

20-6479
No.

Supreme Court, U.S.
FILED

NOV 16 2020

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IN THE
SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

GENARO GARCIA -- PETITIONER
(Your Name)

VS.

STATE OF INDIANA -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Indiana Supreme Court, 216 State House, 200 West Washington, Indianapolis IN 46204
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Genaro Garcia #127725 pro-se
(Your Name)

Wabash Valley Corr. Facility P.O. Box 1111
(Address)

Carlisle, Indiana 47838
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

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QUESTION(S) PRESENTED

- I. Is a State Appellate Court's unexplained to allow a petitioner to file a successive petition for Post-Conviction relief under Rule 1(12) and Post-Conviction Rule 1(A)(4). Meritorious claim's an unconstitutional denial of equal protection of the law and Due Process under 6th and 14th Amendment of the United States constitution.
- II. Trial Counsel not providing adequate representation of the 6th Amendment of the United States Constitution commands Garcia receive.
- III. State in violation under I.C. 33-32-21, Ind. Const. Art. 1, sec. 11 and the United States Constitution 6th and 14th Amendment engaged in prosecutorial misconduct.
- IV. State engaged in prosecutorial misconducted tempering with a witness a whole week prior to trial. violation under I.C. 34-37-2-1 and the United States Constitution 14th Amendment.

- V. Trial Court in violation under United States Constitution 14th Amendment failure to conduct a competency hearing of allege victim prior to trial.
- VI. Trial Court in violation under Ind. Const. Art. 6, sec. 12, CR. 4(A)(1), CR. 4(CD) and United States Constitution 6th Amendment violating Garcia's speedy trial protection.
- VII. Trial Court in violation under Ind. Evid. Rule, 803(2), Ind. Evid. Rule, 803(4) (B) (2), I.C. 35-33-5-2 (B) (2), I.C. 35-37-4-6 and United States Constitution 6th and 14th Amendment, unfairly prejudicial and unconstitutional allowed both hearsay and testimonial statements at trial.
- VIII. State in violation under United States Constitution 6th and 14th Amendment engaged in prosecutorial misconduct Improperly applied DNA evidence to the Jury upon its closing statement to have a probable persuasive effect on the Jury decision placing Garcia in a grave peril position.

LIST OF PARTIES

- ☒ 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:

Petitioner, pro se:

- I. Genaro Garcia #127225 Wabash Valley Corr. Facility P.O. Box 1111
Carlisle, Indiana 47838*
- II. Indiana Attorney General I.C.C.S. 5th Floor - 302 West Washington Street
Indianapolis, Indiana 46204*
- III. Solicitor General of the United States, Department of Justice, 950
Pennsylvania Ave. N.W. Room 5614, Washington, D.C. 20580*

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APPENDIX C April 18, 2019, Post-Conviction denied, Greene County, IN, 28C01-1808-PC-000002.

APPENDIX D March 25, 2020 Modification of Sentence denied, Greene County, IN, 28D01-1508-F1-000001.

APPENDIX E August 24, 2020 Post-Conviction appeal, affirmed the denial, Garcia V. State, 2020 Ind. App. Unpub. LEXIS 1019 (Ind. Ct. App. Aug. 24, 2020)

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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

☐ 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.

☒ For cases from **state courts**:

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

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

1.
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).

☒ For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix H.

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

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). Jurisdiction is conferred on this Court by U.S. Sup. Ct. Rules 10(c) and 13 (1). The state Court decision was a final adjudication per Ind. P-C Rule 1C(2) and the denial conflicts with the Due Process clause of the U.S. 14th Amendment as read in Pennsylvania V. Finley, 481 us 551 (1987).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

On June 30, 2015, E.T. allege to Camron Med that Garcia molested her on the way to her Cousins Eddie Jr. residence. On August 3, 2015, the Greene County prosecution office, filed Charger toward Garcia a level one felony child molesting and a warrent was granted by Judge Dena A. Martin on said date. The Spencer Sheriff department arrested Garcia at his residence. The Greene County Sheriff department had Garcia extradited to the Greene County Jail to face charges for child molesting. On August 4, 2015, Garcia was arram by Judge Dena A. Martin and a plead of not Guilty was entered and Garcia informed the Judge that the states witness's were lying and that Garcia did not understood the charges. On July 22, 2015, the DNA report concluded that could not match no DNA to Garcia's profile.

On October 22, 2015, the state filed for a continuance. The Trial Court granted said continuance the very next day on October 23, 2015. On October 26, 2015, Garcia received notice of state's submitted motion for continuance. The very same day Garcia's appointed Counsel submitted a motion for a speedy Trial. On October 27, 2015, Garcia submitted a motion objecting to the States continuance being grand without Garcia being at the hearing and a motion for ineffective assistance of Counsel for not keeping Garcia inform of a critical stage in a criminal proceedings. On October 28, 2015, Trial Court schedule a hearing to address, state's motion for Continues and Garcia motion for ineffect assistance of Counsel for October 30, 2015. On October 28, 2015, a deposition of Shelby Newton was conducted and it was discovered that state's probable cause was incorrect. On October 30, 2015, Trial Court regranted the State's continuance

on the argument that state's same nurse witness was on maternity leave, without presenting any evidence of unavailability without no objection from Garcia appointed Counsel and unconstitutional denied Garcia speedy trial protection and set trial 36 days beyond the permissible time allowed by ~~attor~~ law. On February 6, 2016, Garcia received a Notice of Potentially Exculpatory Evidence letter from the State, that it was released to the State upon interviewing its witness's on February 2, 2016, in preparation for trial that they lied in their statements of who was present at the time of allege molestation on June 20, 2015. On ~~February 24~~, 2016, Garcia submitted a motion speed trial protection CR. 4(CA)(1) and CR. 4(CD). On February 8, 2016 the Trial Court violated Garcia's protection CR 4(CA)(1) and CR 4(CD) and abuse judicial discretion and did what it wanted. The day the trial commenced on February

9, 2016, Trial Counsel failed to move to dismiss the charge on the grounds that the State's probable cause was supported by prejudiced statements, which were made with reckless disregard for the truth and was support with insufficient evidence as the forensic ~~concurring~~ experts concurring that no DNA match to Garcia's profile, making states warrent invalid and that Trial Court's violated Garcia's speedy trial protection CR. 4(A)(7) and CR. 4(CD), seting trial date over the 180 days permissable by law. On August 13, 2018, pro-se, post-conviction petition included Trial Counsel failure to provide Garcia adequate representation commanded by the United States constitution, failing to investigate the State's hearsay statements supporting the State's probable cause, failing to deposition the State's DNA and Y-STR expert witness's prior to Trial, failing to object to the state tempering

with a witness, failing to object to Trial Court violating Garcia's Speedy Trial protection, failing to object to Trial Court not conducting a competency hearing of alleged victim prior to trial, failing to object to Trial Court not conducting a rog test if hearsay statement of state's witness's were admissible under Ind. Evid. Rule's, and failing to present document evidence to the Jury. On April 18, 2019, post-conviction was denied by the Greene County Circuit Court. On January 15, 2020, post-conviction appeal was successively filed. On August 24, 2020 post conviction appeal was affirmed the denial by the Indiana Court of Appeals. On August 28, 2020 permission to filed successive post conviction petition. On September 10, 2020 request for permission to file a successive post-conviction petition was affirmed the denial by the Indiana Court of Appeal. On Nov. 5, 2020 Transfer was denied by the Indiana Supreme Court. Writing only that Garcia had "failed to establish a reasonable probability" of relief.

REASONS FOR GRANTING THE PETITION

Every opportunity for a dismissal under the Indiana constitution and United States Constitution has been thwarted by Trial Counsel failure to advance the claim at pre-trial, at trial and in direct appeal, these failure by Counsel's prevented the ~~exerc~~ exercised of Garcia's procedural "Due Process" right. Garcia had attempted at every stage to raise the claim of violation of the Crim. Rule 4(A)(1), Crim. Rule, 4(D), Indiana Code. 33-32-2-1, Indiana Code. 35-33-5-2 (B)(2), Indiana Code. 35-37-4-6, Indiana Evidence Rule 803(7), Indiana Evidence Rule 803(4)(B)(2), Indiana Constitution Article, sections 11, 12 and the United States Constitution 6th and 14th Amendment. Garcia's ~~claim's~~ while waived as free standing claim, it is still reviewable as a subclaim under ineffective assistance of Counsel. The post-conviction Courts failure to make ~~any~~ finding of facts on the raise issues of Counsel decision

not to investigate the uncorroborated hearsay statements supporting the State's probable cause. Smith v. State, 511 N.E. 2d 1042 (Ind. 1987), Counsel decision not to object to the Trial Court's not conducting a competency hearing of alleged victim prior to trial committing fundamental error denying Garcia a fair trial. Lee v. Davis, 328 F.3d 896 (7th Cir. 2003) and the state's engaging in prosecutorial misconduct in improperly applying the DNA evidence to the Jury upon its closing statement to have a probable persuasive effect on the Jury decision placing Garcia in a position of grave peril. Dobbins v. State, 721 N.E. 745 (Ind. 1999). Garcia has achieved the standard of a "reasonable probability" of relief. Matheney v. State, 834 N.E. 2d 658, 664 (Ind. 2005)

The State of Indiana, through Indiana post-conviction rule 1(c)(2)(B), authorizes the Indiana Court of Appeals to allow any petitioner with a "reasonable probability"

of relief to file a successive petition. Garcia's claims of Crim. Rule 4(A) (1), Crim. Rule 4(D), Indiana Code 33-32-2-1, Indiana Code 35-33-5-2 (B) (2), Indiana Code 35-37-4-6, Indiana Evidence Rule 803 (2), Indiana Evidence Rule 803 (4) (B) (2), Indiana Constitution Article, sections 11, 12 and the United States Constitution 6th and 14th Amendment violations is established by the record and is meritorious Penson v. Ohio, 488 US 25, 83-84 (1988) (a determination that arguable issues were presented by the record creates a constitutional imperative).

Garcia's request for certiorari is due to the Indiana Court of Appeals arbitrary process for denying permission to file a successive post conviction petition. While there is no Constitutional right to post-conviction review, when a state elects to provide an avenue for post-conviction relief, the process must comport with the protection of the 14th amendment. Yates v. Alken, 484 US 211, 217-218 (1988)

Pennsylvania v. Finley, 481 US 551, 558 (1987) ("when a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the constitution - and, in particular, in accord with the Due Process clause.")),

The procedure in Indiana lacks due process protection. The Indiana Court of Appeals rejected Garcia successive petition without any opinion as to the perceived defects in the filing. Garcia does not know why the petition is classified as having no "reasonable probability" of relief. When a court "gave no reason at all for its decision" and "we do not know the basis for its action" it establishes that the court did not "provide [a] full consideration and resolution of the matter" Anders v. California, 386 US 738 (1967). A review of the record shows that the Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case." Miller-El v. Cockrell, ~~537 US 322 (2002)~~

537 US 322 (2003).

The remedy sought by Garcia is an elaboration of the right recognized in McCoy v. Court of Appeals of Wisconsin, 486 US 429, 443 (1988) wherein if an attorney advise the court that an appeal is frivolous, then "no constitutional deprivation occurs when the attorney explains the basis for that conclusion." ("Once the court is satisfied both that counsel has been diligent in examining the record for meritorious issues and that the appeal is frivolous, federal concerns are satisfied and the case may be disposed of in accordance with state law.") The rationale of McCoy requires the same due process for state successive post-conviction petitions, wherein the petitioner's claims are not reviewed by an attorney but only the Court. If the 14th Amendment is protected only by "requiring the attorney to assert the basis for this conclusion," McCoy, 486 US at 441, then it reasons that absent that absent the level of attorney review per Indiana post-

conviction rule, then the Indiana Court of Appeals should be required to "assert the basis for this conclusion."

Garcia has personally demanded that his Crim. Rule 4 (4)(1), Crim Rule 4(CD), Indiana Code 33-32-2-1, Indiana Code 35-33-52 (B)(2), Indiana Code 35-37-4-6, Indiana Evidence Rule 803(2), Indiana Evidence Rule 803(4)(B)(2), Indiana Constitution Article, section 11, 12 and the United States Constitution 6th and 14th Amendment rights be reviewed by every court in which he has pleaded for nearly years. No court has allowed Garcia to argue the claims on its merits. A process for review of the claims has been implemented by the Indiana Legislature (Indiana post-conviction rule 4 (C2)), which the Indiana Court of Appeals applies arbitrarily. There is no Due Process protection, as required by the 14th Amendment, which is why the United States Supreme Court should grant certiorari.