

No. _____

20-1314

IN THE SUPREME COURT OF THE UNITED STATES

Joshua Richardson,
petitioner

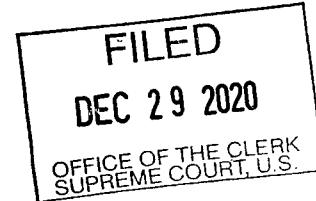
v.

United States of America,
respondent

20-1314
PETITION FOR CERTIORARI

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Joshua Richardson #77089-061
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QUESTION PRESENTED

1. Whether Counsel's decision not to suppress evidence unlawfully seized from a traffic stop because a traffic citation was paid, then relying on that paid traffic citation not to investigate any further, violated the Sixth Amendment Right to effective assistance of counsel?

OPINIONS BELOW

The opinion of the United States Court Southern District of West Virginia is attached to this petition as "Appendix A."
District Judge Irene C. Berger's certificate of appealability is attached to this petition as "Appendix B."
The opinion of the United States Court of Appeals for the Fourth Circuit is attached to this petition as "Appendix C."

JURISDICTION

The Court of Appeals denied the petition for rehearing and rehearing en banc on November 17, 2020.

Jurisdiction of this Court is invoked under 28 U.S.C. '1254(1). Pursuant to Sup. Ct. R. 13.1, This petition is filed within 90 days of said denial.

CONSTITUTIONAL PROVISIONS

The Sixth Amendment states in relevant part: "In criminal prosecutions... the accused shall have the right to have Assistance of Counsel for his defense."

STATEMENT OF THE CASE

On December 20, 2016 Ohio state trooper B. Hayes stopped the Richardson for a "marked lanes violation." Richardson provided a valid driver's license and proof of insurance. The officer then told Richardson to step out of the vehicle and performed a weapons frisk. No weapons were found. Yet the trooper seized Richardson's wallet and cell phone. The trooper then detained Richardson in the police cruiser. Another officer arrived on the scene and told the trooper he could call a k9 unit and have them come to the scene. Around 15 minutes later that k9 unit arrived and the dog was walked around the vehicle. The officers searched the vehicle. No drugs were found. Officers however seized Richardson's currency and cellular phone without a warrant or an exception to the warrant requirement. No arrest were made. In or around August 2017 officers used the seized evidence to bring charges on Richardson for conspiracy to distribute. Richardson asked his attorney to file a motion to suppress the evidence seized in the traffic stop, counsel told Richardson because there was a traffic citation that was paid a motion to suppress the evidence was meritless, and never filed the motion to suppress the evidence nor investigated any further.(appendix A) Counsel then advised Richardson that because there was no other defense to the governments case that the only other option was to plead guilty to avoid a very long prison sentence.

REASON FOR GRANTING WRIT

Counsel should have known that a paid traffic ticket can only validate an infraction, it does not however validate a search or seizure. Counsel erred where he concluded a motion to suppress would lack merit due to a paid traffic citation, and relied on the paid traffic ticket to decline further investigation of a search in a traffic stop. (appendix A)

Counsel's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance." (Hinton v Alabama, 571 US 263, 274, 134 SCt 1081, 188 LEd 2d 1 (2014)) see also Hill v Lockhart, 474 US 52, 62, 106 SCt 366, 88 LEd 2d 203(1985)(White, J. concurring in the judgment.)("The failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the Strickland analysis..."). "Counsel must demonstrate a basic level of competence regarding the proper legal analysis governing each stage of the case. Counsel's lack of comprehension regarding pertinent law, coupled with inaccurate advice he gave his client was deficient performance. The guarantee of effective assistance of counsel extends to the plea bargaining process. see Missouri v Frye, 566 US 134, 140-44, 132 SCt 1399, 182 LEd 2d 379 (2012); see also Lafler v Cooper, 566 US 156, 162, 132, SCt 1376, 182 LEd 2d 398 (2012); Hill, 474 US at 57-58.

Where an Ineffective Assistance claim based on counsel's failure to file a motion to suppress...it is enough to call into question counsel's performance that an unfiled motion would have had "some substance." (Tice, 647 F3d at 104) And the prejudice prong in such cases has two distinct components, with the petitioner required to show (1) that a motion was meritorious and likely would have been granted, and (2) a reasonable probability that granting the motion would have affected the outcome of his trial. (Kimmelman v Morrison, 477 US 365, 106 SCt 2574, 91 LEd 2d 305 (1968)).

The trooper in this case initiated the stop for a traffic violation, then exceeded the scope of a traffic violation without probable cause or an exception to the warrant requirement.(Terry v Ohio, 392 US 1, 20, 88 SCt 1868, 20 LEd 2d 889 (1968))The trooper then performed a pat frisk and seized Richardson's money and cell phone without probable cause or an exception to the warrant requirement.(Terry v Ohio, 392 at 30) The trooper then detained Richardson until he could locate a k9 and have him come to the scene without probable cause, this prolongs the stop.(Rodriguez v United States, 575 US 348, 135 SCt 1609, 1615-16, 191 LEd 2d 492 (2015)). No arrest was ever made, yet property was seized. (Arizona v Gant,) Counsel advised Richardson that because there was no defense to the Governments case the only option was to plead guilty to avoid a very long prison sentence. Counsel made a decision not to file a motion to suppress evidence based on an incorrect evaluation of the law. Counsel's decision cannot be considered tactical if it is unreasonable.

Had it not been for counsels errors, motion to suppress would have been filed as requested, and likely granted based on the facts stated above. Richardson would have proceeded to trial on grounds for a dismissal or acquittal of the charge, as the Government at no stage in this case has produced any other evidence aside from the unlawfully seized evidence that could alone establish a conspiracy to distribute.(Hill v Lockhart).

CONCLUSION

For the reasons stated, the Supreme Court should GRANT Certiorari in this case.

DATED: 12/29/2020

Respectfully Submitted,



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