

No. 19-7847

~~ORIGINAL~~

Supreme Court, U.S.
FILED

FEB 21 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Lee Dewane Watts — PETITIONER
(Your Name)

vs.

State of Tennessee — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tennessee Court of Criminal Appeals at Nashville
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lee Dewane Watts
(Your Name)

South Central Correctional Facility
555 Forest Ave., P.O. Box 279
(Address)

Clifton, TN 38425
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

Question #1: Whether petitioner's original trial counsel rendered ineffective assistance of counsel in violation of U.S. Const. Am. 6 when counsel failed to pursue suppression of Petitioner's confession because Petitioner invoked a request for counsel during Petitioner's police interview, and because he requested to end all questioning.

Question #2: Whether the Tennessee Court of Criminal Appeals decided an important federal question in a way that conflicts with *Fare v. Michael C.*, 442 U.S. 707 (1979); *Lufkin v. Solem*, 716 F.2d 532 (8th Cir. 1983); *Michigan v. Mosely*, 423 U.S. 96 (1975); *Powell v. Alabama*, 287 U.S. 45 (1932); *Smith v. Dugger*, 911 F.2d 494 (11th Cir. 1990); *Smith v. Wainwright*, 777 F.2d 609 (11th Cir. 1985); *State v. Bailey*, 889 P.2d 738 (Kan. 1995); *State v. Wright*, 477 A.2d 65 (N.J. 1984); and *U.S. v. DeCoster*, 487 F.2d 1197 (D.C. Cir. 1973).

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:

RELATED CASES

Lee Dewane Watts v. State of Tennessee, Case No. M2018-01379-CCA-R3-PC, Court of Criminal Appeals at Nashville (8/21/2019).

State v. Lee Dewane Watts, Case No. M2015-02404-CCA-R3-CD, Court of Criminal Appeals at Nashville (1/19/17).

Montgomery County Circuit Court, Case No.s 63 CCI-2013-CR-712.

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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 _____ 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 _____ 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 A 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 Montgomery County Circuit court appears at Appendix B 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 _____.

☐ 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 12/5/2019. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Am. 5: Right to remain silent, and protection from being compelled to provide evidence against an accused's self.

U.S. Const. Am. 4: id.; Right to Remain silent.

U.S. Const. Am. 6: Right to have counsel present during questioning.

Statement of the Case

Appellant Lee Dewane Watts was placed on trial for the offenses of First Degree Murder and Especially Aggravated Robbery. The jury trial began on August 24, 2015 and concluded on August 27, 2015 with Mr Watts being convicted as charged.

At sentencing, the trial court sentenced Mr. Watts to serve life imprisonment for the murder conviction (which equates to 60 years in Tennessee) and twenty-five years for the Especially Aggravated Robbery conviction, for a total of eighty-five years in the TDOC because the sentences were ordered to run consecutively.

Appellant Watts appealed the Montgomery County Circuit Court's decision to the Court of Criminal Appeals of Tennessee at Nashville, which upheld his judgments on January 19, 2017, *State v. Lee Dewane Watts*, No. M2015-02404-CCA-R3-CD (Tenn. App. Nashville, Jan 19, 2017), perm. App. den. May 18, 2017.

Appellant subsequently filed a timely post-conviction petition on June 21, 2017. After an evidentiary hearing, the Trial Court of Montgomery County handed down a decision denying post-conviction

relief, and Appellant appealed once again to the Tennessee Court of Criminal Appeals at Nashville. ^{Watts v. State,} No. M2018-01379-CCA-R3-PC (Tenn. Crim. App., Nashville, Aug. 21, 2019), perm. app. denied (Tenn. Dec. 5, 2019).

This current appeal is now being timely filed before this Honorable Court, and the Facts relevant to the issues presented are as follows. Unless otherwise noted, these facts come from attached Appendix A, with citation to its page numbers.

1. "Relevant to the victim's murder, the evidence... shows that on the night the victim was beaten, the [Appellant] came and went from her apartment multiple times to obtain money to buy drugs." (p.2).

2. "Several witnesses smoking crack cocaine with the [Appellant] that night testified that he left their group and said he was going to his mother's house for more money." (p.2).

3. "The [Appellant] and the victim were the only two people with access to her apartment and there were no signs of forced entry." (p.2).

4. "When questioned by police, the [Appellant] admitted to hitting the victim with the hammer multiple times..." (p.2).

5. "Relevant to the robbery, witnesses testified that the [Appellant] left the group multiple times that night, saying he was going to the victim's apartment, and each time he returned with more money and purchased more drugs. (p. 2).

6. When the Appellant talked to investigators, he said:

"I would like to stop with the questioning, I need some legal guidance. I would like to talk to my pastor for some legal advice." (p. 7).

7. The Tennessee Court of Criminal Appeals opined: "We agree with the post-conviction court that the petitioner's request to speak with his pastor for legal advice was not an unequivocal invocation of his right to counsel." (p. 7).

8. "Because the petitioner did not unequivocally invoke his right to counsel, no basis existed to suppress the statement, even if trial counsel had moved to do so. The petitioner has thus failed to show that trial counsel performed deficiently by failing to seek suppression of the statement or that he was prejudiced by trial counsel's conduct."

Reasons For Granting The Petition

In the "Rules of the Supreme Court of the United States" book that Appellant received from the Supreme Court Clerk, Rule 10 (on p. 5) states that "[a] petition for a writ of certiorari will be granted only for compelling reasons."

Appellant's compelling reason is as follows:

The Tennessee Court of Criminal Appeals at Nashville, on post-conviction appeal, decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court. (See Appendix A).

A

The Statement At Issue

"I would like to stop with the questioning."
(See #6 Above)

B

The Court of Criminal Appeals' Statement At Issue

"Because the petitioner did not unequivocally invoke his right to counsel, no basis existed to suppress the statement, even if trial counsel had moved to do so."
(See #8 Above)

C

The U.S. Supreme Court Decision At Issue

Michigan v. Mosley, 423 U.S. 96, 104 (1975) (A suspect's right to terminate police interrogation must be scrupulously honored).

D

Other Supporting Cases

U.S. v. DeCoster, 487 F.2d 1197 (D.C. Cir. 1973) (recognizes that even the best attorney can render ineffective assistance of counsel, sometimes for reasons totally beyond his control. (id. @ 1202, fn. 20).

Strickland v. Washington, 466 U.S. 668, 693 (1984) (To prove ineffective assistance of counsel, a petitioner must prove that the advice given, or the services rendered by the attorney, are not within the range of competence demanded of attorneys in criminal cases, and that counsel's deficient performance actually had an adverse effect on the defense).

E

Argument

With regard to the instant case, the averred error of both the Court of Criminal Appeals and

Defense Counsel at trial is so obvious that even the most inexperienced attorney should have seen it. To wit: When Appellant asked to stop with the questioning (#6, supra.), that was the milestone that should have suppressed all statements thereafter. It mattered not whether the Petitioner did or did not ask for counsel; he didn't want to talk any longer, which nullified any waiver of rights form he may have signed. (Michigan v. Mosley, supra.). (U.S. Const. Am. 4 and 5).

Any Appellate Court Judge would have immediately recognized this constitutional violation because it was more obvious than Attorney Pinocchio telling his client multiple falsities in a well-stocked glass shop filled with crystalline niceties. In other words, how do you not catch such an egregious and flagrant error and allow a conviction to stand knowing that an accused's constitutional rights have been violated?

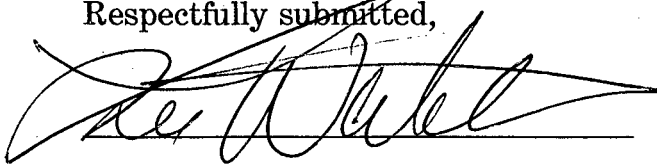
Petitioner contends that the Tennessee Court of Criminal Appeals should have recognized this constitutional error on its own accord as "Plain Error," even if Defense Counsel did not raise the error properly during the post conviction evidentiary hearing. In any event, this

Honorable Court should find that Trial Counsel was ineffective for failing to have Appellant's statements suppressed under U.S. Const. Am 4 and 5 (right to remain silent and to not be a witness against himself); that post-conviction counsel was ineffective at the post-conviction hearing for failing to argue the issues contained herein; that post-conviction counsel's ineffectiveness should serve as "cause" to excuse any procedural defaults; and that the Court of criminal appeals should have recognized these errors as plain error on its own accord. (Violations of U.S. Const. Am. 4, 5, and 6).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-20-2020