

19-8776
No. _____

Supreme Court, U.S.
FILED

APR 21 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Timothy W. Hatter — PETITIONER
(Your Name)

vs.

Harold W. CLAIKE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 4th Cir
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy W. Hatter pro se
(Your Name)

Lawrenceville Coll Center 1602 Planters Rd
(Address)

Lawrenceville VA 23868
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. How can the Court deny Hatter his Habeas Petition asking for his direct appeal rights back when a direct appeal is a fundamental constitutional due process right of every defendant and goes against well established Federal law and procedures?
2. How can the Court hold that Hatter has not shown any basis to toll the state statute of limitations or excuse his untimely filing unless they just failed to read any of his petitions? Because Hatter went into great detail of the difficulties and obstacles that he had to overcome just to discover that his lawyer lied to him and that he always had a right to a direct appeal!
3. How can the courts hold that Hatter's counsel was not ineffective for failing to file an appeal on his behalf and for committing legal malpractice when he lied to Hatter when he told him that he had no right to an appeal several times? Both of these claims are supported by the record ("ie Sentencing Hearings transcripts") where Hatter was yelling that he wanted an appeal and the complaint Hatter filed with the VA State Bar about his attorneys misrepresentation!

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 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☒ is unpublished.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 C 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.

Statement of the Case Procedural History

Hatter was convicted on February 2011 and sentenced in September 2011 in VA Beach Circuit Court. Hatter was coerced and badgered by his trial attorney to take a plea deal, and came back and forth 4 different times from the Commonwealth finally with a 5 year active sentence deal which was agreed to. Hatter only took this deal because his attorney told him that he had spoken with his mother and that she also encouraged him to take the 5 year plea deal. After trial Hatter discovered that his attorney had never spoken with his mother and that there was actually no time constraint plea deal in place. So at sentencing Hatter went off in the court room cursing and screaming at his attorney and the judge expressing how he had been tricked into pleading guilty by his attorney and that he wanted to withdraw his guilty plea. The judge gave Hatter 2 Contempt of Court charges and appointed him a new attorney to represent him at sentencing. The new attorney filed a motion to withdraw Hatter's guilty plea and a motion for the judge to recuse himself as the sentencing judge, because there was a conflict of interest whereas the judge maybe prejudice against Hatter because he had cursed them and his attorney out prior to being sentenced. The judge dismissed both motions and sentenced Hatter to 20 years with 8 suspended for malicious wounding and 10 days and for the 2 Contempt of Court charges. Hatter told his attorney to file an appeal based on the facts that he had been tricked into making a guilty plea by his trial attorney and that he was prejudiced by the judge because she should not have been the one to have sentenced him and should have recused herself. Hatter's attorney told him that he had no right to appeal because he had pled guilty. So Hatter went to prison believing his attorney's statements. Hatter was sent to a level 5 prison, Wootton Ridge where they use the Payne system where a prisoner has to ask for specific case law to do legal studies. Prisoners are not allowed to actually visit the law library to conduct legal research. So Hatter was not able to obtain any information or legal case law to show him that he was entitled to a direct appeal as a right until he got transferred to LCC - Lawrenceville Corr Center in March of 2018 where he could have contact with inmates who knew how to show

Statement OF The case continued

Him How to do legal research and showed Him LAWS and CASE LAW that state that all defendants are entitled to a direct appeal and that their attorneys are required by law to perfect and file an appeal on their behalf when told to do so by the client even IF they don't believe the appeal has merit. So when Hatter discovered these laws in March of 2018 after arriving at Lucc He filed HIS first HABEAS CORPUS only asking for a belated appeal based on the facts that HIS attorney was ineffective for failing to file an appeal on HIS behalf and for erroneously telling Hatter that he had no right to an appeal. This entire HAD instance can be supported by the sentencing court records transcripts where Hatter was screaming at HIS attorney that he wanted an appeal. These transcripts have never been provided or produced to Hatter because they clearly show and support that HIS attorney was ineffective, for not filing a direct appeal.

Constitutional And Statutory Provisions Involved

The rules governing appeal procedures are mandatory and compliance with them is necessary for the orderly, fair and expeditious administration of justice. Counsel's failure to file an appeal or properly advise Hatter as to his constitutional right to appeal was prejudicial towards Hatter and denied him his legal right to challenge his unlawful conviction within the time constraints set forth by the laws governing appeals.

Cause and prejudice under *Wainwright v. Sykes* 433 U.S. 72 (1977) Exceptions for claims otherwise barred must show cause and prejudice, which must include some objective factor external which may include ineffective assistance of counsel, and in *Murray v. Currier* 477 U.S. 478 (1986) they were careful to point out that ineffective assistance of counsel is cause to overcome a procedural default.

The Supreme Court and the District Court ruling is in conflict with the ruling of the United States District Court for the 4th Circuit and this Court because in the United States Supreme Court 105 Sct. 830, 469 U.S. 387, 83 L. Ed. 2d 821, 53 USLW 4101, *Ralph W. Everts v. Keith F. Lucey* this Court held that "The right to Appellant counsel is limited to the first appeal as a right and attorney need not advance every argument regardless of merit urged by Appellant but must be available to assist in preparing and submitting brief to Appellant court for the Appellant and must play a role of Active Advocate rather than a mere friend of the court, assisting in detached evaluation of Appellant's claims under Const Amendment 6214. But the District Court has denied Hatter the right to a direct appeal simply by stating he is time barred without giving consideration to his counsel's ineffective representation.

Hatter's counsel was ineffective when he failed to file his appeal and when he told Hatter he had no right to an appeal. This constitutes cause and prejudice and overcomes Hatter's time bar procedural default.

Constitutional And Statutory Provisions Involved Continued

The Supreme Court of the United States held in *Halliburton v. Michigan* 545 U.S. 605 617, 125 S.Ct. 2582 162 L.Ed.2d 552 (2005) that an attorney's errors during an appeal on direct appeal may provide cause to excuse a procedural default. VA Supreme Court Rule 54.1-390b Liability to Client States that Every Attorney shall be liable to his client for any damage sustained by the client through the neglect of his duty as such attorney. In *Breiser v. Rodriguez* 411 U.S. 425 484-485 93 S.Ct. 1827 36 L.Ed.2d 439 (1973) the Court held that if a state criminal defendant can show a federal habeas court that his conviction rested upon a violation of a constitutional right he will may obtain a writ of habeas corpus for a new trial, sentence or release.

Reasons For Granting The petition.

A Defendants Appeal Rights are the bedrock principles of this nations justice system. Hatter clearly showed due diligence with attempting to obtain information about his rights. Unfortunately it took him 6 years because of the circumstances of where he was sent to serve the first part of his sentence which had an archaic paging system which kept him from conducting any legal research until he arrived at LVC in March 2018. But his being held accountable for a procedural time bar that was out of his control and clearly falls on the shoulders of his ineffective counsel.

Hatter's case falls under the Ends of Justice Clause and should be looked at as a miscarriage of justice which needs to be corrected to give vindicated men like Hatter who are solely dependent upon the words and advice of their attorneys to tell them what their rights truly are a fair and just shot at due process. Hatter was denied this time and time again and as a matter of right he only asks for this court to grant his petition to give him his appeal rights back so that he can challenge the injustice that has been dealt upon him.

CONCLUSION

Timothy W. Hatter Ploze

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy W. Hatter

Date: 4/19/2020