NO. 19-7788

ORIGINAL



**IN THE SUPREME COURT OF THE UNITED STATES**

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**ULISES CORRALES VEGA #974626,**

**Petitioner,**

**v.**

**PEOPLE OF THE STATE OF MICHIGAN,**

**Respondent.**

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**On Petition for Writ of Certiorari to the United States Court of Appeals for The Sixth Circuit**

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# PETITION FOR WRIT OF CERTIORARI

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**Ulises Corrales Vega #974626**
***In Propria Persona***
**Chippewa Correctional Facility**
**4269 West M-80**
**Kincheloe, Michigan 49784**

## QUESTION[S] PRESENTED

**I. DID THE PETITIONER RAISE A SUBSTANTIAL CONSTITUTIONAL CLAIM THAT WAS NOT SO PATENTLY FALSE OR FRIVOLOUS AS TO WARRANT SUMMARY DISMISSAL?**

| | |
|---|---|
| Petitioner answers | "yes" |
| The State answers | "no" |
| Reasonable jurists are | "split" |

## LIST OF PARTIES

[X] 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:

ULISES CORRALES VEGA, Petitioner

CONNIE HORTON, Warden, Chippewa Correctional Facility, Respondent

## TABLE OF CONTENTS

## APPENDIXI'S ATTACHED HERETO

A) Order denying the Application for Certificate of Appealability filed in the United States Court of Appeals for the Sixth Circuit. No. 19-1604.

B) Application for Certificate of Appealability filed in the United States Court of Appeals for the Sixth Circuit.

C) Opinion, Order and Judgment, Dismissing the Petition under Rule 4, May 1, 2019.

D) Petition for Writ of Habeas Corpus and Memorandum of Law filed in the United States District Court for the Western District of Michigan on February 16, 2019 No. 2:19-cv-61

E) Michigan Supreme Court, Order denying application for leave to appeal dated; May 1, 2018, case No. 156862.

F) Michigan Court of Appeals Opinion and Order denying application for leave to appeal dated; October 17, 2017 case No. 333143.

## STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its order on October 29, 2019 case No.19-1604 this court has jurisdiction pursuant *to* 28 U.S.C. §1254(1) and 28 USC §2241 (1) to grant a writ of habeas corpus to a prisoner held in violation of the Constitution of the United States.

## TABLE OF AUTHORITIES

**Cases**



**Statutes**

## TABLE OF AUTHORITIES CONT.

**Rules**

## STATEMENT OF THE CASE

Ulises Corrales Vega was convicted January 26, 2016 of one count of second-degree murder, *M.C.L.A. 750.317*, and one count of carrying a dangerous weapon with unlawful intent, *M.C.L.A. 750.226* following a jury trial. Honorable Clinton Canady III, presided in the Ingham County Circuit Court. On February 24, 2016 Judge Canady sentenced Mr. Vega to concurrent prison terms of 300 to 600 months for the second-degree murder conviction and 23 to 60 months for the carrying a dangerous weapon with unlawful intent conviction. The Petitioner was represented by Attorney Eric X. Tomal (47873) in all of the prior proceedings from the preliminary hearing, through sentencing, Mr. Vega timely filed a claim of appeal and Attorney Lee A. Somerville was appointed and timely filed a brief in the Court of Appeals raising the following claim[s].

ISSUE I:

MR. VEGA WAS DENIED DUE PROCESS AND A FAIR TRIAL WHEN THE COURT REFUSED THE REQUEST TO INSTRUCT THE JURY ON MANSLAUGHTER, AND WHEN THE OTHER RELEVANT INSTRUCTIONS WERE NOT GIVEN.

ISSUE II:

MR. VEGA WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE ACCIDENT INSTRUCTION WAS NOT REQUESTED, IN LIGHT OF MR. VEGA'S TESTIMONY THAT HE KILLED THE COMPLAINANT UNINTENTIONALLY, AND THE VOLUNTARY INTOXICATION INSTRUCTION WAS NOT GIVEN IN FULL

ISSUE III:

MR. VEGA WAS DENIED DUE PROCESS AND A FAIR TRIAL WHEN THE JURY REQUESTED HIS TESTIMONY AND MR. MCCONNELL'S TESTIMONY, AND THE COURT PROVIDED MR. MCCONNELL'S TESTIMONY FIRST, WITHOUT ANY INPUT FROM TRIAL COUNSEL AS TO THE PROCESS.

The Petitioner also filed a Standard 4 Supplemental Brief[1] raising the the following constitutional claim.

> ISSUE IV:
>
> DEFENDANT-APPELLANT WAS DENIED EFFECTIVE ASSISTANCE COUNSEL WHEN TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE AND MASTER THE FACTS OF THE CASE THERE BY DENYING DEFENDANT-APPELLANT HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND TRIAL.

On October 17, 2017, the Michigan Court of Appeals affirmed the trial court's conviction of Mr. Vega. *People v Vega,* No. 333143, 2017 WL 4655268, at *1 (Mich. Ct. App. Oct. 17, 2017) (per curiam) Petitioner filed an application for leave to appeal in the Michigan Supreme Court, which denied leave to appeal on May 1, 2018, *People v Vega,* 501 Mich. 1061, 910 NW 2d 282, 2018 WL 2068630.

Petitioner filed an application for a writ of habeas corpus in the United States District Court for the Western District of Michigan, Southern Division pursuant to 28 U.S.C. § 2254, on February 16, 2019. Petitioner substantially raised the same issues as in the prior proceedings. The Constitutionality of his conviction for one count of second-degree murder, *M.C.L.A. 750.317*, and one count of carrying a dangerous weapon with unlawful intent, *M.C.L.A. 750.226.*

The Court issued its Opinion, Judgment, and Order that the Habeas Corpus Petition is DISMISSED WITH PREJUDICE under Rule 4, and declined to issue a Certificate of Appealability or leave to appeal in forma pauperis on May 7, 2019. Petitioner filed a timely Notice of Appeal, May 30, 2019 and request to proceed *in forma pauperis* with the District Court. Petitioner thereafter filed an Application for Certificate of Appealability with the Sixth Circuit. On October 29, 2019 the Application for a Certificate of Appealability, was denied as "Vega's habeas claims were not 'arguably

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[1] A brief filed in propria persona by a defendant pursuant to Administrative Order 2004-6.

valid or meritorious'".

DISCUSSION

Petitioner requested an instruction on a lesser included offense for which there was evidentiary support, and was denied without reason. Upon review, after reweighing the evidence the State Court of Appeals found that "Viewing the jury instructions as a whole, "they fairly presented the issues to be tried and sufficiently protected the defendant's rights". The Supreme Court has made it clear that, regardless of the weight of the evidence, the defendant is entitled to such a charge if the evidence would allow a rational jury to convict him of the lesser offense and acquit him of the greater. *Keeble v. United States* , 412 U.S. 208, 36 L. Ed. 2d 844, 93 S. Ct. 1993 (1973). Petitioner has consistently demonstrated 1) that the state recognizes that the lesser included offense is a necessary lesser included offense. (as is admitted thus the point conceded in the State Court of Appeals Opinion). 2) That he has complied with all required prerequisites for entitlement to such an instruction and to have his claim adjudicated without any procedural bars to review. 3) That the intent element was in serious dispute. 4) That the jury was not given the opportunity to consider his evidence, theory, or line of defense[s] as the lack of, and or erroneous instructions deprived him of such. 5) That his jury, a rational jury could have easily convicted him of the lesser offense and acquitted him of the greater. (He was found not guilty of 1st degree murder, *M.C.L.A. 750.316,* and convicted for 2nd degree murder, *M.C.L.A. 750.317*). 6) That the principals of law as announced in *Beck v. Alabama*, 447 U.S. 625, 65 L. Ed. 2d 392, 100 S. Ct. 2382 (1980), should be extended to a new context where it should apply, in non-capital cases.

Petitioner avers that a lesser included offense is a recognized defense to the greater offense and that all of the prior reviewing courts have continuously failed to adhere to the findings of its own rules and this courts precedence on the subject. The presentation of his instructional error

issue is not so lacking and frivolous as to warrant dismissal under Rule 4, see *United States v. Williams*, 952 F.2d 1504, 1512 (6th Cir. 1991). A refusal to give requested instructions is reversible error only if (1) the instructions are correct statements of the law; (2) the instructions are not substantially covered by other delivered charges; and (3) the failure to give the instruction impairs the defendant's theory of the case. Id. Although a jury instruction "'should not be given if it lacks evidentiary support or is based upon mere suspicion or speculation,'" *United States v. James*, 819 F.2d 674, 675 (6th Cir. 1987) (citation omitted), so long as there is even weak supporting evidence, "[a] trial court commits reversible error in a criminal case when it fails to give an adequate presentation of a theory of defense." *United States v. Plummer*, 789 F.2d 435, 438 (6th Cir. 1986). As a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor. *Stevenson v. United States*, 162 U. S. 313 (1896)

DISCUSSION OF BASIS FOR APPEAL

The United States District Court for the Western District of Michigan, Southern Division dismissed the Petition under Rule 4 without requiring the state court record to be filed, service upon respondents or a response. Petitioner raises his argument directly in line with the 2d Circuits reasoning in reaching it's holding in *Cuadra v. Sullivan*, 837 F.2d 56 (2d Cir. 1988), with reference to *Anders v. California, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967).*

"The thrust of *Habeas Rule 4*, however, is that the court is to order a summary dismissal without requiring a response only when the petition is "frivolous." *Habeas Rule 4* Advisory Committee Note. A legal point that is arguable on its merits is by definition not frivolous. *See Anders v. California, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967).* Thus, *Habeas*

*Rule 4* does not contemplate that the court will, without requiring a response from the custodian or otherwise ordering some supplementation of the record, decide a petition on its merits when there is any constitutional claim that, given the facts summarized in the petition, is arguable on its merits. Accordingly, we have ruled that summary dismissal of a habeas petition prior to requiring a response is appropriate only where the petition indicates "that petitioner can prove no set of facts to support a claim entitling him to relief." *Williams v. Kullman, 722 F.2d 1048, 1050 (2d Cir. 1983)*. And where the petitioners are *pro se*, the district court "should review habeas petitions with a lenient eye, allowing borderline cases to proceed." *Id.* In sum, the "*sua sponte* dismissal of *pro se* prisoner petitions which contain non-frivolous claims without requiring service upon respondents or granting leave to amend is disfavored by this Court." *Moorish Science Temple of America, Inc. v. Smith, 693 F.2d 987, 990 (2d Cir. 1982)*.

In determining whether a stated claim is arguable on its merits, the court must take care to recognize that a determination that a petition does not plainly reveal a right to relief is not, logically, the same as a determination that a petition plainly reveals the absence of a right to relief. A petition that itself reveals the petitioner has no right to relief may properly be regarded as presenting no arguable claim and hence as frivolous. A petition that is not so self-defeating, however, need not, in order to escape instant dismissal, show to a certainty or even to a probability that a constitutional violation has occurred; it is sufficient that the facts pleaded "point to a 'real possibility of constitutional error.'" *Habeas Rule 4* Advisory Committee Note. When the petition presents such a possibility, the district court should not dismiss without requiring a response from the respondent or taking other action to allow development of the record.

This framework for review of the petition itself does not mean, of course, that the court

could not properly grant a motion by the respondent to dismiss on the pleadings or a motion for summary judgment on the basis of a somewhat more developed record. It means merely that when a petition alleges a claim of constitutional dimension that is arguable on its merits, the petitioner should normally be given some chance to argue it.

In the present case, Vega's petition plainly asserts several claims of constitutional magnitude, to wit, the denial of instructions on the lesser included offense of manslaughter, on accident, and the infirm intoxication instruction, denial of effective assistance of counsel, and the constructive denial of counsel. The magnitude of these constitutional claims is that they have denied Mr. Vega the right to present a meaningful defense, the right to a fundamentally fair trial, and have resulted in a miscarriage of justice. While reasonable jurist could agree with the district court's evaluation that Vega's claim on the evidence surrounding the sword might seem frivolous on its face, "the claims of ineffective assistance of counsel, [the constructive denial of counsel] and error in the jury charge seem plainly arguable on their merits. *Cuadra v. Sullivan*, 837 F.2d 56 (2d Cir. 1988)."

Further, there is a common practice in Michigan whereby Petitioners file their Petitions or a mixed Petition and then seek to stay the Petition and hold the proceedings in abeyance. This practice is regularly used, acknowledged and employed by petitioners and the District Court alike. This is due to the strict deadline that the statute of limitations imposes under the *A.E.D.P.A.,* coupled with Petitioners exploring the availability of other claims to be raised in a Motion for Relief of Judgment in accordance with MCR 6.500 et seq. The error of dismissal under Rule 4 should be corrected due to reliance on this Policy/Practice as this prejudices Petitioner in any future presentations of Constitutional Claims seeking redress. This will prevent a fundamental miscarriage of justice and is in line with the "in the interest of justice" standard.

## CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this petition for writ of certiorari, order responsive pleading, and or briefing. Or issue the Writ of Habeas Corpus, or any other relief that this Court deems equitable.

Respectfully Submitted,

Date: January 26, 2020

s/ _____

Ulises Corrales Vega #974626
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