No. 20-5813

IN THE

SUPREME COURT OF THE UNITED STATES

GLENN YOUNG — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GLENN YOUNG
457113, PINE—2
LOUISIANA STATE PENITENTIARY
ANGOLA, LA 70712

QUESTIONS PRESENTED

This case also involves a non-unanimous verdict leading to the following questions:

1. Is the State's evidence sufficient to sustain Young's non-unanimous conviction?

2. Was Young entitled to a unanimous jury verdict under the Sixth and Fourteenth Amendments to the United States Constitution?

3. Was Young was deprived of his constitutional right to the effective assistance of counsel.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

Glenn Young
457113, Pine—2
Louisiana State Penitentiary
Angola, LA 70712

James E. Stewart Sr., District Attorney
Attention: Appeals Division
501 Texas Street Fifth Floor
Shreveport, LA 71101-5408

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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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is
[x] reported at 809 Fed. Appx. 244; or,
[] has been designated for publication but is not yet reported; or,
[] unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is
[x] reported at 2019 WL 1006243; or,
[] has been designated for publication but is not yet reported; or,
[] unpublished.

[x] 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
[x] reported at 2011-1961 (La. 2/17/12); 82 So.3d 281; or,
[] has been designated for publication but is not yet reported; or,
[] unpublished.

The opinion of the Louisiana Second Circuit Court of Appeal appears at Appendix C to the petition and is

[x] reported at 46, 422 (La. App. 2 Cir. 8/10/11); 71 So.3d 1142; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 12, 2020.

[x] No petition for rehearing was timely filed in my case.

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

[x] For cases from **state courts:**

The date on which the highest state court decided my case was October 30, 2015.

A copy of that decision appears at Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United Sates Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United Sates Constitution provides in pertinent part:

> 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.

Louisiana Constitution Article 1, § 17

> A Criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.

La. C. Cr. P. art. 782

> A Criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.

La. C. Cr. P. art. 821(B)

> A post verdict judgment of acquittal shall be granted only if the court finds that the evidence, viewed in a light most favorable to the state, does not permit a finding of guilty.

STATEMENT OF THE CASE

Young was tried and convicted for one count of possession of a Schedule II controlled dangerous substance over 28 (but less than 200) grams of cocaine and one count of illegal use of a weapon. He was convicted on both counts by a non-unanimous (10-2) vote. Young was adjudicated a third felony offender and sentenced on count one to serve fifty years at hard labor without the benefit of parole for the first five years. On count two he received a concurrent fifty-year-sentence at hard labor without the possibility of parole. The state appellate court remanded the case to the trial court for resentencing on count two because the sentence exceeded Young's "exposure of two years, with or without hard labor." *State v. Wallace*, 46, 422 (La. App. 2 Cir. 8/10/11); 71 So.3d 1142, 1149.

Young unsuccessfully appealed his convictions and sentences to the state appellate and supreme courts. His collateral attacks against both have also been unsuccessful. On February 11, 2019, a federal magistrate judge recommended Young be denied habeas relief and his case be dismissed with prejudice. On March 1, 2019, the district court adopted the magistrate's recommendation and denied Young's habeas petition. On June 12, 2020, the Fifth Circuit Court of Appeals denied Young's request for a Certificate of

Appealability and further declined to grant his request for an evidentiary hearing. This instant petition for a writ of certiorari timely follows.

REASONS FOR GRANTING AND STAYING THE WRIT

On May 4, 2020, the Court granted a petition for a writ of certiorari in Edwards v. Vannoy, _____ S. Ct. _____ (2020)(No.19-5807) to determine if the "Courts decision in Ramos v. Louisiana, 590 U.S. _____ (2020) applies retroactively to cases on federal collateral review. Young respectfully asks this Court to stay this petition pending it's decision in Edwards v. Vannoy, and then dispose of the petition as appropriate in light of that decision.

Under Rule 10, the Louisiana courts and the United States Fifth Circuit Court of Appeals has denied relief in contrarily decided important questions of federal laws that has been settled by this Court and has decided an important federal question in a way that conflicts with relevant decisions of this Court as set fourth below:

1. Young's trial counsel's performance was deficient which resulted in prejudice contrary to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as explained in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2053 (1984).

A. Young's trial counsel rendered ineffective assistance for failure to file a Motion to Suppress Illegally Obtain Contraband

On March 7, 2007, the Shreveport Police Department (S.P.D.) executed a search warrant for the residence of 2997 Hattie Street in Shreveport, Louisiana in search of a .40 caliber handgun and .40 caliber ammunition and two suspects. Upon this search, the S.P.D. Quickly located the .40 caliber handgun with .40 caliber ammunition, which was located in the kitchen cabinet, and arrested the two suspects. The S.P.D. Secured the .40 caliber hand gun with the ammunition by giving it to the case agent, Lee Scott,

who was outside of the residence with the two suspects arrested outside in handcuffs. At this point, the S.P.D. Made a successful search and seizure and the arrest of the two suspect; therefore, the search should have been terminated and no more further government intrusion is allowed.

However, it was not until the case agent, Lee Scott, decided to reenter the residence and started another search looking for items not contain in the warrant after the fruits of the warrant was already in his possession and secured. See Arizona v. Hicks, 107 S. Ct. 1149, 1152-54 (1987); the search and seizure of drugs and paraphernalia from the home went beyond "the objectives of the authorized intrusion" where it "produce[d] a new invasion of [Young's] privacy unjustified by the exigent circumstance that validated entry." Arizona v. Hicks, 107 S. Ct., at 1152. In other words, the S.P.D. Went beyond the scope of the warrant. The Fourth Amendment prohibits unreasonable search and seizure see Coolidge v. New Hampshire, 91 S. Ct. 2022.

The case agent, Lee Scott, reentered the residence and found one bag of cocaine in the living room under a couch which was not in plain view. The reentry of the residence and starting another search apart from the original search after the fruits of the search were secured in his possession was unreasonable, unjustifiable, and it prohibits what the Fourth Amendment requires. The case agent, Lee Scott, stated in his testimony that the cocaine was not in plain view and he couldn't see it unless he moved the couch. This is identical to Arizona v. Hicks supra where the officer's actions in moving equipment to locate the serial number constituted another search.

Hearing the testimony by agent, Lee Scott, defense counsel should have objected and filed a Motion to Suppress this evidence from use at trial. The state argued, "The police were not required to immediately end the search once a single weapon and some ammunition were recovered. They had been told that there were multiple shooters and that

two men in the home had such weapons. Police were entitled to continue the search until they recovered all such weapons and ammunition, together with any items that they encountered in plain view during the course of that search. Counsel would have lacked legal authority to obtain the exclusion of the evidence ..."

In this case, the search warrant describe for a .40 caliber handgun and .40 caliber ammunition and these items were recovered; therefore, the S.P.D. Should have terminated their search. The contraband they found was after they found the .40 caliber handgun with ammunition. The contraband was under a couch and not in plain view and defense counsel did not lack legal authority to obtain the exclusion of the evidence. In Coolidge v. New Hampshire, 91 S. Ct. 2022, Mr. Justice White states in his opinion, "Police with a warrant for a rifle may search only places where rifles might be and must terminate the search once the rifle is found ..."

The purpose of the search warrant executed on 2997 Hattie Street, as acknowledged by the federal district court, was to search "for a .40 caliber handgun and ammunition." Appendix C. p.19. Young argued that his trial counsel rendered ineffective assistance because his counsel failed to object and challenge the reentry of a unlawful search and seizure.

If this Court righteously decide to grant this Writ, a review of the full record will reveal that all the agents that executed the search warrant exited the residence after the fruits of the warrant were recovered and secured n their testimony. The case agent, Lee Scott, had no authority to reenter the residence and s tart another search apart from the original search. Young's counsel did not lack "legal authority to obtain exclusion of the [illegally seized] evidence" and therefore, he shall be entitled to the suppression of this evidence. See Arizona v. Hicks, 107 S Ct. 1149 (1987). Young is a pro se litigant; therefore, he should not be held to the standard of an attorney. Arizona v. Hicks, 107 S.Ct. 1149 (1987); Register v. Thaler, 681 F.3d 623, 628 (C.A.5(La.)2012).

B. Young's trial counsel rendered ineffective assistance when he failed to challenge the Affidavit in Application for Search Warrant

Young contends that this Sixth Amendment Ineffective Assistance of Counsel claim is based on trial counsel's failure to challenge the affidavit is distinct from a Fourth Amendment claim challenging the admission of evidence. See Kimmelon v. Morrison, 106 S. Ct. 2574. The Fourth Amendment contains two separate clauses; (1) A prohibition against unreasonable search and seizures; (2) A requirement that probable cause support each warrant issued. See United States Constitution Amendment Fourth and Fourteenth; Mapp v. Ohio, 367 U.S. 643 (1961).

Detective, Lane Smith, prepared an affidavit in application for a Search Warrant on May 4, 2007. Young contends that the affidavit must not be lacking in probable cause and if the affidavit is lacking in probable cause, the affidavit in application for a search warrant can

be challenged by a pretrial Motion to Suppress and it is the duty and obligation of the defense counsel to do such.

The United States Supreme Court defines probable cause to search as a "fair probability that contraband or evidence of a crime will be found in a particular place." See Illinois v. Gates, 103 S. Ct. 2317, 462 U.S. 213 (U.S. Ill. 1983) In determining if the affidavit in application for search warrant was lacking probable cause, we must review the detailed interview between Marcus Thomas (the victim) and Detective Lane Smith that occurred on May 4, 2007 in pertinent part: The Affiant was able to conduct a detailed interview with Marcus Thomas and Thomas informed Detective, Lane Smith, that Greg Young, Bobby Wallace, and Glenn Young were the three suspects who shot at him. Marcus Thomas told Detective Lane Smith that a source who wished to remain unknown described Bobby Wallace and Glenn Young as to having .40 caliber handguns. Marcus Thomas also told Detective Smith that the suspects ran to the address of 2997 Hattie Street after firing several shots.

After reviewing the detailed interview in pertinent part, probable cause does not exist for a search warrant. Let's review three important factors to see if probable cause existed: (1) Marcus Thomas reported

the shooting incident on April 30, 2007 and Detective Lane Smith did a detailed interview on May 7, 2007 one week later. (2) Marcus Thomas informed Detective Lane Smith that a "source who wished to remain unknown" described Bobby Wallace and Glenn Young having .40 caliber handguns. (3) Detective Lane Smith had no physical evidence that Glenn Young lived at that address other than what Marcus Thomas told him. In Illinois v. Gates, supra, "The totality of the circumstances has informed probable cause determinations." and the totality in this case probable cause for a search warrant does not exist here. Furthermore, Detective Lane Smith stated the following in his testimony at Young's trial:

Q. Donut gives you evidence that he believes that the weapon that was used against him was in the house, he tells you that right?

A. No he tells me these guys live at this house

Q. Okay

A. But to say that he knows for a fact the gun is inside the house he couldn't do that.

Q. All right, did he tell you how he knew that they carried .40 caliber gun?

A. Through word on the streets.

The affidavit is severely lacking probable cause and counsel should have filed a Motion to Quash or Suppress the affidavit and suppress said evidence from use at trial. Had counsel filed a Motion to Quash the affidavit, there is a fair probability that the outcome would have been different.

C. *Young's trial counsel rendered ineffective assistance when he failed to request a continuance.*

The state courts summary disposition of this claim does nothing to satisfy due process and equal protection. According to the district court, Young's claim that his "counsel was surprised by the weapons charge is not supported by the record" is misplaced. Young was not granted an evidentiary hearing to expand the record in the face of a factual dispute. The only person who can say whether Young's counsel was surprised or not is the attorney. The attorney, however, has not said anything and neither was he given an opportunity to do so because Young has been deprived of a chance to expand the record at an evidentiary hearing. See *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

D. *Young's trial counsel rendered ineffective assistance when he failed to object (or request a mistrial) when the prosecution repeatedly mentioned marijuana found, after being instructed not to do so.*

The district court mischaracterized Young's claim. The basis of the claim is the prosecution's consistent attempt to introduce evidence of other crimes without having lain a proper foundation. The trial court had instructed

the prosecution not to talk about marijuana that was found in the jury's presence. With complete disregard for the court's instruction, the prosecutor asked Young if he knew about the marijuana found in the house in the jury's presence. This was the third or fourth reference to the marijuana and it not innocent reference or harmless. Also, the district court's speculation about what counsel's strategy was or was not is just that—speculation. Young is entitled to relief because he was not granted an evidentiary hearing to resolve the factual dispute he presented for review. See *Townsend v. Sain*, supra.

E. *Young's trial counsel rendered ineffective assistance when he failed to note the race and gender of the jury.*

Contrary to the lower courts opinions, Young's trial counsel's reputation is of no consequence. Appendix C, p. 23. In fact, what counsel is known for and what he failed to do are two different things. Just as with counsel's failure to object to Agent Recchia's testimony, his failure to articulate the race and gender of jurors who were struck by the prosecution under pretense serves as another example of deficient performance that has caused Young prejudice.

F. *Young's trial counsel rendered ineffective assistance when he failed to request the transcription of recorded conversations during bench conferences.*

Young did not rely on independent and adequate state court rules and statutes for a resolution of his case. Contrary to the district court's assessment, Young argued that his appellate counsel could not argue anything left out—things "that are germane to [the] consideration of an appeal." Appendix C, p. 29 (citing *Draper v. State of Washington*, 83 S.Ct. 774 (1963)). The assertion that Young has to particularize something he was not privy to is misplaced. The very point of his claim is that important things took place at the Bench and he cannot avail himself of any irregularity without the record, especially where he was not allowed to hear what was said at the Bench.

G. *Young's trial counsel rendered ineffective assistance when he failed to object to the testimony of the agent on the Special Response Team.*

The district court adopted the magistrate's contention that:

> The questions at issue were not an important part of the state's prosecution, and there was no argument that the testimony about the SRT entry supported a finding of guilt. There is little reason to believe that the verdict would have been different had this testimony not been presented. Accordingly, the state court's denial of this claim was not an objectively unreasonable application of clearly established federal law.

Appendix C, pp. 31-32.

First of all, by adopting the MJ's recommendation, the district court has admitted the prosecution's case was not a slam dunk and reasonable

jurist could debate about the sufficiency of the State's evidence under *Jackson*. See Appendix C, p. 14. Secondly, the jury's non-unanimous verdict is also proof of reasonable doubt. There is more than little reason to believe the verdict could have been different.

Detective Smith's search warrant does not contain any information about drugs; however, Agent Recchia told the jury that drugs were the primary reason for entry into the home. The district court's determination that "there was no argument that the testimony about the SRT entry supported a finding of guilt" is misplaced. Considered objectively and under federal jurisprudence, there is "reason to believe that the verdict would have been different had this testimony not been presented." Appendix C, p. 32. Especially if Young's trial counsel would have objected when Agent Recchia changed the facts of this case by presenting false testimony about the reason for the search.

II. *Young's trial counsel rendered ineffective assistance when he failed to request that the jury be instructed about an accomplice's testimony.*

The district court determined there "was nothing in Elie's testimony that directly incriminated [Young] as possessing the cocaine that was found in the house. Rather he said that he did not know whether the people in the

house were involved in drugs." Appendix C, p. 33. The district court further determined that after Elie testified to supposedly hearing Young say "he needed to get a Reggie," Young allegedly said he was "just playing" because he did not have any money. See Appendix C, p. 33. The district court also acknowledged that Elie pled guilty to actually possessing the drugs that were found. In this case, the State could not point to any material evidence to support its allegation that Young was in constructive possession of the drugs seized. Still, the State sought to prosecute him for constructive possession after Elie pled guilty to actual possession and was sentenced to probation. If Elie was innocent, he should not have pled guilty. And, if the State believed Elie was innocent, he should not have been prosecuted. At any rate, Young was entitled to the cautionary accomplice instruction.

2. Under the reasonable jurist standard, the State's evidence is not sufficient to sustain Young's conviction.

According to the district court, the state court's determination that the evidence was sufficient to convict Young in this case is adequate to withstand doubly deferential habeas review. The district court's conclusion is in direct conflict with the magistrate's assessment of the case. The district court admitted the prosecution's case was not a slam dunk and that reasonable

jurist could debate about the sufficiency of the State's evidence under the *Jackson* standard. *Id.*, cf. *Jackson v. Virginia*, 99 S.Ct. 2781, 2789 (1979).

The State did not prove, beyond a reasonable doubt, under *Jackson v. Virginia*, that Young knowingly or intentionally possessed the drugs found in his sister's home. Because this case was based on circumstantial evidence, the State had the burden of proving that Young had "sufficient control and dominion to establish constructive possession ... knowledge that drugs were in the area ... his relationship with the person, if any, found to be in actual possession ... his access to the area where the drugs were found ... evidence of recent drug consumption ... and his physical proximity to drugs." *State v. Major*, 2003-3522 (La. 12/1/04); 888 So.2d 798, 802; *State v. Toups*, 01-1875 (La. 10/15/02); 833 So.2d 910. The morning the police executed their search warrant, Young was at his sister's house asleep in a back bedroom. The State did not present any evidence that Young knew drugs were in the house. Moreover, mere knowledge of the presence of drugs would not be sufficient to establish constructive possession. In an unpublished case, the Fifth Circuit Court of Appeals made clear that it is the prosecution's burden to show Young "had the power and intent to exercise control over the [drugs]" *U.S. v. Williams*, 2018 WL 1940409 (C.A.5 (Tex.) 2018; quoting *Henderson*

v. United States, ---U.S. ---, 135 S.Ct. 1780, 1784, 191 L.Ed.2d 874 (2015); also citing *United States v. Hagman*, 740 F.3d 1044, 1048 (5th Cir. 2014); *United States v. Meza*, 701 F.3d 411, 419 (5th Cir. 2012). The State claimed Young was in constructive possession of cocaine because he was in a house where drugs were found. His mere presence, however, was not sufficient to support this conviction.

The State further failed to meet its burden of proving Young illegally used a firearm in the alleged shooting against Marcus Thomas. Initially, Thomas did not implicate Young as one of the alleged perpetrators who supposedly shot-up his vehicle. In fact, Thomas gave two statements to investigators and did not implicate Young. Thomas initially named Greg Young and Bobby Wallace as two of the people who shot at his vehicle. One week later, after an interview with investigators, Thomas implicated Young in the alleged shooting. His testimony concerning this one incident also changed at trial when he named the prosecution's key witness, Elie, as one of the shooters. Had the jury rationally considered this information, in addition to Elie's self serving testimony, the outcome of Young's trial would have been different. Contrary to the MJ's assertion, Elie is the perfect candidate for criminal activity. His economic status is what makes it more

likely "that [being] seldom employed and homeless" would have a connection to a significant and expensive amount of drugs—especially if he was given an advance of drugs to sell. This idea would serve to explain why he pled guilty to possessing drugs that were, allegedly, not his in the first place. Not to mention, he was sentenced to probation in exchange for his testimony.

3. The trial court entertained this matter without proper jurisdiction in violation of the Fifth and Fourteenth Amendment to the United States Constitution.

The State filed a bill of information alleging that Young violated the provisions of *La. R.S.* 14:95. Although the State claims it filed an amended bill of information to reflect a violation of *La. R.S.* 14:94, the State's alleged proof did not materialize until after Young filed his original habeas petition. Young submitted an official copy of the criminal court minutes undermining the State's claim that the bill of information was amended on March 31, 2008. Accordingly, if the trial court did not have jurisdiction to entertain the allegation contained in the State's bill of information, then Young's right of due process and equal protection were violated. Also, while it is insisted that a pro se litigant's claims be presented, the measure for that accounting does not include a willingness to hold pro se litigants "to the same stringent and rigorous standards as are pleadings filed by lawyers." *Register v. Thaler*, 681

F.3d at 628 (internal quotation omitted). Accordingly, Young is entitled to habeas relief concerning this claim.

CONCLUSION

For the foregoing reasons Young's petition for a writ of certiorari should be granted and held in abeyance pending this Court's decision in *Edwards v. Vannoy*, ___ S.Ct. ___ (2020) (No. 19-5807) and then be disposed of as appropriate in light of that decision.

Respectfully submitted,

/s/ Glenn Young
GLENN YOUNG

Date: Sept. 11, 2020