No. 19-8139

ORIGINAL

Supreme Court, U.S.
FILED
MAR 16 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Douglas Duran Cerritos — PETITIONER
(Your Name)

vs.

United States America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Douglas Duran Cerritos
(Your Name)

FCI-Talladega - PMB 1000
(Address)

Talladega, Alabama, 35160
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Fourth Circuit commit errror by not granting Mr. Cerritos a COA under 28 U.S.C. §2253 (c)(2), after the denial of his 28 U.S.C. §2255 motion: when his trial counsel failed to request the court to submit Mr. Cerritos to a psychiatric evaluation, when Mr. Cerritos demonstrated aberrant behavior, before trial, due to his immature age of 18 years old ?

2. Under Miller v. Alabama, 567 U.S. 460 (2012), the Eight Amendment prohibits sentencing a juvenile convicted of homicide to a mandatory life sentence wihout parole. Did the Fourth Circuit commit error when it denied Mr. Cerritos a COA, under 28 U.S.C. §2253 (c)(1), after the denial of his 28 U.S.C. §2255 motion: when he is claiming that his trial counsel was deficient when it did not request the court to consider the imposition of a life sentence on him as an 18 year old ?

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:

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

OTHER

CASES:

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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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

[ ] reported at Unpublished; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is

[ ] reported at Unpublished; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Dec. 17, 2017.

[x] 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 _____. 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 constitutional and statutory provisions involved in this case involve the Fifth and Sixth Amendment, and the Fourteenth Amendment of due process.

STATEMENT OF THE CASE

On June 25, 2015, a grand jury in the Eastern District of Virginia returned a superseding indictment charging Mr. Cerritos with two counts of murder in aid of racketeering, in violation of 18 U.S.C. §1959 (a)(1). One Count was prematurely dismissed, and Mr. Cerritos, upon advisement of counsel, proceeded to trial by jury on September 19, 2016 - on one sole count of murder in aid of racketeering.

At trial, the government established that Mr. Cerritos, who had just turned 18, was a member of the Northern Virginia clique of the MS-13 gang and had participated in the murder of Gerson Adoni Aguilar, a fellow gang member who had disobeyed gang rules.

After a four day trial, the jury found Mr. Cerritos guilty of one count of murder in the aid of racketeering.

On December 16, 2016, Mr. Cerritos was sentenced to LIFE imprisonment without the possibility of parole. Mr. Cerritos appealed his conviction and sentence to the Fourth Circuit Court of Appeals, arguing that there was insufficient evidence to prove that he was a member of a criminal enterprise engaged in interstate commerce or that he knowingly participated in the murder and that his life violated the Eight Amendment. United States v. Cerritos, 706 F. App'x 113, 114 (4th Cir. 2017). The Fourth Circuit affirmed his conviction and sentence. Id. at 115.

On July 17 2018, Mr. Cerritos filed a 28 U.S.C. §2255 motion with the Eastern District of Virginia, alleging ineffective assistance of counsel claims; particularly, asserting that trial

counsel failed to request the court to submit Mr. Cerritos to a psychiatric evaluation, due to his lucid and irrational behavior during the commission of the crime and his decision making in proceeding to trial.

On April 25, 2019, the district court denied Mr. Cerritos 28 U.S.C. §2255 motion.

On July 25, 2019, Mr. Cerritos filed a request for a COA, under 28 U.S.C. §2253 (c)(2), with the Fourth Circuit Court of Appeals. On December 17, 2019, the Fourth Circuit denied Mr. Cerritos a COA, under 28 U.S.C. §2253 (c)(2).

This writ of certiorari follows the denial of Mr. Cerritos' COA by The Fourth Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

1. Mr. Cerritos' ineffective assistance of counsel claims, as initially presented in his 28 U.S.C. §2255, revolve around the premise that he communicated to his trial counsels that he was suffering from psychological maladies during the commission of the offense, and to request a competency hearing before trial. He also claims, that he requested his appellate attorney to raise this specific issue.

Although there is no verifiable evidence to support Mr. Cerritos' claims, because they are not part of the record, this court needs to be fully aware that Mr. Cerritos was only a juvenile, who had barely turned 18, and did not know what the ramifications would be for choosing to proceed to trial, or why he had participated in such a horrendous crime of murder.

Up to this juncture, Mr. Cerritos continues to hear voices, suffer from depression and anxiety, and still has not received a psychiatric evaluation.

Mr. Cerritos' assertion that both of his counsels were constitutionally ineffective should have, at least, amounted to an evidentiary hearing by the district court to determine whether Mr. Cerritos has been prejudiced by the performance of his trial and appellate counsels. Essentially, since the test for competency to stand trial is established under the premise that: 'It is not enough for the district judge to find that the defendant is oriented to time and place and has some recollections of events, but that test must be whether he has

sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402 (1960); see also, Pate v. Robinson, 383 U.S. 375, 378 (1966)("It is axiomatic that the conviction of an accused person while he is legally incompetent violates due process and that states must implement constitutionally adequate procedures to protect this right.")

Mr. Cerritos avers, that McCoy v. Louisiana, 138 S. Ct. 1500, 200 L. ed. 2d 821 (2018), supports his ineffective of counsel assertion. see also, Florida v. Nixon, 543 U.S. 175, 187 (2004)(citing Taylor v. Illinois, 484 U.S. 400 (1988)(counsel has a duty to consult with their client regarding important decisions.)

Although Mr. Cerritos must ordinarily show prejudice under Strickland v. Washington, 466 U.S. 668 (1984), the issue of being deprived adequate assistance as to a request for a psychiatric evaluation before proceeding to trial, constitutes a structural error per se. Evidently, since he had barely turned 18 years of age when the offense was committed and the decision to proceed to trial was made, upon the adamant advisement of counsel; when Mr. Cerritos was suffering from mental issues.

The ramifications of such action has consequently left Mr. Cerritos with a LIFE sentence without the possibility of parole. Absent counsels' error, Mr. Cerritos could have pleaded guilty and received a diminished sentence other than LIFE; or in the alternative could have raised the following issue on appeal:

Whether it is constitutional to sentence a mentally disturbed 18 year-old defendant to LIFE without the possibility of parole, without a psychiatric evaluation. see Arizona v. Fulminante, 499 U.S. 279, 310 (1991)(Structural error affects the framework within the trial proceedings, as distinguished from a lapse or flaw that is simply an error in the trial process itself.")

The government has argued, and the district court agreed, that Mr. Cerritos could not raise the issue that his trial counsel was ineffective for failing to request the court to call an expert to determine Mr. Cerritos competency to stand trial.

The trial record omits the fact that Mr. Cerritos and his trial attorney often had heated disagreements regarding the objectives of his case. Also that it was difficult for Mr. Cerritos to make an informed decision of whether to proceed to trial or to plead guilty when he was suffering from mental maladies, as previously asserted. Further, this court must note that during those legal decisions Mr. Cerritos was only a juvenile who had just turned 18, without formal education and limited english proficiency.

During trial, Mr. Cerritos was provided an interpreter, yet he still had difficulty understanding the legal intricacies of his case and offense. After trial, Mr. Cerritos asserts, that his trial attorney also did not want him to appeal his conviction and sentence, because he told him he could end up receiving the death penalty.

Mr. Cerritos humbly requests this Supreme Court to grant him certiorari and remand his case back to the district court to have an evidentiary hearing on whether counsels were ineffective by

not following Mr. Cerritos' specific instructions to submit him to a psychiatric evaluation, before proceeding to trial, among other things.

2. As to the issue of whether Mr. Cerritos' trial counsels were ineffective for failing to request the district court to strictly adhere to Miller v. United States, 567 U.S. 460 (2012) as an 18 year-old defendant, during sentencing and on appeal, it also constitutes ineffectiveness under the Sixth Amendment.

(i) Does United States v. Miller applies to 18 year-old defendants?

In this instance, Mr. Cerritos committed his offense 31 days after he had turned 18 years of age. Although, Roper v. Simmons, 543 U.S. 551 (2005), and Miller v. Alabama, 567 U.S. 460 (2012), referenced a drawing line at 18 years of age, to divide between juvenile defendants from adults when considering developmental differences under the Eight Amendment, Mr. Cerritos contends that those cases also explained that drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules, for the qualities that distinguish juveniles from adults do not disappear when an individual turns 18. Id. Miller, Roper.

Mr. Cerritos asserts, that Roper and Miller must be extended to 18 years old; particularly, since those 18 year-old defendants are still exhibiting immature and undeveloped mental faculties. At this time, there is at least one district court which has

ruled in the affirmative, that a mandatory LIFE sentence without the possibility of parole cannot be constitutionally imposed on an 18-year old. see Cruz v. United States, No. 11-cv-787 (JCH) 2018, U.S. Dist, Lexis 52924, 2018 WL 1541898 (D. Conn. Mar, 29, 2018)

Further, an amicus curiae brief filed in Miller, supra, stated, that 'studies have consistently confirmed that gains of impulse control continue into young adulthood, and skills required for future planning continue to develop until the early 20's. Id. Miller, p. 6-13 (expecting the experience-based ability to resist impulses ... to be fully formed prior to age eighteen or nineteen would seem on present evidence to be wishful thinking.") Id.

Mr. Cerritos was convicted of a homicide, but retribution cannot justify treating him as an adult, for 'the heart of retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender'. Graham v. Florida, 560 U.S. 48, 71 (2010)

The mandatory LIFE sentence imposed on Mr. Cerritos is distinguishable from Graham and Miller, because both of those cases were individualized by the Supreme Court. Had Mr. Cerritos committed the offense of homicide 31 years ago, he would not have been prosecuted in federal court, but rather in the State, affording him the ability to receive parole.

(ii) Miller does not preclude relief to 18-year old defendants:

As previously noted, Miller does not infer by negative implication that the Miller court also held that the mandatory LIFE without parole is necessarily constitutional as long as it is applied to those defendants who are 18 years old. The Miller opinion contains no statement to that effect. Nothing suggests that courts are prevented from finding that the Eight Amendment prohibits mandatory LIFE without parole for those who are 18 years of age.

Further, the standard of unusual and cruel punishment standard requires that "punishment for a crime should be graduated and proportioned to the offense." Roper, 543 U.S. at 560.

Mr. Cerritos' case presents a set of facts the Supreme Court has not considered as of yet. The Supreme Court can consider the same factors considered in Roper, Graham, and Miller, with the only exception that under a national consensus, a directional trend, and scientific evidence, that the rule in Miller can extend to an-18 year old defendant; but not to anyone older than that specific age.

A. NATIONAL CONSENSUS:

The decision in Roper, Graham, and Miller, all address 'whether objective indicia of society's standards, as expressed in legislative and state practice', do show a 'national consensus' against a sentence for a particular class of invididuals. Id. Miller, 567 at 482 (quoting Graham, 560 U.S. at 61)

In Roper, the Supreme Court identified three 'objective indicia of consensus' in determining the societal standards which consider the juvenile death penalty to be cruel and unusual: 1] the rejection of juvenile death penalty in the majority of states; 2] the infrequency of its use even where it remains on the books; 3] the consistency in the trend toward abolition of the practice." Roper, 543 U.S. at 567.

Mr. Cerritos asserts, that beyond the context of statutes pertaining specifically to mandatory LIFE imprisonment without the possibility of parole, states have enacted a number of statutes providing greater protections of offenders ages 18 into their early 20's. For instance, a number of states do recognize an intermediate classification of 'youthful offenders' applicable to some other crimes. (18-year old defendants are classified as 'youthful offenders' in California, Colorado, Florida, New Mexico, and New York.)

Mr. Cerritos also identifies 16 states that provide protections, such expedited expungement, youth offender programs, separate facilities, or extended juvenile jurisdiction, for offenders who are 18 years old, depending on the state. see e.g., Cal. Penal Code §3051 (a)(10) (providing a youthful offender parole hearing for prisoners under the age of 25; Va. Code Ann. §19-2-311 (B)(1) (permitting persons convicted of non-homicide offenses under the age of 21 to be committed to a states facility for youth offenders in lieu of any other penalty provided by law.)

Although these protections often do not apply to youthful offenders who commit the most serious crimes, such as the one Mr. Cerritos has been convicted under, these statutes nonetheless indicate a recognition of the difference between 18 year-old defendants and younger offenders for purposes of criminal culpability. So the issue here is whether a national consensus exist as to the practice of sentencing 18-year old defendants to mandatory LIFE without the possibility of parole, without affording those defendants 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation'. Id. Miller (quoting Graham v. Florida, 560 U.S. at 75)

Mr. Cerritos also points to a 2017 Report by the United States Sentencing Commission on offenders ages 25 or younger who were sentenced in the federal system during a five year period. see [Youthful Offenders in The Federal System, Fiscal Years 2010 to 2015](Youthful Offenders).

In this Report the Sentencing Commission reported that 86,309 youthful offenders (age 25 and under) were sentenced in the federal system during the five-year period. Of those: 2,226 (2.6 %) were 18 years old; 5,800 (6.7 %) were 19 years old; 8,809 (10.2 %) were 20 years old.

Of the 86,309 youthful offenders, 96 received LIFE sentences. Of those 96, 85 were 21 years or older at the time of sentencing, 6 were 20 years old, 4 were 19 years old, and only one was 18 years old.

Although the Sentencing Commission's findings are imperfectly tailored to the question before this court, they nonetheless

indicate the rarity with which LIFE sentences are imposed on 18 year-old defendants; defendants, such as Mr. Cerritos, at least, in the federal system.

B. DIRECTIONAL TREND:

Mr. Cerritos also points out to evidence of trends since the Roper Supreme Court decision. This trend indicates a direction of change that 'late adolescents require extra protection from the criminal law', and more generally that society 'treats eighteen year-old defendants as less than fully mature'.

While Roper emphasized that society draws a line at age 18 for many purposes, including the right to vote, to serve on juries, and to marry without parental consent, Mr. Cerritos identifies other important societal lines that are drawn at 21, such as drinking alcohol, etc.

Under the same directional trend, the American Bar Association ("ABA") issued a resolution in February 2018, "urging each jurisdiction to prohibit imposing a death sentence or execution of any individual who was 21 years or younger at the time of the offense." ABA Resolution.

In doing so, the ABA considered both increases in scientific understanding in adolescent brain development and legislative developments in the legal treatment of individuals in late adolescence. Id. pg. 6-10.

While there is no doubt that some important societal lines remain at age 18, they still need to be treated differently than mature adults.

C. SCIENTIFIC EVIDENCE:

The court in Roper, Graham, and Miller, examined the available scientific and sociological research to identify the differences between juveniles under the age of 18 and fully mature individuals that undermine the penological justifications for the sentence in question. Because of these differences, the Supreme Court concluded that juveniles are less culpable for their crimes than adults and therefore the penological justifications for the death penalty and LIFE imprisonment without the possibility of parole apply with less force to them than adults. The same rational must be applied to 18-year old defendants.

This Court should extend the Miller decision to 18-year old defendants. Defendants who are 18 years old at the time of their offense. They should not be considered adults for the imposition of a sentence of LIFE without the possibility of parole.

CONCLUSION

Wherefore, Mr. Douglas Duran Cerritos prays before this Honorable Supreme Court to grant him a writ of certiorari on the aforementioned questions presented.

Respectfully submitted on this 16 day of March, 2020