NO. 19-7770

ORIGINAL

Supreme Court, U.S.
FILED
FEB 07 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Marcus Williams
PETITIONER
(Your Name)

VS.

United States of America

RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION PURSUANT TO THE ALL WRITS ACT 28 U.S.C. 1651(a) DIRECTED TO THE ASSOCIATED JUSTICE WITH SUPERVISORY CONTROL OVER THE FIFTH CIRCUIT UNDER SUPREME COURT RULE 22-1

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON YOUR CASE

PETITIONER FOR WRIT OF PROHIBITION
MARCUS WILLIAMS
(Your Name)

FEDERAL CORRECTIONAL INSTITUTION
TEXARKANA
(Address)
P.O. BOX 7000, TEXARKANA, TEXAS 75505-7000
(City, State, Zip Code)

QUESTIONS PRESENTED

(1)

WHETHER THE PRE-TRIAL ACTS AND OMISSIONS MADE BY MARCUS WILLIAMS' COUNSEL, ALLIED WITH FAILURE TO OBJECT ON THE RECORD, TO PRE-ARRAIGNMENT ERRORS MADE BY THE DISTRICT COURT, FAILURE TO SUBJECT THE GOVERNMENT'S CASE TO STRICT ADVERSARIAL TESTING AND APPELLATE COUNSEL'S DERELICTION IN RAISING COGNIZABLE APPELLATE ISSUES, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, BORDERING ON CONSTRUCTIVE DENIAL OF COUNSEL, A STRUCTURAL ERROR.

(2)

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE 11 VIOLATIONS MAY HAVE RENDERED MARCUS WILLIAMS PLEA AGREEMENT INVOLUNTARY, UNKNOWING OWING AND UNINTELLIGENTLY MADE, BY R EASON OF DECEPTION PERPETUATED BY COUNSEL AND FAILURE E OF THE COURT, THE GOVERNMENT, COUNSEL, TO ENDURE PETITIONER WAS ENTITLED TO RELIEF.

LIST OF PARTIES

In re: Marcus Williams

-v-

United States of America

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. THERE ARE NO ADDITIONAL PARTIES.

TABLE OF CONTENT

INDEX TO APPENDICES

STATEMENT OF JURISDICTION

The Supreme Court of t he United States has original jurisdiction over three categories of cases. First, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties," See, Maryland v. Louisiana, 451 U.S., 725, 737 (1981). Second, the Supreme court also possesses original jurisdiction for "(all) controversies between the United states and a State." 28 U.S.C. Section 1251 (b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court for "all actions or proceedings by a state against the citizens of another state or against aliens." See, e.g. Oregon v. Mitchell,, 400 U.S. 112 (1970); United States v. Louisiana, 339 U.S. 699 (1951); United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeals" and "certiorari" as vehicles for appellate review of the decisions of sate and lower federal courts. where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the state provides for review by "writ of certiorari "the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review virtually eliminated. Now almost all cases to the supreme court by writ of certiorari. Pub.. L. No. 100-352, 102 Seat, 662 (1988).

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdiction and agreeable to the usages and principles of law.

(B) An alternative writ or rule may be issued by a Justice (Chief Justice) to whom an application to a writ of prohibition is submitted may refer to the Court for determination.

inconducting harmless error analysis of constitutional violations, including direct appeals and especially habeas generally, the Supreme Court repeatedly has reaffirmed that "(s)ome constitutional violations ... by their very nature are so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accordingly, Neder v. United States, 527 U.S. 1, 7 (1999)("We have recognized a limited class of of fundamental constitutional errors that defy analysis by "harmless error, standards"...errors of this type are so intricately harmful as to require automatic reversal (i.e, affect substantial rights) without regard to there effect on the outcome").

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993))" Although most constitutional errors have been held to harmless error analysis, some will always invalidate the conviction" (citations omitted), Id. at 183 (Rehnquist, C.J., concurring); United States v. Olano, 507 U.S. 725, 735 (1993); Rose v. Clark, 478 U.S. 570, 577-78 (1986)("some constitutional errors requires reversal without regard to the evidence in the particular case...because they render a trial fundamentally unfair"); Vasquez v. Hillery, 474 U.S. 254, 283-264 (1986); Chapman v. California, 386 U.S.18, 23 (1967)("there are some constitutional rights so basic to a fair trial that there infraction can never be treated as harmless errors").

JUDICIAL NOTICE/STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENC.

The right to effective assistance of counsel. See, Kyles v. Whitley, 514 U.S at 435-436; United States v. Cronis, 466 U.S. 648, 654-57 (1984); Hill v. Lockhart, 28 F.2d 832, 839 (8th Cir. 1994)("it is un necessary to add a separate layer of harmless error analysis to bar caluations on whether a petition has presented a constitution and significant claim for ineffective assistance of counsel).

LAW RELATED TO STRUCTURAL ERROR

Included in the rights granted by the U.S. Constitution, is the protection against prosecutorial suppression on manipulation of exculpatory evidence and the prosecutorial and judicial failures that amount to fraud upon the court. Failure to make available to defendant's counsel, information that could well lead to the assertion of an affirmative defense in material, when 'materiality' is defended as at least a 'reasonable probability that had the evidence been disclosed to the defense, the result of the judicial proceedings would have been different. Kyles v. Whitley, 514 U.S. at 435 (quoting United States v. Bagley, 473 U.S. 667, 682. (1985) (plurality opinion); Id. at 685 (White, J., concurring in judgment)). Counsel impermissibly withheld evidence of strictissimi juris).

In addition, to Bagley which addressed claims of prosecutorial suppression of evidence, the decisions listed below, all arising in "what might be loosely called the area of constitutionally guaranteed access to evidence." Arizona v. Youngblood, 488 U.S. 51, 55 (1988)(quoting United States v. Valenzula-Bernal, 458 U.S. 856, 867 (1982) or require proof of "materiality" or prejudice.

The standard of materiality adopted in each case is not always clear, but if that standard requires at least a "reasonable probability" of a different outcome, Its satisfaction also automatically satisfies the Brecht, harmless error rule. See, e.g., Arizona v. Youngblood,, supra at 55 (recognizing the due process violation based on state's loss or destruction of material evidence before trial); Pennsylvania v. Ritchie, 480 U.S. 39, 57-58 (1987)(recognizing due process violation bases on state agent's refusal to turn over material social services records'"information is material"

if it "probably would have changed the outcome of his trial. (citing United States v. Bagley, supra at 685(White, J., concurring in judgment)).

Ake v. Oklahoma, 470 U.S. 68, 83 (1985)(denial of access by indigent defendant to expert psychiatrist violates Due Process Clause when defendant's mental condition is "significant factor" at guilt - innocence or capital sentencing phase of trial); California v. Trombetta, 467 U.S. 479, 489-90 (1984)(destruction of blood sample might violate Due Process Clause, if there were more than a slim chance that the evidence would affect the outcome of the trial and if there wasn't no alternative means of demonstrating innocence). United States v. Valenzula-Bernal, supra, at 873-874 ("As in other cases concerning the loss of evidence (by the state or government of material evidence, sanctions will be warranted for deportation of alien witness only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact. "Chambers v. Mississippi, 40 U.S. 284, 302 (1973)(evidentiary process"); Washington v. Texas, 388 U.S. 14, 16 (1967)(violation of Compulszory Process Claus when it arbitrarily deprived defendant of "testimony (that) would have been relevant and material, and ... vital to his defense").

Law related to structural error for judicial bias with respect to the failure of the court to detect from the judicial proceedings that it may have been divested of subject matter jurisdiction.

Included in the definition of structural errors, is the right to an impartial judge, i.e., the right to a judge who follows the constitution and the Supreme Court's precedent case law, and upholds the oath of the office. See, Neder v. United States, supra, 527 U.S. at 8. ("biased trial judge" is "structural error" and this is subject to automatic reversal"); Edwards v. Balisok, 520 U.S. 461, 469 (1997); Sullivan v. Louisiana, 508 U.S., at 279; Rose v. Clark, 478 U.S. 570, 577-78 (1986); Tunney v. Ohio, 273 U.S. 510, 523 (1927).

STATEMENT OF CASE

On May 2, 2012, a three (3) Count Superseding Criminal Indictment was returned by a federal grand jury in the United States District Court for the Eastern District of Texas, Beaumont Division. Count One Charged Williams with Conspiracy with intent to distribute cocaine HCL in violation of 21 U.S.C. Sub-Section 846, 841(a)(1) & (b)(1)(A). Count Two charged Williams with conspiracy to launder monetary instruments in violation of 18 U.S.C., Section 1956(h). Doc. Doc. 15.

On August 289, 2012, Williams pled guilty to Counts One and Two the Superseding Indictment without a plea agreement. He did not stipulate to the government's facts or the alleged drug amounts that the government was claiming, Doc. 95.

On March 4, 2013, Williams was sentenced to concurrent 235 months imprisonment, followed by five(5) ears f supervised release, No fine or restitution, and a $200.00 Mandatory Special Assessment Fee. Further. Counts One and Two were run concurrently, followed by five (5) years of Supervised Release, no fine or restitution, and a $200.00 mandatory special assessment fee. Further, Counts one and two were run concurrently with any term of imprisonment in #F0917312, 145th Judicial District Court, Nacogdoches, Texas. Doc. 137.

On March 11, 2013, Wlliams timely filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit Doc. 14. On December 30, 2013, after Williams appellate counsel filed an Ander's brief his appeal was dismissed by the Fifth Circuit. See United States v. Williams, (No., 13-40296)(5th Cir., December 30, 2013) Doc. 168.

On March 27,2014, Williams file a motion under 28 U.S.C. Vacate, Set Aside, or Correct Sentence by a person in federal custody ("Section 2255 Motion). See Doc. 169. In that motion he raised the following grounds;

A. Whether trial counsel's pretrial acts and omissions deprived Williams of effective assistance of counsel guaranteed by the Sixth Amendment of the Constitution of the United States during pre-trial.,

B. Whether trial counsel's's failure to object to the district court's rearraignment hearing errors pursuant to Rule Rule 11 of the federal Rules of Criminal Procedure deprived Williams of effective assistance of counsel as guaranteed by the Sixth Amendment of the constitution of the United States,

C. When sentencing counsel's counsel's failure to properly object to the PSR's recommendation and the district court's findings sentencing sentencing deprived Williams of effective assistance guaranteed by by the Sixth Amendment of the Constitution and a fair and just sentence.

D. Whether appellate counsel's failure to find and raise meritorious issues deprived deprived Williams of effective assistance of counsel as guaranteed by the sixth amendment of the constitution of the United States as a fair and meaningful appeal.

QUESTIONS PRESENTED

(1)

WHETHER THE PRE-TRIAL ACTS AND OMISSIONS MADE BY MARCUS WILLIAMS' COUNSEL, ALLIED WITH FAILURE TO OBJECT ON THE RECORD, TO PRE-ARRAIGNMENT ERRORS MADE BY THE DISTRICT COURT, FAILURE TO SUBJECT THE GOVERNMENT'S CASE TO STRICT ADVERSARIAL TESTING AND APPELLATE COUNSEL'S DERELICTION IN RAISING COGNIZABLE APPELLATE ISSUES, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, BORDERING ON CONSTRUCTIVE DENIAL OF COUNSEL, A STRUCTURAL ERROR.

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REASONS FOR GRANTING

HOW THE WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION IN GRANTING A WRIT OF PROHIBITION

It is settled, that a decision of the Supreme Court of the United States, based solely upon t he construction of Rule 11 of the Federal rules of criminal procedure, with regard to the acceptance of a guilty plea, is made pursuant to the Supreme Court's Supervisory power over the lower courts. See, e.g. Arizona v. California, 373 U.S. 546 (1963); Wisconsin v. Pelican Ins. Co, 127 U.S., 265, 3000 (1888); Kennedy v. Denison, 65 U.S. (24 How) 66, 98 (1860).

As a threshold matter, Marcus Williams avers that the Writ of Prohibition, which he has applied for, is an extraordinary Writ under the All Writ Act 28 U.S.C. 1651(a) which in pertinent part states that, all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions, and agreeable to the usages and principles of law."

In the case at bar, Marcus Williams contends what he seeks is a "drastic and extraordinary remedy "reserved for really extraordinary causes, such as his," where through a combination of constructive denial of counsel, prosecutorial misconduct, a biased judge, he has been impermissibly denied his Fifth and Sixth Amendment rights to Due Process. As here, the traditional use of the Writ of Prohibition of the Writ in aid of appellate jurisdiction both at common law and in the federal court, has been to confine (the court(s) against which the writ is sought, to a lawful exercise of its prescribed jurisdiction." Roche v. Evaporated Milk Assn., 319 U.S, 21, 26, 87 L.Ed 1185 .

MARCUS WILLIAMS' CONTENTION THE ALLEGATIONS HE MAKES CONSTITUTE "EXCEPTIONAL CIRCUMSTANCES" THAT WARRANTS THE INTERVENTION OF THIS HONORABLE COURT'S DISCRETIONARY POWERS.

As a threshold matter, Marcus Williams contends that his failure to make the above captioned assertion, would worst case scenario, lead to a miscarriage of justice or trigger res judicata, or at best, a procedural default. None of these options, would further the goals of the administration of justice. This assertion is predicated on the following claims implicating;

(1) Acts of Clear Error, Mistake of Law and abuse of discretion, committed by the lower courts (Fifth Circuit Court of Appeals and District Court in Texas) that the Constitution and the Supreme Court consider to be ministerial acts that compels both the Fifth Circuit Court of Appeals and the District Court for the Eastern District of Texas, to the fulfillment of requirements of Fed. R. Crim. P. Rule 11(b)(1)(G) that a defendant understand the essential elements of the crime.

This is integrally related to the requirement of Fed. R. Crim. P. Rule 11(b)(3), that the district court determine that Marcus Williams's plea has a factual basis. Because a guilty plea is an admission of all the elements of formal criminal charges, it cannot be truly voluntarily made, unless the defendant possesses an understanding of the law, in relation to the facts. Marcus Williams contends because of the constructive denial of counsel, prosecutorial misconduct, and the validation of both, abuse of discretion a panel of the Fifth Circuit Court of appeals, judicial intervention by Marcus Williams invocation of the Writ of Prohibition and Rule 22-1 of the Supreme Court Rules would be provident.

Thus, in addition to the need to direct the District Court judge to inquire into defendant's understanding of the nature of the charge and the consequences of the plea, Rule 11 also requires the District Court judge to ascertain that a factual basis exists for the plea, especially in light of the fact that, Marcus Williams was denied a right to appeal this unconstitutional sentence and conviction. Through the Plain Error standard of review, the panel of the Fifth Circuit Court of Appeals should have discovered the legal infirmities present in the case, among other things, the right to file an appeal by counsel.

In sum, the district court, allied with the Court of Appeals for the Fifth Circuit, in this case, failed to perform an absolute duty as a matter of law, as distinct from other types of acts that may be a matter of the lower court's discretion. For this reason alone the he should be granted the writ.

Marcus Williams has no other vehicle of getting relief, because the above issues not only have to be addressed now, but are cognizable under application for a Writ of prohibition and directed to the Associate Justice in charge of the Fifth Circuit, to right this egregious wrong. "Under the doctrine of procedural default, a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal or else the defendant is barred from presenting that claim in a section 2255

proceeding." Mackay v. United States, 657 F.3d 1190, 1196 (11th Cir. 2011)(internal citations omitted).

Thus, Marcus Williams is invoking the use of the Writ of Prohibition because his situation is extraordinary, which other judicial remedies at this time would be inadequate to redress. See, 9 F. Supp. 422, 423. It is an emergency situation that only an extraordinary writ can address. 74 P. 695, 501.

Marcus Williams further avers that, even if the first two reasons have been satisfied, this Honorable Court in the exercise of its discretion, must be satisfied that the merit is appropriate under the circumstances. Kerr, supra, at 403, 48 L.Ed.2d 725, 96 S.Ct. 2119 (citing Schlagenhauf v. Holder, 379 U.S. 104, 112 n8, 13 L.Ed.2d 152, 85 S.Ct. 234 (1964).

In conclusion, the Supreme Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by "embarrassing the executive arm of the government," Ex Parte Peru, 318 U.S. 578, 588, 87 L.Ed 1014, 63 S.Ct. 793 (1943), or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations. "Will, supra, at 95, 19 L.Ed.2d 305, 88 S.Ct. 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L.Ed.2d 305, 88 S.Ct., 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L,Ed.2d 305, 88 S.Ct., 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L.Ed 449, 46 S.Ct. 185 (1926).

WHETHER THE PRE-TRIAL ACTS AND OMISSIONS MADE BY MARCUS WILLIAMS COUNSEL, ALLIED WITH , FAILURE TO OBJECT ON THE RECORD TO PRE-ARRAIGNMENT ERRORS MADE BY THE DISTRICT COURT, FAILURE TO SUBJECT THE GOVERNMENT'S CASE TO STRICT ADVERSARIAL TESTING AND APPELLATE COUNSEL'S DERELICTION IN RAISING COGNIZABLE APPELLATE ISSUES, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, BORDERING ON CONSTRUCTIVE DENIAL OF COUNSEL, A STRUCTURAL ERROR.

STANDARD OF REVIEW AND LEGAL ANALYSIS

The Sixth Amendment right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970). The benchmark for judging any claim of ineffective assistance of counsel, however, is whether counsel's conduct so undermined the proper functioning of the adversarial process the the trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S,. 668, 688 (1984)., also Boykin v. Wainwright, 737 F.2d 1539, 1542 (11th Cir. 1984).

Because a lawyer is presumed to be competent to assist a defendant, the burden is not on the accused to demonstrate the denial of the effective assistance of counsel. United States v. Cronic, 466 U.S. 648, 658 (1984). Ineffectiveness of counsel may be grounds for vacating conviction if;

(1) Counsel's performance fell below an objective standard of reasonableness and;

(2) the defendant was prejudiced by the deficient performance. Strickland, 466 U.S. at 687, 684. "three is no reason for a court deciding an ineffective ineffective assistance of counsel claim, to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697.

Thus, if the defendant fails to show that his is prejudiced by the alleged error of counsel, this court may reject the defendant's claim without determining counsel was deficient. See Coulter v. Herring, 60 F.3d 1499, 1504 n.8 (11th Cir. 1995). for performance to be deficient, it must be established that in light of all the circumstances, counsel's performance was outside the wide range of professional competence. 'Strickland, 466 U.S. at 6907.

In other words, when reviewing counsel's decisions, "the issue is not what is possible or "what is prudent or appropriate, but only what is constitutionally compelled." Chandler v. united States, 218 F.3d 1305, 131 (11th Cir. 2000)en banc)quoting Burger v. Kemp. 483 U.S. 776 (2987), cert denied, 531 U.S. 1204 (2001).

Furthermore, "(t)he burden of persuasion is on a petitioner to prove, by a preponderance of the evidence, that counsel's performance was unreasonable." Id. (citing Strickland, 466 U.S. at 688). The burden of persuasion, though not insurmountable, is a heavy one. See Id. at 1314 (citing Kimmelman v. Morrison, 477 U.S. 365 (1986).

"Judicial scrutiny of counsel's performance must be highly deferential," and courts "must indulge (the) strong presumption["that counsel's performance was reasonable and the counsel made all the significant decisions in the exercise of reasonable professional judgment." Id. (quoting Strickland, 466 U.S. at 689-90). therefore, "Counsel cannot be adjudged incompetent for performing in a particular way in a case as long s the approach taken "might be considered sound trial strategy." Id. Darden v. Wainwright, 477 U.S. 168 (1986).

If the record is incomplete or unclear about counsel's actions, then it is presumed that counsel exercised reasonable judgment." Id. at 1314-15 n. 15. Thus, the presumption afforded counsel's performance "on no...that the particular defense lawyer in reality focused on and then deliberately decided to do or not to do a specific act," Id., Rather, the presumption is "that what the particular defense lawyer did at trial ...were acts that some reasonable lawyer might do." Id.

Moreover, "the reasonableness of a counsel's performance is an objective inquiry. "Id. at 1315. For a petitioner to show deficient performance, he "must establish that no competent counsel would have taken the action that his counsel did take." Id. To uphold a lawyer's strategy, a court "need not attempt to divine the lawyer's mental process underlying the strategy." Id. at 1315 n.16. Finally, "(n)o absolute r=rules dictate what is reasonable performance for lawyers." Id. at 1317. Further counsel dies not provide ineffective assistance when frivolous arguments are not raised on appeal. Jones v. Barnes, 463 U.S. 745 (1983) , see also United States v. Winfield, 960 F.2d 970, 974 (11th cir. 1992)(attorney not ineffective for acting to argue a meritless issue).

American bar Association standards are to be used only as "guides" in reviewing whether an attorney's performance is reasonable, reversing a finding of deficient performance where the lower court treated the ABA standards as "inexorable commands that attorneys must "fully comply with." United States v. Mooney, 497 F.3d 397, 404 (4th Cir. 2007)(counsel in criminal cases are charged with the responsibility of conducting appropriate investigations, both factual and legal, to determine if matters of defense can be developed.)

The critical issue is whether, applying prevailing professional norms, trail counsel conducted an objectively reasonable investigation to mitigating evidence. Porter v. McCallum, 558 U.S. 30, 40, 130 S.Ct. 447, 452-53, 175 L.Ed.2d 398 (2009); Kramer v. Kemna, 21 F.3d 305, 309 (8th Cir.., 1994)(failure to interview witnesses or discovering mitigating evidence may be a basis for finding ineffective assistance of counsel). "Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir.. 1996)(a lawyer who fails adequately to investigate, and to introduce new evidence, records that demonstrate his client's factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance)."

AN ABUNDANCE OF INVESTIGATIVE AND TRIAL RELATED PREJUDICE WITH RESPECT TO MARCUS WILLIAM'S REPRESENTATION

The Third Circuit in A United States v. kaufman, 109 F.3d 186, 191 (3d. Cir. 1997), also held that in the context of a claim that counsel failed to conduct an adequate investigation prior to the entry of a guilty plea, prejudice is demonstrated by showing that the defendant would have insisted on going to trial instead of pleasing guilty).

APPLICABLE LAW TO MARCUS WILLIAMS

Generally, claims of ineffective assistance of counsel are analyzed pursuant to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to prevail on such a claim, Movant must show;

(1) deficient performance - counsel's performance fell below the unprofessional errors the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. at 687-88, 684, see also United states v. Thornton, 23 F.3d 1532, 1533 (9th Cir. 1994)(per curiam); and United States v. Solomon, 795 F.2d 747, 749 (9th Cir. 1986).

WHAT CONSTITUTES A "REASONABLE PROBABILITY" IN THE CONTEXT OF MARCUS WILLIAMS' CLAIMS

The circuits have all been vey vocal on this issue. In Ward v. Dretke, 420 F.3d 479, 487 (5th Cir. 205), the court held (prejudice inquiry where the defendant claims that he would have not pled guilty and insisted on going to trial but for counsel's deficient performance partially depends on a precision of what that outcome of the trial might have been); See also, Trottie v. Stephens, 720 F.3d 231, 251 (5th Cir. 2013)(materiality exists if there is "a reasonable probability that , had the evidence been disclosed to the defense, the result of the proceeding would have been different.")

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE 11 VIOLATIONS MAY HAVE RENDERED MARCUS WILLIAM'S PLEA AGREEMENT INVOLUNTARY, UNKNOWING AND UNINTELLIGENTLY MADE, BY REASON OF DECEPTION PERPETRATED BY COUNSEL(S) AND FAILURE OF THE COURT, THE GOVERNMENT, COUNSEL(S) TO ENSURE PETITIONER, WAS ENTITLED TO RELIEF.

(A)

To be valid, a guilty plea must be made voluntarily and with full knowledge of the consequences. Boykin v. Alabama, 395 U.S. 238 (1969). Stano v. Dugger, 921 F.2d 1125 (11th Cir. 1991), overruled by United States v. Garey, 540 F.3d 1253 (11th Cir. 2008). In Coleman v. Alabama, 827 F.2d 1469 (11th Cir. 1987), the court construed Boykin to require that an accused have information concerning each range of punishment prescribed by the act to which he may be sentenced. In order for a guilty plea to be entered knowingly, and and intelligently made, the defendant must have the mental competence to understand and appreciate the nature and consequences of the plea.

Clearly, the record of Marcus Williams' judicial proceedings, especially from the inception of the plea negotiations to its culmination, Counsel left him in the dark, without access to his discovery, and with respect to the nitty gritty of the plea, especially to what punishment he was looking at.

Marcus Williams was not reasonably informed about his legal options and the alternatives that were available to him. A plea may be involuntary, because the accused, like Marcus Willaims does not understand the nature of the constitutional protections that he is waiving or because the accused has such an incomplete understanding of the charge that his plea cannot stand and an intelligent admission of guilt. Gaddy v. Linahan, 780 F.2d 935 (11th Cir. 1986).

(B)

HAD THE PLAIN ERROR DOCTRINE BEING INVOKED BY THE PANEL OF FIFTH CIRCUIT JUDGES, IT WOULD HAVE BEEN ABUNDANTLY CLEAR THAT DISCOVERED THT MARCUS WILLIAMS WOULD HAVE BEEN ENTITLED TO FULL APPELLATE RIGHTS.

A guilty plea is not knowing and voluntarily made when the defendant has been misinformed about the critical elements of the charged offense, even when the misinformation is the result of the court's erroneous interpretation of a criminal statute, and even if the interpretation was correct at the time the plea was entered. United States v. Brown, 117 F.3d 471 (11th Cir. 1997).

This revelation itself rendered the plea unknowing, unwilling an unintelligently made.

The Supreme Court considered whether the government is required to provide Brady or Giglio information to the defendant before a plea is entered in United States v. Ruiz, 536 U.S. 622 (2002). In the Southern District of California, a defendant is sometimes given the opportunity to enter a "fast track " guilty plea. Pursuant to his program, the government will furnish Brady information to the defendant, but will not provide Giglio material (impeachment information about its witnesses does not taint the guilty plea or violate Due Process Clause). The Court held (reversing the Ninth Circuit) if the entry of the guilty pleas is otherwise free and voluntary, the government's decision to withhold impeaching information about its witnesses does not taint the guilty plea or violate Due process Clause.

The fact that a defendant enters a guilty plea and states at the time of the plea that it was given freely and voluntarily does not necessarily preclude the defendant from subsequently challenging the voluntariness of the plea. Blackledge v. Allison, 431 U.S. 63 (1977). In Martin v. Kemp, 760 F.2d 1244 (11th Cir. 1985), for example, the defendant entered a guilty plea and acknowledged that it was freely and voluntarily entered with no duress. In a collateral attack, however, he offered evidence that the state threatened to prosecute his wife if he did not plead guilty.

The cumulative errors committed during Marcus Williams's judicial proceedings may have had the effect of nullifying his appeal waiver, a view supported by the holdings of several circuits some of which are listed hereunder, for which he seeks his appeal rights restored by this Honorable Court.

Ineffective assistance of counsel qualifies as a miscarriage of justice to overcome a waiver of appeal provision. United States v.

Shedrick, 493 F.3d 292, 298 n.6 (3d. Cir. 2007).

United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005) (ineffective assistance of counsel claims following entry of guilty plea cannot be waived).

United States v. Oliver, 630 F.3d 397, 411 (5th Cir. 2011)(court allowed plea challenge, despite existence of appeal waiver).

In re Acosta, 480 F.3d 421, 422 (6th Cir. 2007) (waiver of right to appeal or collateral attack sentence may be attacked as involuntary or product of ineffective assistance).

United States v. Flucker, 516 Fed. Appx.. 580, 581 (6th Cir. 2023)(a a waiver of appeal right may be challenged on the grounds that it was not knowing or voluntary, was not taken in compliance wit Fed. R. Crim. P. 11, or was the product of ineffective assistance of counsel).

United States v. Joiner, 183 F.3d 635, 645 (7th Cir. 1993)(same)

CONCLUSION

The use of a petition for a Writ of Prohibition is well settled. It is patently clear from two Supreme Court cases in Dairy Queen Inc. v. Wood, 469 U.S. L.Ed.2d 44 825 S.Ct. 894 (1962), and Beacon Theaters v. Wood, 359 U.S. L.Ed.2d 988, 79 S.Ct. 948 (1959), support the use of the writ of Prohibition to correct an abuse of discretion by the district court. Peersonette v. Kennedy) In re Midgard Corp) 204 B.R. 764, 768 (10th Cir. 1997).

Like the case at bar, the following cases show that the district court "displayed a persistent disregard of the criminal and civil rules of procedure." Moothart v. Bell, 21 F.3d 1499, 1504 (10th Cir. 1994)(quoting McEwan v. City of Norman, 926 F.2d 1539, 1553-54 (10th Cir. 1991); Jennings v. Rivers, 394 F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on post judgment se aide voluntary dismissal with prejudice if it was not "free, calculated and deliberate choice"). Hackett v. Barnhart, 475 F.3d 1166, 1172 (10th Cir. 2007)(quoting Kiowas Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998). In re Graves, 609 F.3d 1153, 1156 (10th Cir. 2010); See Braunstein v. McCabe, 571 F.3d 108, 120 (1st Cir. 2009)(giving courts broad discretion in preventing injustice or fairness).

The real issue at stake in this case is one of subject mater jurisdiction. Subject matter jurisdiction also refers to the competency of the court to hear a determine a particular category of cases. Federal district courts have "limited" jurisdiction in that they have no such jurisdiction as is explicitly conferred by federal statute. 3231 et seq.

Thus, given the totality of the claims raised by Marcus in this petition, he expects thie WSupreme Court to determine if the District Court and the Court of Appeals properly exercised the jurisdiction conferred on it by 28 U.S.C. 3231 and 28 U.S.C. Section 1291 respectively , and whether the constitutional prohibition against Double jeopardy, includes within it, the right of the defendant (but not the state) to plead 'collateral estoppel' and thereby preclude proof of some essential element of the state's case found in the defendant's favor.

In conducting harmless error analysis of constitutional violations, including direct appeals and especially habeas generally, the Supreme Court repeatedly ha reaffirmed that "(s)ome constitutional violations...by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they cannot be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("We have recognized a limited class of fundamental constitutional errors that defy analysis by "harmless error" standards.'...Errors of this type are so intrinsically harmful as to require automatic reversal (i.e.. 'affect substantial rights') without regard to their effect on the outcome.") Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)("Although most constitutional error have been held to harmless-error analysis, they will always invalidate the the conviction "(citations omitted).

WHEREFORE, Marcus Williams respectfully moves this Honorable court to grant his application for a Writ of Prohibition.

Date: February 5th 2020

Respectfully Submitted, Marcus Williams

Marcus Williams