

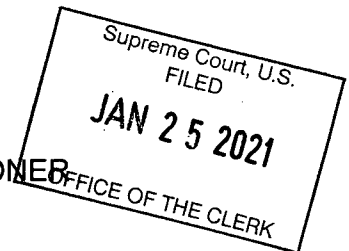
No. **20-7607**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Perry Burris
(Your Name)

— PETITIONER



vs.

TERESA DELBAND, ET AL

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third CIRCUIT COURT of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Perry Burris
(Your Name)

Box A, 1 Rockview Place
(Address)

Bellefonte PA 16832
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

DID ATTORNEY DOUGLAS P. EARL VIOLATE PERRY BURRIS' CONSTITUTIONAL RIGHT OF HIS 5TH AMENDMENT RIGHT TO DUE PROCESS OF LAW SUBSEQUENTLY VIOLATING HIS 6TH AMENDMENT RIGHT TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR?

ANSWER: YES. The 6th amendment constitutional right of the petitioner was violated due to the fact that counsel was ineffective for failure to investigate and conduct a reasonable pre-trial investigation. See: Wiggins v. Smith, 539 U.S. 510 (2003).

Answer: Yes. The 5th amendment constitutional right of the petitioner was violated due to the fact that counsel was ineffective when he so utterly failed to defend against the charges that the trial was the functional equivalent of a guilty plea, rendering counsel's representation presumptively inadequate. See: U.S. v. Cronin, 466 U.S., 648 (1985).

WAS ATTORNEY DOUGLAS P. EARL INEFFECTIVE FOR NOT FILING CONFIDENTIAL DOCUMENT FORM OF THE MEDICAL RECORDS PURSUANT TO 204 PA.CODE 213.81?

ANSWER: YES. Attorney Douglas P. Earl was ineffective for not filing a confidential document form of the medical records belonging to the alleged victim. - Pursuant to the Public Access Policy of the Unified Judicial System of Pennsylvania: Case records of the appellate and trial courts, the confidential document form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter, medical records are included as one of the types of confidential documents, and are required to be filed differently

then - confidential information and documents.

WAS ATTORNEY DOUGLAS P. EARL INEFFECTIVE FOR VIOLATING MR. BURRIS' 5TH
AMENDMENT DUE PROCESS RIGHT FOR CUMULATIVE ERROR?

ANSWER: YES. Petitioner was denied due process by the the combined effect of
individually harmless errors which, in combination, rendered the defense less
persuasive than it otherwise would have been. See: Chambers v. Miss., 410 U.S.
284 (1949).

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:

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STATUTES AND RULES

204 PA. CODE 213.81

QUESTIONS Presented

OTHER

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 A1 to the petition and is

☒ reported at 19-3740; 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 D to the petition and is

☒ reported at 17-2161; 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 C to the petition and is

☒ reported at 179 EM 2016; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Common Pleas court appears at Appendix B to the petition and is

☒ reported at CP-51-CH-0000712-2008; 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 ~~September 21, 2020~~ April 23, 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: September 14, 2020, and a copy of the order denying rehearing appears at Appendix A1.

☐ 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 May 29, 2015. A copy of that decision appears at Appendix E.

☐ 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

Fifth Amendment of The UNITED STATES CONSTITUTION
SIXTH Amendment of The UNITED STATES CONSTITUTION

204 PA. CODE 213.81

STATEMENT OF THE CASE

The Appellant, Perry Burris, was charged with rape and additional charges in relation to an incident on September 25, 2007. On September 17th, 2008 a Bench Trial was held before the Honorable Judge Harold M. Kane. On September 17th, 2008 The Honorable Judge Kane found Mr. Burris (Appellant) guilty of all charges. Judge Kane sentenced Mr. Burris (Appellant) to an Aggregate term of Thirty (30) to Sixty (60) years imprisonment on November 13, 2008.

On May 8, 2017 Petitioner signed and filed his timely federal habeas petition. On October 18, 2018 the District Court denied Petitioner's habeas relief. On 10-4-19 Petitioner filed a 60(b) motion. On 2/28/20 Petitioner filed a COA. On 4/23/20 The United States Court of Appeals for the Third Circuit denied Petitioner's COA. Petitioner immediately filed a re-hearing en banc motion which was denied on 9/14/20.

REASONS FOR GRANTING THE PETITION

In this case in chief, appellant was not given effective assistance of counsel that is guaranteed by the 5th, 6th and 14th amendments of the United States Constitution. During trial the only witnesses Douglas P. Earl Esquire called to the stand were Erikca McGlond, and Christen Horn, he then stipulated Jeffrey Davis's testimony to be the same as Christen Horn's. Appellant informed Douglas P. Earl, Esq., long before trial began that there were other witnesses in which he could call on his behalf who could have destroyed the key witness' testimony. Rodney Banks, Buck, Mark, and Eric/Erica Miner. All whom would have testified to quite the contrary of the prosecutor's key witness' testimony. In this case at bar counsel failed to contact and subpoena said witnesses. When defense counsel fails to investigate his client's only possible defense, although requested to do so by him and fails to subpoena witnesses in support of the defense, it can hardly be said that the defendant has had the effective assistance of counsel.

Trial counsel also failed to call expert witness pertaining to the rape charge that would have undermined the prosecutor's theory of rape, stated claim of ineffective assistance. See; Rogers v. Isreal, 746 F.2d 1288 (7th Cir.1984); Harris v. Reed, 894 F.2d 871, 878-879 (7th Cir.1990)(decision to not put on any witnesses in support of viable theory of defense constitutes ineffective assistance).

At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case, counsel did not investigate the facts and/or circumstances of the case. See; Nealy v. Cabana, 764 F.2d 1173, 1177 (5th Cir.1985); Bryant v. Scott, 28 F.3d 1411, 1419 (5th Cir.1994)(duty to investigate includes obligation to

investigate all witnesses who may have information concerning his or her client's innocence); *Grooms v. Solem*, 923 F.2d 88, 90 (8th Cir.1991)("it is unreasonable not to make some effort to contact [Alibi witnesses] to ascertain whether their testimony would aid in defense"). Counsel Earl did not do so.

Appellant claims involves Sixth amendment claims of ineffective assistance of counsel which are governed by *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984) which qualifies as clearly establish federal law, as determined by the Supreme Court of the (United States) *Taylor v. Hern*, 504 F.3d 416, 430 (3rd Cir.2007) quoting *Williams v. Taylor*, 529 U.S. 362, 413, 1205, CT 1495 (2000) according to *Strickland* a court deciding an ineffective assistance claim must (determine) whether in light of all of the circumstances the identified acts (of counsel were outside the wide range of professionally competent assistance 466U.S. at 690, 140 S.Ct. at 2006, in order to successfully claim ineffective assistance of counsel appellant must meet the two prong test established by the Supreme Court in *Strickland*).

The government's evidence in its prosecution of this case, consisted only of One (1) witness, the trial took place one year after the alleged crime; it was over in less than a day.

For the purposes of *Strickland*, the relevant inquiry is whether trial counsel's course of action was reasonable under prevailing professional norms? See; *Wiggins v. Smith*, 123 S.Ct. 2527, 2535 (2003)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 24, 2021