pg.6). Four casings and bullets were found at the crime scene. Two were linked to the police and two were linked Jones' gun (Depo.25). This indicated that Jones fired twice, and Officer Matt Crosby fired once, and Lieutenant Lewis fired once (Depo.26)(Photographic Exhibit (P.E.)3-11).

The police claim that one of the two bullets fired by Jones' gun (bullet 18) struck Officer Crosby in the clavicle (Investigative Report #10-18577 pg.6). That bullet was removed from Officer Crosby during surgery at St. Johns Medical Center (Investigative Report pg.22). Officer Crosby claimed that the second bullet from Jones' gun creased his forehead (Investigative Report pg.21). However, this bullet was never found. Officer Crosby was standing in front of a large glass window when he claims that the bullet creased his forehead (Investigative Report pg.12)(P.E.1). However, none of the Investigative Police Reports indicate evidence of a bullet hole in that window nor in the wall around the window. Jones was shot in the head from the front, and the bullet exited the back of his head (Depo.27). That bullet bounced off the ceiling, hit the wall and landed in front of Apartment #1145 (Investigative Report pg.13)(P.E.3). Jones was also shot in the side of the torso (Investigative Report pg.22). That bullet did not exit Jones in flight, but was removed during surgery at St. Johns Hospital (Investigative Report pg.23). Neither Jones' pants nor shirt had an exit hole where a bullet would have exited through (Investigative Report pg.47-48).

These four shots would account for all four shots at the crime scene. However, there was also a bullet embedded in the door of Apartment #1141 that was not removed and examined by ETU (Investigative Report pg.13)(P.E.9-11). Expert witness, Robinson contended that the bullet should have been tested because it was likely from Jones' gun (Depo.32).

Because the bullet in the doorframe of Apartment #1141 was shot in the direction away from where the police claimed to have been, this would have impeached the account of the police in two critical ways: (1) there was no shot from Jones that "creased" Officer Crosby's forehead; and (2) Jones was in his own doorway, and not confronting officers on the stairwell when he was shot. It would also have indicated that Jones' gun went off inadvertently after he was shot in the head. To support this theory, expert witness, Robinson also referred to the lack of blood spatter evidence. The following are relevant excerpts from Christopher Robinson's Deposition:

ROBINSON: What I was about to say, but see, then we have the problem. The police didn't want to take down the door frame because they didn't want to dig in the wall. That's a huge mistake, man. That's a huge mistake. It would have answered the question: Is that George's bullet? Or is there a third shot from the police officer?

... I want to know: Did the cops fire twice? Because I can account for the cops' two shots. I cannot account for a third bullet.

So that bullet couldn't be the cops' you understand ... So that's George's bullet is all we can say, right? George fired twice; the police

fired twice ... It's got to be George's bullet.

(Depo.32).

ROBINSON: George had to be standing in front of his door when he was shot--for that bullet to go ...

(Depo.41)(P.E.2).

ROBINSON: I would have to examine, how about blood spatter. If you're shot and the bullet exits you, there's going to be blood spatter, so then I could show where you were standing. Blood spatter wasn't done on the scene either.

(Depo.45).

ROBINSON: I'm saying the possibility is that he was shot--and listen to me, this is why bullet in the door--and if you let me go back to that one more time--if that bullet in the door is George's bullet, which we have to assume, because you told me four shots were fired. Well, if George is trying to shoot the police officers, why did he shoot one six feet away, right? Your measurements that you just gave me are six feet ... Well, why in the world would he shoot straight into that door frame six feet in front of him? And then one hits Officer Crosby in the clavicle down below.

you know that sounds like erratic shooting to me? Like erratic shooting. Like someone's been shot. And then George involuntarily is squeezing that trigger after he's shot.

(Depo.46-47)(P.E.2).

PROSECUTOR: Okay. Now you talked about blood spatter analysis that wasn't done. And why is that so important?

ROBINSON: Well, if the bullet passed through George's head, I sure

would have liked to have seen some spatter when it exited his skull, for it to be right around his door. They could have tested the door for blood to see exactly. That would have placed George in his proper location. Or for your account, or the officer's account, that he was standing in front of the stairwell. There would be blood over in that direction. If it passed through his skull, you would have seen the blood blow out of the back of his head. There would be blood somewhere back there. There's no indication. You don't see that. Furthermore--

PROSECUTOR: Your theory is that George Jones was shot standing by his door, correct?

ROBINSON: Yes sir. On this particular shot, that's where he was standing, right there.

PROSECUTOR: And you know that for a fact?

ROBINSON: I can prove it forensically ...

(Depo.52-53)(P.E.5).

Expert witness, Robinson goes on to state that the bullet which struck Jones in the head and bounced off of the ceiling, was shot by police who were standing below Jones. Spatter of Jones' skin and blood, and fabric from Jones' baseball cap were located at the top of the doorway of Apartment #1145 (P.E.5). Whereas, no such evidence was discovered around the doorway of Apartment #1141 (Investigative Report pg.13). This forensic evidence contradicts the police officers' account of what actually occurred at the crime scene. Expert witness, Robinson's testimony paints the picture of a very sloppy handling of the

crime scene by police. It also impeached the police officer's account of the incident.

The fact that Jones lost his memory as a result of being shot in the head (LF 27), combined with the fact that Jones reasonably believed that he would be able to rely on expert witness, Robinson's substantial testimony in his defense. Then to suddenly lose this defense during voir dire, is a dramatic ground shift that would have left any defendant feeling as though he suddenly lost his only defense.

Jones alleged that he was informed of the expert's credibility issue in the middle of trial (LF 136), and that he would not have pled guilty but for the fact that his attorney advised him that the expert witness, Christopher Robinson had serious credibility issues, and that it was too late to do anything about it, and that he needed to plead guilty as a result (LF 137).

It is clear that Petitioner's attorney could have hired an expert who did not have any credibility issues and who would have provided the same useful testimony as Christopher Robinson. PCR counsel, Srikant Chigurupati discussed Jones' case with forensic expert, Don Mikko, and is convinced that Don Mikko would have provided the same useful testimony that Christopher Robinson was going to testify to, and Don Mikko would not have had any credibility issues. Jones asserts that if trial counsel had secured a forensic expert, like Don Mikko, who was available



and who did not have credibility issues he would not have pled guilty and would have proceeded with his trial (LF 135-137).

These facts demonstrate prejudice and entitle Jones to relief on the grounds that his pleas were involuntary and the result of the ineffectiveness of his attorney. Furthermore, the facts alleged in support of Jones' claim were not refuted by the record. Where this is the case, a petitioner is entitled to an evidentiary hearing and additionally warrants relief.

Because Ground Two is closely related to Ground Four, Petitioner will discuss Grounds Two and Four, and then discuss Ground Three last.

## GROUND TWO

THE TRIAL COURT ABUSED ITS DISCRETION AND TRIAL COUNSEL WAS INEFFECTIVE IN ERRONEOUSLY MISADVISING PETITIONER, JONES THAT HE COULD NOT TAKE A DIRECT APPEAL FROM HIS ALFORD PLEA TO APPEAL HIS CONVICTION AND SENTENCE, AND JONES WAS DENIED HIS RIGHTS TO A DIRECT APPEAL UNDER § 547.070 R.S.Mo., TO DUE PROCESS OF LAW, TO ACCESS TO THE COURTS, TO EQUAL PROTECTION OF THE LAW, AND TO EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE 1ST, 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §§ 2, 10, 14, AND 18(a) OF THE MISSOURI CONSTITUTION, IN THAT, THE TRIAL COURT AND TRIAL COUNSEL MISADVISED JONES THAT HE COULD NOT APPEAL FROM HIS ALFORD PLEA. THE MISADVICE FROM THE TRIAL COURT AND TRIAL COUNSEL PREJUDICED JONES, AND THUS, THIS MISADVICE CAUSED JONES TO UNKNOWINGLY AND INVOLUNTARILY FOREGO HIS RIGHT TO DIRECT APPEAL. FURTHERMORE, JONES MOVED TO WITHDRAW HIS ALFORD PLEA BY WRITTEN MOTION FILED ON SEPTEMBER 11, 2012, PRIOR TO SENTENCING AND AGAIN BY ORAL MOTION ON THE DAY OF SENTENCING. HOWEVER, THE TRIAL COURT REFUSED TO ALLOW JONES TO WITHDRAW HIS GUILTY PLEA.

## ARGUMENT

The Supreme Court has held that due process is offended when a defendant is kept completely ignorant of his right to seek direct appellate review of his conviction and sentence. See Peguero v. United States, 526 U.S. 23 (1999). Here, Jones clearly asserts that he was misadvised by the trial court and trial counsel, that he could not take a direct appeal from his Alford plea to appeal his conviction and sentence. Furthermore, Jones asserts the trial court nor counsel informed him of his right to appeal the denial of motion he filed prior to sentencing, in which he sought to withdraw his Alford plea.

On September 11, 2012, Jones filed a motion to withdraw his Alford plea, in that, the plea was induced by false promises of the plea Judge, conveyed to Jones, by and through counsel (LF 9). On September 24, 2015, during the sentencing hearing, Jones tried to withdraw his Alford plea stating: "I want my day in court with a competent lawyer" (Sent.Tr.46)(LF 36). On July 31, 2012, during the plea hearing, the following colloquy occurred between the plea Judge and Jones:

Q: You understand that there will be no further trial on these charges; do you understand that?

A: Yes, ma'am.

Q: And do you understand that there will be no appeal?

A: Yes ma'am.

(Plea Tr.5)(LF 26).

On September 24, 2012, during the sentencing hearing, the following colloquy occurred between the sentencing court, Jones, and counsel:

THE COURT: Okay. That being the case, then following the examination of the Defendant under oath pursuant to Rule 29.07(b)(4) four, the court finds that the Defendant has been advised of his rights to proceed under Supreme Court Rule 24.035 and that he understands those rights. The Court finds that there is no probable cause to believe that the Defendant received ineffective assistance of counsel.

THE DEFENDANT: So does that mean that I can't file an appeal?

MR. BARNHART: You can file a Form 14 [Sic].

(Sent.Tr.58)(LF 39).

§ 547.070 R.S.Mo. provides: "In all cases of final judgment rendered upon any indictment or information, an appeal to the proper appellate court shall be allowed to the defendant, provided, defendant or his attorney of record shall during the term at which the judgment is rendered file his written application for such appeal."

Because Jones was obviously entitled to appeal the trial court's denial of his motion to withdraw the Alford plea, it was wholly improper for the trial court and counsel to tell Jones that he could not appeal. Therefore, Jones is entitled to resentencing and appeal. He is not required to prove any further prejudice than that he was denied the right to direct appeal. See Rodriquez v. United States, 395 U.S. 327 (1969).

#### GROUND FOUR

THE TRIAL COURT ERRED IN FAILING TO ADVISE PETITIONER, JONES PURSUANT TO Mo. Sup. Ct. R. 29.07(b)(4), AT THE CONCLUSION OF FINAL SENTENCING, OF HIS RIGHT TO FILE FOR POST-CONVICTION REMEDIES PURSUANT TO RULE 24.035, 180 DAYS FROM THE DATE ENTERING MISSOURI DEPT. OF CORRECTIONS, UNLESS DIRECT APPEAL IS TAKEN, THEN 90 DAYS FROM APPELLATE MANDATE, AND JONES WAS DENIED HIS RIGHTS TO A DIRECT APPEAL UNDER § 547.070 R.S.Mo., TO DUE PROCESS OF LAW, TO ACCESS TO THE COURTS, TO EQUAL PROTECTION OF THE LAW, AND TO EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE 1ST, 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §§ 2, 10, 14, AND 18(a) OF THE MISSOURI CONSTITUTION, IN THAT, AT THE CONCLUSION OF FINAL SENTENCING, THE TRIAL COURT FAILED TO ADVISE JONES OF HIS RIGHT TO APPEAL AND/OR PROCEED UNDER RULE 24.035. THE TRIAL COURT'S FAILURE TO ADVISE JONES OF SAID RIGHT TO APPEAL PREJUDICED JONES, AND THUS, HAD JONES BEEN ADVISED BY THE TRIAL COURT OR COUNSEL OF HIS RIGHT TO APPEAL AND/OR PROCEED UNDER RULE 24.035, HE IN FACT WOULD HAVE CHOSE TO DO SO.

#### ARGUMENT

A Mo. Sup. Ct. R. 24.035 motion is the proper procedural vehicle to challenge the sentencing court's jurisdiction to accept a [movant's] voluntary guilty plea. In this case, however, the sentencing court erroneously erred in failing to

advise Jones of his right to file for such post-conviction remedies. Such error during sentencing prejudiced Jones and determined his plea of guilty to have been made unintelligently, unknowingly, and involuntary.

The sentencing court erroneously erred in failing to advise Jones pursuant to Mo. Sup. Ct. R. 29.07(b)(4), at the conclusion of final sentencing, of his right to file for post-conviction remedies pursuant to Rule 24.035, 180 days from the date entering Missouri Dept. of Corrections, unless direct appeal is taken, then 90 days from appellate mandate.

Mo. Sup. Ct. R. 29.07(b)(4) provides, in pertinent part:

"[t]hat if a defendant has a right to proceed under Rule 24.035 or Rule 29.15, the court at the conclusion of final sentencing shall advise the defendant of such right."

In this case, however, the sentencing court unequally left Jones uninformed of his right to appeal and/or proceed under Rule 24.035. Had Jones been advised by the sentencing court or counsel of his right to appeal and/or proceed under Rule 24.035, he in fact would have chose to do so.

### GROUND THREE

PLEA COUNSEL WAS INEFFECTIVE IN ASSURING PETITIONER, JONES THAT HE WOULD BE SENTENCED BETWEEN A RANGE OF 20 TO 25 YEARS IMPRISONMENT FOR THE CRIMES CHARGED, AND JONES WAS DENIED HIS RIGHTS TO DUE PROCESS OF LAW AND TO EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §§ 10 AND 18(a) OF THE MISSOURI CONSTITUTION, IN THAT, PRIOR TO THE ENTRY OF THE ALFORD PLEA, COUNSEL ASSURED JONES THAT HE WOULD BE SENTENCED BETWEEN A RANGE OF 20 TO 25 YEARS. JONES BELIEVED AND RELIED ON COUNSEL'S ASSURANCE, AND JONES WAS PREJUDICED WHEN THE TRIAL COURT SENTENCED HIM TO AN EXCESSIVE TERM OF LIFE IMPRISONMENT, AND JONES WAS FURTHER PREJUDICED WHEN PCR COUNSEL FAILED TO RAISE THIS CLAIM IN THE POST-CONVICTION AMENDED MOTION.

### ARGUMENT

In this case, the trial court was aware that Jones had been promised a plea deal in exchange for his Alford plea. Having this knowledge, the trial court was required by due process to follow the dictates of Mo. Sup. Ct. R. 24.02(d)(4), which states:

Rejection of a Plea Agreement. "If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the

defendant's plea if it is based on an agreement pursuant to Rule 24.02(d)(1)(A), (C) or (D), and advise the defendant that if the defendant persists in the guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement."

Based upon Rule 24.02(d)(4), the trial court should have allowed Jones to withdraw the Alford plea instead of sentencing him. Furthermore, Rule 24.02(d) states as follows:

Plea Agreement Procedures. "The trial court shall not participate in any such discussions, but after agreement has been reached, the court may discuss the agreement with the attorneys including any alternative that would be acceptable."

Jones asserts that the trial Judge's offer or "hint" of 20 to 25 years, which was presented to Jones by and through trial counsel, was a violation of due process and made the plea proceedings unethical, unlawful, and prejudicial. Since it was unlawful for the trial Judge to offer or "hint" at any plea agreement with Jones, it was not something that the Judge would have wanted to appear on the record. This may also indicate why trial counsel had advised Jones not to mention the plea agreement during the Plea Hearing on July 31, 2012.

Trial counsel gave Jones false hope of receiving between 20 to 25 years imprisonment based on the statements of the trial Judge. This improperly induced Jones to enter an Alford plea.



The plea must, of course, be voluntary and knowing, and if it was induced by promise, the essence of those promises must in some way be made known. Santobello v. New York, 404 U.S. 257, 261-262 (1971).

Jones asserts on the second day of trial, counsel approached him and his first words were, "We have a problem, a big problem! The prosecutor did a background check on our expert (Chris Robinson) and found some things that's going to kill his credibility, which will kill your case. I forgot to mention friday (last pretrial conference) that the Judge said that she would let you plead out and give you 25 years. She (the Judge) said, 'At least he'll get out in his 50's, if not, he'll never get out.'"

Trial counsel instructed Jones not to mention the plea agreement when asked by the trial Judge, stating, "It's just a formality." For this reason, when asked by the trial Judge during sentencing whether any promises had been made to him, Jones said, "No." (Plea Tr.12)(LF 27).

On September 24, at the Sentencing Hearing, the following colloquy occurred between Jones and the trial Judge:

THE COURT: Do you think your lawyer has done a good job for you?

DEFENDANT: No, ma'am. I tried to fire him.

THE COURT: Okay. This case was a plea not pursuant. And were any threats made to you in order to get you to plead guilty?

DEFENDANT: That he had talked to you and that you were talking about betewwn twenty and twenty-five years.

THE COURT: Were any threats or promises made to you in order to get you to plead guilty?

DEFENDANT: Yes.

(Sent.Tr.57)(LF 39).

Despite Jones' statements in open court and on the record, the trial Judge did not deny having said that she would sentence him to 20 or 25 years. The trial Judge merely went on to sentence Jones to life imprisonment, though given the opportunity to respond to Jones' statements that trial counsel did not deny having told him that he would receive no more than 25 years (LF 39).

Jones would not have entered the Alford plea if not for the false promises relayed to him by plea counsel. As such, plea counsel's performance was deficient and Jones suffered prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

## **REASONS FOR GRANTING THE PETITION**

Because Petitioner's pleas were involuntary and the result of the ineffectiveness of his attorney, and the result of counsel's ineffectiveness caused the Defense's expert witness to be eliminated as a credible witness for the Defense, and resulted in a guilty plea that was not knowingly, voluntarily, and intelligently entered.

Because it was wholly improper for the trial court and counsel to tell Petitioner that he could not appeal, denying Petitioner the right to direct appeal.

Because the sentencing court unequally left Petitioner uninformed of his right to appeal and/or proceed under Rule 24.035, wherein he in fact would have chosen to do so.

Because Petitioner would not have entered the Alford plea if not for the false promises relayed to him by plea counsel.

Furthermore, because Petitioner has made a substantial showing of his claims of trial court error and abuse of discretion, and ineffective assistance of counsel, and the denial of his constitutional rights. Therefore, this Court should grant the petition.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*George Jones*  
/s/ George Jones

Date: 1/10/2020