

The Supreme Court of The
United States

Supreme Court, U.S.
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Eunice Husband,
Petitioner, Pro Se,
v.
United States of America,
Respondent.

20-7250

Petition for a Writ of Certiorari

On appeal from the United States Court of
Appeals for The Seventh Circuit.

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Questions Presented for Review

In accordance with Rule 14

- ~~I. The Court committed Federal Rule of Criminal Procedure 52 (b) Plain Error~~
- II. Bias and Abandonment of judicial role by District Judge
- III. Appellate Court failed to address district court's in-court-identification
- IV. Appellate Court incorrectly asserts that defendant was appointed counsel for case no. 19-cr-30016
- V. Appellate Court erred in affirming district court's calculation of defendant's new term of supervised release
- VI. Ineffective Assistance of Counsel

Rule 14(b). List of Parties to the Proceeding

- (1) Eunice Husband, Petitioner, Pro Se
- (2) United States of America, Respondent
- (3) United States District Court for The Central District of Illinois, Springfield Division, Case Numbers 98-cr-30050 and 19-cr-30016
- (4) United States Court of Appeals for The Seventh Circuit Case Numbers 19-3247 and 19-3248

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Jurisdictional Statement

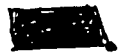
This Court exercises jurisdiction of this subject-matter pursuant to Rule 10 of the Supreme Court of The United States.

Rule 10. Considerations Governing Review on Writ of Certiorari

A petition for a writ of certiorari will be granted only for compelling reasons.

(a) a U.S. Court of Appeal has entered a decision in conflict with the decision of another U.S. Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a State Court of a last resort; or has so far departed from the accepted and usual course of judicial proceedings.

Pursuant to Rule 13 of the Supreme Court of The United States, the time for petitioning is 90 days after entry of judgment.



VII.

Statement of The Case

On March 27, 2019, at about 1:50 p.m. in Springfield, Illinois, defendant, Eunice Husband was arrested by the United States Marshals for the Central District of Illinois on a Petition for Offender Under Supervision (Pet.'s Exh. 1). Initial Appearance was not held until May 23, 2019.

During the time-frame in which the May 23rd initial appearance and the November 26, 2019 Revocation hearing the Government made three requests for "Continuances" of revocation hearing. The district Court granted each of these requests, (Pet.'s Exhs. 2 and 3). The third request was made verbally, during the revocation hearing, (Tr., pg. 7). The Court on it's own rescheduled the hearing, (Pet.'s Exh. 4). And, defense Counsel also filed for a continuance, (Pet.'s Exh. 9).

Defendant moved into an apartment with Keith Davis, the Government's witness, on or about February 13, 2019, 841 North 7th Street, apt. A. At that time Mr. Davis already had received an "eviction notice." Subsequently, on March 1, 2019 Mr. Davis was evicted for failure to pay rent. Defendant was present when the landlord, along with a Sangamon County Sheriff's deputy arrived and told ~~her~~ Mr. Davis to get out, and stay out. Defendant and Mr. Davis, both had personal possessions in the apartment.

After this incident, petitioner spoke with his pastors, Tammy and Brian Williams, about his situation and circumstances. Pastor Tammy gave defendant \$40 to obtain means of transportation to move his belongings from the eviction residence. Defendant spoke with the landlord by phone. The landlord said that defendant could retrieve his belongings after the 30-day passage from date of eviction.

The alleged victim, Keith Davis asserts that defendant assaulted him on March 5, 2019, at about 11:15 a.m., at Helping Hands of Springfield. The Springfield police was called by Helping Hands personnel. The reporting officer was wearing a body-camera, and the time of his arrival at the alleged scene, the body-cam indicates the time as being, 17:21 p.m., (5:21 p.m.)

Eric W. Fox, U.S. Probation Officer was called and informed of the alleged assault, at the time of the allegation, by Laura Davis, a case manager at Helping Hands. (Pet.'s Exh. 7)

Defendant had March 5, 12, and 21, 2019 appointments with Mr. Fox, and he never mentioned any such incident.

Summary of Argument

On March 27, 2019, at about 1:50pm, in Springfield, Illinois, defendant was arrested by the United States Marshals Service, on a federal warrant, (Pl.'s Exh. 1). ~~The government asserts through~~ that at the time of defendant's arrest, he was in state custody for the Battery charge, even though, (1) the U.S. Marshals never produced or served defendant an arrest warrant, state or federal, (2) the petition for revocation/with warrant, issued by the U.S. Magistrate, was authorized on March 25, 2019, two days before the arrest, and (3) the claimed state arrest warrant never surfaced, during the state or federal proceedings. Subsequently, defendant was brought before the magistrate judge for initial appearance for case no. 98-cr-30050 on May 23, 2019. Though both cases were included in the contents of the Petition for Revocation, initial appearance for case no. 19-cr-30016 was not held until November 6, 2019.

Counsel for defendant, at initial appearance in case no. 98-cr-30050, on May 23rd, failed to challenge the delay, nor did Counsel offer any evidence, challenge the government's proffered evidence, and failed to call any witnesses, or cross-examine any adverse witnesses at preliminary hearing. Substitute Counsel refused to challenge the delay of initial appearance in case no. 19-cr-30016, on November 6, 2019. Further, Counsel waived preliminary hearing. If not for both lawyers' failure and refusal to present evidence, and to challenge the government's proffered evidence and witnesses, the petition would have been dismissed.

for lack of sufficient evidence. Further, counsel at the revocation hearing failed and refused to offer any Discovery evidence, nor witnesses.

Both lawyers were "ineffective." The government's evidence was based solely on "hearsay." The probation officer's petition for revocation is merely a recitation of officer Jeffrey Leininger case report. Counsel failed to challenge this fact.

Defendant's probation officer was aware of the Battery allegation, as Laura Davis, a case manager at Helping Hands called Eric Fox (U.S. Probation) at the time-and-place of the alleged incident. Mr. Davis was also present during the entire time that officer Leininger was conducting the investigative report. Officer Leininger was wearing a body-camera, (Pet's Exh. 6). The alleged assault would have occurred March 5, 2019, but defendant was not arrested until March 27th, though he had visited Mr. Fox March 5, 12, and 21, 2019. Significantly, and unbelievably the alleged assault would have occurred at nearly the same time, 11:15 a.m., as defendant's appointment with Mr. Fox, 11:00 a.m.

The district judge was biased throughout the entire revocation proceedings, and abandoned her "impartial judicial role" during the revocation hearing, held November 6, 2019.

After granting the Government's requests for two previous Continuances of revocation hearing, the judge, during the hearing, granted the prosecution a "third" continuance, after being informed that the government's witness, the alleged victim had not shown.

The judge granted the government's, (1) first continuance

due to the ongoing and underlying State charges, of Battery. The State trial was set for October 7, 2019, so the judge rescheduled the revocation hearing from August 28, 2019 to October 15, 2019. The State dismissed the charge on October 2nd, (Pet's Exh. 8). (2)

Second, though the State charge was dismissed, the government filed for another Continuance on October 11, 2019, asserting that "the witness could not be located, and that the witness's testimony was paramount to the government moving forward with the petition, though the government already had the previous seven months to contact the witness, as defendant had been in custody since March 27, 2019. Over the defense's Objection, the judge granted the request. (3) Third, at the revocation hearing, not only did the judge allow the government another continuance, but also joined in the "search" for the witness.

The district Court committed multiple "errors" during the revocation proceedings, i.e., (1) the delays of initial appearance in both cases, (2) the Court should not have considered the government's witness testimony that he suffered multiple injuries as a result of an attack at the hands of defendant, as the assumed injuries are unsubstantiated. There is no medical documentation. The judge used this testimony as aggravating sentencing factors. (3) The judge imposed a very harsh sentence. Defendant was accused of committing a Grade C violation, and this was defendant's first time before the Court for an alleged violation of SVR, (4) the judge miscalculated the term of SVR imposed in case no. 98-cr-30050, (5) the judge identified defendant at the revocation hearing, after the witness was unable to do so, and (6) concerning the need for unwarranted sentence disparities, pursuant to 18 U.S.C. § 3553, the judge was biased, and prejudiced towards defendant. Many other "offenders" have been sentenced by

this

judge for revocation violations for much more serious offenses,
(Grade A and B), and multiple violations, and received much
lighter sentences.

Argument

I. The Court Committed F.R. Cr. P. 52(b), Plain Error

(a) On November 6, 2019, during initial appearance the magistrate Judge explained concerning the procedural posture in the Petition for Revocation of Supervised Release (SVR), in both cases, 19-cr-30016 and 98-cr-~~30050~~ 30050, (Tr. pgs. 3-5). "On May 23, 2019 an initial appearance was held for Mr. Husband in case no. 98-cr-30050. I proceeded--or presided at that initial appearance. At that time, the defendant appeared before me in custody. He was advised of his rights and the contents of the petition. Petition was unsealed." (Tr. pgs. 3-4). At that May 23rd initial appearance the prosecution and the Court failed to unseal said charge in case no. 19-cr-30016, thus creating a U.S. Const. 5th Amendment violation of liberty, and a 6th Amendment violation, right to counsel. Further, the initial appearance and unsealing of the petition in case no. 98-cr-30050 were in violation of rule 32.1(a)(1), and U.S. Const. Amds. 5 and 6, as defendant was arrested and taken into federal custody by the U.S. Marshals on March 27, 2019, on an arrest warrant authorized by U.S. Magistrate Judge, Tom Schanzle-Haskins, issued March 25, 2019, (Pet's Ex. 1). Counsel for defendant, at this May 23rd hearing was ineffective for failing to challenge the delay.

Defendant was deprived of his liberty interests, and other protected interests of the United States Constitution, and Laws of the United States.

"The necessary predicate to a due process claim is a deprivation of a protected interest." Ramirez v. Cooke, Civ. No.

14-cv-00171-RBJ-CBS, (U.S. Dis. Co., D. Colorado). "The first inquiry in every due process challenge is whether the plaintiff/defendant has been deprived of a protected interest in property or liberty." (citing U.S. Const. amend. XIV) "nor shall any State deprive any person of life, liberty, or property without due process of law." Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 59 (1999). Defendant challenged the error, delay of initial appearance in case no. 19-cr-30016. (Tr., pg. 6).

(b) Petitioner's revocation hearing was conducted on November 6, 2019, nearly seven and a half ($7\frac{1}{2}$) months after his arrest on March 27, 2019. This is an abuse of F.R.C.P. 32.1(b)(2), and also in violation of U.S. Const. Amendments. 5 (liberty interests) and amend. 8 (Cruel and Unusual Punishment), for unwarranted and unwanted incarceration.

This $7\frac{1}{2}$ months delay was due ~~to~~ caused by the district judge's multiple continuances at the government's requests, and also the judge's bias of defendant. (1) On August 19, 2019 the ~~the~~ government electronically filed an unopposed Motion To Continue Revocation, which the Court granted, (Pet.'s Exh. 2). (2) The Court granted a second continuance on behalf of the government, ~~the~~ Pet.'s Exh. 3). On October 22, 2019 the Court, on its own reset the hearing, (Pet.'s Exh. 4). And, on November 6, 2019, during the revocation hearing, the government verbally requested a third continuance, which the judge granted. The defense objected to the October 11th and November 6th continuances.

"Under circumstances, 12-month delay before holding final revocation hearing was objectively unreasonable; district Court, as a matter of law waited too long before holding hearing under Fed. R.

Crim. P. 32.1(b)(2). U.S. v. Pagan-Rodriguez, 600 F.3d 39, (1st Cir. 2010).

In petitioner's revocation proceedings, he, (1) challenged the delay of initial appearance in case no. 19-cr-30016, (Tr., pg. 6), (2) defendant objected to the government's Motion to Continue Revocation, (Pet's Exh. 3), and (3) defense counsel objected to government's verbal request to continue Revocation, during the hearing, on November 6, 2019, (Tr., pg. 7). And moreover, the district judge continued the revocation hearing, November 6th, to allow the government to search for the witness.

II. Bias and Abandonment of Judicial Role by District Judge

(a) During the Revocation Hearing, on November 6, 2019, the district judge abandoned her "impartial judicial role" and took on the role of prosecutor, and assisted the government in a partisan role.

Rules for Judicial-Conduct and Judicial Disability Proceeding.

Article II. Misconduct and Disability

4. Misconduct and Disability Definitions

(a) Misconduct Generally. — Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the Courts.

Cognizable conduct includes:

(1) Violation of Specific Standards of Judicial Conduct.

(C) engaging in improper ex parte communications with parties or counsel for one side in a case;

(D) engaging in partisan political activity or making inappropriately partisan statements

The Revocation Hearing

District Judge (J) Government (G)

G: Your Honor, I'm sorry to interrupt you.

Your Honor, the Government's position regarding going forward today was dependant on the availability of the witness. The Court recalls the government initially filed a motion to continue this hearing because the necessary witness had not been located yet.

The Court granted that continuance, and the government subsequently, did identify and locate the necessary witness, name as Mr. Keith Davis, as did the U.S. Probation Office, both by phone. He was made aware of today's Court date and time.

I had scheduled a time to meet on today's date prior to the hearing with Mr. Davis and he did not meet -- he did not show up at that meeting. I tried calling him at the number that he was -- that he had provided previously and that at least I had gotten voicemail before. And that phone, as of this morning, appeared to be disconnected. I did leave him a voicemail last night.

So given those circumstances, Your Honor, I was hoping that he would have walked in the Courtroom by now. He's not here.

Given those circumstances, I recognize this is the second such request, but I would respectfully be seeking a short continuance to attempt to have further contact with Mr. Davis.

J: Let me have Court Security check to see if he has come in the building.

Chuck, could you check that?

Court Security Officer: No, Your Honor.

Q: Is Mr. Davis known to Court Security?

A: I spoke with Court Security this morning, I showed them a picture of Mr. Davis and asked them to notify us as soon as he was here.

Q: Well, I guess what my point is is it possible he's over at the church as we speak, which is where many homeless congregate?

A: So, I don't have any reason to believe that he's at that location. So, if the Court wants to take a brief recess and I can go walk the block myself and see if he's there.

Q: Let's do that. Court is in recess.

First, the judge engaged in partisan conduct with the government, in discussing the whereabouts of the witness, having Court Security search for the witness, and recessing the hearing to allow the search for the witness. And second, the judge took on the role of the prosecution when taking the lead in search of the witness, when having Court Security check to see if the witness had arrived, and more significantly suggesting the whereabouts of the witness.

An example of such abandonment is the behavior of the judge in Lo-Ji Sales Inc. v. New York, who 'yielded to the State Police -- the completion of the -- warrant, was present at and conducted a generalized search, allowed himself to become a member, if not the leader of the search party, and instructed officers on what to seize.' Lo-Ji Sales Inc. v. State of New York, 442 U.S. 319, 60 L.Ed.2d 920, 99 S.Ct. 2319

"The Town Justice did not manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application for a search and seizure." Coldidge v. New Hampshire, supra, 403 U.S. at 449, 91 S.Ct. at 2029, (1971). See, PP v. Cussel Ozaka et Andr, (2006) NSWSC 1425.

American Bar Association (ABA) Standards. - A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication can give to parties or lawyers in the proceeding, jurors, the media, and others, an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. The trial judge should be the exemplar of dignity and impartiality. The judge should exercise restraint over his or her conduct and utterances. The judge should suppress personal predilections, and control his or her temper and emotions.

The judge should not permit any person in the Courtroom to embroil him or her in their conflict, and should otherwise avoid personal conduct which tends to demean the proceedings or to undermine judicial authority in the Courtroom.

The due process clause "guarantees an absence of actual bias on the part of a judge." Williams v. Pennsylvania, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132, (2016).

The district judge in petitioner's case was biased, and by being such, prejudiced the proceedings, thus violating petitioner's 5th Amendment's liberty interests. The 5th Amendment's due process clause "compelled" the judge to dismiss the petition, when the government informed the Court that it's witness did not show. Petitioner's conviction and incarceration was obtained by illegal means.

The Seventh Circuit Court of Appeals refused to address this issue, both, on direct appeal and on en banc hearing.

III. Appellate Court failed to address District Court's In-Court-Identification of Defendant

(a) The district judge identified defendant during the revocation hearing, ~~after being asked by the prosecution, due to Keith Davis's~~ inability to do so, (Tr. pgs. 14-15). The prosecutor asked Mr. Davis, "did you get to know an individual--- by the name of Eunice Husband?" The witness responded, 'yes sir.' "Would you mind pointing to him and identifying something that he is wearing? The witness says, Mr. Husband is wearing a gray-brown sweater. The government "asks the Court to reflect in-court-identification of the defendant?" The Court responds, "I don't believe he has on a gray and brown sweater. That's gray and black, I think? He's the only one with stripes on in the courtroom." (Tr. pg. 15)

It was as if petitioner was placed in crime-suspect line-up, and the judge identified the suspect, instead the victim. Further, defendant was the only individual in the Courtroom wearing a one-piece black and white pinstripe jailhouse jumpsuit. Without a defendant/suspect, the government has no case.

The judge prejudiced the proceeding, violating the due process clause of U.S. Const. Amd. 5.

IV. Appellate Court incorrectly asserts Petitioner was appointed Counsel for case no. 19-cr-30016

On May 23, 2019, initial appearance was held in case no. 98-cr-30050. At this hearing there was no unsealing of ~~the~~ charge for Case no. 19-cr-30016. Defendant could not have been appointed counsel for no. 19-cr-30016 at that time. In fact, initial appearance was not held in this case until November 6, 2019, the same

day the revocation hearing was conducted. It was at this time defendant was appointed Counsel.

Therefore, F.R.C.P. 32.1(a)(1) was violated, along with defendant's 5th Amendment. 32.1(a)(1) calls for a person held in custody shall ~~be~~ be brought before a U.S. Magistrate for initial appearance with unnecessary delay. This did not happen, as defendant had been in custody since March 27, 2019.

V. Appellate Court erred in affirming the District Court's calculation of defendant's new term of supervised release

Considering the totality of the circumstances, information presented, and the State Charge (an alleged Battery), which only carries a maximum sentence of one year, which would be only a Grade C category supervised release violation, the district judge sanctioned and sentenced defendant harshly, when considering the factors of 18 U.S.C. § 3553(a), ~~(B)~~ (B) through (D), and 18 U.S.C. § 3583 (c) and (E).

The district Court sentenced defendant to a term 8 month, with seven (7) years of SVR upon release in case no. 98-cr-30050, and a term of 12 months, with one year of SVR. The judge could have ordered the prison terms to be served concurrent, but instead ordered consecutive terms. The judge displayed bias in this aspect, as this very same judge has sentenced other defendants, convicted of more serious grades (A and B), and had multiple counts (violations), to far less and softer sentences.

Moreover, each sanction the judge imposed, was recommended by U.S. Probation and the government.

The 7 years of SVR ordered for case no. 98-cr-30050 was a miscalculation. Defendant was originally sentenced to a term of

eight years of SVR in that case. But, the Statutory Custody Provisions under 18 U.S.C. § 3583(e)(3) calls for no more than 5 years SVR. The 8 months the Court ordered defendant to serve, minus that 5 years, would entitle the Court to impose no more than 4 years or less of SVR upon release.

Petitioner has demonstrated that the district Court was biased, and committed reversible, plain, clear, and manifest errors.

VI. Ineffective Assistance of Counsel

(a) On May 23rd, 2019, during initial appearance and preliminary hearing, on Petition for Revocation of Supervised Release, Counsel failed, (1) to challenge the delay in holding initial appearance as required under F.R.Cr.P. 32.1(a)(1). Defendant was arrested on a federal warrant, (Pet's Exh. 1), ~~which was~~ not a State warrant. Further, no State arrest warrant was ever served upon, or shown to defendant at anytime, which indicates that there isn't one. (2) During preliminary hearing, Counsel did not address the absence of a State arrest warrant, the delay in initial appearance, nor the fact that defendant was not served or shown a federal or state arrest warrant upon his arrest, on March 27th. In fact, defendant did not read or receive the petition/warrant, until the May 23rd initial appearance. And, (3) Counsel did not call, nor subpoena any witnesses, nor offer any evidence/information in defense.

(b) At defendant's initial appearance, on November 2, 2019, in Case no. 19-cr-30016, Counsel merely replayed the showing of counsel at the May 23rd initial appearance in case no. 98-cr-30050, with the exception of making the record for defendant concerning the due process delay, 32.1(a)(1). And, instead of offering and challenging

related information and evidence, calling witnesses, and any other information, counsel waived preliminary hearing.

(1) Hearsay evidence sought to be admitted in defendant's case was not so reliable as to obviate need for application of balancing test prior to admitting evidence at defendant's revocation hearing; (2) none of government's other evidence introduced at revocation sufficiently corroborated challenged hearsay evidence as to render erroneous admission of that evidence harmless. U.S. v. Wallace, 557 Fed. Appx. 567, (7th Cir. 2014)

In probation revocation hearing, where basis for revocation petition was police report recounting basis for issuance of arrest warrant for defendant, in order to comply with Fed. R. Crim. P. 32.1 (b)(2)(C), government was required to produce witness for cross-examination, other than defendant's probation officer, who had sufficiently direct knowledge of circumstances surrounding alleged probation violation found in police report. U.S. v. Palmer, 463 F.Supp.2d 551, (E.D. Va. 2006)

In the instant cases, 98-cr-30050 and 19-cr-30016, defendant's probation officer relied solely on the police report of Springfield Police Officer, Jeffrey Leininger, (Pet.'s Exh.). Eric Fox (U.S. Probation Officer) petition, (Pet.'s Exh. 1), is merely a recitation of officer Leininger's report. Not only was counsel ineffective in not motioning the Court to conduct a rule 32.1(b)(2)(C) balancing test of the government's hearsay evidence, but also, the Court was in error for not conducting the "test" on its own.

Where in defendant's revocation of SVR hearing, he refused to admit pending State charges, and police report was read into record

over his objection, with that being only evidence of criminal conduct, it was error to have considered police report. U.S. v. Johnson, 710 F.3d 784, (8th Cir. 2013). Where defendant appealed his sentence for violating his supervised release, district court's admission of

hearsay testimony without conducting Fed. R. Crim. P. 32.1(b)(2)(C) balancing test ran directly afoul of Seventh Circuit's precedent in Jordan decision. U.S. v. Moslavac, 779 F.3d 661, (7th Cir. 2015)

Rule was violated when, during revocation of SVR hearing, district court permitted probation officer, rather than police officer who prepared it, to testify about events contained in police report without making required "interest of justice" finding. U.S. v. Jordan, 765 F.3d 785 (7th Cir. 2014).

Petitioner asserts, the district court's allowance of probation officer's information, contained in the body of the petition for revocation of SVR, is the same as allowing probation officer to testify, instead of officer Leininger who prepared report.

Counsel, during the November 6, 2019 initial appearance ~~in~~ in case no. 19-cr-30016, waived preliminary hearing, (Tr., pg. 10). It is clear that defendant did not voluntarily waive preliminary hearing. In fact, defendant challenged the petition, procedurally, (Tr., pg. 6). There, defendant challenged the delay in initial appearance, under rule 32.1(a)(1).

If a person facing proceeding for revocation of probation, parole, or supervised release purposes to waive rights under Fed. R. Crim. P. 32.1, district court has obligation to ensure that waiver is made knowingly and voluntarily. U.S. v. Correa-Torres, 326 F.3d 18, (1st Cir. 2003).

The magistrate judge, nor district judge made an inquiry as to the voluntariness of waiver of preliminary hearing.

No Witnesses or Evidence

(c) Witnesses, if called or subpoenaed, and such evidence, if presented by Counsel at the preliminary hearings and revocation hearing, would have, (1) corroborated defendant's testimony, (2) established that the Springfield Police, Eric Fox, (U.S. Probation officer), and the U.S. Marshals were aware of the alleged assault on March 5, 2019, and (3) proved by a preponderance of evidence, that defendant could not have committed the alleged Battery.

1. Jeffrey Leininger, Springfield Police Officer

Officer Jeffrey Leininger was the reporting officer, on March 5, 2019, concerning the alleged Battery of Keith Davis, (Pet's Exh. 5 and 6).

Officer Leininger's police report, (Pet's Exh. 5) indicates that he was dispatched to 1023 East Washington St., on 3-06-2019, at 1115 hrs for a battery report. But, the body-camera, (Pet's Exh. 6) which Leininger was wearing, indicates the date as March 5, 2019, time 17:21, a discrepancy of one day, and ~~time~~ time discrepancy of six-and-a-half hours. At 17:25, the video shows Laura Davis, Case Manager at Helping Hands, who was present throughout the police interview, giving Leininger defendant's personal information, i.e., name, date of birth, social security number, a photograph, and physical description. At 17:34 Leininger states, "we have enough to arrest him on. 17:35, if we don't find him, other local officers, or the U.S. Marshals will pick him up. 17:40, we have plenty to arrest him on."

It is obvious that defendant's probation officer, as well as the U.S. Marshals, were informed of the alleged Battery, on March 5th, according to the records of officer Leininger and Laura Davis, but defendant was not arrested until March 27th, by the U.S. Marshals.

2. Eric Fox, U.S. Probation Officer

Mr. Fox's testimony could have verified, (1) that defendant was at an 11:00 a.m. appointment with him (an alibi) on March 5, 2019, at the time at which the alleged assault of Keith Davis occurred, (2) defendant was present for his March 5th, 12th, and 21st appointments with Mr. Fox, ~~and~~ and defendant also visits the Family Guidance Center (FGC) Monday through Saturday, between the hours of 7:00 a.m. - 10:00 a.m. to check if urine sample for supervised release drug testing is needed. (Why wouldn't Mr. Fox arrest defendant at one of these appointments?) And, (3) Laura Davis, a case manager at Helping Hands contacted Mr. Fox about the alleged assault, at the claimed time of occurrence, (Pet.'s Exh. 7).

Title II. Apprehension and Investigation

Article 107. Arrest, Act 5. Code of Criminal Procedure 1963 § 725 ILCs 5/107-16. Apprehension of Offender

It is the duty of every sheriff, coroner, and every marshal, policeman, or other officer of an incorporated city, town, or village, having the power of a sheriff, when a criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge to be dealt with according to law.

Officer Leininger, Probation officer Eric Fox, the U.S. Marshals, nor any other local law enforcement agency arrested defendant.

Counsel was ineffective in not raising this issue.

Further, defendant had already informed Mr. Fox that he was living with Keith Davis, since around February 12, 2019, and also informed Mr. Fox that Mr. Davis was evicted on March 1, 2019.

(3) Tammy Williams

Pastor Tammy Williams testimony could have corroborated defendant that she gave defendant \$40 for transportation of defendant's personal belongings from the eviction residence, 841 N. 7th Street, apt. A. Therefore, defendant would have absolutely no reason to assault Mr. Davis.

Mrs. Williams could also verify that Mr. Davis was not a regular attendant of Broken Chains Church, as Mr. Davis claims. (Tr., pgs. 43-47)

(4) Brian Williams

Pastor Brian Williams could have verified the same testimony as Pastor Tammy Williams.

(5) Laura Davis

Laura Davis, a case manager at Helping Hands could have verified that, (1) she was present and a participant during officer Leininger's investigation with Mr. Davis, (2) she was the individual who called the police, and (3) she called Mr. Fox (U.S. Probation), (Pet's Exh. 7).

(6) Misty, a tenant at 841 N. 7th Street, apt. B

Misty could have verified and corroborated, (1) defendant acquired the landlord's telephone number from her, and (2) defendant stopped by the residence almost daily to check on his belongings. (Tr., pg. 44)

(7) Nick, Landlord of 841 North 7th Street

The landlord could provide testimony that, defendant called him and he told defendant, "listen, I cannot let you in the apartment because your name was not on the lease." Defendant then said, I have belongings in there, and I have paperwork and different items that can prove that some of the stuff is mine. The landlord said, "he has 30 days to ~~get~~ come get his stuff, which I guarantee you that he will not. After those 30 days, I'll call you and

let you get your stuff, and whatever else you want out of there, because I'm going to trash it. And, I'll call you if he arranges to get his things before those 30 days."

The landlord could verify that Mr. Davis was physically evicted on March 1, 2019. (Tr., pgs. 44-45)

(8) John Wise, landlord's Father

Mr. Wise could provide testimony that he and a Sangamon County Sheriff's Deputy physically evicted Mr. Davis, on March 1, 2019.

Counsel's performance was extremely poor. Though defendant requested and instructed counsel numerous times to call and subpoena the foregoing witnesses, counsel vehemently and stubbornly refused to do so.

Defendant told counsel to submit the following Discovery evidence, (1) the DVD of the body-camera footage, which officer Leininger was wearing, (Pet.'s Exh. 6), (2) officer Leininger's police report, (Pet.'s Exh. 5), (3) the State arrest warrant, which does not exist, (4) Laura Davis's case report, (Pet.'s Exh. 7), and (5) to subpoena the records of defendant's appointments with Eric Fox, (U.S. Probation Officer) on March 5th, 12th, and 21st, 2019. Defendant made these requests to counsel, in vain, as she vehemently refused all. Thus, defendant was subjected to a "he-say, she-say" defense.

At best, Counsel's representation, during each stage of the revocation proceedings, was "cartoonish" and "wholly lacking in effort, and thus, does not satisfy Strickland v. Washington, 466 U.S. 668, 687, (1984). Petitioner has met the cause-and-prejudice standard of Strickland.

Conclusion

Petitioner asserts, that petition for a writ of certiorari must be granted. Petitioner respectfully request that this Honorable Court grant petition.

Petitioner seeks for relief: (1) this Court to overturn and dismiss the final judgment(s) of the United States Court of Appeals for The Seventh Circuit, and (2) termination, in full, the term of supervised release, in both cases.

Date: November 13, 2020

Respectfully Submitted,

Emm Russell

Petitioner, Pro Se