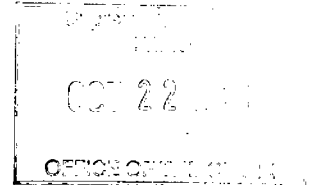


20-6615

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



Cornell D. McHenry — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

^{5th}
FIFTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cornell Dupree McHenry
(Your Name)

815-12th Street
(Address)

Huntsville, Tx 77348
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Mr. McHenry alleged that his trial counsel was ineffective for failing to call a witness of whom Mr. McHenry was aware he was ~~innocent~~^{innocent} for possession of meth, Mary Etherly, Mitchell's aunt. The omitted witness would have testified that the evidence belonged to Mitchell. After she filed a non-prosecution affidavit, Mitchell the co-defendant had sworn under Oath, The substance meth was her personal and McHenry had no knowledge of the substance being in her possession. This case thus presents In finding of facts no prejudice, the fifth Circuit ruled upon the states courts statement of the facts on direct appeal, but significantly mistated even that slanted version of the fact.

Question

Did the Fifth Circuit err in deferring to the State Court finding that Mr. McHenry was not prejudiced or harm by trial counsel's conflict of Interest and failure to call a witness who would have impeached the state's Identification evidence when the fifth Circuit decision was based on a flagrant misreading of the trial record?

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

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APPENDIX D	<i>McHenry v State UNITED STATES District Court</i>
APPENDIX E	<i>McHenry v state Unpublished decision Sept 9 2020</i>
APPENDIX F	<i>Order denying rehearing</i>

TABLE OF AUTHORITIES CITED

CASES

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<u>Wilson v Cain</u>	1999 U.S. Dist Lexis 22664
<u>Jacobs v Warden</u>	2011 U.S. Dist Lexis 103901
<u>Salts v Epps</u>	696 F.Supp 2d 639
<u>Garcia v Dretke</u>	2005 U.S. Dist Lexis 2168
<u>Jordan v Dretke</u>	2004 U.S. Dist Lexis 10658
<u>Smith v Dretke</u>	2004 U.S. Dist Lexis 7272
<u>Tenny v Cockrell</u>	420 F Supp 2d 617
<u>Quatrevinger v Cain</u>	2001 U.S. Dist Lexis 4770

STATUTES AND RULES

28 U.S.C. § 1254
28 U.S.C. § 2254
U.S. Const Amend. V
U.S. Const Amend. XIV

OTHER

Martinez Standard

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 _____; 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 _____; 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 TCCA NA court appears at Appendix A 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 9, 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: Sept 9 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 NA.
A copy of that decision appears at Appendix A.

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

☐ 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).

Statutory and Constitutional Provisions Involved

U.S. Const AMEND. VI

In all Criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the same nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

U.S. Const AMEND XIV

Section 1. All persons born or naturalized in the UNITED STATES, and subject to the jurisdiction thereof are citizens of the UNITED STATES and of the state wherein they reside. 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 the jurisdiction the equal protection of the laws.

U.S. Const. AMEND. VI

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Wilson v Cain 1999 U.S. Dist Lexis 22664 (E.D. La. 1999) failure to object to defective reasonable doubt instruction.

Although the record clearly involves and indicates that Public Defender's Office Rick Shumaker represented Mitchell in her guilty Plea, it is silent as to whether Shumaker represented Mitchell, and McHenry dispute this fact. Which the fifth Circuit Court of Appeals, disregards this error. Ineffective Assistance of Trial Counsel, Conflict of Interest, with states Key Witness. Garcia v Dretke, 2005 U.S. Dist. Lexis 2168 (W.D. Tex. 2005) ineffective assistance of counsel, accomplice witness Jury instruction violated due process by creating a mandatory presumption that the defendant was an accomplice as a matter of law and relieving the state of its burden of proving guilt. Jordan v Dretke, 2004 U.S. Dist Lexis 10658 (N.D. Tex 2004) McHenry trial Counsel failed to inform the court and him that a plea offer would be withdrawn if the inmate did not complete a presentence investigation. Tenny v Cockrell, 420 F. Supp 2d 617 (W.D. Tex 2003) (ineffective assistance of trial Counsel in violation of Sixth Amendment because Counsel did not offer probative evidence supporting prisoners only-defense, self defense, Omissions was not attributable to trial strategy. Bridges v Thaler 2010 U.S. Dist Lexis 10523 (N.D. Tex 2010) (Multiple ineffective assistance of Counsel claims, unreasonable application of federal law, Unreasonable determination of facts,

STATEMENT OF THE CASE

Mr. McHenry was convicted of possession of controlled substance. Which the states key witness Dequeener Mitchell actually Co-defendant the state referred as Accomplice witness. Who she was the originally charged with possession of meth Mitchell had sworn under Oath twice that the substance was her personal Exhibit 17 state court records, And was sentence to 10 years probation in 2012. Mitchell violated the probation and was warranted for court in state twice for the use of the substance. Later I Cornell McHenry was charged with the same charge possession of Control Substance. Mitchell recanted her testimony two years later after McHenry and Mitchell had Seperated. McHenry went to trial in Bowie County Texas his Public Defender which Rick Shumaker is the Cheif public defender had Knowledge of representing Mitchell in 2012. In 2014 during McHenrys trial Rick Shumaker the Cheif public defender Ordered McHenry not to testify to defend himself, which Conflict of Interest was well understood before and during trial. The prosecutor, and the Judge Leon Pesek Jr was well aware of the Conflict, the Judge stopped trial, Spoke to the Jury saying lady's and gentlemen we have Grounds for a Mistrial for Conflict of Interest the Judge and prosecutor overuled the Conflict and Objeeted it. My Attorney Rick Shumaker did not object not one time and I asked him too. The prosecutor told me not to say another word at trial or I would be rejected from court. Please Check Court Reporter Records for merit.

REASONS FOR GRANTING THE PETITION

(1) The fifth Circuit's misapplication of the prejudice standard of Strickland warrants this Court's attention.

The fifth Circuit's opinion misapplied the Strickland v. Washington, 466 U.S. 668, 687-88 (1984) test for prejudice and Constitutional harm in two important ways, first the Court flagrantly mistated the record. It stated McHenry was offered a plea deal by the public defender Rick Shumaker which is not true because, I'm honest and truthfull that the evidence presented was factually not McHenry's possession point blank. Mitchell the Co-defendant which was cohearsed at McHenry's trial two years after she had taken a plea deal for probation and violated her probation twice and went to several probation violaters facilities; McHenry and Mitchell has a child together and was not living together time of incident accured, She only wanted to involve McHenry with the charge of possession after they were seperated she wanted to do any thing in her power to get back at McHenry for their past relationship. The District Attorney, Prosecuting Attorney, Public Defender, and the Judge had knowledge of Dequeener Mitchell lying to the Court. (2) The State relied on a recanted testimony of the Co-defendant Dequeener Mitchell, which was adversely affected by the stipulation that Mitchell testify against McHenry.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cornell McHenry # 1928881

Date: 10-21-20