

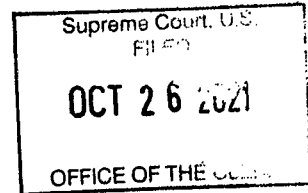
Case No. 20-8068

IN THE SUPREME COURT OF THE UNITED STATES

STEPHEN MARK MCDANIEL,
Petitioner-Appellant,

v.

EDWARD PHILBIN, Warden
Respondent-Appellee.

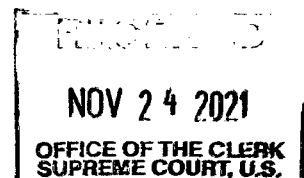


ON A PETITION FOR CERTIORARI BEFORE

THE UNITED STATES SUPREME COURT

PETITION FOR REHEARING

Stephen Mark McDaniel
GDC# 1001291310
Hancock State Prison
P.O. Box 339
Sparta, GA 31087



GROUND'S PRESENTED

In denying Certiorari, this Court passed over issues of Due Process and the right to receive a fair hearing in a state court on a violation of a person's rights under the United States Constitution.

Petitioner submits these grounds to this Court in the hopes of clarifying the applicable standard of law under the Sixth Amendment for Effective Assistance of Counsel.

1. Does Defense Counsel render Effective Assistance by failing to perform legal research upon being informed that the State has intentionally and illegally obtained privileged Defense trial preparations when Defense Counsel is ignorant of governing law for such a violation of his client's Sixth Amendment rights?

2. Does Defense Counsel render Effective Assistance by allowing the State to exploit privileged Defense trial preparations, that the State obtained intentionally and illegally, to elicit false testimony to defeat Defense challenges?

3. Does Defense Counsel render Effective Assistance by failing to challenge the State's theft and exploitation of privileged Defense trial preparations when a challenge would result in dismissal of the case against the client with prejudice?

To facilitate consideration of these grounds on their merits, Petitioner attaches as Exhibits the documentary evidence of the State's Prosecutorial Misconduct, the evidence of perjured testimony by the State, and Defense Counsel's admissions under oath of ignorance of law and failure to perform legal research on the violation of a Constitutional right, all of which are exhibits in the Record below.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

- *The State of Georgia v. Stephen Mark McDaniel*, 11-CR-67684, Bibb County Superior Court
- *The State of Georgia v. Stephen Mark McDaniel*, 13-CR-69874, Bibb County Superior Court. Judgment entered April 14, 2014.
- *Stephen Mark McDaniel v. Edward Philbin*, 2018-RCHM-2, Richmond County Superior Court. Judgment entered September 9, 2019.
- *Stephen Mark McDaniel v. Edward Philbin*, S20H0313, Supreme Court of Georgia. Judgment entered November 2, 2020. Rehearing denied December 7, 2020.
- *Stephen Mark McDaniel v. Edward Philbin*, Case No. 20-8068, Supreme Court of the United States. Order issued on October 4, 2021.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

Petitioner respectfully prays that this Court reconsider its denial of the Petition for Certiorari and upon rehearing grant Certiorari to review the judgment below.

PRIOR RULING

On October 4, 2021, this Court denied the Petition for Writ of Certiorari, without opinion.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a), arising from violation of rights and privileges under the United States Constitution. The Habeas Court's Final Order was entered on September 9, 2019, and was timely appealed. The Georgia Supreme Court denied review on November 2, 2020. The Georgia Supreme Court denied reconsideration on December 7, 2020.

This Court denied Certiorari on October 4, 2021.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the 6th Amendment Right to Effective Assistance of Counsel as applied to the states under the Due Process Clause of the 14th Amendment of the United States Constitution.

United States Constitution, Amendment VI.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

United States Constitution, Amendment XIV (Procedural Due Process Clause only).

"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

Following the denial by the Supreme Court of Georgia of Petitioner's Motion for Reconsideration, Petitioner filed a Petition for Writ of Certiorari to the United States Supreme Court on May 3, 2021.

On October 4, 2021, the United States Supreme Court denied the Petition for Writ of Certiorari.

This Petition for Rehearing follows.

REASONS FOR GRANTING THE PETITION

The 6th Amendment is supposed to guarantee and safeguard the right to the Effective Assistance of Counsel. In this case, it failed.

Defense Counsel was informed that the State had engaged in the intentional and illegal acquisition of privileged Defense opinion work product in January 2013. Defense Counsel received a copy of an email from the Chief Deputy of the Bibb County Jail to District Attorney Greg Winters which contained Petitioner's legal research forms, and the forwarded email from D.A. Winters to members of his Office. (Exhibit A - Email Chain).

The legal research forms included inquiries concerning lines of defense, not just requests for specific cases. One such inquiry was directed to the validity of consent to search obtained by withholding medical care from a defendant. (Exhibit B - Legal Information Request Form). In presenting evidence to counter Defense motions, the State questioned a witness whether police withheld medical care from Petitioner following his loss of consciousness while in police custody - a matter that had not been raised in any Defense filing or questioning. (Exhibit C - Evidentiary Hearing Transcript, Sept. 16-17, 2013, p. 182, lines 20-21). The State questioned another witness in relation to the same Defense challenge, and elicited testimony that an ambulance was called and Petitioner was cleared medically while the State was seeking consent to search Petitioner's home. (Exhibit D - Evidentiary Hearing Transcript, Sept. 16-17, 2013, p. 216, lines 7-14).

The elicited testimony was false, and provable as such, but Defense Counsel took no action to provide the evidence of its falsity.

Defense Counsel had in its possession documentation and recordings created by a 9-1-1 Call Center, showing that when Petitioner suffered a life-threatening loss of consciousness, Emergency Responders were unable to make contact with Petitioner because of police. (Exhibit E - 9-1-1 Call Center Report; Exhibit F - Habeas Corpus Transcript, Nov. 30, 2018, p. 69, l. 4-9).

Because of the State's theft of Defense opinion work product, the State prepared its presentation of evidence to prevent the Defense from showing the State's search of Petitioner's home was accomplished by depriving Petitioner of medical care, leaving Petitioner in a semi-catatonic state in which voluntary consent could not be obtained. (Exhibit G - Police Incident Report). Police observations of Petitioner's home were essential to form Probable Cause for Search Warrants. Had the Defense raised the issue and presented evidence in its possession, the Search Warrants would have failed, and the State would have lost virtually every piece of evidence in its possession, decimating their case.

Defense Counsel was ignorant of the law concerning such misconduct, but rather than perform legal research to learn what legal significance this intrusion into the Defense camp had, he did no research - looking up not a single case. (Exhibit H - Habeas Corpus Transcript, Nov. 30, 2018, p. 181, lines 20-24).

When an attorney is ignorant of the law on a violation of his client's rights and doesn't look up a single case to learn what remedy exists, that lawyer is failing his client, and when that breach of duty deprives the client of available relief, the 6th Amendment is violated. See Hinton v. Alabama, 571 U.S. 263 (2014); Kimmelman v. Morrison, 477 U.S. 365 (1986).

More than 30 years ago, members of this Court called upon their fellow Justices to grant Certiorari in order to resolve a growing diversity of law between the Circuit Courts of Appeal concerning intrusions by the government into the defense camp, but the Court refused to take up the call. Cutillo v. Cinelli, 485 U.S. 1037 (1988). Since that time, as detailed in the Petition for Certiorari, the split between the Circuit Courts (as well as between state courts) has only grown worse. More than 100 cases alleging illegal intrusion into the attorney-client relationship by the government have been consolidated in the Federal District Court for Kansas, with others not included in the litigation filed separately. See United States v. Carter, 429 F. Supp. 3d 788 (D. Kan. 2019). At least 500 more victims of such intrusion filed a civil class action against the company that recorded and conveyed the conferences, which was settled - though such settlement holds only the company responsible and not the prosecuting attorneys who knowingly and egregiously violated the Constitution. See CCA Recordings 2255 Litig. v. United States, 2021 U.S. Dist. LEXIS 8833 (D. Kan. 2021).

Because the U.S. Supreme Court has allowed the conflict of law to grow larger, the results emerging from the litigation are quixotic, some litigants having their convictions vacated and their indictments dismissed with prejudice, while others establish a *per se* violation of the 6th Amendment and are then told they aren't entitled to relief because they haven't shown prejudice for a violation that case law says requires no showing of prejudice. See United States v. Carter, 429 F. Supp. 3d 788 (D. Kan. 2019); CCA Recordings 2255 Litig. v. United States, 2021 U.S. Dist. LEXIS 8833 (D. Kan. 2021).

This case could not present more stark an example of misconduct by both prosecutors and Defense Attorneys. The State stole and exploited Defense trial preparations. The Defense did nothing to correct it. Precedents are set not over cases of insignificant wrongs, nor where the

misconduct is unproven. Case law is set by taking those most egregious acts of misconduct and forcefully condemning them, because no justification exists for their choice to do wrong.

The evidence is in the record and sits now before this Court.

How can such misconduct as has happened here be allowed to stand? How can this Court, the *final* Court of review, watch the Constitution being reduced to less than a form of words by lawyers who abandoned all fealty to actual justice and place getting a conviction before the integrity of the system? If such injustice is allowed to stand, then let this Court issue an opinion to declare that the adversarial system is dead - that prosecutors are unfettered by the law and defense attorneys unfettered by any duty to their client. If this Court will take no action to seek justice, uphold the Constitution, and ensure the integrity of this country's system of governance, then let it give explanation for its choice. If justice is so unimportant in the modern day and age, then let this Court give the final eulogy as dirt is piled atop the grave of the United States Constitution.

Or, let this Court declare that justice *will* be done, that those who betray their oaths for the sake of political gain or convenience will be held to account, and that the Constitution remains the supreme law of the land. Let this Court hear this prayer for relief and grant it, for there remains no avenue left for the pursuit of justice.

There is no question that, according to precedent set by this Court, Defense Counsel rendered quintessentially deficient performance. No competent lawyer tries a case without knowing the law that is relevant to it. No competent lawyer allows the Prosecution to use perjury to win against the challenges he has raised when he has the evidence to prove their falsity. No competent lawyer would counsel his client to accept life imprisonment when he had the means to win the case and go home.

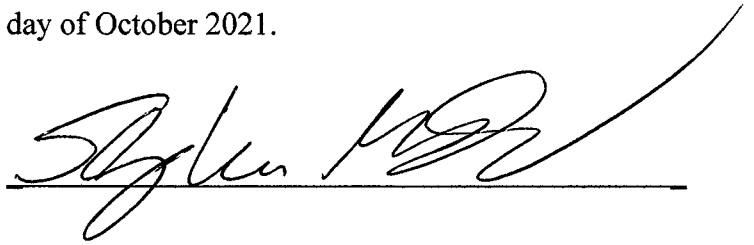
Petitioner did not have a competent lawyer to assist him. Incompetent counsel allowed the State to steal Defense trial preparations, allowed the State to elicit perjury to prevent the Defense from winning challenges, and allowed the State's misconduct to go unchallenged, resulting in a guilty plea instead of a dismissal. The 6th Amendment is supposed to guarantee the Effective Assistance of Counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984). It failed.

Competent counsel would have researched the law, challenged the State's misconduct, and won Petitioner's freedom. That freedom is all Petitioner seeks - nothing more than the result he would have received if his lawyers had done their duty.

CONCLUSION

For the reasons given herein, for the sake of justice, Petitioner humbly prays this Honorable Court to rehear his Petition, grant Certiorari, and give Petitioner the relief sought.

Respectfully submitted this 14th day of October 2021.

A handwritten signature in black ink, appearing to read "Dylan M. R.", is written over a horizontal line. The signature is stylized with a large, sweeping flourish extending from the end.