

19-8353
No.

IN THE
SUPREME COURT OF THE UNITED STATES

CURTIS STOKES,

Petitioner,

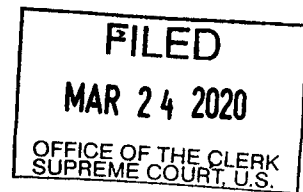
-vs-

STATE OF INDIANA,

Respondent.

ORIGINAL

On Petition for a Writ of Certiorari
to the Indiana Court of Appeals



PETITION FOR A WRIT OF CERTIORARI

Curtis Stokes, #984391
Wabash Valley Correctional Facility
P.O. BOX 1111
Carlisle, IN 47838

Petitioner, Pro Se

QUESTIONS PRESENTED

I. Stokes and his codefendants were charged with multifarious felonies. On appeal, Stokes' codefendant had the most serious charge dismissed for insufficient evidence after Stokes' conviction was affirmed. Stokes, who exhibited lesser culpability than his codefendant sought Post-Conviction Relief, asking the Court, to reconsider the insufficiency of the evidence argument in light of the opinion in his codefendant's case. Does Indiana have an obligation to equally apply the federal constitution in the same factual scenario?

II. Stokes' appellate counsel failed to recognize the insufficiency of the evidence for the Class A felony robbery and conceded that sufficient evidence existed in her brief. Was appellate counsel's performance constitutionally deficient in violation of *Evitts v. Lucy* and *Strickland v. Washington* and their progeny?

III. Stokes' attorney stipulated that a witness would have testified contrary to his statement to the police, and did not attempt to introduce the witnesses' original statements. This stipulation virtually guaranteed Stokes' conviction. Was counsel's performance constitutionally deficient under *Strickland* and its progeny?

TABLE OF CONTENTS

| | |
|-----------------------------------|-----|
| Questions Presented | ii |
| Table of Contents | iii |
| Table of Authorities | iv |
| Opinions And Orders Below | 1 |
| Constitutional Provision Involved | 1 |
| Introduction | 2 |
| Statement of the Case | 2 |
| Reasons for Granting the Petition | 4 |
| Conclusion | 8 |

INDEX TO APPENDICES

| |
|--|
| Exhibit A – Decision of the Post-Conviction Court |
| Exhibit B – Decision of the Indiana Court of Appeals |
| Exhibit C – Decision of the Indiana Supreme Court |

TABLE OF AUTHORITIES

Federal Cases

| | |
|--|---|
| <i>Baer v. Neal</i> , 879 F.3d 769 (7 th Cir. 2018) | 5 |
| <i>Coleman v. Thompson</i> , 501 U.S. 722, 754 (1991); | 5 |
| <i>Douglas v. California</i> , 372 U.S. 353, 357-358 (1963), | 5 |
| <i>Evitts v. Lucy</i> , 469 U.S. 387, 396 (1985); | 5 |
| <i>McCoy v. Louisiana</i> , 132 S.Ct. 500 (2018). | 8 |
| <i>Strickland v. Washington</i> , 466 U.S. 684, 694 (1984). | 5 |

State Cases

| | |
|--|---------------|
| <i>State v. Huffman</i> , 643 N.E.2d 899 (Ind. 1994) | 4,6 |
| <i>Stokes v. State (Curtis)</i> , 919 N.E.2d 1240 (Ind. Ct. App. 2010) | <i>passim</i> |
| <i>Stokes v. State (Johnnie)</i> , 922 N.E.2d 758 (Ind. Ct. App. 2011) | <i>passim</i> |

PETITION FOR A WRIT OF CERTIORARI

Petitioner Curtis Stokes respectfully petitions this Court for a writ of certiorari to review the judgment of the Indiana Court of Appeals in this case.

OPINIONS AND ORDERS BELOW

The Order of the Marion County Superior Court, Criminal Division 2, denying post-conviction relief is unpublished. (Ex. A) The opinion of the Indiana Court of Appeals affirming the post-conviction court in cause number _____ is unpublished. (Ex. B). The order of the Supreme Court of Indiana summarily denying Stokes' Petition to Transfer is unpublished. (Ex. C.)

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution states: "In all criminal prosecutions, 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 defence."

The Fourteenth Amendment to the United States Constitution states, in pertinent part: "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.”

INTRODUCTION

This case aligns perfectly with the Court’s criteria for granting review. The issue is nationally important. Without a requirement for the states to equally apply the federal constitution, the constitutional rights bestowed upon the citizens of the various states by this historic document become meaningless. Similarly, defense attorneys should not be permitted to stipulate to evidence that contravenes the rights of their clients and essentially admit guilty particularly when the evidence could have been impeached with prior statements given to the police. Defense attorneys should have an obligation to protect the rights of their clients. If not, the right to the assistance of counsel becomes a mere perfunctory obligation that fails to protect the full panoply of rights guaranteed to criminal defendants.

STATEMENT OF THE CASE

On December 18, 2008, several people were present at Big Engine Entertainment, a recording studio in Indianapolis owned by Gregory Arnold Junior. A group of men entered the building, including Johnnie Stokes (Johnnie) and Curtis Stokes (Curtis). Johnnie was carrying a trash bag containing an assault rifle.

Once inside the building, the men split up. Johnnie was in the hallway when he pulled out the assault rifle and said, “Get down, you know what this is.” Curtis was present with Johnnie but did not say a word. Johnnie and Curtis demanded nothing and took no property from anyone. Elsewhere in the building, two other codefendants held a man at gunpoint and took \$200.00 from his pockets.

Curtis and his codefendants fled the building after Arnold started a gunfight. One of Stokes' codefendants returned fire as they fled. Police apprehended some of the men, including Curtis, near the studio.

On December 23, 2008, Curtis was charged with one count of Class A felony attempted robbery, one count of Class B felony robbery, eight counts of class B felony attempted robbery, once count of class B felony unlawful possession of a firearm by a serious violent felon and one count of class C felony criminal recklessness. On March 2, 2009, the State also added a request for the habitual offender enhancement.

Following a joint jury trial with his codefendant, the trial court granted Curtis's motion for a directed verdict on three of the class B felony attempted robbery counts. The jury found Curtis guilty on all remaining counts. On April 17, 2009, Stokes was sentenced to an aggregate 74-year sentence.

Stokes appealed the judgment of conviction, and the Court of Appeals reversed the five remaining class B felony attempted robbery convictions. *Stokes v. State*, 919 N.E.2d 1240 (Ind. Ct. App. 2010). Curtis's appellate attorney did not challenge and actually conceded the sufficiency of the evidence for the Class A felony conviction. Johnnie's attorney challenged the sufficiency of the evidence of the Class A felony conviction, and the conviction was overturned. *Stokes v. State*, 922 N.E.2d 758 (Ind. Ct. App. 2011).

Stokes subsequently filed a petition for post-conviction relief with the trial court, which was ultimately denied. Stokes appealed and the decision of the post-

conviction court was affirmed. Stokes sought discretionary review with the Indiana Supreme Court, which was summarily denied.

REASONS FOR GRANTING THE PETITION

This case presents the perfect procedural vehicle to eliminate the disparate treatment between codefendants in nearly identical circumstances. In this case, Curtis demonstrated less culpability than his codefendant, Johnnie. Yet, Johnnie's conviction was overturned because there was insufficient evidence to support the conviction, while Curtis's case was affirmed because it was not challenged. During post-conviction proceedings, Curtis sought to have the courts remedy the disparate treatment between him and Johnnie. The courts refused. Such a decision not only results in disparate treatment in this case, it is an encroachment upon federal constitutional rights that will eventually erode the guarantees for all citizen, and it calls into erode confidence in the judiciary as a whole.

QUESTIONS I AND II

In his post-conviction petition, Curtis Stokes claimed that his appellate attorney was ineffective for failing to challenge the sufficiency of the evidence for the Class A felony Attempted Robbery. Stokes also asked the Court to revisit this issue in order to correct a manifest injustice.¹ *State v. Huffman*, 643 N.E.2d 899 (Ind. 1994). Stokes specifically alleged that "[i]t is a manifest injustice to permit Curtis Stokes to remain convicted of a charge for which the appellate courts have stated there is insufficient evidence to support. Moreover, the law of the case

¹ Indiana has never clearly defined the term, "manifest injustice," but the case authority tends to equate this with clear due process violations.

doctrine demands that Curtis Stokes's case be brought into conformity with Johnnie Stokes's case." The postconviction court addressed the ineffective assistance of trial counsel claim but it did not address Stokes' manifest injustice argument.

Both the post-conviction court and the State admitted that there has been disparate treatment between the appellate decisions of Curtis and his codefendants. However, both the court and the State sought to use procedural technicalities to preclude the warranted relief.

This court has held that criminal defendants have the right to effect counsel on direct appeal. *Evitts v. Lucy*, 469 U.S. 387 (1985). If the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claims. *See Coleman v. Thompson*, 501 U.S. 722, 754 (1991); *Evitts v. Lucy*, 469 U.S. 387, 396 (1985); *Douglas v. California*, 372 U.S. 353, 357-358 (1963). To establish prejudice, Curtis must show that the claim would likely have prevailed on appeal. "Prejudice is found where the result of the proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Baer v. Neal*, 879 F.3d 769 (7th Cir. 2018), *quoting Strickland v. Washington*, 466 U.S. 684, 694 (1984).

Unlike most criminal defendants, Stokes does not have to guess or speculate about this matter. This matter was addressed in his codefendant's case. *See Johnnie Stokes v. State*, 922 N.E.2d 758 (Ind. Ct. App. 2011). In *Johnnie Stokes v. State*, the

Court of Appeals held that “we agree with the conclusion of that panel but go one step further and also reverse Stokes’s class A felony Attempted Robbery conviction.” *Id.* at 764. The State (and the post-conviction court) noted the disparate treatment between Johnnie and Curtis on direct appeal. Thus, had appellate counsel raised the issue, it would have prevailed just as it did in Johnnie’s case.

In *State v. Huffman, supra*, the Indiana Supreme Court announced that finality and fairness were both important goals, but faced with a choice, fairness should prevail over finality. *Id.*, 643 N.E.2d at 901. Nothing could be more unfair or more violative of due process principles than the situation presented in this case. The parties and the courts all agree that there is nothing to distinguish Curtis’s case from Johnnie’s. The men were alleged to have been in the same room, acting in concert with one another. The evidence of wrongdoing was greater for Johnnie, who pulled an assault rifle out of the trash bag and began firing it, saying, “Get down, you know what this is.” Curtis said nothing and was, by the State’s account, a passive participant in the action, while Johnnie acted much more aggressively. Yet, the Indiana courts affirmed the conviction of the less culpable and reversed the conviction of the more culpable. Such an absurd result should not be allowed to stand.

QUESTION III

During his trial, Curtis’s defense attorney stipulated that a witness, Colin Moore, would testify contrary to the discovery indicated that he had told the police. Counsel stipulated that when he was interviewed at the hospital, Moore specifically

said, "I can tell you that the guys I pointed out to you, I didn't see them shoot me. I know they wouldn't have shot me because they know me. I don't give a damn which, which one. They know me, and I know they wouldn't shoot me." Such a statement suggests that the men in the photo array were there when the crime occurred.

During post-conviction proceedings, Detective Schemenaur, the detective who investigated the case and took Moore's statement testified tht Moore could not advise who shot him. He also confirmed tahat after seeing several photo arrays, Moore did not recall seeing anyone there. This is contrary to the stipulation because Moore knew Curtis and would necessarily be able to identify him if he were the perpetrator. A specific exoneration is different from I don' know who did it.

Stokes was undoubtedly prejudiced by this fact. As this Court has said: "When a defendant' sown lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value. *Buck v. Davis*, 197 N.E.2d 1, 20 (2017). Additionally, the jury was instructed that the stipulation was to be accepted as true.

Curtis argues that his right to confront witnesses against him was violated by counsel's stipulation that Moore would testify contrary to what he told the police. If the jury had known that Moore did not identify Stokes or his codefendants, even though he knew them, they likely would have acquitted.

Moreover, counsel failed to protect Curtis's confrontation rights or secure a waiver from Curtis. It is well-settled that using testimonial statement of a person that is absent from trial violated the Sixth Amendment, unless the person is

unavailable **and** the defendant had a prior opportunity to cross-examine the person. The record is devoid of any claim by the State that Moore was unavailable.

Curtis cannot be said to have waived his right to confrontation when he was not consulted by counsel about her stipulating to inaccurate/misleading information and foregoing the right to cross-examine and impeach Moore. Counsel's stipulation prejudiced Stokes and was tantamount to violating an objective of representation. *McCoy v. Louisiana*, 132 S.Ct. 500 (2018).

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

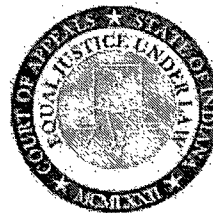
Respectfully submitted,

A handwritten signature in cursive script that reads "Curtis Stokes". The signature is written in dark ink and is positioned above a horizontal line.

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March 23, 2020

**STATE OF INDIANA
COURT OF APPEALS**



CURTIS STOKES

Appellant(s),

Cause No. 18A-PC-02982

v.

STATE OF INDIANA

Appellee(s).

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 14th day of January, 2020.

Gregory R. Pachmayr,
Clerk of the Supreme Court

EXHIBIT B