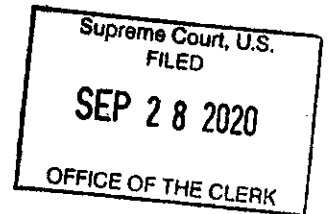


No. 20-8122

IN THE
SUPREME COURT OF THE UNITED STATES



ANDI MUSTAFA — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS, STATE OF MICHIGAN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDI MUSTAFA
(Your Name)

MICHIGAN REFORMATORY PRISON
1342 W MAIN ST

(Address)

IONIA MI 48846
(City, State, Zip Code)

(Phone Number)

STATEMENT OF QUESTIONS PRESENTED

- I. Is Plaintiff entitled to withdraw his no contest plea when he was not interrogated by the judge to determine the factual basis for his plea and the Judge did not state her reasons for concluding that the proper administration of justice did not require Mr. Mustafa to be interrogated regarding his participation in a crime?
- II. Is Mr. Mustafa entitled to withdraw his plea where the initial search of his residence was illegal and subsequent searches were done without a valid warrant or the search warrants that were overbroad?
- III. Is Mr. Mustafa entitled to withdraw his plea and request a new trial or evidentiary hearing after Mr. Mustafa entered an involuntary plea because retained counsel rendered ineffective assistance when he failed to ensure the plea record contained sufficient information to establish a factual basis for each charged offense to which Plaintiff pled no contest?

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 _____ to the petition and is

- ☐ reported at _____; 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☐ is unpublished.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 _____ to the petition and is

- ☐ reported at _____; 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 A to the petition and is

- ☐ reported at _____; 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 _____.

☐ 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 6/30/2020.
A copy of that decision appears at Appendix ____ B ____.

☐ 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).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST., AMEND 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 defense.

U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens on 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, Andi Mustafa, was arrested on February 14, 2018 for breaking and entering. Petitioner was charged with four (4) felony counts (18-266944-FH). Based upon the February 14, 2018 arrest and investigative information, detectives obtained a search warrant on February 15, 2018 to search Petitioner's residence.

Based upon this arrest and search warrant, on February 20, 2018, the police issued a search warrant for Petitioner's Google Email accounts. This provided detectives with over seven (7) years worth of GPD historical location data. From this data, Petitioner Mustafa was accused and charged with thirteen (13) additional felony counts. Eleven (11) counts from the City of Bloomfield (Case No. 18-266954-FH). One (1) count in the city of Novi (Case No. 18-267073-FH), and one (1) count in the city of Troy, Michigan (Case No. 18-267188-FH).

Petitioner had little contact with his retained attorney during the course of the prosecution. He never received any polic reports or copies of the search warrants related to his cases.

At the plea hearing, held July 17, 2018, Petitioner was forced to plea Nolo Contendre to all 17 felony counts. The trial court explained, that based upon the discussions in the Judges chambers between the prosecution, Defense Attorney and the Judge, Petitioner would receive a minimum prison sentence of nine (9), while neglecting to address, on the record, the scoring guidelines to determine which bracket Petitioner fell under. (Plea Hearing Trscrpt, 11-12). He also failed to ensure the plea record contained sufficient information to establish any factual basis for each offense to which Petitioner pleaded No Contest.

On September 18, 2018, the trial court sentenced Petitioner to a term

of 9 years.

After sentencing, Petitioner filed a motion to withdraw his No Contest plea and for re-sentencing, claiming ineffective assistance of counsel because counsel failed to ensure the plea record contained sufficient information to establish a factual basis for each offense to which Petitioner pleaded no contest. The motion was heard and denied by the trial court on June 12, 2019.

Petitioner then filed a delayed application for leave to appeal in the Michigan Court of Appeals on December 5, 2019, raising four (4) grounds for relief. The Court of Appeals denied the application on January 17, 2020, for lack of merit on the grounds presented. See Appendix A, (Mich. Ct. App. Order, Dckt No. 351857).

Petitioner then filed an application for leave to appeal to the Michigan Supreme Court, which was denied on June 30, 2020. See Appendix B, People v. Mustafa, 944 NW2d 705, 2020 WL 3568514.

REASONS FOR GRANTING THE WRIT

I. THE STATE COURT ERRONEOUSLY CONCLUDED THAT THERE WAS A FACTUAL BASIS ELICITED TO SUSTAIN PETITIONER'S NO CONTEST PLEA.

In the case of a plea of nolo contendere, the standard to be applied by an appellate court in its review of the adequacy of factual bases for a plea is whether the trier of fact could properly convict on the facts elicited from reliable sources. People v. Booth, 414 Mich 343, 360, 324 NW 2d 741. Holtgreive v. Curtis, 174 F. Supp. 2d 572, 583 (ED Mich 2001). See also United States v. Goldberg, 862 F2d 101 (CA6 1988)(Defendant's guilty plea was vacated because it was not accompanied by a determination that there was a factual basis for plea).

THE STATE COURTS NEVER REVIEWED OR DETERMINED THE MERITS OF PETITIONER'S QUESTION.

The Fourth Amendment demands that a search warrant "particularly describe the places law enforcement may search and the things they may seize." Riley v. California, 134 S.Ct 2473, 139 L.Ed 2d 430 (2014). Defense never pursued these issues as it related to possible defective warrants. Raric V. United States, 2016 US LEXIS 3607 (2016).

In Rompilla v. Beard, the Supreme Court established the standard of reasonable competence required on the part of defense counsel by the 6th Amendment. Rompilla v. Beard, 545 US 374. The notion that defense counsel must obtain information that the state has and will use against the defendant is not simply a matter of common sense.

"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 the 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 exists regardless of the accused's

admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty." 1 ABA standards for Criminal Justice 4-4.1 (2d. ed. 1982 Supp.) Id. at 387.

The Supreme Court has long referred to these ABA standards as "guides to determining what is reasonable." Wiggins v. Smith, 539 US 510, 524; 156 L.Ed 2d 471 (2003).

In this case, trial counsel failed to investigate and discover the unconstitutionality of the warrants and search of Petitioner's residence and Email accounts.

Had Petitioner been aware of these Fourth Amendment violation, he would not have plead No Contest. Instead he would have elected to go to trial. Certiorari should be granted to correct this error.

III. THE STATE COURT ERRONEOUSLY CONCLUDED THAT TRIAL COUNSEL WAS NOT INEFFECTIVE IN FAILING TO ADVOCATE FOR HIS CLIENT CONCERNING HIS PLEA AGREEMENT.

A plea functions as a waiver of constitutional rights. It must be knowing and voluntary to be valid.

The right to the effective assistance of counsel is enshrined in our state and federal constitutions and "is a fundamental component of our criminal justice system." United States v. Cronic, 466 US 648, 653; 104 S.Ct. 2039 (1984); US Const, AMs VI, XIV. The right to counsel applies to all critical stages of criminal proceedings, including plea proceedings. Hill v. Lockhart, 474 US 52, 58; 106 S.Ct. 366 (1985). " Perhaps the most critical period of the proceedings... is the time of ... arraignment until the beginning of ... trial." Powell v. Alabama, 287 US 45, 47; 53 S.Ct. 55 (1932).

The longstanding test for determining the validity of a guilty plea (in the present instance No Contest) is "whether the plea represents a voluntary and intelligent choice among the alternative course of action open

to the defendant." North Carolina v. Alford, 400 US 25, 31 (1970).

Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases" McMann v. Richardson, 397 US 759, 771 (1970). As the Supreme Court explained in Tollett v. Henderson, 411 US 258 (1973), a defendant who pleads guilty upon the advice of counsel "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in McMann." *Id.* at 267.

During these pretrial stages, counsel has "critical obligation" to "advise the client of 'the advantages and disadvantages of a plea agreement'" Padilla v. Kentucky, 559 US 356, 370; 130 S.Ct. 1473 (2010), quoting Libretti v. United States, 516 US 29, 50-51; 116 S.Ct. 3561 (1995). This obligation includes informing a defendant of any statutory and constitutional rights that a guilty plea might waive. *Id.* at 50-51.

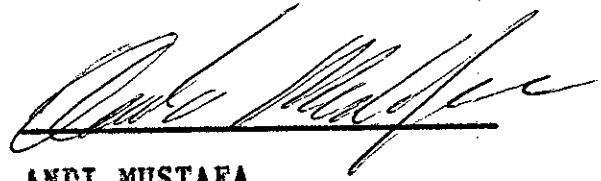
Thus "the two-part Strickland test applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill, 474 US at 58. Prejudice following a guilty plea "focuses on whether counsel's constitutionally deficient performance effected the outcome of the plea process." *Id.* at 59. In other words, to prevail on a claim of ineffective assistance of counsel in the plea context, a defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have accepted the plea offer. *Id.* Had Petitioner been aware of the Fourth Amendment violations in his case, he would not have pled No Contest, instead, he would have elected to go to trial. Certiorari should be granted to correct this error.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the State of Michigan Court of Appeals.

Respectfully Submitted,

September 27, 2020



ANDI MUSTAFA

Michigan Reformatory Prison

1342 West Main St

Ionia, MI 48846