

NO _____

20-5316

IN THE

Supreme Court of the United States

ORIGINAL

Tyrone Smith

—

Petitioner

VS

Sec'y Dept of CORR, et al
State of Florida —

Respondents

FILED

JUL 20 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Tyrone Smith
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110 Melaleuca Drive
Crawfordville, FLA
32327

Questions Presented For Review

1. Whether the State Court decision that:
"There is no Requirement the Court inform the Defendant of the Elements of each Charge" Contrary to Supreme Court Law?
2. Whether the Federal District Court Resolution of Petitioner's Claim Conflicts With *McCarty v. United States*, 89 S.Ct 1166 (1969) and *United States v. Wetterlin*, 99 S.Ct 1044 (1979)?
3. Whether the Federal District Court Erred or Abused its discretion where it failed to determine that Petitioner had made a Substantial Showing of a denial of a Constitutional Right as Required by 28 U.S.C. Sec. 2253(c)(2) when Seeking to obtain a C.O.A.?
4. Whether the Eleventh Circuit Court of Appeals Erred or Abused its discretion in Requiring Petitioner to show that Justice of Reason would find debatable both (1) "The merits of an Underlying Claim" and (2) "The procedural issues he seeks to Raise", in order to obtain a COA where Claim was denied on the Merit?
5. Whether the Eleventh Circuit Court of Appeals Erred or Abused its discretion in denying Petitioner's Motion for Rehearing?

Certificate of Interested Parties/Corporate Disclosure
Statement

The following is a list of all known parties to the proceedings in the Court whose judgment is sought to be reviewed.

Fletcher, Phil, State Attorney, 18th Judicial Cir. Fla

Barrett, Samantha, Assistant State Attorney

Grant, Circuit Judge, Eleventh Circuit

Hoffman, Leslie R. U.S. Magistrate Judge

Lagora, Circuit Judge, Eleventh Circuit

Moons, Stephen R. Judge Brevard County Fla

Lukashow, Thomas J, Assistant Public Defender 5th DCA Fla.

Maloney, Nancy, Judge 18th Judicial Cir. Fla.

McGuire, Rebecca, Assistant Attorney General, Fla.

Moody, Ashley, Attorney General, Fla.

Narine, Malissa, Victim [Bank Teller]

Piolo, Michael Mario, Public Defender 5th DCA Fla.

Presnell, Gregory A. Senior U.S. District Judge M.D. Fla

Reid, Andrew, Assistant Public Defender, Brevard County Fla.

Reinman, Morgan Lane, Judge, 18th Judicial Cir. Fla.

Roberts, Charles, Judge, 18th Judicial Cir. Fla.

Torpy, Vincent G, Judge 5th J.C.A. Fla.

There is no publicly traded company or corporation
that has an interest in the outcome of this case.

Tyrone Smith

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LEGAL MAIL
Provided to
Wakulla CI

JUL 20 2020

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IN THE
Supreme Court of The United States
Petition For Writ of Certiorari

The Petitioner Respectfully prays that a Writ of Certiorari
issue to review the judgments below.

Opinions Below

Federal Courts:

The Opinion of the United States Court of Appeals appears
at Appendix G to the petition and is not reported yet.

The opinion of the United States District Court appears
at Appendix E to the petition and is not reported yet.

State Courts:

The Opinion of the highest State Court to review the
merits appears at Appendix C to the petition and is
reported at 245 So 3d 746 Fla. 5th DCA (2018),

The opinion of the Eighteenth Judicial Circuit Court appears at Appendix B to the petition and is unpublished to my knowledge.

Jurisdiction

Federal Courts:

The date on which the United States Court of Appeals decided my case was March 23, 2020.

A timely petition for Rehearing was denied by the United States Court of Appeals on May 13, 2020, and a copy of the order denying Rehearing appears at Appendix H.

The jurisdiction of this Court is invoked under 28 U.S.C. SEC. 1254(1).

State Courts:

The date on which the highest state court decided my case was April 3, 2018, a copy of that decision appears at Appendix C.

A timely petition for rehearing was denied on April 27, 2018, and a copy of the order denying rehearing appears at Appendix D.

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

Constitutional and Statutory Provisions Involved

This petition for writ of certiorari involves the following:

(1) The fifth and fourteenth amendments of the United States Constitution, Federal Rule Crim. P. 11 and Florida Rule Crim. P. 3.172, the federalism and effective gender penalty act of 1996, U.S.C. SEC. 2253(C)(2) and SEC. 2254(D)(1).

In further support of this petition for writ of certiorari the petitioner cites the following: "Pro se litigants must be held to less strict standards than those of private attorneys and be given a more liberal review." *Haines v. Kerner*, 92 S.Ct 594 (1972).

This Court has jurisdiction pursuant to Article III section 2 of the United States Constitution, Supreme Court Rules 10, 14 & 34.

Statement of the Case

On June 30th 2015 the Petitioner was charged by information with Robbery 2nd degree and grand theft 3rd degree. On October 5th 2015 the Petitioner entered a plea of guilty to both charges. The trial Court accepted the plea, but failed to inform the Petitioner of the nature of the charges. On December 11th 2015 the Petitioner was sentenced as a habitual violent offender to 15 years and one day for Robbery 2nd degree and 10 years for grand theft 3rd degree to run concurrent.

Basis of Federal Jurisdiction in the Court of

First Instance

The trial Court failed to inform the Petitioner

of the nature of the charges in violation of due process of Law, the 5th and 14th Amendment of the United States Constitution, Fed. C.V. P. 11, Fla. R. Crim. P. 3.172. and further on post Conviction motion 3.850, the State Court Adjudication on the claim resulted in a decision that Petitioner believes to be contrary to clearly established Federal Law as determined by the Supreme Court. (See A D E P A 1996, 2254 (d) (1).

Argument

May it please the Court. All of the relevant facts and contentions in support of and which the Petitioner believes to be necessary and essential to the understanding of this petition are set forth herein the body of this argument. Portions of the Record Relied on are included in the Appendix.

The Petitioner argues that his claim on Post

Conviction motion, 3.850 was that, "the trial court failed to inform him of the nature of the charges". (see Appendix-(A))

The State Court Respondents equated the Petitioner's claim to be that, "the trial court failed to inform him of the elements of the charges". (see portion of Record in Appendix-(B) At Q)

The State Court adjudication denying Petitioner's claim was that, "there's no requirement the court inform the defendant of the elements of each charge". (see portion of Record in Appendix-(B) At Q)

The Petitioner presented his claim to the Fifth District Court of Appeals - Case No. 5D17-2988 citing United States v. Brown, where the Eleventh Circuit held that:

"For the purpose of determining whether defendant guilty plea was voluntary, in accordance with due process, defendant

does not receive Real Notice of the Nature of the Charges unless defendant is informed of the Elements of charged offense, U.S.C.A. Const. Amend 14,

The defendant receives Real Notice of the charge when he has been informed of both the nature of the charge to which he is pleading guilty and its elements. This is so because a plea of guilty represents in essence, an admission to each and every element of the offense.

In addition, the defendant should understand how his conduct satisfies those elements. United States v. Brown, 117 F.3d 471 (11th Cir 1997) Emphasis added.

In McCarty v. United States, On Certiorari, the Supreme Court reversed and remanded, in an opinion by Warren, Ch. J., expressing the view of eight members of the Court, it was held that under Rule 11, the trial judge must personally inquire whether the defendant understood the nature of the charge against him... and the defendant is entitled to plead guilty, where the trial court did not inquire of the defendant personally whether he understood the nature and essential elements of the —————→

Charges against him," Notwithstanding that the defendant's attorney stated that he had advised the defendant of the consequences of the plea, or that the defendant, in response to the court's questions, expressed his desire to plead guilty, acknowledged his understanding of the consequence of such plea as explained by the court with regard to the waiver of a jury trial and the punishment involved, and stated that his plea had not been induced by any threats or promises." *McCarthy v. United States*, 89 S.Ct 1166 (1969).

The 5th DCA failed to address the claim on the merits and affirmed the lower court's denial. (See order in appendix-C). In an event such as this, this court must look through the unexplained decision back to the last related state court decision that provides a relevant rationale and presume that the 5th DCA's unexplained decision adopted the same reasoning... (See *Wilson v. Sellers*, 138 S.Ct 1188 (2018)).

The Petitioner filed the same claim in the Federal Middle District Court of Florida, i.e.; "the trial Court failed to inform him of the Nature of the Charges". In a Memorandum of Law Supporting his claim, Case# 6:18-CV-715-ORI-31KRS the Petitioner Argued that the State Court Adjudication of his claim was Contrary to United States Supreme Court Law. (see 42 U.S.C. 1983 Sec. 2254(d)(1)).

The Petitioner Relied on Henderson v. Morgan, 96 S.Ct 2253 (1976), McCarthy v. United States, 89 S.Ct 1166 (1969) (Quoting Smith v. OGrady, 61 S.Ct 572 (1941)) "The defendant Receives Real Notice of the Nature of the Charge when he has been informed of both the Nature of the Charge to which he is pleading guilty and its elements". Smith v. OGrady 61 S.Ct 572 (1941). Further, the Petitioner now Relies on Boykin v. Alabama, "A plea is not intelligent when, among other things a defendant pleads guilty to a crime without having been informed of the crimes elements".

Boykin v. Alabama, 89 S.Ct 1709 (1969), and U.S. v. Kletterlin where the Supreme Court held that: "When defendant pleads guilty to more than one charge at plea hearing, Rule 11 does not require District Judge to repeat all advice specified in Rule before taking plea on each charge; however, it is essential for judge to inform defendant of, and determine that he understands the nature of each particular charge and maximum possible penalty to that charge". United States v. Kletterlin, 99 S.Ct 1044 (1979).

"Rule 11 Requirement that the defendant understands the nature of the charge against him Refers to the Elements of the Offense". United States v. Calderone, 243 F.3d 587, 589 (2nd Cir 2001) See also, 11th Cir. holding that: "the Nature of the Charges Refers to the Elements". United States v. Lujano-Perez, 274 F.3d 219 (5th & 11th Cir 2001). (Emphasis added)

The Federal Middle District Court of Florida denied Petitioner's Claim deciding its on Resolution of the Claim Citing Gaddy v. Linnaman, "Due process does not require that the defendant, in pleading guilty be informed of each element of the crime in question at the plea hearing". Gaddy v. Linnaman, 780 F.2d 935 (11th Cir 1986). And further decided that the Petitioner failed to demonstrate that the State Court Resolution of his Claim was contrary to clearly established Federal Law. (See order of denial in Appendix-E).

The Petitioner timely Requested issuance of a COA to the District Court. The Middle District Court of Florida denied Request for COA. (See order in Appendix-F).

The Petitioner then filed an Amended Request for issuance of a COA to the Eleventh Circuit Court of Appeals, including motion to proceed in forma pauperis

and a Certificate of Interested Persons/ Corporate Disclosure Statement.

The Petitioner, in his amended Request for COA to the Eleventh Circuit Court of Appeals argued that: "Under ADEA's standards for a COA, when a state prisoner seeks permission to initiate appellate review of a district court's denial of habeas relief, a court of appeals should limit its examination to a threshold inquiry into the underlying merit of the prisoner's claims rather than ruling on the merit of the prisoner's claims." Miller - EL v. Cockrell, 123 S.Ct 1029 (2003).

The Petitioner further argued that the Supreme Court in Miller - EL, supra held that: "... a prisoner seeking a COA need only demonstrate a substantial showing of the denial of a constitutional right. Moreover, a prisoner satisfies this standard by demonstrating that jurist of Reason could (i) disagree with the district court's resolution

of the prisoner's federal Constitutional claims, or (2) conclude the issues presented are adequate to deserve encouragement to proceed further."

The Petitioner's Constitutional claim is that: "the trial Court failed to inform him of the nature of the charges, in violation of due process, the Fifth and Fourteenth Amendment of the United States Constitution and Fed. R. Crim. P. 11."

The Petitioner argued that jurist of Reason would find defensible the District Court's Resolution of his claim, i.e.; "Due process does not require that a defendant, when pleading guilty be informed of each element of the crime in question at the plea hearing" (citing *Gaddy v. Linahan*, 780 F.2d 935 (11th Cir 1986)) because the Resolution does not fairly address his claim.

The Petitioner argued that his claim was not about a sentencing listing of the elements of the crimes in question

at the plea hearing but, that the Court accepting the plea failed to inform him of the nature of the charges at all, before, at or after the plea hearing.

The Fifth and Eleventh Circuit holds that the nature of the charges refers to the elements. See U.S. v. LOYANO-PETER, SUPRA. Due process requires that the Court, prior to accepting a plea inform the defendant of the nature of the charges. See Fed. R. Crim. P. 11.

In McCarthy, SUPRA, the Supreme Court held that: "there is no adequate substitute for demonstrating in the record, at the time the plea is entered the defendant's understanding of the nature of the charges against him."

In U.S. v. Kletterlin, SUPRA, the Supreme Court held that: "When a defendant pleads guilty to more than one charge at a plea hearing ... it is essential for judge to inform defendant of, and determine that he understands the nature of each particular charge ... " i.e., the elements.

The Petitioner stresses that in light of U.S. v. Luñano-Perez, McCarthy v. U.S. and U.S. v. Wetterlin, Supra, it appears that due process would require that a defendant, in pleading guilty be informed of each element of the crimes in question at the plea hearing. There is no adequate substitute. (see McCarthy, Supra).

The Petitioner argues that it is evident here, where the District Courts Resolution of his claim conflicts with McCarthy and Wetterlin, Supra, that Jurist of Reason would find the Resolution debatable, wrong or that the issue presented is adequate to deserve encouragement to proceed further. Moreover, Jurist of Reason would find the District Courts Resolution debatable or wrong where the Record reflects that the Court accepting the plea completely failed to inform the Petitioner of the nature of the charges of both, Robbery and degree and grand-theft 3rd degree.

The Eleventh Circuit Court of Appeals denied the Petitioner's Request for COA expressing the view that:
"To merit a COA, Smith must show that Jurist of Renson would find debatable both (1) the merits of an Underlying Claim, And (2) the procedural issues that he seeks to raise. Citing 28 U.S.C. sec. 2253(c)(2); and Slack v. Meylanis, 529 U.S. 473, 478 (2000) Smith's Motion for COA is Denied because he failed to make the requisite showing. (See order in appendix - G).

On Motion for Rehearing the Petitioner Respectfully disagreed with the Eleventh Circuit view of the prerequisite to obtain a COA according to 28 U.S.C. sec. 2253(c)(2) and Slack v. Meylanis, arguing that there is no support in these citations for their view. That in fact, sec. 2253(c)(2) Requirement is that: "A Circuit justice or judge may issue a COA if a Applicant has made a substantial showing of a denial of a Constitutional right."

The Petitioner avers that he met the Substantial Showing Requirement of 2253(c)(2) where he submitted attached to his Request for COA as Exhibit (A) a Copy of the original transcript of the hearing of the Court accepting the plea as Undeniable proof that the Court failed to inform him of the Nature of the Charges as is Constitutionally Required by due process of Law, U.S.C.A. Const: Amend 5th & 14.

In Absence of any Showing that the Court accepting the plea informed the defendant of the Nature (Elements) of the Charges, Just of Reason would find the District Court's Assessment of Petitioner's Claim defensible.

This Court in its precedent, Slack v. McDaniel held that: "Where Federal District Court, in considering a petition for writ of Habeas Corpus, has rejected a State prisoner's Federal Constitutional claims on the merit, the Showing needed to satisfy the Requirement for issuance of a Certificate of Appealability, under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 28 USCS 2253(c), is straightforward, that is, the prisoner

Most demonstrate that Reasonable Jurist would find the District Courts assessment of the Constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district Court dismisses the petition based on procedural grounds. We hold as follows: When a district Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying Constitutional claim, a COA should issue when the prisoner shows, at least, that Jurist of Reason would find it debatable whether the petition states a valid claim of the denial of a Constitutional right and that Jurist of Reason would find it debatable whether the district Court was correct in its procedural ruling." *Slack v. Meltanuel*, 529 US 473, 146 LEd 2d 542, 120 S.Ct 1595 (2000).

In the instant case, the district Court having reached the Petitioner's Constitutional claim and having denied the claim on the Merit, the Petitioner was only required to show that the district Courts assessment of his claim

to be debatable or wrong.

The Eleventh Circuit denied Petitioner's Motion for Reconsideration expressing the view that the Petitioner failed to offer new evidence or arguments of merit to warrant relief. (See order in Appendix - H)

In the case sub judice, the Petitioner's claim was denied by both: State Court and the Federal Middle District Court of Florida on the merits.

The new evidence and argument of merit not previously offered but, was offered on Motion for Reconsideration was the Petitioner's citing of *Slack, supra*, where the Supreme Court explained the difference in the requirement standard where a district court has rejected the constitutional claim on the merits and where the district court has rejected the constitutional claim on procedural grounds.

Where as the Petitioner's claim was denied on the

Merits, the showing to satisfy 2253(c)(2) is straightforward:

The Petitioner must demonstrate that Reasonable Jurist would find the district Court assessment of the Constitutional claim debatable or wrong.

The Petitioner contends that in light of *McCarthy* and *Wetterlin*, *supra*, and the fact that the transcript of record of the Court accepting the plea reflects a total failure of the Court to inform the Petitioner of the nature of the charges, Jurist of Reason would find the district Court's assessment of his claim debatable, wrong or that the issue presented is adequate enough to deserve encouragement to proceed further.

The Petitioner asserts that when applying the aforementioned standard as explained by the Supreme Court in *Slack*, *supra* to his claim, which was denied on the merits, a COA should be issued.

Conclusion

For all of the foregoing compelling reasons, For

Similarly situated persons and the public's trust in the Fairness and integrity of the judicial system, this Honorable Court should Reverse and Remand with instructions that a COA should issue permitting Petitioner to argue the merits of his claim on appeal and or any such other Relief that this Court deems just and proper.

Respectfully
Tyron Smith

OATH

I hereby swear or affirm under penalty of perjury under United States Laws that I have read the foregoing instrument and the facts stated there in are true. (28 USC SEC. 1746; 18 USC. SEC. 1621).

Tyron Smith

Certificate of Service

I hereby Certify that a true and correct copy of the foregoing Petition For writ of Certiorari was placed in the hands of a prison official for the purpose of mailing to the Sec'y of the Dep't of Corr, Mark Ench, 501 S. Calhoun St Tallahassee Fla, 32301, and to the State Attorney General; Ashley Moody, 444 Seahorse Blvd, 5th floor, Daytona Beach Fla 32118 on the 30th day of July 20th 2020

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Provided to
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JUL 20 2020

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