

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH WILBERT BROWN — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF KENTUCKY RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

KENTUCKY COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KENNETH WILBERT BROWN #251796
(Your Name)

P.O. Box # 479
(Address)

Burgin, KENTUCKY 40310
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Should a court be allowed to deny the withdrawal of a defendant's guilty plea, when it is clear that the plea was not entered voluntarily, and with an understanding of the nature of the charge, While simultaneously ruling that his counsel's performance was deficient by giving him incorrect legal advice pertaining to said plea?
2. Should a court be allowed to rule that a Defendant serving an additional 1.4 years in prison due to inaccurate legal advice from defense counsel was not "Not of such substance as to amount to a violation of the sixth Amendment under Strickland."?

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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OTHER

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 0 to the petition and is

☐ reported at NONE; 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☐ is unpublished.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 0 to the petition and is

☐ reported at NONE; 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☐ is unpublished.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 Brown v. Com, 2019 Ky. App lexis 125; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Oldham County, Kentucky Circuit court appears at Appendix B to the petition and is

☐ reported at n/a; 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☒ is unpublished.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 NONE

☐ 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: NONE, and a copy of the order denying rehearing appears at Appendix 0

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 0 (date) on 0 (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 Feb 12, 2020
A copy of that decision appears at Appendix C

☐ A timely petition for rehearing was thereafter denied on the following date: NONE, and a copy of the order denying rehearing appears at Appendix 0

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NONE (date) on 0 (date) in Application No. -- A --

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment to the United States Constitution:

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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to Have the Assistance of counsel for his defense.

14th Amendment of the United States Constitution

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.

Kentucky Rules Of Criminal Procedure 8.08

A defendant may plead not guilty, guilty or guilty but mentally ill. The court may refuse to accept a plea of guilty or guilty but mentally ill, and shall not accept the plea without first determining that the plea was made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

Kentucky Rules of Criminal Procedure 8.09

With the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion. A defendant shall be allowed to withdraw such plea upon prevailing on appeal.

STATEMENT OF THE CASE

On December 1, 2017, after a brief trial, a jury found the petitioner, Kenneth, W. Brown, guilty of intimidating a participant in the legal process.(TR71-79, 76). As he was then, and is currently, serving a 24 year sentence for Murder,Wanton Endangerment, and tampering with physical evidence, The stage was set for him to proceed to the penalty phase which carried an indictment for Second Degree Persistant Felony Offender.

While waiting for the second trial to begin, Mr. Brown's defense counsel brought him a plea bargain, sent over by the special prosecutor from the Kentucky Attorney General's Office. In exchange for Mr. Brown's plea of guilty and the forfeiture of his appeals rights, The Commonwealth recommended he serve 5 years for the "intimidating" offense, enhanced to 7 years by the second degree Persistant Felony Offender (PFO) charge, He faced a maximum of 10 years. (TR 80-83).

Being exhausted from incessantly fighting numerous courtbattles (His murder conviction is still being litigated in appeals courts and he has been fighting a solicitation of murder charge in Oldham County, Kentucky since 2016). He reluctantly agreed, as long as it did not affect the parole eligibilty date set by his murder charge. His counsel advised him that it would not.

During the plea colloquy with the trial court, before it accepted his guilty plea, there was some confussion among the petitioner, defense counsel, the prosecutor, and the trial court regarding how the plea would affect his parole eligibility date. (VR. 12/1/17 2:36:41-2:39:32). As a result, Mr. Brown asked the trial court, "Is there any way, before final sentencing, we can find out for sure if it affects my parole eligibility date or not?." He received a vague nod in the affirmative from the court, Then his plea

Continued statement

was accepted. (Id. at 2:37:33-2:40:55).

Mere weeks later, Mr. Brown discovered that the new charges in fact had affected his parole eligibility by an astonishing 17 months! He hastily sent a letter to the trial court informing it that he wished to withdraw his plea of guilty and move forward with the penalty phase. It was filed in the court record on January 26, 2018, (TR 112).

On April 20, a hearing on the motion was held. (TR113,116-17). After the hearing & arguments, the trial court entered a written order denying Brown's motion to withdraw.(TR 121-24). The trial court subsequently entered two final judgments, imposing the 7 year sentence.(TR 127-33).

An appeal challenging the trial court's overruling of Mr. Brown's motion to withdraw his guilty plea followed. See Brown v. Commonwealth, 2019, Ky. App. Lexis 125. The Kentucky Court Of Appeals, upheld the trial court's ruling, and the Kentucky Supreme Court denied the ensuing Motion for Discretionary Review. See Appendix C.

REASONS FOR GRANTING THE PETITION

" Any deprivation of liberty is a serious matter," This declaration was made by this Honorable Court over 40 years ago, See Argersinger v. Hamlin, 407 U.S. 25, 41(1972). These words rang as true then as they do now, but it seems that they have been either forgotten or completely ignored with the passing of time.

As the petitioner expressed in the "statement of the case", he was ill-advised by his defense counsel concerning his parole eligibility when taking a plea bargain. This deficient advice caused the petitioner to have to serve an additional 1.4 years, or 17 months in prison after having served 20 years.

In Argersinger, Supra, this Honorable court also proclaimed that, " Imprisonment for even one day has a substantial impact on a man's liberty."

This proclamation was subsequently quoted in U.S. Ex rel. Miller v. twomey, 479 F 2d 701, 715(7th Cir. 1973), the following years. In stark contrast to this ruling, the Kentucky Court Of Appeals stated concerning the petitioner's case, " While having to wait an additional one year and five months to have a parole hearing may seem unfair to Brown, This court cannot conclude that the trial court abused its discretion when denying Brown's motion to withdraw his plea agreement because it was made voluntarily." See Brown v. Comm, 2019 Ky. App. Lexis 125.

In light of the ruling in this nation's highest court regarding the issue at hand, it is without question that the Appeals Court of Kentucky, was erroneous when it upheld the ruling of the trial court. Furthermore, this Honorable court has clearly established the standards needed to accept, nullify, or withdraw guilty pleas in numerous cases throughout the last 50 years. See Boykin v. Alabama, 395 U.S. 238, (1969); Strickland v. Washington, 466 U.S. 687, 688 (1984); Hill v. Lockhart, 474 U.S. 52(1985).

Continued Reasons

In the petitioner's case, he clearly expressed his concern about parole eligibility before hesitantly signing the guilty plea, since his defense counsel and prosecutor had conflicting opinions concerning the issue, he asked the court to intervene and resolve the dilemma, The court agreed, but failed to do so.

Because of the defense counsel's bad advice and the court's failure to uphold its duty by finding out the answer to the petitioner's questioning, his signing of the guilty plea cannot be considered "voluntary and intelligent." See Boykin Id. at 241-42, Edmonds v. Commonwealth, 189 s.w. 3d 565, (2006), RCr 8.08-09

In Strickland, this Honorable court developed a two-prong test in determining whether a defendant is entitled to relief, to succeed, a moving defendant must establish: (1) that counsel's performance fell below an objectively reasonable standard; and (2) that the performance gave rise to a reasonable probability of a different outcome Strickland, 466 Id at 687-88. (Citing Hill v. Lockhart, the Kentucky Supreme Court later addressed guilty pleas in particular and held that the defendant must show, that had he not received erroneous advice concerning parole eligibility, he would have not entered the guilty plea and would have proceeded to trial. See Greene v. Comm, 475 s.w. 3d at 629, (citing Hill, 474 U.S. at 52).

The record is clear that the petitioner entered his guilty plea based on incorrect legal advice that any mediocre counsel would have been privy to. The Second prong of Strickland's analysis, however, also satisfies the last test set by this court in Hill and the Kentucky Supreme Court in Greene.

To alleviate any confusion, the trial court should have "simply..... ask[ed] if [Brown] were given the correct information from the outset, would he have nonetheless accepted the Commonwealth's bargain, or in other words, does the inaccurate advice about ["parole Eligibility"] under these instances

Continued Reasons

undermine the confidence in the outcome'?" See Greene, 475 Id at 632(citing Strickland, 466 Id at 694). The answer is a complete unequivocal NO! he would not have accepted the guilty plea!

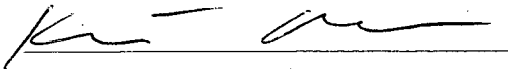
If history is any indicator, the petitioner has a long and detailed track record of doing the exact opposite of taking deals and waiving appeals. See Brown v. State Of Mississippi, 986 So. 2d 270; Brown v. Commonwealth, 416 s.w. 3d 302(2013); and Brown v. Commonwealth, 2018 Ky. App.Lexis Unpub.518. So in light of all the facts emphasized throughout this petition, it is evident that this nation's highest court is needed once again to pull in the reigns of the seemingly forgetful and unruly lower courts.

The petitioner acknowledges that this case may seem miniscule on the surface, but if the lower courts are allowed to continue to trick defendants into signing guilty pleas unchecked and without consequence, where does it end? Without a doubt, the honor, integrity, and dignity of our judicial system is at stake! Therefore, the gravity of the need for intervention by the U.S. Supreme Court is no different than what was needed in Flowers, concerning the Batson issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a horizontal line and a cursive flourish.

Date: 5-6-2020