

20-7877

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

APR 16 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Washington # M06106 PETITIONER
(Your Name)

vs.

David Gomez — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Robert Washington # M06106
(Your Name)

16830 S. Broadway, P.O. Box 112
(Address)

Joliet, Illinois 60434
(City, State, Zip Code)

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(Phone Number)

RECEIVED

APR 27 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether The United States Seventh Circuit Court Of Appeals Erred, When It Denied Petitioner's Application For A Certificate Of Appealability (COA) 28 U.S.C. §§ 2254 and 2253 (West 2018); Without Considering Whether The Deficient Performance Prong Of Strickland Applied Therein, Thus Requiring An Amendment.

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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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 A to the petition and is

☒ reported at No. 20-3091; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 1:12-cv-10236; 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☐ is unpublished.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 No. 06-CR-23271; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan 25, 2021.

☒ 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: _____, 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was Sept 30, 2015.
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

US Constitutional Amendment VI Effective Assistance of Counsel; and US Const. Amendment XIV Due Process of Law.

STATEMENT OF THE CASE

Prior to trial Washington's lawyer was tendered an investigative report of a witness statement. The report was a post-mortem exam report which was not admitted into evidence and improperly given to the jury.

Trial counsel failed to call the victim's girlfriend who would have bolstered Washington's claim of self-defense, that Carpenter was the initial aggressor in the incident.

Trial counsel failed to investigate via-interviewing First responders and paramedics. Carpenter's brother saw him with a knife while being attended to by paramedics, the same knife that Washington avered Carpenter pulled out on him.

Post-trial counsel was ineffective in failing to highlight trial counsel's inadequacy.

Trial counsel, post-trial counsel and appellate counsel was ineffective in failing to litigate a Supreme Court Rule 431(b) violation.

The aforementioned errors are not chronological in essence however they are in and of themselves deficient performance with prejudiced Washington. These deficient ~~acts~~ all occurred where there was a proffer on the record, procedural default was the counter-claim from the State not that the errors did not occur.

The state along with the US. District Court Northern District, all categorize the above errors as procedurally defaulted and also harmless errors. Thus the cumulative harmless errors analysis need to apply herein.

REASONS FOR GRANTING THE PETITION

Washington avers that this court must/should take that the first Prong of Strickland v. Washington, 466 US 687, 104 S.Ct 2052, 80 L.Ed 674 (1988) ("Deficient performance requires a showing that counsel's actions were in light of all of the circumstances, outside the wide range of professionally competent circumstances"). In the case at bar, the assistance complained about consisted of a seemingly competent trial attorney, who proffered an Affirmative Defense of self-defense; and then completely failed to investigate that which would have produced reliable evidence thereof.

All of the circumstances therein in Case No 06 CR 23271 pertain to self-defense as a defensive theory of the case. Counsel did not seek out paramedic and first responders who would have testified that Mr. Carpenter was in fact in possession of the knife the petitioner Washington stated was thrust towards him that day.

Statement/reports/ photographs that were not tendered into evidence via a proffer to the court, cannot be sent back to jurors during deliberation whatsoever. This type of an error can be harmless, however, here it is improperly tendered evidence was a post-mortem statement that contain a hearsay statement that contradicted the defense of Washington counsel, the hearsay that inflame the jurors was highly prejudicial on it's face. A competent attorney having the wherewithal to navigate criminal trials would not have stood idle as such errors commenced. Furthermore Supreme Court Rule 431(b) formerly called Zehr Principles has an automatic application in Illinois courts per Court Rules in committee comment. To chalk

these errors up as procedurally defaulted due to Counsel's negligence and not petitioner Washington, is a slap in the face to the very jurisprudence that counsel derives its authority. Were state courts allowed to brush aside the inadequacy and deficiency of officers of the court, who took an oath to advocate for their client, then a insult; both the Sixth and Fourteenth Amendment should be abolished outright. For clarification purpose only due process contains two elements to writ: (1) the minimal requirements of notice and a hearing guaranteed by the Due process Clause of the Fourteenth Amendment, especially if deprivation of a significant life or liberty interest may occur; and (2) the doctrine that the Due process Clause of the Fourteenth Amendment require legislation to be fair and reasonable in context and to further legitimate governmental objective XIV Amend U.S. Const. § Three see also Art I § Two 1970 Ill. Const. (Procedural Due Process and Substantive Due Process respectively)

Here, Counsel did not put the state or witnesses found on discovery on notice that a hearing on motion(s) to suppress, in limine or to dismiss charges would be forthcoming. There was nothing strategic or tactical where trial counsel completely satisfied the adversarial, testing process. A clearly established rule that generally, tactical decision cannot be the basis for a finding of ineffective assistance of counsel. A tactical decision is reasonable only to the extent it is based on a thorough investigation of the case, cf Wiggin v. Smith, 539 U.S. 510, 123 S.Ct 2527, 56 L.Ed 2d 471 (2003). The sole reason behind petitioner Washington ineffective assistance of counsel claim is a complete failure to investigate herein. There were no reason why witnesses would have corroborated petitioner defense were

not interviewed, tactics and/or strategy bore no place in not making a Rule 431(b) violation claim as this court opined in Rompilla v. Beard 545 U.S. 374, 125 S.Ct. 2456 162 L.Ed 2d 260 (2005) ("A defense is require to make a reasonable investigation or reason decision which makes a particular investigation unnecessary")

This is why petitioner Washington employs This Court to consider his case in light of an amendment to the First Prong of the Strickland propylactic; because under the performance prong, there is only a "presumption" that counsel's strategy and tactics fall within the wide range of reasonably profession assistance. Strickland, 466 U.S. at 689 (Quotations added). If we are left to "presume" that counsel acted or acts professionally then there is nothing sufficient to establish "actual deficient performance"; when in and of itself should warrant review alone. Counsel failing to investigate materially relevant evidence that would shatter the state's theory; counsel failing to investigate witnesses who would corroborate petitioner's self-defense claim; and counsel failing to make a Rule 431(b) argument are all objectively unreasonable acts period. The afore said is in line with This court's ruling that: "To establish ineffective assistance of counsel, a criminal defendant must normally show that: (1) his attorney performed objectively unreasonable . . . Counsel entirely failed to subject the prosecution's case to meaningful adversarial testing" citing Bell v. Cone, 535 U.S. 685, 122 S.Ct. 1843, 152 L.Ed 2d 914 (2002). In retrospect and in keeping with "jurisdictional case comparison". Petitioner's claims were ruled upon in favor in our sister circuit at the Sixth Circuit: Defense counsel was ineffective for failing to contacting two witness who were with the defendant during the events leading to his arrest. The decision not to contact the witnesses could not be stratisis because there was no

reason to believe that an investigation would have been futile see Workman v. Tate, 957 F.2d 1339 (6th Cir 1992). There would be no reason believe an investigation would be futile where a defendant claimed the decedant threatened him with a knife prior to his use of force in defense of reason where decedant's brother gave that testimony that he and the first responders saw decedant with a knife.

Thus, the deficient performance prong should be mandated for remand where the error itself or a combination of similar errors, can mandate an automatic hearing in instances like petitioner Washington's. Counsel's advocacy lies under the performance prong which should have three stages for de novo review, i.e. harmless error review to cure any ineffectiveness prior to appellate review, plain error review to cure any ineffectiveness prior to collateral review and reversible error review to reverse under egregious ineffectiveness. The aforementioned transcripts herein via cumulative effects of a few instances of ineffectives, avering that individually harmless errors may cumulatively alter the course of a trial so as to violate the petitioner due process rights, see Alvarez v. Boyd, 225 F.2d 820, 824 (7th Cir 2010). To make out a cumulative error claim, a petitioner must show: (1) at least two trial error which (2) considered together with the complete record so infected the proceedings as to make the trial fundamentally unfair. Id. Petitioner must show that but for these, the trial outcome probably would have been different, see U.S. v. Benabe, 436 Fed 639, 659 (7th Cir 2011). Counsel failed to investigate corroborating defense evidence that could have resulted in a different verdict and counsel failed to litigate a clear Rule 431(b) violation as it states: Supreme Court Rule 431(b) requires a trial judge to ask each juror whether they except and understand that: (1) the state has the burden and it never shift (2) petitioner is not required to testify, (3) present evidence presumed innocent.

The above contents are why petitioner Washington believes in good faith that the ineffectiveness in his case warrants reversal-remand in the interest of justice.

15/ Robert Washington

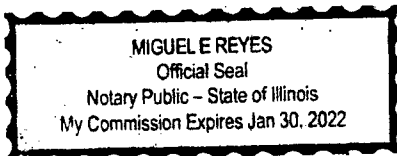
Robert Washington

MO6106

April 14, 2021

[Signature]

APRIL 14, 2021



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

[Signature] Robert Washington

Date: 4-14-21