

No. 20-6567

IN THE
SUPREME COURT OF THE UNITED STATES

Kedrio Summerville — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

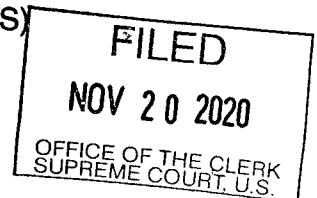
Kedrio Summerville
(Your Name)

FCI Butner II, Po Box 1500
(Address)

Butner, NC 27509
(City, State, Zip Code)

NA
(Phone Number)

ORIGINAL



QUESTION(S) PRESENTED

The counsel conceded during sentencing that "it was his fault that Mr. Summerville was faced with the increased penalty because he failed to investigate and review the files before he advised Summerville to accept a 10 yr to life plea". The Counsel asked the court to withdraw the plea and the court denied it. Therefore, was the counsel ineffective during the critical stages and should the petitioner be allowed to withdraw the plea?

The petitioner filed a 2255 and raised the numerous constitutional claims and ineffective claims, in which the Court immediately Granted a Evidentiary Hearing and transported the petitioner to the Courts jurisdiction. However, the petitioner had a new counsel who had not practiced criminal law for years and instead did real estate law.. On the morning of the Evidentiary hearing, with all parties there, the new counsel moved for continuance and the court granted it. But while the petitioner was in the holding facility, the new counsel "moved to strike all of the petitioners original claims and filed a new claim outside of the 1 yr time-frame and then even requested that no evidentiary hearing be granted all in the same breadth". Therefore, the Court denied the 2255 and the Evidentiary Hearing. Was the post-conviction counsel ineffective?

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:

RELATED CASES

US v Summerville, 2:15cr100, EDVA

US v Summerville, 18-7182 , 4th Cir 2018-2020

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A - 4th Cir. of Appeals, COA/Appeal Denial & Filing

APPENDIX B - E.D.VA District Court 2255 filing(s) & Denial

APPENDIX C - Virginia Bar Complaint

APPENDIX D - Original 2255 filing by Summerville, pro se

APPENDIX E - NA

APPENDIX F - NA

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Brown v Brown, 17-887 (7th Cir. 2017)	10
Glover v US, 531 US 198 (2001)	9
Hill v Lockhart, 474 US 52 (1985)	9
Lee v US, 137 S.ct 1958 (2017)	9
Mckoy v Louisiana, 138 S.Ct 1500 (2018)	9
Strickland v Washington, 466 US 668 (1984)	Passim
US v Cronic, 466 US 648 (1984)	7
US v Holding, 18-3270 (7th Cir. 2020)	8
US v Sterling, 18-2974 (8th Cir. 2019)	8
US v Summerville, 2:15CR100, 18-7182 (4th 2020)	Passim

STATUTES AND RULES

Sixth Amendment	Passim
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OTHER

Weaver v Massachusetts, 137 S.Ct 1899 (2017)	Passim
Wright v FBOP, 451 F.3d 1231 (11th Cir. 2006)	Passim

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 A to the petition and is

☒ reported at US v Summerville, 18-7182; 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 B to the petition and is

☒ reported at US v Summerville, 2:17-cv-00205-~~NA~~; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**: NA

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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Sept. 1, 2020.

☒ 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**: NA

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

☐ 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

US Constitution, Sixth Amendment, Right to Counsel
and Due Process

..In all criminal prosecutions, the accused shall enjoy the
the [right] to have the assistance of counsel for his defense

STATEMENT OF THE CASE

There are 2 different types of counsel :

1. Effective Counsel

or

2. Ineffective Counsel

This court has recognized both of the above and recently shown and redefined the Strickland Prejudice in the Weaver v Massachusetts. (137 S.Ct 1899, 2017). In this case, Mr. Summerville had 2 "very bad and ineffective counselors that led to a wrongful conviction, increased mandatory minimums and increased sentencing in which the counsel (William L. Taliaferro) had to admit his own ineffectiveness. But the Court would not allow the petitioner to withdraw his guilty plea"

After the sentencing, and appeal, Mr. Summerville filed a timely 2255, in which he showed that the plea/sentencing counsel was ineffective and that he is entitled to Vacate the plea. The Court ~~Granted the Immediate~~ Evidentiary Hearing, which was to be held on Jan. 30, 2018 (2:15cr100, Doc 58). At the Hearing, the New Counsel, Trey Kelleter, a real estate lawyer, filed a motion for continuance (See App'x B, Doc 58), without first ~~consultant~~ the petitioner. But, instead of continuing to learn about the case, the new counsel ~~filed~~ a motion to strike all of Sumemrville's meritable 2255 claims and replaced them with a out-of-time and procedurally barred frivolous claim. (See App'x B, Doc 61). The government swiftly filed &

moved to dismiss the claims and agreed to strike the original 2255 claims and agreed that no evidentiary hearing should be held. (Doc 64 in App'x B) All of this took place without 1st consulting with Mr. Summerville.

All of a sudden while in the holding facility and transit, the petitioner recieved a denial of the 2255 (DOC 66, App'x B) and denial of the "COA". The petitioner filed a COA Request and Appeal, which was just denied on Sept. 1, 2020. In between the COA filing, the petitioner also filed a complaint with the Virginia Bar about the counselors actions and inactions, in which no action was taken against either for their actions. The petitioner now files the herein Writ of Certiorari and request that the Court Grants Oral Argument, assigns Counsel, and Issues a Amicus Curiae request and Reverses the District and Appeal Courts Orders with instructions to Grant the Withdrawal of the plea and either proceed to trial or renegotiate the plea agreement with the correct information and lower mandatory penalty of 5 to 40 instead of 10 to life.

REASONS FOR GRANTING THE PETITION

..According to Wright v FBOP, 451 F.3d 1231 (11th Cir. 2006), the court held that a competent , first class lawyer can tie a case in knots not only for the jury but for the judge as well..It is "able lawyers" , [not the incompetent ones, who should not be permitted in the courtroom since they are the ones who are doing all the damage]. (See Art Buchwald, Bad Lawyers are very good for the US Justice systems, 64 A.B.A.J 328 (1978))

Justice O'Connor identified 3 categories of cases in Strickland 104 S.Ct at 2067. The first is "actual or constructive denial of the assistance of counsel altogether". In this case , the issue is not a factor here..The second situation involves those cases in which counsel has an actual conflict of interest. Well this situation arose in the 2255 when the post conviction counsel did in fact strike all of the petitioner's meritable claims without Mr. Summervilles consent and then also requested that the Court deny (or not hold a evidentiary hearing, although that was the sole reason [he] was even there), again it was not consented to by Sumemrville. [This] Court has held that "prejudice is presumed". The third, the one that most often arises and that Strickland concerned, involves claims of actual ineffective representation. Well, this is the case here with the original plea/sentencing counsel & the 2255 new counsel. Both were ineffective.

The Sixth Amendment "guarantee's" all criminally charged defendants the "assistance of counsel", in which this Court has defined as the "effective assistance of counsel". (US v Cronin 466 US 648 (1984) ; Strickland v Washington, 466 US 668, (1984). Strickland governs the instant petition, but in the form of the Weaver v Massachusetts, 137 S.Ct 1899 (2017) .

As this Court is aware, obtaining post-conviction relief based on a attorney's ineffective and performance is notoriously difficult. But this court just ruled in Weaver, that the courts should recognize an attorney's deficient performance is prejudicial when the counsel's errors rendered the process fundamentally unfair even if those errors did not have a probable effect on the outcome. Well in this case it clearly did, not once, but 3 times and at plea, sentencing and post-conviction stages. In fact, the original lawyer (Taliaferro) admitted that he failed to investigate prior to the advisement of the plea and this concession came during the sentencing. But all of a sudden, when Summerville filed his 2255, the counsel reversed course and did an about face and stated, I did investigate and when I did I saw that the drug weight was incorrect and informed the government and the government removed "some" of the drug weight. But the problem is that the "plea was based exclusively from this now removed information and because of the removal, should have also vacated the 10 yr to life plea". But instead the government and counsel

stipulated to a drug weight and then he argued for the lesser sentence, which the court denied. But all of this could have been avoided if the counsel had investigated prior to the plea and prior to rendering the bad legal advice that increased the floor and ceiling based upon collateral and no-existence ghost dope findings. (US v Holding, 18-3270 (7th Cir. 2020)...the district court acts within its discretion when it credits CI's statements about drug quantity. But when a defendant objects, the evidence supporting that quantity must be found reliable. While that step may prove modest, it needs to be taken, lest a defendant face the risk of being sentenced on the basis of unreliable information and the statements here fell short of that threshold, so we reverse and remand for resentencing)

The petitioner is entitled to be sentenced on reliable and factually true information. But this did not happen and none of the parties seriously contested this when raised by the petitioner. In fact, the court removed "some of the inaccurate information but left a dramatic amount, and the leadership role enhancement that was premised from the same inaccurate information", which shows that the [sentence] and conviction are both constitutionally infirm and must be vacated. Therefore, the plea/sentencing counsel was ineffective and the Court should have vacated the plea and conviction and ordered the government to begin anew, in which now this Court should do what the district and appeal court failed to do.(US v Sterling. 18-2974 (8th Cir. 2019)

By following this Courts own jurisprudence of Weaver, supra and Mckoy v Louisiana, 138 S.Ct 1500 (2018) and Glover v US 531 US 198 (2001), this court will not have a problem with finding that the counsel was ineffective and was the "cause" of the increased penalty and charges being applied and that the petitioner was in fact "prejudiced by the counsel's woeful performance."

Therefore, the petitioner request that the court reverses the 4th Circuit of Appeal and E.D.VA, Norfolk decisions and Orders the parties to Vacate the plea and begin anew or to set the matter for trial, seeing that the petitioner was stripped of his constitutional right to proceed to trial when the counsel provided the inaccurate information to plea without 1st investigating. (Hill v Lockhart 474 US 52 (1985) and Lee v US 137 S.Ct 1958 (2017))

Reason for Cert. Granting No. 2

This court has not truly resolved the "post-conviction ineffectiveness claims", but this case is the prime case to do such and to set the appropriate course. Here, Mr. Summerville did file the timely 2255, did get the evidentiary hearing granted, did show that he was wrongfully convicted and wrongfully enhanced from inaccurate information that was proven to be inaccurate, but when the day of recourse came, Evidentiary Hearing date, the new counsel moved to continue the case and then afterwards moved

to strike and undo everything Mr. Summerville had done to get back into court and in its place, filed a frivolous supplemental filing and in the same breadth moved to strike the meritable claims and to not hold the evidentiary hearing without even consulting the petitioner. What competent counsel would do this. Instead of perfecting the pro se claims the counsel cancelled them without further notice. Of course, the government bounced on the opportunity to dismiss the claims, not hold the hearing and then even showed the counsel why he was time barred from raising these new claims, which came outside of the 1 yr window. (See App'x B) The court granted the new counsel and governments request and denied the petitioner in all aspects and without the hearing .

No where in the history of the courts has such "bad lawyering" ever existed and the cause and prejudice prongs are met. But this court has yet to resolve the post-conviction ineffective claims and this case presents the prime opportunity to do so to set the precedent on how to conduct review of such issues and to ensure the fairness and integrity and public's confidence are all kept and the lawyers are held at the higher standards.

Therefore, the Court should Grant Cert on this issue, and appoint counsel and issue a Amicus briefing on this issue.

Brown v Brown, 17-887 , 847 F.3d 502 (7th Cir. 2017)..the court of appeals held that defendant was entitled to a hearing to determine if his post-conviction counsel was ineffective, so that the court can consider the trial counsels ineffectiveness as well.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kedirio Summerville

Mr. Kedirio Summerville

Date: Nov. 16, 2020