

IN THE
UNITED STATES SUPREME COURT

FILED

OCT 28 2020

IN RE: KEVIN DEWAYNE MOORE
PETITIONER

APPLICATION FOR THE ISSUANCE OF AN
ORIGINAL HABEAS CORPUS

PETITION FOR REHEARING
TO: JUSTICE AMY BARRETT

Petitioner, KEVIN DEWAYNE MOORE (Mr Moore), pro se, is presenting this Petition for Rehearing, in GOOD FAITH. It is NOT any type of delay tactic. The issue(s) presented, within this Petition, show that Mr Moore has nowhere else to turn to, in order to get his Sixth Amendment Constitutional violation into the court(s), to be corrected.

that it appears as if this Court has failed to uphold and/or has violated its previous holding(s)/precedent(s), regarding Mr Moore's Sixth Amendment violation factual claim. Mr Moore, who is NOT an attorney, nor has he had the assistance of a trained/schooled/licensed attorney, has presented this Petition to the best of his knowledge and ability, in order to comply with this Court's Rule 44.

QUESTIONS PRESENTED

1. Does this Court's holding in PREMO v MOORE, 562 US 115 (2011), as emphasized in LEE v US, 198 L Ed 2d 476 (2017), that "strict adherence to the Strickland standard is '**ESSENTIAL**' when reviewing claims about attorneys error 'at the plea bargain stage.' Id at 125," as well as this Court's holding in MISSOURI v FRYE, 566 US 134 (2012), as well as in this Court's other cases, apply to Petitioner's claim of ineffective assistance of counsel and/or counsel's deficient performance "at the plea bargain stage," of this case, claim?
2. Does this Court violate its own precedent when a petitioner mets or exceeds the requirement(s) for this Court to use its Original Jurisdiction and issue an Original Habeas Corpus - when petitioner has no other avenue available to present his Constitutional violation claim, but fails to do so? Thus, allowing the Constitutional violation to remain uncorrected?
3. Did this Court violate its holding in MISSOURI v FRYE, 566 US 134 (2012), and/or LAFLER v COOPER, 566 US 156 (2012), when it failed to hold Petitioner's court appointed counsel ineffective and/or that counsel's performance was deficient - when counsel failed to present, or to even inform Petitioner of, the government's formal plea bargain offer - SAME conduct/violation?

STATEMENT OF CASE

Mr Moore is presenting his factual claim of ineffective assistance of counsel and/or that counsel's performance was deficient - at the plea bargain stage of this case, due to counsel's failure to present, or to even inform him of the existence of, the government's formal plea bargain offer and factual resume, to him. That he discovered this evidence YEARS AFTER his original 28 USC §2255 process had been completed.

Mr Moore avers that he has no other avenue to present this Sixth Amendment Constitutional violation , to the Court, without this Court exercising its Original Jurisdiction and issuing an Original Habeas Corpus. Otherwise, this Sixth Amendment Constitutional violation will go uncorrected.

I
DOES THIS COURT'S HOLDING IN PREMO v MOORE, 562 US 115
(2012), AS EMPHASIZED IN LEE v US, 198 L Ed 2d 476
(2017), AS WELL AS IN THIS COURT'S OTHER CASES, APPLY
TO MR MOORE'S CLAIM OF INEFFECTIVE ASSISTANCE OF
COUNSEL?

Mr Moore avers that he presented his factual claim that his court

appointed lawyer provided ineffective assistance of counsel and/or that counsel's performance was deficient - based on newly discovered evidence that counsel failed to present, or to even inform Mr Moore of the existence of, the government's formal plea bargain offer and factual resume, to him.

This Court has failed to hold that Mr Moore's lawyer provided ineffective assistance of counsel and/or that counsel's performance was deficient, during the pretrial/plea bargain phase/stage of the proceedings, in this case.

In reviewing Mr Moore's claim, this Court **MUST** review it using the "Strickland standard."

"In PREMO v MOORE, 562 US 115 (2011), the court emphasized that '**STRICT ADHERENCE**' to the Strickland standard' is '**ESSENTIAL**' when reviewing claims about attorney error 'at the plea bargain stage.' Id at 125." LEE v US, 198 L Ed 2d 476 (2017).

This Court's single word "denied," shows that this "review" did not take place. Because if it had, with the undenied facts and irrefutted documented evidence presented, the outcome of this case would have been different.

THIS COURT in MISSOURI v FRYE, 566 US 134 (2012), held that FRYE'S counsel was ineffective for the **EXACT SAME CONDUCT** as Mr Moore's counsel.

"The court in MISSOURI v FRYE, 566 US 134...(2012), took a similar approach. In **THAT CASE**, the court extended HILL to hold that counsel could be constitutionally ineffective for **FAILING** to communicate a plea deal to a defendant. 566 US at 145." LEE, *supra*. Also see: HILL v LOCKHART, 474 US 52 (1985)(Failure to provide effective assistance during plea negotiations).

Mr Moore avers that the record shows that he has adequately demonstrated a reasonable probability that he would have entered into plea negotiations, had his lawyer presented the government's formal plea offer to him. (Petition, at pg 13).

The record shows that Mr Moore did, in fact, attempt to sign a plea for 2-3 years. However, his court appointed lawyer **REFUSED** to present this offer to the government. (Petition, at pg 13).

Mr Moore avers that not only is this Court's precedent - regarding this type of Constitutional violation, well-established, but the Second, Third, Fifth, Sixth, and Seventh Circuit's precedents are

also well-established.

"Attorneys are obligated to present plea offers to their clients and **WILL BE FOUND LACKING** if they fail to do so." "[T]he negotiation of a plea bargain is a critical phase of litigation of the Sixth Amendment right to effective assistance of counsel.' UNITED STATES v REEDY, 719 F 3d 369, at *2 (5th Cir 2013), quoting PADILLA v KENTUCKY, 559 US 356 (2010)." VALLADO v STEPHENS, SA-13-CA-196-XR (5th Cir 2013). Also see: BAKER v US, No 14-370(PGS) (3rd Cir 2019); GLOVER v US, 531 US 198 (2001); COMPEAN v US, No 12-0730 (WD KY 2013); LINT v PRELESNIK, No 09-10044 (ED MICH 2011); ROBINSON v US, 744 F Supp 2d 684 (ED MICH 2010); MAVASHEV v US, No 11-3724 (ED NY 2015); JOHNSON v DUCKWORTH, 793 F 2d 898, 902 (7th Cir 1986)(Failure to inform client of [plea] offer **CONSTITUTES** ineffective assistance of counsel).

The record shows that Mr Moore presented facts and evidence - Attachment E(3), showing that the government presented his court appointed lawyer with its formal plea bargain offer. (Petition, at pg 12; Attachment E(3)).

The record shows that Mr Moore sent a request to the U.S. Attorney's office, in Dallas, TX, in his attempt to obtain a copy of that plea and factual resume. (Petition, at pg 13; Attachment G).

The record shows that he has NEVER received a response reply to that request. (Petition, at pg 13).

Mr Moore does not know what else to do. He has provided facts, with supporting documented evidence and supporting Supreme Court, as well as Circuit Court, holding(s)/precedent(s), proving this claim. **ALL** to no avail.

Thus, Mr Moore's question presented: Does this Court's holding(s)/precedent(s), apply to his claim of ineffective assistance of counsel and/or that counsel's performance was deficient - at the pretrial/plea bargain stage/phase, of this case?

This Court has held that:

"These precedents are consistent with our cases governing the right to effective assistance of counsel in other contexts. This court has held that the right to effective counsel applies to **ALL** 'critical stages of the criminal proceedings.' MONTEJO v LOUISIANA, 566 US 778, 786...(200)." LEE, supra.

This Court has also held that:

"Where defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial, the remedy **MUST** 'neutralize the taint' of a Constitutional violation, UNITED STATES v MORRISON, 449 US 361, 365...(1981)." LAFLER v COOPER, 566 US 156 (2012).

The record shows that Mr Moore has met or exceeded this Court's requirement to show ineffective assistance of counsel and/or that counsel's performance was deficient at the pretrial/plea bargain stage, of this case. **HOWEVER**, this Court appears not to be willing to apply its OWN holding(s)/precedent(s) to Mr Moore's case.

"The precedents of this Court warrant our deep respect as embodying the considered views of those who have come before." **RAMOS v LOUISIANA**, 140 S Ct 1390 (4-20-20).

II

DID THIS COURT VIOLATE ITS OWN PRECEDENT WHEN IT FAILED TO ISSUE AN ORIGINAL HABEAS CORPUS, WHERE MR MOORE HAS NO OTHER AVENUE AVAILABLE TO PRESENT HIS CONSTITUTIONAL VIOLATION CLAIM TO THE COURTS, THUS, ALLOWING THIS CONSTITUTIONAL VIOLATION TO GO UNCORRECTED?

The record shows that Mr Moore is **NOT** challenging the "validity" of his sentence or conviction.

The record shows that this "particular" claim of ineffective assistance of counsel and/or that counsel's performance was deficient at the pretrial/plea bargain phase/stage, is **NOT** cognizable under 28 USC §2244(b)(2), 28 USC §2255(h), or even 28 USC §2241 - the way the courts have held what the §2244 can be used for. (Petition, at pgs 7-12).

The record shows that Mr Moore has attempted to present this Sixth Amendment Constitutional violation claim under the PLAIN, CONCISE, and EXPRESS language in Fed.R.Civ.P. (FRCvP) Rule 15, or 59(e), or 60(b)(2), or 60(b)(6), to the United States District Court (USDC).

The record shows that the USDC would **NOT** allow/permit Mr Moore to present this claim, as filed. (Petition, at pgs 6-7).

The jurisdiction of the Supreme Court extends to rights protected by the Constitution, Treaties or Laws of the United States, from whatever source these rights may spring. **NEW ORLEANS v DeARMAS**, 34 US 224 (1835).

The record shows that Mr Moore is petitioning this Court for the issuance of an Original Habeas Corpus, because he has **NO** other avenue available to present his Sixth Amendment violation claim. That the exercise of jurisdiction by this court to protect the Constitutional rights **CANNOT** be declined when it is plain that fair result of decision is to delay. **ROGERS v ALABAMA**, 192 US 226 (1904).^④

Mr Moore avers that by denying the issuance of this Habeas Corpus,

^④ (Petition, at pg 10).

this Court has violated the above holding, in ROGERS, as this denial has denied Mr Moore's Constitutional right to effective assistance of counsel, during the pretrial/plea bargain phase/stage, of this case.

Mr Moore avers that not only are this Court's holding(s)/precedent(s) well-established, but so are the Second, Tenth, and Eleventh Circuits.

"A federal prisoner may resort to §2241 to contest his conviction if and only if the §2255 remedial mechanism is 'inadequate or ineffective to test the legality of his detention.. 28 USC §2255(e)." PROST v ANDERSON, 636 F 3d 578, 580 (CA10 2011). Also see: TREISTMAN v US, 124 F 3d 361, 377 (CA2 1997); WOFFORD v SCOTT, No 98-8297 (CA11 1999); McCARTHAN v DIR OF GOODWILL INDUS - SUNCOAST, NO: 12-14989 (CA11 2017), which held:

"A motion to vacate is inadequate or ineffective to test the legality of a prisoner's detention only when [AS IN MR MOORE'S CASE] it CANNOT remedy a particular kind of claim."

The record shows that this "particular kind of claim," CANNOT be remedied, as it is NOT cognizable under 28 USC §§2244(b)(2), 2255(h), or 2241. Therefore, it is up to this Court to issue an Original Habeas Corpus to correct this Constitutional violation. Otherwise, it will go uncorrected, in violation of this Court's holding(s)/precedent(s).

"In an opinion by Rehnquist, Ch, J., expressing the view of the court, it was held that...the Act did not preclude the Supreme Court from entertaining a habeas corpus petition filed as an original matter in the Supreme Court." FELKER v TURNER, 518 US 651 (1996).

III

DID THIS COURT VIOLATE ITS OWN HOLDING IN MISSOURI V FRYE, 566 US 134 (2012) AND/OR LAFLER V COOPER, 566 US 156 (2012),
WHEN IT FAILED TO HOLD THAT PETITIONER'S COUNSEL WAS
INEFFECTIVE AND/OR THAT COUNSEL'S PERFORMANCE WAS DEFICIENT?

The record shows that on May 29, 2007, the prosecutor sent Mr Moore's court appointed lawyer its formal plea bargain offer and factual resume. (Petition, at pg 12; Attachmant E(3)).

The record shows that counsel FAILED to present, or to even inform Mr Moore of the existance of, the government's formal plea offer. (Petition, at pg 12).

THIS Court held, in MISSOURI V FRYE, 566 US 134, 182 L Ed 2d 379 (2012), that:

Decision: "Defense counsel's allowing a plea offer to expire without advising accused of offer HELD TO CONSTITUTE denial of effective assistance REQUIRED under Federal Constitution's Sixth Amendment."

The record shows that this is exactly what Mr Moore has presented to the USDC; to this Court, in his Application for this Court to issue an Original Habeas Corpus.

THIS Court further held, in FRYE:

"Defense counsel has the duty to communicate formal offers from the prosecution." "That defense counsel in that case was deficient in failing to communicate to the petitioner the prosecutor's formal plea offer before it expired, where petitioner [EXACTLY AS MR MOORE HAS DONE] produced a letter from the prosecutor [Attachment E(3)] communicating that offer." (Petition, at pg 14).

Mr Moore avers that this Court is not permitted, through the fundamental fairness of the judicial system, to pick and choose who or which case they want to grant/apply its holding(s)/precedent(s) to and to who or to which case to choose to violate its holdings on.

In GAMBLE v US, 139 S Ct 1960, 1969 (2019), this Court held:

"Stare decisis 'PROMOTES the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.' PAYNE v TENNESSEE, 501 US 808, 827(1991)."

"In Constitutional cases, 'A DEPARTURE from precedent' DEMANDS SPECIAL JUSTIFICATION.' ARIZONA v RUMSEY, 467 US 203, 212 (1984)."

This Court did **NOT** provide any "special justification" for its failure to hold Mr Moore's attorney ineffective, for the **EXACT SAME REASON** FRYE's attorney was.

This Court has HELD that:

"This court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution. When defense counsel allowed the offer to expire without advising the defendant,..., defense counsel did not render the effective assistance the Constitution requires." FRYE, *supra*, at 390, HN 9 (Sotomayor, J., joined by Roberts, Ch. j., and Scalia, Kennedy, Thomas, Breyer, Alito, and Kagan, JJ); HN 10 (SAME).

Mr Moore avers this Court has failed to uphold or has violated its OWN holding/precedent, as shown in the above section. This Court's precedent is well-established and should be respected and upheld, **AT ALL TIMES.** RAMOS, *supra*.

IV CONCLUSION

For any or all of the foregoing, Mr Moore prays that this Honorable Court will reconsider its prior denial, and GRANT the Relief requested,

in his Application for the Issuance of an Original Habeas Corpus [Petition, at pgs 21-22], and any/all other relief this Court deems needed or necessary.

Respectfully submitted

BY:LS: Kevin Dewayne Moore, Head of State - House of Moore,
(Kevin Dewayne: Moore)
Est '80, Secured Creditor, D/B/A: KEVIN DEWAYNE MOORE: CEO, American
National, Oklahoma National, in esse, sui juris, legalis homo,
without prejudice, without recourse.

Date: October 28, 2020

The Four Corners of this Petition for Rehearing are under the Highest level of Knowledge, Truth, and Fact, as scribed and dated hereunder, thereof; Kevin Dewayne: Moore, Secured Creditor, D/B/A: KEVIN DEWAYNE: MOORE: CEO, American National, Oklahoma National, in esse, sui juris, legalis homo. Given under the Penalty of Perjury.

Date: October 28, 2020

BY:LS: K. D. Moore, Head of state - House of Moore,
(Kevin Dewayne: Moore)
Est '80, Secured Creditor: D/B/A: KEVIN DEWAYNE MOORE: CEO, American
National, Oklahoma National, in esse, sui juris, legalis homo,,
without prejudice, without recourse.

Date: October 28, 2020

CERTIFICATE OF MAILING

I, KEVIN DEWAYNE MOORE, hereby declare that a True and Correct copy of this Petition for Rehearing, presented to Justice Barrett, was provided to the Clerk of the Court on this day of October, 2020, by placing such in the inmate outgoing legal mail system with first class postage affixed to it and mailed Certified Mail to the address listed below.

Date: October 28, 2020

BY:LS: K. D. Moore, Head of State - House of Moore,
(Kevin Dewayne: Moore)
Est '80, Secured Creditor, D/B/A: KEVIN DEWAYNE MOORE: CEO, American National, Oklahoma National, in esse, sui juris, legalis homo, without prejudice, without recourse.

RE: S Ct case no: 20-5194

U.S. SUPREME COURT
CLERK OF THE COURT
1 FIRST STREET NW
WASHINGTON, DC 20543

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