No. 20-6391

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY RONALD HARE — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TIMOTHY RONALD HARE MDOC# 981251
(Your Name)

Saginaw Correctional Facility - 9625 Pierce Rd.
(Address)

Freeland, MI 48623
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. Does the requirement to prove prejudice under this Court's previous decision in Lafler v Cooper, place a burden on the accused that this Court deemed unnecessary in United States v Cronic, when an attorney is "totally absent" from a critical stage of the proceedings?

II. Does this Court's previous decision in Lafler v Cooper, and United States v Cronic, contradict each other in such a way as to create a vacuum of constitutional magnitude that is capable of repetition, yet evading review?

III. Because this Court has previously deemed our system to be a system of plea bargains, as opposed to a system of trials, and therefore concluding that the plea process is almost always a critical stage, does the Sixth Amendment right to effective assistance require counsel to inform his client of any and all plea agreements offered by the prosecutor, including those offers that the trial court may refuse to accept, for the reason that the failure to do so would ultimately deny the accused of the entire critical stage of plea negotiations, that the prosecutor, who by making such an offer, has demonstrated a willingness to participate in?

LIST OF PARTIES

[XX] 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:

RELATED CASES

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TABLE OF AUTHORITIES CITED

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 _____ 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Saginaw County Trial court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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 6/17/20.
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V, VI, XIV

V - Due Process

VI - Effective Assistance of Counsel

XIV - Due Process

STATEMENT OF THE CASE

Defense attorney, William D. White, was appointed by the State of Michigan to represent the Petitioner on October 21, 2015. Petitioner, who was facing a mandatory minimum sentence of twenty-five years, was ultimately convicted by a jury on May 16, 2016, in the Tenth Judicial Circuit Court for the County of Saginaw, in the State of Michigan. On June 27, 2016, he was sentenced to concurrent terms of eight - fifteen years and twenty-five - fifty years. He is currently serving that sentence in the military veterans unit at the Saginaw Correctional Facility in Freeland, Michigan.

On July 12, 2015, attorney Gary D. Strauss was appointed to represent the Petitioner on direct appeal. The Petitioner's timely filed direct appeal was denied by the Michigan Court of Appeals on October 12, 2017, with Leave to Appeal being denied by the Michigan Supreme Court on April 3, 2018. After the Petitioner's direct appeal had concluded, in preparation for the filing of his federal habeas corpus, he sent letters to both attorneys requesting that they provide him the complete case/work files that had been created during their representation of the Petitioner.

Attorney White responded with a letter stating that all such files had been destroyed in a flood. Attorney Strauss responded by providing the Petitioner with the entire contents of his case/work file. Included within that file was a plea agreement from the Saginaw County Prosecutor, dated December 9, 2015. The agreement stated, "Defendant shall plead ... with agreed upon guidelines of 81 - 135 and all remaining counts would be dismissed. People would agree that the sentences would run concurrent and the Court should stay within the guidelines. **This would avoid the mandatory minimum of 25 years on Counts 3 & 4.**" (Emphasis included in original document) (See Appendix D) The Petitioner was never informed of this formal plea offer.

As opposed to seeking relief through federal habeas corpus, or by seeking certiorari in this Court, the Petitioner returned to the Saginaw County Trial Court

for post-conviction relief under a Motion for Relief From Judgment pursuant to MCR 6.500 et seq. That motion presented only two questions:

> I. WAS THE DEFENDANT DENIED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COURT APPOINTED ATTORNEY FAILED TO INFORM HIM OF A PLEA BARGAIN THAT HAD BEEN PRESENTED BY THE PROSECUTOR?
>
> II. WAS THE DEFENDANT DENIED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL WHEN HIS COURT APPOINTED APPELLATE ATTORNEY FAILED TO RAISE A "DEAD BANG WINNER" ON DIRECT APPEAL?

In support of that motion, Petitioner attached: the original plea agreement printed on the prosecutor's stationary; a copy of the detailed invoice attorney White submitted to the State of Michigan for compensation for his representation of the Petitioner, and a sworn affidavit from the Petitioner that stated he had never been informed of the plea offer, and that had he known about it, he would have absolutely accepted it.

The trial court ultimately denied the motion after determining that it would not have accepted the plea agreement even if the Petitioner would have agreed to it. In making its decision, the Court relied on the holdings of Lafler v Cooper, 566 U.S. 156; 132 S. Ct. 1376; 182 L. Ed. 2d 398 (2012), and Strickland v Washington, 466 U.S. 668 (1984). More specifically, the Court decided that the Petitioner was unable to satisfy the four elements outlined in Lafler, that are required to prove the prejudice prong of Strickland, as applied to claims of ineffective assistance of counsel involving the plea process. (See Appendix C)

A delayed Application for Leave to Appeal was filed in the Michigan Court of Appeals on May 22, 2019, with a dissenting Opinion from Judge Michael J. Kelly, who would have "remand[ed] the matter to the trial court for an evidentiary hearing and

decision on whether the defendant was denied the effective assistance of counsel." (See Appendix B)

On November 26, 2019, the Michigan Supreme Court responded to the timely filed Application for Leave to Appeal by Ordering the Saginaw County Prosecutor to answer the Application. After receiving that Answer, the Court denied the Application on June 17, 2020. (See Appendix A) It is that denial by the Michigan Supreme Court that this Petitioner now submits to this Honorable Court for review.

REASONS FOR GRANTING THE PETITION

Petitioner contends that this Petition is of national importance, as it presents an issue of Constitutional magnitude created by the vacuum formed by two conflicting Supreme Court Decisions, which make this issue capable of repetition yet evading review.

In deciding the case at bar, the state courts relied upon this Court's decision in Lafler v Cooper, 566 U.S. 156; 132 S. Ct. 1376; 182 L. Ed. 2d 398 (2012). However, Petitioner contends that the decision issued by the Lafler Court, is in direct contradiction of another decision issued by this Court - United States v Cronic, 466 U.S. 648; 104 S. Ct. 2039, which mandates relief to be granted in this instance.

In Lafler, this Court concluded that the "performance" prong of Strickland v Washington, 466 U.S. 668 (1984), was presumed satisfied by a defense attorney's failure to advise his or her client of a plea agreement that had been formally presented by the prosecutor. However, the Court went on to find that before a defendant could prevail on a claim of ineffective assistance of counsel, as it related to the plea process, the defendant must still prove the remaining "prejudice" prong of Strickland. The Court then outlined a four-part test for doing so. Petitioner believes that it is this requirement of proving "prejudice" under Lafler, that is in direct contradiction to the holding of Cronic.

This Court has routinely found constitutional error without any specific showing of prejudice to a defendant when counsel is either totally absent, or prevented from assisting the accused during a critical stage of the proceedings. United States v Cronic, 466 U.S. 648, 659, n.25; 104 S. Ct. 2039; See also Mickens v Taylor, 535 U.S. 162, 166 (2002) (prejudiced presumed when assistance of counsel "denied entirely or during a critical stage of the proceeding.")

The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours "is for the most part a system of pleas, not a system of trials," Lafler, post, at 1388, 132 S. Ct. 1376, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. ... In today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant. Missouri v Fry, __ U.S. __; 182 L. Ed. 2d 379; 132 S. Ct. 1399 (2012).

In the case at hand, where the Petitioner's attorney failed to advise him of a plea agreement that would have allowed for a seventy-three percent reduction in his sentence, even if the Court would not have accepted the agreement as required under Lafler, it is more likely than not that the outcome of the proceedings would have been different, as the two parties had already shown a willingness to negotiate, and would have merely returned to the negotiation process. But because the attorney failed to advise the Petitioner of the offer, which specifically stated that the prosecutor was willing to entertain counter-offers, the Petitioner was denied complete access to a "critical [stage]" of the process. The attorney's actions had a "substantial and injuries effect" on the outcome of the proceedings. Brecht v Abrahamson, 507 U.S. 619, 631; 123 L. Ed. 2d 353; 113 S. Ct. 1710 (1993).

It is for the above forgoing reason this Petitioner respectfully asks this Honorable Court to consider that when a defense attorney fails to advise his client of a plea offer, prejudice should be presumed under Cronic, without the burden of proving prejudice under Lafler, as the attorney has, without any knowledge of his client, successfully impeded the entire plea process from occurring. When this

occurs, the actions of the attorney amounts to an attorney being "totally absent," and prejudice should be presumed.

The Petitioner in this instance would have fared much better in this case had he been acting in pro se, as the prosecutor would have served the plea offer directly upon him. As it stands, having an attorney in this instance actually harmed the Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tim Hane

Date: August 20, 2020