

20-6906

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

FILED

DEC 15 2020

OFFICE OF THE CLERK

PETITION FOR WRIT OF CERTIORARI

CASE NO. _____

CHARLES HAMILTON, :

Petitioner, :

v. :

STATE OF NEW JERSEY, ET. AL. :

Respondent, :

ON PETITION FOR WRIT OF CERTIORARI TO THE
3rd CIR. COURT OF APPEAL

ORIGINAL

SUBMITTED BY:

CHARLES HAMILTON
East Jersey State Prison
1100 Woodbridge Road
Rahway, N.J. 07065

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SUPREME COURT, U.S.

QUESTION'S PRESENTED

1. Whether a State Court's erroneous denial of a criminal defendant's Sixth Amendment Right to be represented by counsel of choice, resulted in a decision that was contrary to, or involved an unreasonable application of "clearly established" Federal law as determined by the Supreme Court of the United States?

2. Whether a State Court's erroneous denial of a criminal defendant's Sixth Amendment Right to be represented by counsel of choice, meet the restrictive Antiterrorism and Effective Death Penalty Act(AEDPA), which put restrictions on Federal courts hearing petitions by State prisoners?

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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 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is unpublished.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 and reconsideration at C 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is unpublished.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 U.S. Court of Appeals decided my case was October 7, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the U.S. 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

N.J. CONSTITUTION, ARTICLE I, § 10

U.S. CONSTITUTION, AMEND VI, XIV

STATEMENT OF THE CASE

From its earliest origins, the right to assistance of counsel has been understood to preclude the government from unjustifiably refusing to allow an accused to be represented by the counsel of his choice. In rare instances when States have transgressed this constraint, Federal Courts consistently have held that these errors require reversal and new trials. The question in this case, is whether a State Court's erroneous denial of a criminal defendant's Sixth Amendment Right to be represented by his chosen counsel of two years, resulted in a decision that was contrary to, or involved an unreasonable application of "clearly established" Federal law as determined by the Supreme Court of the United States?

In July/2004 petitioner was arrested along with 15 others, and was charged with 1st degree distribution of CDS, 2C:35-5; 1st degree racketeering, 2C:41-2c; 1st degree leader of a narcotics network, 2C:35-3; and a host of other charges that derived from this arrest. Soon after on December 2, 2004, petitioner Charles Hamilton retained & paid Maria Noto his counsel of choice \$50,000; (exhibit E). This was two years before his 2006 trial, and also at this time Ms. Noto was a "sole practitioner". In January/2006 Ms. Noto added Edward G. Washburne, esq. to her firm as a partner; (trans. 10/10/06, 4:3-15). Mr. Hamilton was notified of this change, and was also advised that Mr. Washburne would be "assisting" Ms. Noto on his case from time to time. However, at no time was it ever

suggested that Mr. Washburne would be taking over Mr. Hamilton's case; (trans. 10/10/06, 7:9-17). On April 4, 2006, Ms. Noto signed a trial memorandum on Mr. Hamilton's behalf, in which the trial date was set for September 26, 2006; "Good morning, Your Honor, Maria Noto on behalf of Charles Hamilton"; (trans. 4/4/06, 3:3-4). On August 30, 2006, exactly 26 days before the September 26th scheduled trial date, Mr. Washburne for the first and only time alone, appeared on Mr. Hamilton's behalf for a scheduled pre-trial DRIVER HEARING / STATUS CONFERENCE. At this hearing, Mr. Washburne emphatically made it very clear to the court that he would not be trying Mr. Hamilton's case, and that he was only a stand in for Ms. Noto for that day.

Mr. Washburn: "Judge, good morning. My name is Edward Washburn. I represent, atleast for the purpose of today's hearing, Mr. Hamilton"
(trans. 8/30/06, 3:1-3)

The Court even acknowledged that they were aware that Mr. Washburne would not be trying petitioner's case.

The Court: "So Mr. Washburn, how long do you think your case will be? I know you wont be trying it, but do you think three weeks look like alot?"
(trans. 8/30/06, 5:9-11)

After the August 30, 2006 Status Conference / Driver hearing and just days before the September 26, 2006 trial date, Mr. Hamilton received a message from Ms. Noto stating that his trial

date had been postponed due to a previous trial the Court was conducting had run longer than scheduled, and that it would not be finished in time to start Mr. Hamilton's trial as had been planned; (trans. 10/5/06, 6:6-11). It's at that time Mr. Hamilton was informed of Ms. Noto's trial scheduling conflict, that she was scheduled to conduct a murder trial in Essex County (State v. Jarret Cerrano) at the same time the Judge had set Mr. Hamilton's new trial date for, which was October 5, 2006, and that Mr. Washburne would be acting as substitute counsel during his trial. (trans. 10/10/06, 6:7-16).

Note: Until such time that the September 26th trial date was postponed to October 5th, there were no conflicts in Ms. Noto's schedule and no conflict in Mr. Hamilton's Counsel of Choice.

Nevertheless petitioner objected to this substitution, and Ms. Noto stated that the court did not want to postpone the October 5th date, so "it was nothing she could do". On September 28, 2006, a few days after Mr. Hamilton was notified by Ms. Noto of this scheduling conflict and that Mr. Washburne would be acting as substitute counsel, Mr. Hamilton called the court and attempted to speak directly with Judge Bielamowicz to voice his objection to this substitution of counsel in which Judge Bielamowicz properly declined to speak with him. Mr. Hamilton was unaware that the Judge was barred from speaking with him ex'parte and believed that he was simply getting the brush off. Dissatisfied with this outcome Mr. Hamilton took the next step of coming to the courthouse in person and requesting to speak with Judge Bielamowicz, again to voice his objection to this counsel substitution; the Judge again declined

to meet with him. Once the reason was explained to Mr. Hamilton by the bailiff, Mr. Hamilton then submitted his objections in writing and gave the letter to the bailiff in person. The letter was addressed by the Court on October 5, 2006, the first day of the proceedings, where Mr. Hamilton's letter and objection to counsel's substitution was discussed.

THE COURT: "I did read your letter Mr. Hamilton, and I brought your concerns to your attorney's attention. Is there anything you would like to say". (trans. 10/5/06, 4:5-8)

Mr. Hamilton's letter and objection to counsel's substitution was discussed, where he was all over the place; however, the one thing that he did make clear several times throughout the proceeding, is that he did not retain, want, choose, or assent to Mr. Washburne's substitution:

Mr. Hamilton: "I didn't pay him. He wasn't even in the firm when I paid her my money.
(trans. 10/5/06, 4:14-16)

Mr. Hamilton: "He's not the attorney of my choice. He's not the attorney that I hired. I mean, I'm not saying he's not a good attorney. I'm not saying he wouldn't fight the case to his ability but he's not the attorney that I hired to handle my case. He wasn't even in the practice. If I wanted Mr. Washburn I would have went and seeked out Mr. Washburne. All I want is a fair trial. I want somebody that is going to fight that I choose" (trans. 10/5/06, 7:2-10)

Petitioner consulted with an attorney that would have been

his perfect choice for substitute counsel, and made the Court aware; "I have a substitute attorney of my choice, that's willing to fight my case"; (trans. 10/5/06, 6:20-21). At this point, the Court told Mr. Hamilton that there will be no postponements to get a substitute attorney, and that he can choose to either to go to trial with Mr. Washburne or with Ms. Noto; (trans. 10/5/06, 7:22-24). In which petitioner responded:

Mr. Hamilton: I'm not going to sit here and say I want Miss Noto, because I don't. She must not be interested! But I don't want Mr. Washburne either, because I didn't choose Mr. Washburne I guess you make your decision!
(trans. 10/5/06, 8:19-23)

Mr. Hamilton: I guess, if I have to pick between the two, could I have Ms. Noto?
(trans. 10/5/06, 9:8-9)

The matter was continued to October 10, 2006 so that Ms. Noto could be present along with Mr. Washburne, so that petitioner's counsel of choice claim could be hashed out on the record; (trans. 10/5/06, 8:11-14).

On October 10, 2006, the proceeding continued with petitioner Hamilton, Mr. Washburne, and Ms. Noto present. The Court started it's questioning with Mr. Washburne:

The Court: "He did acknowledge in his letter that he was aware of your substitution for some period of time, is that correct?"; (trans. 10/10/06, 2:10-15)

Mr. Washburne: "Well, I don't know that it was so much that he was advised of it. I wasn't present at the conversation

with Ms. Noto and him"
(trans. 10/10/06, 2:20-24)

Mr. Washburne doubles down, to make clear; "I wasn't present at that conversation". (trans. 10/10/06, 3:1-2). The Court then proceeds to next question Ms. Noto, where she states that Mr. Hamilton assented to Mr. Washburne's substitution:

Ms. Noto: I told Mr. Hamilton that I would like to have Mr. Washburne take over as his trial counsel and asked him if he would have an objection. He told me that he did not.

The Court: When was this?

Ms. Noto: I can't give you an exact date, approximately the middle of April.
(trans. 10/10/06, 5:11-18)

Lastly, the Court then directs it's questioning to petitioner Hamilton, the individual that the sixth amendment was designed to protect:

The Court: Do you disagree with that, because that's exactly what I've been told?

Petitioner: Yes, I do disagree!

The Court: I'm just telling you whether you agree or not?

Petitioner: "No" (trans. 10/10/06, 3:3-22)

Even though Ms. Noto stated that petitioner assented to Mr. Washburne's substitution, Mr. Washburne stating that he did not have any direct knowledge of petitioner assenting to his substitution, and petitioner clearly stating himself that

he did not in any way assent to Mr. Washburne's substitution, Ms. Noto however tells the Court that, "if it would adjourn the case, she would certainly try it". (trans. 10/10/06, 6:12-16). Nevertheless, the trial court ultimately denied Mr. Hamilton's request for a continuance so that he could continue with his counsel of choice - "Maria Noto" or in the alternative hire substitute counsel of his choosing, and was forced to proceed with a partner in Ms. Noto's firm, "Edward Washburne"; (trans. 10/10/06, 10:1-10). The New Jersey State Court totally ignored the fact that it was petitioner's constitutional right to counsel of choice, and based it's reasoning partially on the fact that it(the Court) felt that Mr. Washburne would make for a good trial attorney for petitioner due to his status as a former prosecutor(such as herself).

THE COURT: Well, he has experience on both defense side and the prosecutor's side, and "I" always thought that former prosecutors made very good defense attorneys because they were aware of weaknesses in the state's case from having recognized them when they prosecuted them. So "I" have no reason to believe that Mr. Hamilton will not have very professional and aggressive representation. So we're going to proceed with Mr. Washburne representing Mr. Hamilton, and "I" have every reason to believe, Mr. Hamilton, that you will receive very fine representation.
(trans. 10/10/06, 10:15 to 11:8)

NOTE: Whether the Judge thought that Mr. Washburne would make for a good trial attorney or not, was to no consequence, because it wasn't her life, liberty or constitutional right to counsel of choice that was at stake!

It continued in it's reasoning, stating that it believed that petitioner assented to substitute representation by Edward Washburne(Ms. Noto's new partner), and therefore was already represented by his counsel of choice; and went on to say, it was also concerned that petitioner was just looking for a way to adjourn the trial.(trans. 10/10/06, 10:1-24).

Petitioner next raise that he was denied his constitutional right to counsel of choice on direct appeal to the New Jersey State's Appellate Division, which the Court denied on June 29, 2010, stating "the denial of Hamilton's request for an adjournment was not an abuse of the court's discretion nor did it cause Hamilton a manifest wrong or injury", (exhibit D); it was certified by the New Jersey State Supreme Court January/2011. On September 17, 2019, Hon. Peter G. Sheridan, U.S.D.J. denied petitioner's habeas corpus petition, stating "that there was little support for Hamilton's contention that the trial court committed any constitutional error in him proceeding to trial with Mr. Washburne as his trial counsel"; (exhibit C). On March 3, 2020, Hon. Peter G, Sheridan U.S.D.J. denied petitioner's motion to reconsider it's September 17, 2019 ruling; (exhibit B). And lastly on October 7, 2020, the United States 3rd Cir Court of Appeals denied petitioner's request for certificate of appealability, stating that "Jurist of reason would not debate that the claims in appellant's habeas petition were either procedurally barred or meritless for essentially the reasons set forth in the District Court's opinion"; (exhibit A).

REASONS FOR GRANTING PETITION

1. A State Trial Court's unjustified refusal to allow a short continuance so that a defendant can continue to be represented by his counsel of choice of two years or time to choose & hire substitute counsel of choice, violates the Sixth Amendment without regard to whether the unjustified refusal had a demonstrable effect on the verdict.
2. Forcing a defendant to trial with substitute counsel not of his choice, violates the Sixth Amendment without regard to whether he can show that substitute counsel not of his choice was in some way deficient or had an affect on the verdict.

The historical core of the right to counsel, is the right to counsel of choice. Before the Assistance of Counsel Clause guaranteed anything else, it guaranteed defendants right to be represented by their retained lawyers, provided courts had no legitimate reason to preclude such representation. Past State and Federal appellate decisions confirmed that this right was understood to exist on its own terms, apart from any ability to demonstrate that its denial affected the verdict in any particular case. This Court in Glasser v. United States, 315 U.S. 60, 75(1942), held that "Glasser wished the benefit of the undivided assistance of counsel of his own choice. We think that such a desire on the part of an accused should have been respected".

The case sub judice originated in the State of New Jersey,

where petitioner was denied his sixth amendment right to counsel of choice. Petitioner filed a habeas corpus petition to the 3rd Cir. District Court, where it ruled that "there was little support for petitioner Hamilton's contention that the trial court committed any constitutional error in him proceeding to trial with Mr. Washburne as his trial counsel"; (exhibit A).

The Sixth Amendment entitles a defendant to be represented by his chosen attorney, and once he selects this attorney it's at that moment his right to counsel of choice attaches. In reviewing the "whole record", it will be clear to this Court, that petitioner's United States Sixth Amendment Right to Counsel of Choice was indeed violated.

TIME-LINE

1. December 2, 2004, Petitioner payed \$50,000 & retained "Maria Noto as his counsel of choice", two years prior to his October 5, 2006 trial; (exhibit E).
2. April 4, 2006, petitioner's counsel of choice Maria Noto signed the trial memorandum on his behalf, with a trial start date of August 26, 2006; (trans. 4/4/06, 3:3-4).
3. August 30, 2006, Edward Washburne, Ms. Noto's new partner, showed up in Court for the first time alone, just 26 days before the September 26, 2006 scheduled trial start date. At this hearing, he made it clear to the Court, that he "WOULD NOT" be conducting petitioner's trial, that he was only standing in for Ms. Noto for that day; (trans. 8/30/06, 3:1-3).
4. August 30, 2006, the trial Court itself also acknowledged that it was aware that Mr. Washburne would not be conducting petitioner's September 26th trial, again just 26 days before the scheduled September 26th trial start date; (trans. 8/30/06, 5:911).
5. Just days before the September 26, 2006 scheduled trial date, Ms. Noto calls petitioner to tell him that his trial start date was rescheduled to October 5th, due to a trial the court

was conducting running longer than expected; (trans. 10/5/06, 6:6-11).

NOTE: Until the rescheduling of petitioner's original trial date from September 26th to October 5th, there were no conflicts in Ms. Noto's schedule and no conflict in Mr. Hamilton's Counsel of Choice.

6. Just days before petitioner's September 26th scheduled trial date, petitioner went to the courthouse, on a noncourt day, and gave a letter to the bailiff to give to the Judge, objecting to Ms. Noto's attempt to have Mr. Washburne take her place as petitioner's trial attorney; (trans. 10/5/06, 4:5-8).
7. October 5, 2006, petitioner stood up and made clear to the Court, that "Mr. Washburne is not the attorney that he hired and not his attorney of choice; (trans. 10/5/06, 4:14-16 & 7:2-10).
8. October 10, 2006, Mr. Washburne made it clear, contrary to Ms. Noto's statements to the court, that he was not present at no such meeting where he witnessed petitioner assent to his substitution & was only told by Ms. Noto that he did; (trans. 10/10/06, 2:18-22). Mr. Washburne doubled downed later at this same hearing, and again made himself clear to the Court "that he did not personally witness Mr. Hamilton assent to his trial substitution"; (trans. 10/10/06, 3:1-2).
9. October 10, 2006, petitioner went on to explain to the Court that he did not want Mr. Washburne, and his understanding was that he payed Ms. Noto and that Mr. Washburne was only "assisting" her on his case by showing up at his last Court hearing(8/30/06) alone; (trans. 10/10/06, 7:9-25).
10. October 10, 2006, the trial Court unreasonably based it's decision to deny petitioner a continuance so that he could continue with his counsel of choice "Maria Noto" or time to get substitute counsel of choice, and based it's reasoning "that it believed petitioner assented to Mr. Washburne's substitution, and that it was also concerned that petitioner was just looking for a way to adjourn the trial"; (trans. 10/10/06, 10:1-24).

The record cannot be any clearer, petitioner was not looking for a way to adjourn his trial, all he wanted was the representation by his counsel of choice of two years Maria Noto, or in the alternative time to retain substitute counsel of his

choice. Here are a few cases, Federal & Supreme Court that are starkly factually similar to petitioner's case: See United States v. Johnston, 318 F.2d 288(1963); where Johnston retained his counsel of choice, well in advance of trial. There were no continuances or other bad faith motives or attempts to delay the proceedings caused by Johnston. However just days before Johnston's trial was scheduled to start, his retained counsel informed him of a scheduling conflict and that an associate would be conducting the trial. At trial, Johnston voiced his complaint to the court. The Court inquired of the U.S. Attorney, his position, and was informed there were witnesses coming from Canada and from other states. Some were already here, while others were on their way. The Court inquired into the competency of substitute counsel (as was done in Hamilton's case), and satisfied ordered the trial to continue with substitute counsel. Johnston was convicted, but reversed on appeal. In United States v. Seale, 461 F.2d 345, 356-361(1972); on September 9, 1969, Seale's attorney Mr. Gary filed a motion for a continuance of a September 24, 1969 trial date, due to an impending operation. The trial court denied this motion, and forced Johnston to trial with substitute counsel "who was only hired for pretrial work", "against Seale's objections". Seale was convicted, and the Appellate Division reversed and held: "The point is, that the trial Judge was confronted from the very beginning with objections that these attorneys of record were not in fact counsel chosen by Seale to represent him at trial(as was done in Hamilton's case). In sum, the right to counsel of choice

could not be denied by exclusive recourse to appearances on record, where Seale did not actually agree to the trial representation of the appearing attorneys or where he was not shown to be engaging in unwarranted dilatory tactics". They went on to say "The grant of a reasonable continuance to secure substitute counsel, or leave to defendant to represent himself would have permitted the trial to continue promptly and may well have alleviated many of the difficulties that later occurred". Lastly, this Court's ruling in United States v. Gonzalez-Lopez, 548 U.S. 140(2006) represents the importance of ones Sixth Amendment Right to Counsel of his own choosing. Justice Scalia held: "a paying defendant should get a new trial because he was wrongly denied the lawyer of his choice", "no matter how well or poorly the defendant's substitute attorney performed the accused had a core Sixth Amendment right to be represented by the lawyer he hired for his case", "the Sixth Amendment commands not that a trial be fair, but that a particular guarantee be provided - to wit, that the accused be defended by the counsel he believes to be the best", and lastly "a new trial is required because there were unquantifiable and indeterminate consequences of substituting one attorney for another".

Sub Judice, as in Johnston, Seale, and Gonzalez-Lopez, there were no continuances, or other indica of bad faith. The New Jersey State Court made no inquiry into how long Ms. Noto would be unavailable, and the State never asserted any hardship would accrue to them should any continuances be granted

by the Court. The State Court should have Granted a short continuance, so that Mr. Hamilton could have continued with his counsel of choice of two years "Maria Noto", or in the alternative time to hire substitute counsel of his choice. Also, the 3rd Cir. District Court should have granted his habeas corpus petition, as petitioner's Sixth Amendment Right to Counsel of his Choice was indeed violated.

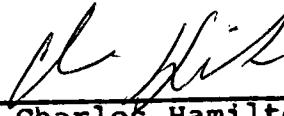
CONCLUSION

Petitioner has made clear that the New Jersey State & 3rd Cir. District Court's adjudication of his Denial of Counsel of Choice issue, resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States, and/or resulted in a decision that was based on an unreasonable determination of the facts in light of evidence presented in the State Court proceedings. 28 U.S.C. 2254(d).

Petition for writ of certiorari should be granted.

Respectfully submitted,

Date: 12/11/2020



Charles Hamilton