

20-8242

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAY 27 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DAVIS, TYRONE — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

08706-007

TYRONE DAVIS #36127-037

(Your Name)

USP COLEMAN #2 P.O. Box 1034

(Address)

COLEMAN, FL 33521

(City, State, Zip Code)

(Phone Number)

RECEIVED

JUN - 4 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) DOES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS DEFINED BY THE 6TH AMENDMENT EXTEND TO THE PLEA PROCESS?
- 2) SHOULD SENTENCING JUDGES STOP THE PROCEEDING IF A DEFENDANT STATES ON THE RECORD THAT HE DOES NOT WISH TO PLEAD GUILTY, BECAUSE HE IS BEING FORCED INTO THE PLEA AGREEMENT?

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:

RELATED CASES

UNITED STATES OF AMERICA V. TYRONE DAVIS 1:19CR174-1
U.S. V. TYRONE DAVIS No. 20-4168 (4TH CIR APPEALS COURT)

TABLE OF CONTENTS

| | |
|--|-----|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 5-6 |
| CONCLUSION..... | 7 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | DECISION OF THE UNITED STATES APPEALS COURT |
| APPENDIX B | DECISION OF THE UNITED STATES DISTRICT COURT |
| APPENDIX C | |
| APPENDIX D | |
| APPENDIX E | |
| APPENDIX F | |

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| STRICKLAND V. WASHINGTON | 4, 5 |
| HELL V. LOCKHART. 474 U.S. 52 | 5, |
| FADILLA V. KENTUCKY 130 S. Ct. 1473 | 5 |
| U.S. V. MOORE, 931 F.2d 245 | 5 |

STATUTES AND RULES

| | |
|---------------------------------|---|
| 18 U.S.C. § 1951(a) | 4 |
| 18 U.S.C. § 924(c) | 4 |
| 18 U.S.C. § 922(g)(1) | 4 |
| FED.R.Crim.P. 11(d)(2)(B) | 5 |

OTHER

| | |
|---|---------|
| U.S. CONST. AMEND II | 3, 4, 5 |
| U.S. CONST. AMEND XIX | 3, 4 |
| U.S. CONST. AMEND VIII | 3 |
| U.S. CONST. AMEND IV | 3, 4 |

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 _____; 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 _____; 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 _____ 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 MARCH 1ST, 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 _____. A copy of that decision appears at Appendix _____.

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

U.S. CONSTITUTIONAL AMENDMENT VI "ASSISTANCE OF
COUNSEL FOR DEFENSE"

U.S. CONSTITUTIONAL AMENDMENT XIV "DUE PROCESS OF
LAW"

U.S. CONSTITUTIONAL AMENDMENT VIII "CRUEL AND UNUSUAL
PUNISHMENT"

U.S. CONSTITUTIONAL AMENDMENT V "DUE PROCESS OF LAW"

STATEMENT OF THE CASE

THE GRAND JURY FOR THE MIDDLE DISTRICT OF NORTH CAROLINA RETURNED A SUPERSEDING INDICTMENT AGAINST, "MR. TYRONE DAVIS" ON JULY 30, 2019. COUNTS 1, 3, AND 5 CHARGED HOBBS ACT ROBBERY IN VIOLATION OF 18 U.S.C. § 1951(a). COUNTS 2, 4, AND 6 CHARGED POSSESSION OF A FIREARM DURING AND IN RELATION TO A CRIME OF VIOLENCE, IN VIOLATION OF 18 U.S.C. § 924(c). COUNT 7 CHARGED BEING A FELON IN POSSESSION OF A FIREARM, IN VIOLATION OF 18 U.S.C. § 922(g)(1).

ON SEPTEMBER 9TH, 2019, MR DAVIS PLEAD GUILTY TO COUNT 7. SHORTLY THERE AFTER, ON SEPTEMBER 29, 2019, MR DAVIS, FILED A PROSE MOTION TO WITHDRAW THE PLEA, BECAUSE IT WAS INVOLUNTARY. MR DAVIS WAS MISLED AND HAD PERTINENT INFORMATION PURPOSEFULLY WITHHELD FROM HIM, BY HIS ATTORNEYS, WHICH CREATED A CONFLICT OF INTEREST AND LED TO INEFFECTIVE ASSISTANCE OF COUNSEL.

IN RESPONSE THE DISTRICT COURT HELD A HEARING TO ALLOW MR DAVIS TO ADDRESS HIS GRIEVANCES. AMONG THOSE WERE FAILURE TO BE TRUTHFUL & DENIAL OF DUE PROCESS. MR DAVIS PRIOR TO SENTENCING MOVED TO HAVE THE PLEA WITHDRAWN. MR DAVIS TRIED TO WITHDRAW HIS PLEA A TOTAL OF AT LEAST THREE TIMES BEFORE SENTENCING, AND THE COURT DENIED THEM EACH TIME.

MR DAVIS WAS CONSTANTLY DENIED THE RIGHT TO DUE PROCESS AS DEFINED IN THE 5TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE ~~EFFECTIVENESS~~ OF COUNSEL FELL BELOW THE STANDARD SET FORTH IN STRICKLA V. WASHINGTON, AS GOVERNED BY THE 6TH AMENDMENT OF THE CONSTITUTION.

REASONS FOR GRANTING THE PETITION

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS A FUNDAMENTAL RIGHT GUARANTEED TO CRIMINAL DEFENDANTS BY THE U.S. CONSTITUTIONAL AMENDMENT 6 AND AS AFFIRMED BY THE SUPREME COURT IN "STRICKLAND V. WASHINGTON, 466 U.S. 688". ALSO IN HILL V. LOCKHART, 474 U.S. 52, 58 (1985), THE COURT HELD THAT THIS RIGHT EXTENDS TO PLEA NEGOTIATIONS, AS WELL AS TO SENTENCING PROCEDURES AS DEFINED IN PADILLA V. KENTUCKY, 130 S. Ct. 1473, 1480-81 (2010).

UNDER FED. R. CRIM. P. 11 (d) (2)(B), SINCE MR DAVIS MOVED TO WITHDRAW HIS PLEA PRIOR TO SENTENCING, HE ONLY NEEDS TO SHOW A FAIR AND JUST REASON FOR REQUESTING THE WITHDRAWAL.

PURSUANT TO THE "MOORE FACTORS", DEFINED IN, U.S. V. MOORE, 931 F.2d 245 (4TH CIR. 1991), MR DAVIS MUST MEET THE FOLLOWING:

1) WHETHER THE DEFENDANT HAS OFFERED CREDIBLE EVIDENCE THAT HIS PLEA WAS NOT KNOWING OR NOT VOLUNTARY.

* MR DAVIS HAS SET FORTH FACTS KNOWN TO THE DISTRICT COURTS SUCH AS: HIS LAWYER NEVER COMMUNICATED PERTINENT INFORMATION CONCERNING THE LACK OF SERIAL NUMBER COMPARISON, THE ABSENCE OF DATA AND FINGERPRINTS. IF MR DAVIS WAS PROPERLY ADVISED HE WOULD HAVE NEVER ACCEPTED THE PLEA.

2) WHETHER DEFENDANT HAS CREDIBLY ASSERTED HIS INNOCENCE.

* THROUGHOUT THE PLEADINGS MR DAVIS HAS MAINTAINED HIS INNOCENCE WITH THE EXCEPTION OF DURESS WHICH WAS BROUGHT ON BY ATTORNEYS "CRUMP" AND ~~JONES~~ "JONES"

3) WHETHER THERE HAD BEEN A DELAY BETWEEN ENTERING A PLEA AND THE FILING OF A MOTION TO WITHDRAW THE PLEA.

* EXACTLY 20 DAYS AFTER THE PLEA WAS ENTERED, MR DAVIS FILED A MOTION TO WITHDRAW.

4) WHETHER THE DEFENDANT HAS THE CLOSE ASSISTANCE OF COMPETENT COUNSEL.

* ACCORDING TO THE AMERICAN BAR ASSOCIATION, 2018 EDITION OF "MODEL RULES OF PROFESSIONAL CONDUCT"

Rule 1.1: Competence: A Lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2: A Lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

Rule 1.3: A Lawyer shall act with reasonable diligence and promptness in representing a client. A Lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the Lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause of endeavor. A Lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

RULE 1.4: (a) A LAWYER SHALL:

(1) PROMPTLY INFORM THE CLIENT OF ANY DECISION OR CIRCUMSTANCE WITH RESPECT TO WHICH THE CLIENT'S INFORMED CONSENT, . . .

(2) REASONABLY CONSULT WITH THE CLIENT ABOUT THE MEANS BY WHICH THE CLIENT'S OBJECTIVES ARE TO BE ACCOMPLISHED;

* ATTORNEYS CRUMP AND JONES FAILED TO SUPPLY MR. DAVIS WITH SUFFICIENT INFORMATION TO PARTICIPATE INTELLIGENTLY IN DECISIONS CONCERNING THE OBJECTIVES OF THE REPRESENTATION AND THE MEANS BY WHICH THEY ARE TO BE PURSUED, TO THE EXTENT THE CLIENT IS WILLING AND ABLE TO DO SO.

* A LAWYER MAY NOT WITHHOLD INFORMATION TO SERVE THE LAWYER'S OWN INTEREST OR CONVENIENCE OR THE INTEREST OR CONVENIENCE OF ANOTHER PERSON.

ATTORNEYS, "CRUMP AND JONES" FAILED TO DISCLOSE EXONERATORY EVIDENCE WHICH COULD HAVE HELPED TO EXONERATE MR. DAVIS.

5) WHETHER WITHDRAWAL WILL CAUSE PREJUDICE TO THE GOVERNMENT.

* IT IS IN THE GOVERNMENT'S BEST INTEREST TO PRESERVE THE INTEGRITY AND FAIRNESS OF THE JUDICIAL SYSTEM.

6) WHETHER IT WILL INCONVENIENCE THE COURT AND WASTE JUDICIAL RESOURCES.

* RESOURCES ARE NEVER WASTED WHEN BALANCING THE SCALES OF JUSTICE. THE TAX PAYERS, PAY THE SALARIES, BULGING FEES ETC . . . AND THEIR BIGGEST CONCERN IS MAINTAINING PUBLIC TRUST AND CONFIDENCE. THE COURT IS HERE TO ADDRESS THE GRIEVANCES OF THE PEOPLE.

UNDER THE "STRICKLAND REVIEW" TWO PRONGS MUST BE MET TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL.

#1: COUNSEL'S PERFORMANCE WAS DEFICIENTLY BELOW THE STANDARD OF REASONABLENESS COMPARED TO PROFESSIONAL NORMS.

FIRST AND SECOND DEFENSE ATTORNEYS WERE INADEQUATE IN THEIR FAILURE TO COMMUNICATE TO MR. DAVIS THE TRUE NATURE OF THE CASE WHICH WAS THAT HE WAS INNOCENT. INSTEAD OF INFORMING MR. DAVIS OF THE LACK SERIAL NUMBER ON THE GUN, NO FINGER PRINTS OR DNA, HE WAS FORCED INTO PLEADING GUILTY UNDER DURESS BY DEFENSE COUNSEL AND PROSECUTORS. DEFENSE COUNSEL CONSTANTLY BOMBARDDED MR. DAVIS WITH STATEMENTS OF, "THERE'S NO WAY OUT" "YOU ARE GUILTY" "THE GOVERNMENT WILL NEVER LET YOU OUT" AND "JUST PLEAD GUILTY". WHEN IN FACT MR. DAVIS WAS AND STILL TODAY MAINTAINS HIS INNOCENCE.

#2: COUNSEL "CRUMP AND JONES", IF IT WERE NOT FOR THEIR INEFFECTIVENESS NO REASONABLE, NOR COMPETENT COUNSEL WOULD ALLOW THEIR CLIENT TO PLEAD GUILTY TO A CRIME WHICH THEY WERE INNOCENT. THE EVIDENCE IS OVERWHELMINGLY IN FAVOR OF MR. DAVIS. NO DNA OR FINGER PRINTS MATCH THAT OF MR. DAVIS. THERE WAS NO BALLISTIC EVIDENCE LINKING ANY GUN TO A CRIME. THE ONLY REASON MR. DAVIS PLEAD GUILTY WAS BECAUSE OF CONSTANT THREATS FROM COUNSEL "CRUMP AND JONES", THAT HE WOULD GET 60 YEARS IF HE WENT TO TRIAL AND IF HE PROCEEDED TO TRIAL, THEN HE WOULD BE GUARANTEED TO BE FOUND GUILTY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TYRONE DAVIS #08706-007

* Tyrone Davis

Date: 25 MAY 2021