

No. 19-7805

Supreme Court, U.S.
FILED

DEC 13 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Shavis Holloman — PETITIONER
(Your Name)

vs.

Harold Clarke — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shavis Holloman
(Your Name)

Red Onion State Prison P.O. Box 970
(Address)

Pound, Virginia 24279
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether defense counsel Misrepresentation of "use immunity" as transactional immunity" fell below an objective standard of reasonableness of a competent attorney in felony cases?

2. Was Mr. Holloman "ambiguous language" set in his immunity agreement a violation to his constitutional rights where he was subject to no benefit from the employer language?

3. Does defense counsel filed motions and arguments of "immunity" which entitling Holloman to deny a plea offer constitute ineffective assistance of counsel which the ~~plea~~ plea was tainted by bad advice?

4. Was Holloman constitutional rights violated when the courts deny Holloman motion to stay his August 22, 2010 incident separately from his September 17, 2010 incidents were there was no common scheme or plan and was weeks apart.

5. Was Mr. Holloman sixth amendment right violated when the courts denied Holloman hearsay objection to a "prepared" note book prepared by some unidentified individual who asserted that Holloman was a general in the unit they hang?

6. Was Holloman constitutional rights violated when a motion to strike the cause # rejected Hampton Police detective, where the reasonable doubt about the impartiality was not resolved in the favor of the accused?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

1. Circuit Court of the City of Hampton, Hampton Virginia
2. Virginia Court of Appeals
3. Virginia Supreme Court
4. United States District Court of the Eastern District of Virginia.

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TABLE OF AUTHORITIES CITED

CASES

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O'Neil v. Osborne, 706 F.2d 498 (4th Cir) 1983	
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Santobello v. New York, 404 U.S. 257, 267 (1971).	
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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 E 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 United States district court appears at Appendix D to the petition and is

☐ reported at _____; 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 C 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 Virginia Court of Appeals court appears at Appendix B to the petition and is

☐ reported at Holloman v. Commonwealth (2015); 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 Oct 25, 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: _____, 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. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was May 19th 2016
A copy of that decision appears at Appendix March 6th 2018 C.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Statutory And Constitutional Provisions are involved in this case.

U.S. Const. Amend VI

IN ALL CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

U.S. Const. Amend. XIV

SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

Constitutional And Statutory Provisions involved

28. U.S.C. § 2254

(A) The Supreme Court, a Justice thereof, a Circuit Judge, or a district Court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state Court shall not be granted unless it appears that --

(A) the applicant has exhausted the remedies available in the Courts of the state; or

(B)(i) there is an absence of available state corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the Courts of the state.

(3) A state shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the state, through counsel, expressly waives the requirement.

CONT

Constitutional And Statutory Provisions involved

- (C) An Applicant shall not be deemed to have exhausted the remedies available in the Courts of the State, within the meaning of this Section, if he has the right under the law of the State to raise, by any available procedure, the questions presented.
- (D) An application for a writ of Habeas Corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim --
- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or
 - (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.
- (e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, a determination of a factual issue made by a state court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

Court

Constitutional And Statutory Provision involved

(2) If the Applicant has filed to develop the factual basis of a claim in State Court Proceedings, the Court shall not hold an Evidentiary Hearing on the claim unless the Applicant shows that ..

(A) the claim relies on ..

(i) A new Rule of Constitutional Law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) A factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(P) If the Applicant challenges the sufficiency of the evidence adduced in such State Court Proceeding to support the state court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the state shall produce such part of the record and the federal court shall direct the state to do so by order directed to an appropriate state official. If the state cannot

Cont

Constitutional And Statutory Provisions Involved

Provide Such Relevant Part of the Record, then the Court shall determine under the existing facts and Circumstance what weight shall be given to the state Court's factual determinations.

(G) A copy of the official Records of the state Court duly Certified by the Clerk of such Court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the state Court shall be Admissible in the federal Court Proceeding.

(h) Except as provided in Section 408 of the Controlled Substance Act, in all Proceedings brought under this Section, and any subsequent Proceeding Review, the Court may Appoint Counsel for an Applicant who is or becomes financially unable to Afford Counsel, except as provided by a Rule Promulgated by the Supreme Court Pursuant to Statutory Authority. Appointment of Counsel under this Section shall be Governed by Section 3006A of Title 18.

(i) The ineffectiveness or incompetence of Counsel during federal or state collateral Post-conviction Proceedings shall not be a ground for Relief in a Proceeding arising under Section 2254.

STATEMENT OF THE CASE

Mr. Holloman was convicted of Second degree Murder, use of a firearm in the Commission of a Felony (three counts), attempted Robbery, Conspiracy to Rob, gang Participation, and Maiming and was sentenced to a total term to a total term in Prison of life and 63 years by the Circuit Court of the City of Hampton.

The Commonwealth Attorney for the City of Hampton drafted an ambiguous immunity Agreement on April 28, 2011. Court appointed Counsel Gregory Blanchard brought Mr. Holloman the immunity agreement and did not clearly explain its contents or discuss the Constitutional Rights Mr. Holloman was waiving by signing the Agreement. The Document was signed by Mr. Holloman on 5/17/11 and by Counsel on 5/19/11. A Debriefing was set and Mr. Holloman participated in the debriefing on June 1, 2011 where he gave the Commonwealth relevant facts of the charges he was later convicted for, enabling him to testify in his own defense. Mr. Holloman later motioned the Court to substitute Counsel and relieve Mr. Blanchard of his duties as Counsel (January 28th 2013).

Counselor Nicholas Hobbs was appointed to represent Mr. Holloman. On May 16th 2014, Counsel Hobbs met with Mr. Holloman at the Hampton Roads Regional Jail to discuss the contents of Mr. Holloman's immunity Agreement and the Commonwealth Attorney's plea offering.

Statement of the Case

Cont

Mr. Hobbs Advise Holloman that He was entitle to "Blanket immunity" due to the Raw language interpret in his immunity Agreement. Mr. Hobbs advise Holloman that a deal wasnt in his best interest Because He couldn't be Prosecuted and if a Conviction comes the Supreme Court would Reverse the decision within two years.

Counsel filed a Motion to Dismiss And Require specific performance of immunity Agreement. on May 16th 2014. The Circuit Court for the City of Hampton Heard Counsel argument on May 22, 2014. Where the Counsel Argue that Mr. Holloman Immunity Agreement barred him from Prosecution. upon Hearing the defense argument and the Commonwealth Attorney argument the Judge Ruled that the "immunity agreement was poorly written But it was 'use immunity' and not a 'transactional immunity'" As Counsel Argue it to be... the Judge Rule that at no-point should any statement derive from Mr. Holloman Immunity Agreement be use against him in his Trial.

The Commonwealth Attorney Filed a Motion for a Rehearing! The Circuit Court for the City of Hampton Heard the Rehearing on June 23, 2014. Counsel Hobbs again Argue that Mr. Holloman should be granted Require specific performance that the immunity Agreement offer him "Blanket Agreement."

Statement of the Case

On March 6, 2017, the Supreme Court of Virginia issued an order directing the Hampton Circuit Court to conduct an evidentiary hearing and then file its findings of facts with the Supreme Court. The state Circuit Court conducted the evidentiary hearing on July 21, 2017 and thereafter filed its report with the Supreme Court of Virginia. On March 6, 2018, the Supreme Court of Virginia issued an order dismissing Holloman's habeas Petition (Record no. 160934). In its habeas dismissal order, the Supreme Court of Virginia deferred to the factual findings made by the state court.

At no point during trial of Mr. Holloman's case in June of 2014 or during the evidentiary hearing on July 21, 2017 did Mr. Hobbs state or concede that he agreed the immunity agreement was "use immunity" rather than "transactional immunity". Mr. Hobbs acknowledges that at two separate hearings it was concluded by the Circuit Court to be considered "use immunity" however he stated "I explained to him we noted the exceptions and that he had an appeal right if the trial went unfavorably to him. He had grounds at that point. Mr. Hobbs himself agreed at the evidentiary hearing that he never conceded that Mr. Holloman was granted "use immunity" rather than "transactional immunity" (Ev. Hg Transcript p. 240 lines 4-8). The Supreme Court of Virginia dismiss Mr. Holloman's claims under both the performance and "Prejudice" prongs of the two-part test in *Strickland vs. Washington*, 464 U.S. 668 (1984).

Statement of the Case

Mr. Holloman then filed a timely appeal to the United State District Court for the Eastern district of Virginia.

Holloman claim that the Virginia Supreme Court Adjudication Resulted in a decision that was Contrary to, or involved An unreasonable application of, clearly established federal law, as determine by the Supreme Court of the United States.

The United State Magistrate Judge adopted the Virginia Supreme findings in his Report and Recommendation file on 1/4/19.. The magistrate Judge Report & Recommendation claim Mr. Holloman file to overcome the two-part Strickland test

Mr. Holloman then filed An objection to the United States Magistrate Judge Report And Recommendations. Holloman Respectfully submitted that the Magistrate Judge erred (1) by improperly determining that Petitioner was not prejudiced within the meaning of Strickland (2) refused to consider the fact that Trial Counsel interpretation of the agreement was erroneous, and (3) improperly determined that Trial Counsel was not deficient within the scope of Strickland.

After making a de novo Review the United State District Judge for the Eastern district of Virginia Arendia L. Wright Allen Adopted and approve the findings and Recommendations set fourth in the Report and Recommendation. Filed March 12th, 2019

cont

Statement of the Case

Mr. Holloman then filed a timely notice of appeal and an application for a Certificate of Appealability to the United States Court of Appeals for the Fourth Circuit.

Mr. Holloman made "a Substantial Showing of the denial of a Constitutional right by demonstrating that a Jurist of Reason could disagree with the district court resolution of his Constitutional claims or that Jurist could conclude the issues presented are adequate to deserve encouragement to proceed further."

The United States Court of Appeals ultimately concluded that Holloman has not made the requisite showing, accordingly, denying a Certificate of Appealability, denying leave to proceed in forma pauperis and dismissing the appeal. They also dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and ~~the~~ any argument would not aid the decisional process.

REASONS FOR GRANTING THE PETITION

The United States District Court for the Eastern District Misapplied the Strickland v. Washington, 466 U.S. 668, 687-88 (1984) two-part test. The Court's flagrant misstatement of the record. They say Mr. Hobbs understood the immunity agreement offer "use immunity" and would undoubtedly contradict Mr. Hobbs' steadfast arguments pre-trial and throughout that Mr. Holloman was offered transactional immunity! Mr. Hobbs had a Constitutional duty to know the difference between a "use immunity" and a transactional immunity and being to bear such skill and knowledge that will render the trial a reliable Adversarial testing Process. Strickland v. Washington 466 U.S. at 667.

Mr. Hobbs' interpretation fell below an objective standard of reasonable and showed his ignorance to contract law. Satisfying the first prong in Strickland. Holloman presented substantial evidence that Mr. Hobbs indeed believed he was offered a transactional immunity and wanted to preserve it for the appeal courts. The lower courts rejected Holloman's evidence relying solely on Counsel testimony clearly construing the interpretation of Strickland v. Washington, 466 U.S. 668-688 (1984). The courts suggested that the evidence against Mr. Holloman was overwhelming and therefore Mr. Hobbs' advisement of the immunity agreement to Mr. Holloman would have made no difference. This conclusion is likewise an unreasonable interpretation of Strickland and its progeny Williams v. Terry, 529 U.S. 362 (2000), emphasizes that in determining

Reason for Granting the Petition

Strickland Precedence, the Court must examine both the trial testimony and the Post Conviction evidence to determine whether, had omitted evidence been presented there is a reasonable probability of a different outcome.

It's undoubtly that the results of the immunity agreement being presented as a "transactional immunity" would had been different from being presented as a "use immunity". Bad advice is as much effective as good advice if a defendant relies on that bad advice to be the truth.

In *North Carolina v. Alford* 400, U.S. 25 9/15/70 (1970). The Court found that Counsel Advice to Alford to plead guilty, where there was strong evidence of guilt, was not only indicative of voluntariness but of Attorney competence. Mr. Hobbs Pre-trial Motion is substantial evidence of the competence of his knowledge in regards to Mr. Holloman's immunity agreement. Hobbs recognized as a Jurist, was Privy to Principles of Contract law of which is beyond the grasp of Holloman and advise him wrongly. Holloman was deprived of a benefit every defendant in America is afforded, the professional skill of Counsel within the range of competence demanded of Attorneys in Criminal Cases, where as Hobbs determination of the phrase was unreasonable and devoid of the competence that reflects professional deliberation.

If Hobbs was a competent Attorney and understood that Holloman was offered "use immunity" then he deprived Holloman of the duty of loyalty and acted in-favor of adverse interest thus abandoning him in the midst of significant Prosecution forces.

Reasons for Granting the Petition

The advice of Hobbs to forego the guilty plea amounted to Renunciation of his Role as Holloman's Agent leaving him without the Assistance of Competent/Effective Counsel rendering the Judicial Process fundamentally unfair.

~~See~~ *Osborne v. Osborne*, 706 F.2d 498 (4th Circuit). Teaches when a defendant is grossly misinformed by his Attorney and relies on that he is deprived of his Constitutional Right to Counsel. Mr. Holloman contends that his not guilty plea and rejection of a 20 year plea deal was entered involuntarily and unintelligently because it was induced by gross misinformation of his Counsel concerning his "immunity agreement".

Strader v. Garrison, 511 F.2d 61, 65 (4th Cir. 1979) Teaches that if defendant relies on such misinformation in reaching his decision to plea guilty or not guilty then he has been deprived of his Sixth Amendment Right.

Comparing Holloman's Allegations to the Record, Mr. Holloman's claim is not patently false or frivolous and the Virginia Supreme Court and the United States District Court for the Eastern District and the Court of Appeals for the Fourth Circuit has clearly abided by actual findings that are contrary to the United States Supreme Court findings.

Reasons for Granting the Petition

the Virginia Supreme Court's Prejudice determination was unreasonable insofar as it failed to evaluate the totality of the available mitigation evidence that was adduced in the Holloman Habeas Proceeding and reweighing it against the evidence in aggravation. This error is apparent in its consideration of the additional mitigation evidence developed in the postconviction Proceedings...

Because the United States District Court for the Eastern District and the United States Courts of Appeals for the Fourth Circuit truncated the scope of *Sherickland v. Washington*, 466 U.S. 668, 687-88 (1984) Prejudice review, this Court must Grant Petitioner

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shawn Hillman

Date: December 12th 2019.