

No. 19-8470

ORIGINAL

Supreme Court, U.S.
FILED

APR 30 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Raymond Walker — PETITIONER
(Your Name)

VS.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raymond B. Walker
(Your Name)

FCI P.O. Box 1000
(Address)

Oxford, WI 53952
(City, State, Zip Code)

(Phone Number)

RECEIVED

MAY - 7 2020

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SUPREME COURT, U.S.

Question[5] Presented

I. Refusal of Prior Counsel to Comply with Continual request and court orders to file an affidavit rebutting allegations of ineffectiveness conceded the challenged conduct. When Petitioner's show counsel's actions resulted from inattention and neglect, he's rebutted the presumption that counsel rendered constitutionally effective assistance.

"Can a habeas court consistent with the Fifth Amendment's guarantee of fundamental fairness, overlook and misapprehend record facts and "rule of law" constructively denying the Sixth Amendment's guarantee of the effective assistance of counsel?"

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:

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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 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☒ is unpublished.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 United States district 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☒ is unpublished.

[] 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[] is unpublished.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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12-02-2019.

☒ 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 _____.
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

United States Constitution's Fifth Amendment:

No person shall... be
deprived of life, liberty, or
property, without due process
of law. . . . 3

United States Constitution Sixth Amendment:

In all criminal prosecutions,
the accused shall... have the
Assistance of counsel for his/her
defense. . . .

21 U.S.C. 841(a)	 5
21 U.S.C. 841(b)(1)(c)	 5
21 U.S.C. 846	 5
28 U.S.C. 2254	 4
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Statement of the Case

Mr. Raymond K. Walker was indicted after the Government sought an indictment from the grand jury sitting in the district of Minnesota with conspiracy to distribute 2.4 kilograms of heroin in count one of the indictment, Mr. Walker own conduct was charged in separate counts pursuant to 841(b)(1)(c) although the conspiracy was charged pursuant to 846.

Mr. Walker attempted to prepare a defense, however, Mr. Walker's counsel vehemently advised Mr. Walker that had he proceeded to trial he would be found guilty of conspiring to distribute 2.4 kilograms of heroin instead of the 98 grams that encompassed his particular conduct within the scope of the conspiracy inapposite of the pinkerton principles.

Counsel in this case negotiated a plea agreement subjecting Mr. Walker to a Statutory Maximum Minimum Sentence

of ten years contrary to the facts that Mr. Walker was indicted for conspiring to distribute 98 grams of heroin subjecting him to a Statutory Sentencing Scheme of 0-20 years.

The plea agreement also stipulated that no specific offense characteristics apply in the case although it also contained a provision U.S.S.C. 3B1.1 dictating a specific offense characteristics.

During the plea proceedings Mr. Walker relying on a statement made by the court stopped the proceedings and again enquired as to whether he was acceptable to the entire 2.4 Kilograms, counsel assured him he was. See Sentencing Transcripts at 24, 15-20.

After the Probation Agent conducted a presentence investigation Counsel for Mr. Walker did not disclose the report to Mr. Walker nor were there any consultations regarding the presentence report.

Likewise, no objections were lodged against the presentence report. The failure to object to the presentence report the government's and Mr. Walker's belief that the Criminal history Category of III was turned into a II. Mr. Walker was sentenced to 132 months based on Counsel ineffectiveness.

Mr. Walker filed a 2255 bringing his prior counsel's deficient performance to the court's attention. The court allowed the Government to seek affidavits from Mr. Walker's prior counsel. Mr. Walker's prior counsel did not respond to those request, after Mr. Walker's motions for Summary Judgment the district court ordered Mr. Walker's prior counsel to file the affidavit rebutting Mr. Walker's claims on more than one occasion counsel blatantly disregarded the court's orders. In the middle of the wait for counsel to file the demanded affidavits Mr. Walker's prior counsel was disbarred by the Minnesota Supreme Court finding

that Mr. Walker's prior counsel had performed deficiently in 11 (eleven) cases during the exact same time period being challenged by Mr. Walker. Mr. Walker supplemented the proceedings to make the court aware of the fact. The court disregarded Mr. Walker's motion and made a ruling misapprehending the facts and denying the relief requested by Mr. Walker.

Mr. Walker filed a notice of appeal seeking a certificate of appealability that appeal was dismissed. This writ of Certiorari timely follows.

Argument In Support

I. Certiorari is necessary to secure the most minimal rights afforded to the accused in the habeas context regarding the fundamentally fair review of pro se habeas petitions.

In 1948, Congress adopted Section 2255 of the Judicial Code. Pursuant to Section 2255, a federal prison could file a motion "at any time" to "vacate, set aside or correct [a]... [federal] sentence" upon the ground that

the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.

In the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Congress amended Section 2255 to impose new procedural obstacles to federal postconviction review and relief.

The procedural hurdles included into Section

2255 were numerous and substantial.

The AEDPA effectively suspended the writ of habeas corpus; it changed Section 2255 by establishing a one-year statute of limitation for the filing of a Section 2255 motion; imposing limits upon compensation of counsel, investigators, and experts; requiring a preliminary showing to justify an ex parte application for support services; limiting the availability of successive section 2255 motions; and requiring that Section 2255 appellants obtain a "certificate of appealability" in order to appeal a denial of relief by the district court. AEDPA's provisions regarding fact-development and fact-determining procedures and adjudication of legal claims do not, however, apply to section 2255 proceedings.

Also engrafted into Section 2255 is an exhaustion of appellate remedies requirement.

The rule is designed to ensure that section 2255 proceedings will not develop into a substitute for direct appeal. By definition, this procedural bar is inapplicable to claims that could not have been raised on direct appeal, such as "ineffective assistance of counsel."

(2)

Material to the issues presented here is the fact that section 2255 movants must file the pleading in the district court "which imposed the sentence" being challenged.

The Rules governing 2255 Rule 4(a) provides that "the motion shall be presented promptly to the judge of the district court who presided at the movant's trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant."

"The possibility of bias inherent in allowing judges whose rulings are under attack to review section 2255 motions has led to criticism of the same-judge assignment rule." See e.g., *Developments in the law*, *Supra* § 41.1 n.1, at 1207 ("trial judge may have become so involved with the decision that it will difficult for him to review it objectively").

(3) The Fifth Amendment to the United

States Constitution guarantees a criminal defendant the right to an impartial fact-finder. In the habeas context the United States Supreme Court has worked to bring the fundamental fairness principles to life.

In *Strickland v. Washington*, 466 U.S. 668 (1984) (Brennan, J., concurring in part and dissenting in part) (observing, in habeas proceedings pursuant to § 2254, that "we have consistently required that 'capital proceedings' be policed at all stages by an especially vigilant concern for procedural fairness and for 'the accuracy of fact finding' (emphasis added from original)"). See also, *Stoutter v. Remolds*, 168 F.3d 1155, 1173 (10th Cir. 1999). ("My duty to search for constitutional error with painstaking care is never more exacting than it is in capital cases."). However, this court has not resolutely set its face regarding the procedural fairness and ~~accuracy~~ for the accuracy of fact finding or the habeas court's duty to search for constitutional error with painstaking care where the death penalty is not at stake, but where an

individuals due process rights and the Judiciary's independence and impartiality demands the same fundamental procedural fairness in habeas proceedings.

This court's refusal to require that district courts be procedurally fair in its duty to accurately find the facts in all habeas cases have explicitly manifested in Petitioner (Mr. Walker) being sentenced in violation of this court's holding in *Allyene*, that is, Petitioner was sentenced to a statutory mandatory minimum of 10 years pursuant to Title 21 U.S.C.S. section 846, even though his particular charge pursuant to 841(a) was only punishable pursuant to 841(b)(1)(c) proscribing a statutory sentencing range of 0-20 years.

In Petitioner 2255 motion he alleged his counsel performed deficiently when he "advised petitioner to enter into a plea agreement in which counsel was unaware of the consequences of the agreement rendering petitioner's plea not knowing and voluntarily

made. Because counsel failed to investigate Petitioner's criminal history before advising petitioner to plead guilty; That Petitioner accept the government's application of an enhancement for organizer, leader, supervisor, or manager pursuant to 3B1.1(c), however, the parties agreed that no specific characteristic applied. And that, Counsel rendered ineffective assistance during the sentencing phase, because the presentence report was not disclosed to Petitioner by his attorney, nor was there any consultation between counsel and petitioner regarding the information contained in the report, that the Presentence report was plagued with misrepresentations; and that counsel's neglect allowed the courts oral pronouncements regarding the presentence report to go unnoticed allowing petitioner to be sentenced pursuant to inaccurate information; And Lastly, Petitioner claimed that his counsel advised him that if he proceeded to trial the government would have to only prove its case by clear and convincing evidence.

(6)

(13)

The Government responded telling the court that it could deny the case on the merits notwithstanding Petitioner's Counsel's tacit agreement that he indeed deprived Petitioner of of the effective assistance guaranteed by the Sixth Amendment.

On 05/17/2019, the district court issued a memorandum opinion and order denying Petitioner's 2255.

The district court went away from the entire record. It failed to recognize that it sentenced Mr. Walker to a statutory mandatory minimum sentence outside of that with which he was charged. The district court disregarded the fact that it sentenced Petitioner to a sentencing enhancement that the plea agreement forbade. Moreover the court blatantly disregarded its duty to accept Petitioner's claims as admitted due to his counsel's blatant disregard of the court's order to file affidavits.

(7)

(14)

Instead of complying with the rules of this court, the district court in this case engaged in conduct that appear unusually common within the district court's it misapprehended the facts in favor of finality.

Petitioner ~~asserts~~ ^{asserts} that the conduct engaged in by the district courts solicit unnecessary litigation, while all parties took to put these proceeding behind them, the district court blatant disregard of the facts that are contained in the record and the law of the land that we are allowed to appropriate subvert finality. Therefore, Petitioner request that his court in the interest of justice declare the duties and responsibilities of the district court in habeas proceedings.

Conclusion

Petitioner asks this court to utilize its Supervisory powers to dictate

the factfinding responsibilities to the
district court to prevent injustice
and circumvention of the writ of
habeas Corpus as it applies to
2253.

Raymond K. Walker
Raymond Walker