

20-8196
No. 20-8196

In the
Supreme Court of the United States

WILLIAM SEVERS,
Petitioner,

ORIGINAL

v.

ATTORNEY GENERAL OF NEW JERSEY;
ADMINISTRATOR, NEW JERSEY STATE PRISON

Respondents.

FILED
MAY 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

Mr. William Severs, Pro-Se
#539137 / 188285-B
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625

QUESTIONS PRESENTED

Mr. William Severs make leave to appeal the following issues:

- 1) Whether the Decisions of the Third Circuit Court of Appeals and the District Court for the District of New Jersey were contrary to the United States Supreme Court decisions in Garza v. Idaho, 586 U.S. ___, 139 S.Ct. 738 (2019); Roe v. Flore-Ortega, 584 U.S. 470 (2000) and McCoy v. Louisiana, 584 U.S. ___, 138 S.Ct. 1500 (2018)
- 2) Whether Petitioner was subjected to Ineffective Assistance of Third Circuit Appointed Counsel when Counsel failed to Raise and argue the Garza Issue on Appeal to the Third Circuit when Petitioner's Appeal was pending at the time when Garza was decided? (see District Court Opinion at Appx C at *6); (see also Appendix D-1 to D-7, Severs v. Attorney Gen. of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir. Nov. 5, 2019))

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Appendix C: The September 30, 2020 Order and Opinion of the United States District Court for the District of New Jersey denying Petitioner's Rule 60(b) Petition (Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.))

Appendix D: The November 5, 2019 Order and Opinion of the United States Court of Appeals for the Third Circuit affirming the District Court Opinion of March 19, 2018 in dismissing the Habeas Petition as Untimely, (Severs v. The Attorney General of the State of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir.))

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TABLE OF AUTHORITIES

Cases Cited

Garza v. Idaho, 586 U.S. ___, 139 S.Ct. 738 (2019)

McCoy v. Louisiana, 584 U.S. ___, 138 S.Ct. 1500 (2018)

Rodriquez v. United States, 395 U.S. 327, 89 S.Ct. 1715 (1969)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William Severs respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeal for the Third Circuit denying his Petition for a Rehearing and Rehearing En Banc; and his Application for a Certificate of Appealability.

OPINIONS BELOW

The April 30, 2021 Order of the United States Court of Appeals for the Third Circuit denying Petition for Rehearing and Rehearing En Banc, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir.)) is attached herein (Appendix A).

The March 9, 2021 Order of the United States Court of Appeals for the Third Circuit Denying Request for a Certificate of Appealability, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir.)) is attached herein (Appendix B).

The September 30, 2020 Order and Opinion of the United States District Court for the District of New Jersey denying Petitioner's Rule 60(b) Petition (Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.)) is attached herein (Appendix C).

The November 5, 2019 Order and Opinion of the United States Court of Appeals for the Third Circuit affirming the District Court Opinion of March 19, 2018 in dismissing the Habeas Petition

as Untimely, (Severs v. The Attorney General of the State of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir.)) is attached herein (Appendix D).

The March 19, 2018 Order and Opinion of the United States District Court for the District of New Jersey dismissing Petitioner's Habeas Corpus Petition as Untimely (Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.)) is attached herein (Appendix E).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). All the pertinent decisions effecting this controversy are attached as outlined above.

CONSTITUTIONAL PROVISIONS

The relevant parts of the Sixth Amendment is: "In all criminal prosecutions, the accused shall have the Assistance of Counsel for his defence."

STATEMENT OF THE CASE

A. Introductory Statement

It cannot be overemphasized that the decisions of the United States Court of Appeals for the Third Circuit and the United States District Court for the District of New Jersey are contrary to the United States Supreme Court decisions in Garza v. Idaho, 586 U.S. ___, 139 S.Ct. 738 (2019); Roe v. Flore-Ortega, 584 U.S. 470 (2000) and McCoy v. Louisiana, 584 U.S. ___, 138 S.Ct. 1500 (2018) and consideration by this Court is necessary to secure and maintain uniformity of the lower courts.

B. Procedural History and Statement of Facts

This Appeal stems from the April 30, 2021 Order of the United States Court of Appeals for the Third Circuit denying Petition for Rehearing and Rehearing En Banc, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir.)) is attached herein (Appendix A).

Additionally, this Appeal also stems from the March 9, 2021 Order of the United States Court of Appeals for the Third Circuit Denying Request for a Certificate of Appealability, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir.)) is attached herein (Appendix B).

Moreover, this Appeal also stems from the September 30, 2020 Order and Opinion of the United States District Court for the District of New Jersey denying Petitioner's Rule 60(b) Petition

(Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.)) is attached herein (Appendix C).

The November 5, 2019 Order and Opinion of the United States Court of Appeals for the Third Circuit affirming the District Court Opinion of March 19, 2018 in dismissing the Habeas Petition as Untimely, (Severs v. The Attorney General of the State of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir.)) is attached herein (Appendix D).

The March 19, 2018 Order and Opinion of the United States District Court for the District of New Jersey dismissing Petitioner's Habeas Corpus Petition as Untimely (Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.)) is attached herein (Appendix E).

On February 25, 2004, Petitioner was indicted by a Cumberland County Grand Jury on Murder and Weapons offenses.

The Court conducted a Rule 104(b) hearing from July 12, 2005 through July 14, 2005. On July 15, 2005, the Judge rendered a written decision that admitted and excluded a portion of the proffered testimony at trial.

On August 5, 2005, the trial court admitted the out-of-court identification following a Wade hearing.

A jury trial then commenced on August 15, 2005 and ended on August 31, 2005. On September 2, 2005, the jury returned its verdict finding Petitioner guilty of first-degree murder, N.J.S.A. 2C:11-3a(1); second-degree possession of a weapon for an

unlawful purpose, N.J.S.A. 2C:39-4(a); third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5c(1) and fourth-degree obstruction of justice, N.J.S.A. 2C:29-1.

On October 20, 2005, the trial judge sentenced Petitioner to an aggregate term of 60-years subjected to the No Early Release Act.

A Direct Appeal was filed on January 23, 2006. The Appellate Division affirmed the conviction on May 19, 2009. See State v. Severs, A-2634-05T4, 2009 N.J. Super. Unpub. LEXIS 1217 (App. Div.). The New Jersey Supreme Court denied Certification on September 11, 2009 (210 N.J. 370).

On November 5, 2009, Petitioner filed a pro-se Petition for Post-Conviction Relief in the trial court. The Court then assigned counsel to represent the Petitioner.

The PCR Court considered and denied the Petition on September 22, 2011 and placed its decision on the record and entered an order on the same date denying the Petition. The PCR Court later filed a written opinion dated October 4, 2011 amplifying the reasons for its denial.

On the date of September 22, 2011, Petitioner made known to his PCR Attorney that he wanted an appeal filed and even signed the Appeal Form attesting this fact.

On September 26, 2011, Petitioner sent a letter to Jodi Ferguson, Esq. of the Public Defender's Office informing her that

he wanted to appeal the order of September 22, 2011 denying the Post-conviction Relief.

On October 3, 2011, Petitioner sent a letter to Raymond Black, Esq. of the PCR Unit of the Public Defender's Office also advising him that he wanted an appeal filed.

On October 20, 2011, Petitioner also sent a letter to his PCR Counsel requesting status on the appeal.

Unbeknownst to Petitioner, PCR Counsel was involved in a serious car accident and did not file the Appeal.

It was not until February 2012, when counsel was able to forward the PCR case file back to the Office of the Public Defender ("OPD"), without the Notice of Appeal being filed. It took the OPD an additional eight months to actually file the Notice of Appeal. The Appeal was ultimately filed on October 2012, a year after the PCR court's decision of September 22, 2011 (written decision of October 4, 2011).

On March 14, 2014, the Appellate Division affirmed the denial of PCR. See, State v. Severs, A-0798-12T3, 2014 N.J. Super. Unpub. LEXIS 533 (App. Div.). The New Jersey Supreme Court denied Certification on September 22, 2014 (219 N.J. 630)).

On August 21, 2015, Petitioner filed a Petition for Habeas Corpus.

On March 19, 2018, the District Court dismissed the Petition as Untimely filed and declined to issue a Certificate of Appealability. See, Severs v. The Attorney General of the State

of New Jersey, No. 15-6421 (D.N.J.). Petitioner argued that the District Court erred in its decision.

On April 12, 2018, the Petitioner filed a Notice of Appeal with the District Court.

The Third Circuit Court of Appeals granted the Certificate of Appealability and assigned an attorney to represent the Petitioner. After all the necessary briefings were submitted, on November 5, 2019, the Court affirmed the District Court's Opinion. (Severs v. The Attorney General of the State of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir. 2019))

On November 8, 2019, a Petition for a Writ of Certiorari was filed in the United States Supreme Court which was ultimately denied. (140 S.Ct. 829).

Petitioner then filed a 60(b) Petition in the District Court based upon the Supreme Court decision in Garza v. Idaho. Petitioner argued that the attorney(ies) were ineffective for not filing the Appeal as requested to by him after the PCR Court had denied his Petition.

On September 30, 2020 the United States District Court for the District of New Jersey denied Petitioner's Rule 60(b) Petition (Severs v. The Attorney General of the State of New Jersey, et al., Civil No: 15-6421 (D.N.J.)).

The Petitioner then filed a Notice of Appeal challenging the denial of the 60(b) petition. On March 4, 2021 the United States Court of Appeals for the Third Circuit Denied Petitioner's

Request for a Certificate of Appealability, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir)).

Petitioner then filed a Petition for a Rehearing and Rehearing En Banc with the Third Circuit. On April 30, 2021 the United States Court of Appeals for the Third Circuit denied the Petition for Rehearing and Rehearing En Banc, (Severs v. The Attorney General of the State of New Jersey, No. 20-3153 (3d Cir.)).

This Application now follows and presents Constitutional issues that should be resolved by this Honorable High Court.

REASONS FOR GRANTING THE WRIT

I

Certiorari Should Be Granted Since the Decisions of the Third Circuit Court of Appeals and the District Court for the District of New Jersey were contrary to the United States Supreme Court decisions in Garza v. Idaho, 586 U.S. ___, 139 S.Ct. 738 (2019); Roe v. Flores-Ortega, 528 U.S. 470 (2000) and McCoy v. Louisiana, 584 U.S. ___, 138 S.Ct. 1500 (2018)

On February 27, 2019, the United States Supreme Court made it clear that "[d]efendants have an autonomy to decide whether to appeal, not counsel and if counsel does not file the Notice of Appeal after being requested to do so, it is a structural error and no prejudice needs to be shown." Garza, 586 U.S. at ___ (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000) and McCoy v. Louisiana, 584 U.S. at ___ (2018)).

In this case, Petitioner was subjected to ineffective assistance of Counsel and the Office of the Public Defender when they failed to file the Notice of Appeal in a timely fashion after being requested to do so by the Petitioner.

Mr. Severs requested that his PCR Counsel and the Office of the Public Defender file the Notice of Appeal relating to the denial of his Post-Conviction Relief. On September 22, 2011, September 26, 2011, October 3, 2011 and October 20, 2011, Mr. Severs requested the Appeal to be filed, however, no appeal was filed on his behalf. In fact, it took nearly a year before the

Office of the Public Defender finally filed the Notice of Appeal, however, by this time, the 1-year federal filing for Habeas Petitions had expired. This failure to file a timely requested Notice of Appeal and only this failure was the sole reason why the federal habeas petition was ultimately denied as time-barred.

The United States Supreme Court have long held "that a lawyer who disregards specific instructions from the defendant to file a Notice of Appeal acts in a manner that is professionally unreasonable. This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes." Garza 586 at ____; 139 S.Ct. at 746.

"Those whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." Rodriquez v. United States, 395 U.S. 327, 330, 89 S.Ct. 1715 (1969); Garza, 586 U.S. at ____; 139 S.Ct. at 748.

After the Federal Appeals were all filed and denied, see, e.g., Severs v. Attorney General of the State of New Jersey, 793 F.App'x 72, 74 (3d Cir. Nov. 5, 2019), cert. den, 140 S.Ct. 829 (Jan. 13, 2020), Petitioner filed a 60(b) Petition with the

District Court on February 27, 2020, seeking to overturn its decision based upon the Supreme Court decision in Garza v. Idaho, however, the Court denied relief. The Court listed several reasons in its decision for denying the 60(b) Petition:

(1) ... at the time of Garza's decision, Petitioner's appeal was pending in the Third Circuit and that he could have raised the issue there. (see Appx. C-6) (Argued in Point II below under Ineffective Assistance of Circuit Counsel);

(2) Petitioner has not shown the extraordinary circumstances necessary for relief under Rule 60(b)(6). (see Appx. C-6); and

(3) Garza has little application to Petitioner's case (see Appx. C-7);

Petitioner filed an Appeal to the Third Circuit Court of Appeals. They ultimately denied the appeal. See, Severs v. The Attorney General of the State of New Jersey, C.A. No: 20-3153 (3d Cir. March 9, 2021).

Petitioner then filed a Petition for Rehearing and Rehearing En Banc with the Third Circuit, however, same was denied the Court on April 30, 2021.

It is respectfully requested that this Honorable Court grant a Writ of Certiorari to review the matter at hand.

Certiorari Should Be Granted Since Petitioner was subjected to Ineffective Assistance of Third Circuit Appointed Counsel when Counsel failed to Raise and argue the Garza Issue on Appeal to the Third Circuit when Petitioner's Appeal was pending at the time when Garza was decided? (see District Court Opinion at Appx C at *6); (see also Appendix D-1 to D-7, Severs v. Attorney Gen. of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir. Nov. 5, 2019))

In this instant matter, Mr. Severs alleges and argues that his Third Circuit Court of Appeals appointed counsel was ineffective for failing to raise and present the Garza v. Idaho, issue before the Circuit Court in Severs v. Attorney Gen. of New Jersey, No. 18-1822, 793 F.App'x 72 (3d Cir. Nov. 5, 2019) when Severs' case was pending review by the Circuit Court when Garza was decided.

Mr. Severs raised this issue on appeal to the Circuit Court from the Denial of his 60(b) Petition by the District Court, however they denied the Appeal and the Petition for Rehearing and Rehearing En Banc was also denied by the Third Circuit.

The District Court in its decision stated:

At the time the Garza decision was issued, Petitioner's appeal was pending in the Third Circuit. The Court of Appeals granted a Certificate of Appealability on the timeliness question and appointed counsel to represent Petitioner on April 4, 2019. Severs v. Attorney Gen. of New Jersey, 793 F.App'x 72, No. 18-1822 (3d Cir. April 4, 2019). The Third Circuit issued its decision on November 5, 2019, well after Garza was decided. Petitioner could have presented his Garza argument to the Third Circuit or to the Supreme Court. Instead, it appears he waited until the Third Circuit and Supreme Court denied his appeals before filing asserting a right to relief based on Garza.

Severs v. The Attorney General of the State of New Jersey, No: 15-6421, slip. op. at *6 (D.N.J. Sept. 30, 2020); see Appx. C-6.

Petitioner was represented by an attorney and therefore could not himself present the issue to the Circuit Court and/or the United States Supreme Court. It was imperative that the Court appointed counsel raise and argue the Garza issue as the case applied to him. Instead, Petitioner had no choice but to wait until after the Circuit and Supreme Court to rule before he was able to file his 60(b) Petition pro-se.

Moreover, by the District Court stating what they did (quoted above), they essentially stated that the court appointed counsel was ineffective for not raising the issue at the appropriate and necessary time.

Petitioner could not, with the limited LEXIS NEXIS access the prison provides to its inmates, find any precedented cases dealing with Circuit Court appointed counsel(s) being ineffective, therefore, must rely on and argue the landmark case dealing with ineffective assistance of counsel claims. Strickland v. Washington, 466 U.S. 668 (1984)

In Strickland, 466 U.S. at 687, the Court provided a two-part inquiry that petitioner's must establish: **1.** that counsel's performance was deficient, and **2.** that counsel's deficient performance prejudiced the defendant.

Petitioner argues that he has met both parts of Strickland by Circuit Court appointed counsel's failure to (1) raise and

argue the Garza issue in the proper forum and (2) the fact that Petitioner has been prejudiced by this failure when the District Court and Circuit Court denied him relief under Fed.R.Civ.P. 60(b).

For this reason, Mr. Severs respectfully request that this Honorable Court grant the Petition to review this ground.

CONCLUSION

For the foregoing reasons, the Petitioner William Severs respectfully requests this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,


William Severs, Pro-Se

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.2(b), I certify that the petition for certiorari is (less than) 40-pages, excluding the parts of the petition that are exempted by Supreme Court Rule.


William Severs, Pro-Se