

No. \_\_\_\_\_

20-7764

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

JAMIL STEFON CARTER — PETITIONER

(Your Name)

vs.

O'BELL T. WINN, WARDEN — RESPONDENT

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

FILED  
APR 07 2020

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMIL STEFON CARTER

(Your Name)

9625 Pierce Road - MDOC

(Address)

Freeland, Michigan 48623

(City, State, Zip Code)

(Phone Number)

**RECEIVED**

APR 14 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTION(S) PRESENTED

### Ground One:

DUE PROCESS REQUIRES PLEA WITHDRAWAL WHERE PETITIONER DID NOT KNOW HIS GUILTY PLEA WAIVED HIS RIGHT TO APPEAL THE DENIAL OF THE PRE-TRIAL MOTION TO SUPPRESS PETITIONER'S STATEMENT TO A DETECTIVE AND WHERE PETITIONER WAS FRIGHTENED INTO PLEADING GUILTY BY DEFENSE COUNSEL'S FAILURE TO ASK THE QUESTIONS PETITIONER WANTED PUT TO THE POTENTIAL JURORS DURING SELECTION AND PETITIONER FELT DEFENSE TRIAL COUNSEL HAD LOST INTEREST IN THE CASE. U.S. CONST. AMS VI, XIV.

### Ground Two:

DUE PROCESS REQUIRES PLEA WITHDRAWAL WHERE TRIAL COUNSEL'S FAILURE TO INFORM THE TRIAL COURT THAT PETITIONER HAD INFORMED COUNSEL THAT THE CONFESSION HE MADE TO DETECTIVE JOHNELL WHITE WAS COMPLETELY FALSE.

TRIAL COUNSEL'S FAILURE TO INFORM PETITIONER OF LESSER RELATED OFFENSES IN REGARDS TO THE ORIGINAL CHARGES.

TRIAL COUNSEL'S FAILURE TO FOLLOW THROUGH WITH THE TRIAL COURT DECISION FOLLOWING PETITIONER'S MOTION TO FIND OUT THE TRUE IDENTITY OF THE PROSECUTION WITNESS LORENZO PETTUS.

TRIAL COUNSEL'S FAILURE TO INFORM PETITIONER THAT HIS GUILTY PLEA WOULD WAIVE HIS RIGHT TO APPEAL THE PRE-TRIAL MOTION TO A POLYGRAPH EXAM.

TRIAL COUNSEL'S USE OF COERCION WHERE PETITIONER EXPRESSED RELUCTANCE DURING PLEA PROCEEDINGS.

ALL THE ABOVE SHOULD BE CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL. U.S. CONST. AMS VI, XIV.

## 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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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 2021 U.S. App. LEXIS 462; 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 C to the petition and is

reported at 2018 U.S. Dist. LEXIS 197059; 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 D to the petition and is

reported at 920 NW2d 117 (Mich. 2018) (mem.); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Michigan Court of Appeals court appears at Appendix E to the petition and is

reported at People v. Carter, MICH APP No. 343389; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

### [x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan 07, 2021.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Mar 01, 2021, 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).

### [x] For cases from **state courts**:

The date on which the highest state court decided my case was 2018 Mich LEXIS 2325. A copy of that decision appears at Appendix D.

[ ] 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

### AMENDMENT V

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

### AMENDMENT VI

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

### AMENDMENT XIV

Sec. 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 its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Jamil Stefon Carter pled guilty to second degree murder and felony firearm (second offense). The Wayne County Circuit Court sentenced him to 19 to 60 years for the murder charge and a consecutive 5 years for the weapons violation.

Following the conviction and sentence, a delayed application for leave to appeal was filed with the Michigan Court of Appeals. The following claim was raised by appellate counsel:

ISSUE I:

DOES DUE PROCESS REQUIRE [SIC] PLEA WITHDRAWAL WHERE APPELLANT DID NOT KNOW HIS GUILTY PLEA WAIVED HIS RIGHT TO APPEAL THE DENIAL OF THE PRE-TRIAL MOTION TO SUPPRESS APPELLANT'S STATEMENT TO A DETECTIVE; AND WHERE APPELLANT WAS FRIGHTENED INTO PLEADING GUILTY BY DEFENSE TRIAL COUNSEL'S FAILURE TO ASK THE QUESTIONS APPELLANT WANTED PUT TO THE POTENTIAL JURORS DURING SELECTION, AND APPELLANT FELT DEFENSE COUNSEL HAD LOST INTEREST IN THE CASE?

Petitioner thereafter filed a pro se brief, known in Michigan as a Standard 4 brief, which raised:

ISSUE II - STD. 4:

DOE DUE PROCESS REQUIRE PLEA WITHDRAWAL WHERE TRIAL COUNSEL'S FAILURE TO INFORM THE TRIAL COURT THAT THE DEFENDANT-APPELLANT HAD INFORM [SIC] COUNSEL THAT THE CONFESSION HE MADE TO DETECTIVE JOHNELL WHITE WAS COMPLETELY FALSE; TRIAL COUNSEL'S FAILURE TO INFORM DEFENDANT-APPELLANT OF LESSER RELATED OFFENSES IN REGARD [SIC] TO THE ORIGINAL CHARGES; TRIAL COUNSEL'S FAILURE TO FOLLOW THROUGH WITH THE TRIAL COURT DECISION FOLLOWING DEFENDANT MOTION TO FIND OUT THE TRUE IDENTITY OF THE PROSECUTION WITNESS LORENZO PETTUS; TRIAL COUNSEL'S FAILURE TO INFORM DEFENDANT-APPELLANT THAT HIS GUILTY PLEA WOULD WAIVE HIS RIGHT TO APPEAL THE DENIAL OF THE PRE-TRIAL MOTION TO A POLYGRAPH EXAM; TRIAL COUNSEL'S USE OF COERCION WHERE DEFENDANT-APPELLANT EXPRESSED RELUCTANCE DURING THE PLEA PROCEEDING. ALL THE ABOVE SHOULD CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL.

On September 6, 2016, the Michigan Court of Appeals denied this delayed application for leave to appeal "for lack of merit" in the grounds presented." (9/6/16 Mich. Ct. App. Order).

Petitioner thereafter filed an application for leave to appeal with the Michigan Supreme Court, raising the same claims as in the Court of Appeals and a new claim of:

NEW GROUND - MISCT:

INEFFECTIVE ASSISTANCE OF COUNSEL, SUBSTITUTE APPELLATE COUNSEL REFUSED TO SUBMIT A NEW BRIEF AFTER DEFENDANT ASKED COUNSEL TO DO SO AFTER THE LAST APPELLATE COUNSEL WITHDRAWAL.

The Michigan Supreme Court denied this application because it was not persuaded that the questions presented should be reviewed by the Court. *People v. Carter*, 891 NW2d 491 (Mich. 2017) (Unpublished table decision).

Petitioner thereafter filed a Motion for Relief from Judgment in the Wayne County Circuit Court, which raised the following claims:

ISSUE I - MRJ:

DOES DUE PROCESS REQUIRE RELIEF FROM JUDGMENT WHERE A DEFENDANT MAKES A CLAIM OF ACTUAL INNOCENCE AND INTENDS TO SUPPORT THIS CLAIM BY THE RECORD, WHICH CONSTITUTES A POTENTIAL BASIS FOR WITHDRAWAL OF A GUILTY PLEA. THIS DEFENDANT ALSO INTENDS TO PRESENT COMPELLING EVIDENCE OF ACTUAL INNOCENCE TO THE SPECIFIC CHARGES THAT THE DEFENDANT PLEAD [SIC] GUILTY TO.

ISSUE II - MRJ:

DOES DUE PROCESS REQUIRE RELIEF FROM JUDGMENT WHERE TRIAL COUNSEL DISPLAYED INEFFECTIVE ASSISTANCE FROM A COLLECTION OF ACTIONS WHICH WERE: (A) FAILURE TO NOTIFY THE TRIAL COURT OF THE FALSE CONFESSION THAT DEFENDANT MADE TO A POLICE DETECTIVE; (B) FAILURE TO SHOW THE DEFENDANT THE VIDEO OF THE INTERROGATION WHERE THE DEFENDANT MADE THE FALSE STATEMENT/CONFESION; (C) FAILURE TO INVESTIGATE THE OVERALL FACTS OF THE DEFENDANT'S CASE, WHICH LEAD [SIC] TO THE DEFENDANT NOT HAVING ANY POSSIBLE DEFENSE STRATEGIES; (D) FAILURE TO FILE A MOTION FOR AN EXPERT WITNESS, WHICH WOULD HAVE HELP [SIC] TO EXPLAIN THE REASONS WHY INDIVIDUALS GIVE FALSE CONFESSIONS; (E) FAILURE TO INTERVIEW ANY POTENTIAL WITNESSES THAT THE DEFENDANT REQUESTED, WHICH SABOTAGE [SIC] THE DEFENDANT'S [SIC] CHANCES TO EXPLAIN HIS SIDE OF THE ORDEAL AT A TRIAL; (F) FAILURE TO INFORM THE DEFENDANT OF ANY LESSER RELATED OFFENSES THAT A POTENTIAL JURY WOULD HAVE BEEN INSTRUCTED ON, HAD THE DEFENDANT CHOSE TO GONE AHEAD TO TRIAL; (G) TRIAL COUNSEL PERSUADED THE DEFENDANT TO PLEAD GUILTY

ISSUE II - MRJ (CONT):

BY THE USED OF STRONG COERCION, AND THE LACK OF PREPARING ANY DEFENSE TO PRESENT AT TRIAL. [T]RIAL COUNSEL CONSTANT MENTIONING OF THE DEFENDANT RECEIVING A LIFE SENTENCE FRIGHTEN [SIC] DEFENDANT INTO PLEADING GUILTY TO CHARGES THE DEFENDANT ISN'T GUILTY OF.

ISSUE III - MRJ:

DOES DUE PROCESS REQUIRE RELIEF FROM JUDGMENT DUE TO PROSECUTORIAL MISCONDUCT, WHERE THE DEFENDANT WAS CHARGED WITH MURDER WHEN THE ELEMENTS FOR THAT SPECIFIC CHARGES WEREN'T PRESENT AT ALL. IF PROSECUTION WOULD HAVE DONE A PROPER INVESTIGATION OF THE FACTS OF THE CASE THE DEFENDANT WOULD HAVE BEEN CHARGED WITH A LESSER RELATED OFFENSE.

ISSUE IV - MRJ:

DOES DUE PROCESS REQUIRE RELIEF FROM JUDGMENT DUE TO INEFFECTIVE ASSISTANCE, WHERE SUBSTITUTE APPELLATE COUNSEL REFUSED TO SUBMIT A NEW BRIEF ON THE DEFENDANT'S BEHALF. INSTEAD THE COUNSEL CHOSE TO ALLOW THE BRIEF THAT THE PREVIOUS COUNSEL SUBMITTED TO STAND. SUBSTITUTE APPELLATE COUNSEL NEVER DONE ANY WORK IN THIS CASE WHATEVER, WHICH THE RECORD WILL REFLECT.

On March 29, 2018, The Wayne County Circuit Court denied the motion for relief from judgment under MCR 6.508(D)(3). (3/29/18 Wayne Cir Ct. Order at 1-8).

Petitioner then appealed by leave to the Michigan Court of Appeals, which was subsequently denied on May 31, 2018. (5/31/18 Mich. Ct. App. Order at 1).

Petitioner filed a timely application for leave to appeal to the Michigan Supreme Court, which was subsequently denied under MCR 6.508(D). *People v. Carter*, 920 NW2d 117 (Mich. 2018) (unpublished table decision).

Petitioner thereafter filed a Petition for Writ of Habeas Corpus 28 U.S.C. §2254, in the United States District Court for the Eastern District of Michigan - *Carter v. Winn*, Docket No. 2:19-cv-11041-AC-PTM, which raised the same claims presented to the Michigan State Court.

On August 26, 2020, U.S. District Judge Paul D. Borman, entered and Order of Judgment and 18 page opinion denying Petitioner's petition for Writ of Habeas Corpus, COA, and permission to appeal in forma pauperis. (ECF No. 16)

Petitioner filed a timely notice of appeal, and Petition for permission to appeal with the United States Court of Appeals for the Sixth Circuit, which was heard and denied on January 7, 2021, by Circuit Judge Stranch. *Carter v. Winn, Docket No. 20-1924 (6th Cir. Jan. 7, 2021).*

Petitioner thereafter filed for rehearing en banc, which was subsequently denied before: Circuit Judges Sutton, Cook, and Readler, Judge Larsen recused herself from participation in this ruling. *Carter v. Winn, Docket No. 20-1924 (6th Cir. Mar. 1, 2021).*

Petitioner Jamil S. Carter, In Pro Per, now files this instant Petition for Writ of Certiorari before this Honorable Court.

#### FACTS OF THE CASE

On May 27, 2015, Petitioner, Nakia Brim (decedent) live-in girlfriend lived at 2692 Edsel Street, in the Southwest part of Detroit. Petitioner and Ms. Brim had been visited by Petitioner's mother, who the day before had been an over-night guest, and Lorenzo Pettus aka "ONE LOVE". (PE 5/29/15 at 26-28).

Petitioner, Ms. Brim, Petitioner's mother and Pettus had all been drinking during that period at the residence. (PE \*27). Pettus testified that Ms. Brim made a statement, "You're going to get your gun." The pushed Pettus and walked out the home. (PE \*30).

This Court should take note that during the preliminary examination that the Petitioner was represented by two court appointed counsels as follows: Angela Peterson, Esq P59116, and Kristen Gura, Esq., P75375. These counsels along with the prosecution to reduce the number of witnesses presented at the preliminary examination after the testimony of Petitioner's Great-Grand mother, Ms. Constance Brown. (PE \*25).

Petitioner contends that the uncalled witness material to his case was Petitioner's mother Ms. June Carter, who had been present at the Carter home the night before the shooting incident, during the purchase of the rifle, the attendance of Pettus, and was on the scene attending the victim - Nakia Brim. (PE pp. 27, 29, 33-34).

Per the pre-trial record during the suppression hearing Petitioner counsel did not call a single witness to establish the extent of his intoxication prior to the incidental shooting, which from the date of the incident he contended was an accident. See PE Testimony of Ronald Massey at \*15.

Ronald Massey testified that he heard Petitioner say, "I didn't mean to do it. It was a mistake and they want to take me to jail." (\*15). Though, this statement made as an excited utterance, should be held for its truthful implications, no attorney for Carter undertook an investigation of this known controversy of the actual events.

Massey further testified that Petitioner was upset, (18) and emotional. (PE 19). Massey testified that he only heard two shots. (PE 10-11). He saw a guy fast-tracking around the corner. (\*11).

On September 4, 2015, a Motion to Suppress his Statement for Involuntariness was conducted. Petitioner was represented by appointed counsel - **Timothy Wrather P70539**. The trial court denied this motion finding that his statement was voluntarily provided in accord with Lego and Twomey, 404 U.S. 477 (1972). (MT, pp. 50-52).

On September 16, 2015, the first day of Petitioner's trial and represented by **Wrather** and **Mark Procida P39242**, there was a disagreement with the voir dire of the jury. Further, counsel had not been prepared to present witnesses on his behalf, specifically, June Carter, his mother who would have testified that Petitioner had created a false story to protect the victim's family from the obvious truth that he was handling his newly acquired rifle, by the prompting of Pettus, because he had purchased a rifle without testing it first. That Pettus and Petitioner had been fiddling with the weapon's safety then discharged twice. That Pettus was not testifying truthfully since he and Petitioner were responsible for the accidental shoot of Ms. Brim.

Petitioner was advised by counsels to agree with the judge to obtain a deal. Petitioner had not been explained the elements of second degree murder and the record of the plea is void of such explanation.

On appeal from his conviction via appellate counsel - **Randy E. Davidson P30207**, of SADO did move to Withdraw Guilty Plea. See **Motion/Brief to Withdraw Guilty Plea filed March 31, 2016**.

Petitioner on appeal was that his counsel was ineffective for failure to relay to his information regarding a conditional plea to preserve his appeal on the voluntariness of his confession.

Petitioner contends that the question by the court, does not elude to his understanding of his rights surrendered of the adequacy of counsel legal advice provided.

That under the Sixth Amendment counsel was inadequate under the prevailing norms because the advise provided from counsel was unreasonable because it was not based on the duty to investigate under the Strickland standard.

The applicable standard of review in this matter is *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

On review from the collateral proceeding Petitioner choose to focus his argument of his ineffective of assistance of counsel claims under the Sixth Amendment and on the last two reasoned opinions in the U.S. Court of Appeals for the Sixth Circuit he stands by his due process claims premised on the validity of his guilty plea under *Brady* and *Boykin* as cited by the Sixth Circuit Court and the ineffective assistance of counsel claims.

Petitioner now raises these claims before this Honorable Court on Writ of Certiorari.

## REASONS FOR GRANTING THE PETITION

Petitioner Carter was denied Due Process of Law by the inadequate legal advice of his attorney which induced him to plead guilty. Whether the Constitutional deprivation is characterized as a denial of Due Process of Law because the plea of guilty was involuntary, or as inadequate assistance of counsels which denied Petitioner Carter Due Process of Law (discussed *infra*), the questions are closely related that the authorities discuss them together. See *Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985) and *Bradshaw v. Stumpf*, 125 S.Ct. 2398, 2405-2407 (2005) (any shortcoming of defendant's plea bargain will cast doubt on validity of his plea only if they show either that defendant made unfavorable plea on constitutionally defective advice of counsel, or that he could not have understood terms of bargain he and prosecution agreed to).

In *Hill*, this Court found that, where defendant pleaded guilty to charges of first degree murder and theft of property on counsel's advice, the voluntariness of plea depended on whether advice was within range of professional confidence demanded of attorneys.

A. DUE PROCESS REQUIRES PLEA WITHDRAWAL WHERE PETITIONER DID NOT KNOW HIS GUILTY PLEA WAIVED HIS RIGHT TO APPEAL THE DENIAL OF THE PRE-TRIAL MOTION TO SUPPRESS PETITIONER'S STATEMENT TO A DETECTIVE AND WHERE PETITIONER WAS FRIGHTENED INTO PLEADING GUILTY BY DEFENSE COUNSEL'S FAILURE TO ASK THE QUESTIONS WANTED PUT TO THE POTENTIAL JURORS DURING THE SELECTION AND PETITIONER FELT DEFENSE TRIAL COUNSEL HAD LOST INTEREST IN THE CASE.

Factually this case is straightforward. Petitioner Carter, a person not trained in the law, and substandard public education, was charged with first degree murder, weapons charge and AWIM, based on the testimony of a person he contends was also a cause of the accidental shooting. Per the record, Carter asserted that it was an accident and had been witnessed expressing such sentiments.

Petitioner admitted to the investigating officer a false statement that there had been a dispute between his and Pettus which caused him to obtain the newly acquired rifle. The statements during the investigation and adduced at by the testimony supports that no argument between Pettus and Petitioner transpired. Pettus' statement concurs with his preliminary exam testimony.

Petitioner thereafter determined to admit and explain his actual version of events but decidedly counsel filed a motion to suppress Carter's statement on intoxication grounds. This reliance on a suppression motion was ill-chosen because did not perform and adequate pre-trial/independent investigation under the Strickland standard. *Strickland v. Washington*, 466 U.S. 668, 690-691 (1984).

Under Strickland, trial counsel has a duty to investigate his case. See *Stewart v. Wolfenbarger*, 468 F3d 338, 356 (6th Cir. 2006). "This duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence." Id. (quoting *Towns v. Smith*, 395 F3d 251, 258 (6th Cir. 2005)).

This Court in *Rompilla v. Beard*, 545 U.S. 374 (2005), reversing the decision of the United States Court of Appeal for Third Circuit on ineffective assistance of counsel grounds citing the ABA standards for Criminal Justice:

"It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exist regardless of the accused's stated desire to plead guilty." A ABA Standard for Criminal Justice 4-4.1 (2d ed. 1982 Supp). Id. 545 U.S. at 387.

It is well established that a defendant's Sixth amendment rights are his alone, and that trial counsel, while held to a standard of "reasonable effectiveness," is still only an assistant to the defendant and not the master of the defense. See *Faretta v. California*, 422 U.S. 806, 820 (1975). Our criminal system allows a defendant the choice of whether he wants to be represented by counsel at trial. See generally *Faretta*. Thus, it is recognized that a defendant must have this broad power to dictate the manner in which he is tried, it follows that, in evaluating strategic choices of trial counsel a reviewing court must give great deference to choices which are made under the explicit direction of the client. This Court in *Strickland* said:

The reasonableness of counsel's action may be determined or substantially influenced by the defendant's own statement or actions. Counsel's actions are usually based, quite properly, on informed strategic choice made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions. See *United States v. Decoster*, 624 F.2d [196], at 209-210 [D.C. Cir. 1976].

466 U.S. \_\_\_, 104 S.Ct. at 2066-67, 80 L.Ed. 2d at 695-96. This is not to say that an attorney has no professional independence to act without the explicit permission of his client. Rather, if he is commanded by his client to present a certain defense, and if he does thoroughly explain the potential problems with the suggested approach, then his ultimate decision to follow the client's will may not be lightly disturbed.

The claim of a disagreement of potential question during the voir dire process and how it was handled supports, no such explanation, why Petitioner's decision was not followed, as directed. Thus, review is required.

Petitioner contends that his claim of plea withdrawal was based on the amount of information which was not provided by counsel so he could make an informed decision to plea.. This point has repeatedly stressed by this Court. See *Barnes v. Jones*, 463 U.S. 745, 751 (1983) ("the accused has the ultimate authority to make certain fundamental decisions regarding the case," as to whether to plead guilty, waive a jury, testify in his or her behalf, or take an appeal"); *Wainwright v. Sykes*, 433 U.S. 72, 93 n.1 (1977) (Burger, C.J., concurring) ("only such basic decisions as whether to plead guilty, waive a jury, or testify in one's own behalf are ultimately for the accused to make"). Thus, the decision whether or not to plead guilty will ultimately rest with the client, counsel must ensure that the client's decision is as informed as possible. Failing even to consider, let alone notify the client of, a factor that could negate the entire benefit of the guilty plea is not within the range of professional norms. See *Miller v. Straub*, 299 F3d 570, 580-81 (6th Cir. 2002).

The aggregate of counsel's inactions affected Petitioner decision-making ability. Per Carter's affidavit submitted to the Michigan Supreme Court his counsel's inaction was not based on one single claim, but multiple claims or inaction, and/or deficient performance. See *Carter's Affidavit in Support of Motion for Remand for Evidentiary Hearing* (October 23, 2018).

In fact, the legal advice transcend more than deficient performance, where the information provide was patently incorrect. Petitioner in affidavit cites (1) that counsel declined to investigate the name that Lorenzo Pettus testified under when inform it was a false name, and that such a claim did not make difference, (2) refusal to interview/investigate June Carter as witness stating the family witness tend to lie and are not credible, (3) when directed to run a LEIN on the name provided was Pettus actual name counsel erred by running the testimonial name.

The District Court reviewed Petitioner's claim starting with the fifth habeas claim assert regarding voluntariness of the plea pursuant to United States v. Broce, 488 U.S. 563, 569 (1989); Boykin v. Alabama, 395 U.S. 238 (1969)(ECF No. 15 at \*10)

Under the reasoning articulated by the District Court citing Brady, "A guilty plea is voluntary if it is not induced by threats, bribes, or misrepresentations, and the defendant is made aware of the likely consequences of the plea. Brady v. United States, 397 U.S. 742, 755 (1970). The plea is intelligent and knowing where there is nothing to indicate that the defendant is incompetent or otherwise not in control of his or her mental faculties, is aware of the nature of the charges, and is advised by competent counsel. Id. at 756. The catch-all to this is "and advised by competent counsel."

Here, the competence of counsel, was not recognized under the prevailing standards of Strickland. See also Hill v. Lockhart, 474 U.S. 52 (1985). Here, the claims were actual predicated on how Carter got all the way to the trial proceeding, risk of trial on the highest charge and then tap out. The numerous misrepresentation of the legal claim presented by Carter, erroneous answers for counsel inaction, and willful disregard to consulting the client on legal issues, contrary to the Strickland standard. Thus, a case-by-case review is appropriate.

The straw that broke the camel's back, was the question that was to be posed the potential jurors. Namely, there can be no transferred intent to harm Pettus, where Pettus alleged that he was shot at after the decedent, not before, and there was no malice towards Pettus after he was leaving. Counsel refused to explain the difference to Carter, nor raise this question in voir dire.

Secondly, Petitioner decided to enter his trial with an admit and explain defense, and explain away the version that he contends was false as expressed to the detective, and that the shooting was an accident. During this exchange lacked the zeal to go to trial as he stopped listening to the defense Carter desired to present at his trial. This disagreement was evident by his shaking of his head and not answering, the questions posed by Petitioner.

Per the record Petitioner had declined an plea offer previous to acceptance and moved for withdrawal after advice by appellate counsel, upon consultation that he was not advised on a conditional plea and the possibility to preserve his constitutional claims for appellate review such as trial counsel's issues deficient performance by attempting to promote the false statement to the detective which was used against him.

Thus, the applicable test for the guilty plea was **Hill**, which applied the **Strickland** standard to the guilty plea context, this Court explaining that a defendant shows prejudice by demonstrating "a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial. **Hill**, 474 U.S. at 59.

This Court must look to the findings of the trial and Michigan Courts and examine whether the court applied **Hill** and **Strickland** unreasonably. The last reasoned opinion is found in the motion to withdraw the plea in the trial court. See ECF No. 10-5, PgID 274-79.

This Court may look to the entire record and pleading which establish that was constitutional void and should have been withdrawn.

GROUND TWO:

DUE PROCESS OF LAW REQUIRES THAT COUNSEL BE EFFECTIVE DURING THE PRE-TRIAL PERIOD AND DURING PLEA, WHERE PETITIONER WAS DENIED EFFECTIVE REPRESENTATION UNDER STRICKLAND AND HILL'S BUT FOR CLAUSE, PETITIONER WOULD HAVE PROCEEDED TO TRIAL.

In this matter before this Honorable Court Petitioner Carter contends that the review of his claim under **Hill v. Lockhart**, 474 U.S. 52, 59 (1985), was contrary to or an unreasonable application of Hill, using the Strickland standard, where the State and Federal Courts did under take totality of circumstances approach.

In light of the variety of circumstances faced by defense counsel and the range of legitimate decisions how best to represent a criminal defendant, the performance inquiry necessarily turns on whether counsel's assistance was reasonable considering all the circumstances. See **Cook v. Foster**, 948 F3d 896, 908-09 (7th Cir. 2020)(taken together, several instances of deficient performance undermined court's confidence in the trial result). See also **Browning v. Baker**, 871 F3d 942, 969 (9th Cir. 2017)(district court improperly broke up IAC claim into parts, unfairly limiting certificate of appealability)

Here, the obvious, is that the District Court and Court of Appeal each elected to break the ineffective assistance of counsel claims into part, which effectively denied Petitioner a COA. Specifically overlooking counsel's duty to investigate. Misstating the law regarding his compulsory right to witnesses by informing Carter that June Carter, would not be a viable witness because family members lie for them. This is furthered by the failure to list June Carter as a witness in any proceeding. June Carter was not called for the suppression hearing, though, she was intoxicated a her son on the day of the shooting and reportedly so, in the arresting agencies police report by name.

The predicate to Carter's claim for review is based on Strickland's duty to investigate. Strickland, 466 U.S. at 690-91.

Petitioner starting with (7) failing to investigate the facts of the case to develop any possible defenses as indicated in the Sixth Circuit's January 7, 2021 denial of COA - Ineffective Assistance of Counsel at \*4. Petitioner contends that only voluntary and intelligent guilty plea is constitutionally valid. Brady v. United States, 397 U.S. 742, 748 (1970). A plea is not intelligent unless a defendant first received real notice of the nature of the charge against him. Smith v. O'Grady, 312 U.S. 329, 334 (1941).

Brady, holds an exception regarding the voluntariness argument, explaining that a "plea of guilty entered by one fully aware of the direct consequences" of the plea is voluntary in a constitutional sense "unless induced by threats... . . . misrepresentation...., or perhaps by promise that are by their nature improper as having no proper relationship to the prosecutor's business." Id., as 755. Brady's detriment was he was advised by competent counsel...and was made aware of the nature if the charge against him. Id., at 756.

Like petitioner in the Bousley case, Bousley v. U.S., 532 U.S. 614, 619 (1998), he asserts that he was misinformed as to the true nature of the charge against him regarding the second degree murder and its elements.

Not only was Carter misinformed as what was required to plea to a second degree murder, counsel consistently misrepresented the law pre-trial, required compulsory process to obtain witnesses, such as his mother. Defense counsel's performance can serve as the requisite "fair and just reason" for withdrawal

only if [the defendant] can demonstrate both that his attorney's performance was deficient and that he was prejudiced by it. See *United States v. McMullen*, 86 F3d 135, 137 (8th Cir. 1996). To establish deficient performance, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687-88. To show prejudice the defendant must prove "that there is a reasonable probability that, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial." *McMullen*, 86 F3d at 137 (internal quotations omitted).

Here, the best record of Carter's claim of his insistence on going to trial is not only his motion to withdraw his plea, but the hearing on this claim. See MT, 5/20/16.

On Motion to Withdraw plea hearing, the People objected to any evidentiary hearing being held. (MT 5/20/16 at 3-4). The defense's position that the evidentiary hearing was absolutely necessary, because the record was not adequate as contended by the People that it was. (\*5). The Court was made aware that the applicable standard for reviewing claim was *Hill v. Lockhart*, and the need to call the attorney witness that the advice complained of was not provided. (8).

Carter contends that *Strickland* does not requires certainty that result would have been different, [only] reasonable probability, meaning probability sufficient to undermine confidence in outcome. See *Maples v. Comm'r. Alabama Dep't of Corr.*, 729 Fed. Appx. 817, 823 (11th Cir. 2018) (unpublished)

On the motion proceeding the requisite transcript necessary to argue the ineffective assistance claim or withdrawal on the specifics of the claim. (MT, 13-14).

The Michigan Supreme Court further held that Due Process does not require that trial courts inform defendants of potential consecutive sentence, but placed the onus was on the attorney. Holding, "Rather, this advisory responsibility lies primarily with defense counsel, whose effective assistance is guaranteed to all criminal defendants by the United States and Michigan Constitutions." *Warren*, 2020 Mich LEXIS 688 \*41.

In this matter, Carter was denied due process of law where his counsel misrepresented the laws, failed to investigate pre-trial, and failed to advise Carter that plea waived his defenses, or even his theory he wanted to pursue that the shooting was accidental.

Further, Carter, asserts that when he was about to raise a complaint against his counsel during voir dire, he and counsel on the granted recess argued about Carter going to trial, and his inadequacies. (MT at 29-30)

Carter was denied due process where the record of these proceedings were not present on the motion for withdrawal, by a State created impediment.

This Court may hear this certiorari pursuant to *Lockhart v. Fretwell*, 506 U.S. 364, 366 (1993), for the fundamental unfairness of the proceeding, and under the aggregate of the deficient performance of counsel pre-trial and during the plea process and lack of advisement under Strickland.

In conclusion, Carter asserts that he was denied Due Process of Law under Sixth and Fourteenth Amendment where he was denied the effective assistance of counsel contrary to the Strickland standard and the numerous acts and omissions of counsel should be assessed in aggregate to determine if Carter was prejudiced by counsel.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4-7-21