

No. 20-8367

Supreme Court, U.S.
FILED

APR 30 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

KIERA SHANICE GRAHAM — PETITIONER
(Your Name)

vs.

MURRAY TATUM — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Kiera Shanice Graham #1001154592
(Your Name)

Lee Arrundale State Prison, P.O. Box 709
(Address)

Alto, Georgia 30510
(City, State, Zip Code)

(Phone Number)
ORIGINAL

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QUESTION(S) PRESENTED

Is it a violation of due process for a defendant to plead guilty to a life sentence when informed by counsel that death penalty was being sought, but was not?

Can significant misleading statements of counsel rise to a level of being a threat, depriving defendant of making a voluntary decision?

Did appellate counsel's failure to investigate plea counsel's ineffectiveness violate Petitioner's right to counsel?

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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TABLE OF AUTHORITIES CITED

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O.C.G.A. 16-5-1(e)(1), formerly 26-1101(c)	4
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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 _____ 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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Habersham County Superior 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.

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 02/01/21.
A copy of that decision appears at Appendix A.

☐ 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

Fifth Amendment of the U.S. Constitution

Sixth Amendment of the U.S. Constitution

Fourteenth Amendment of the U.S. Constitution

STATEMENT OF THE CASE

On September 10, 2013 Counsel Jason Moon discussed plea offer of life with the possibility of parole, informing Petitioner that the death penalty was being sought and advised Petitioner to plead guilty. Plea and sentencing was held September 12, 2013. A timely Motion to Withdraw Guilty Plea was filed October 2, 2013 and hearing was held February 15, 2016. Motion was denied. Denial was appealed to the Supreme Court of Georgia and judgment was affirmed on February 27, 2017 finding that plea was voluntarily made. Petitioner filed a state habeas corpus June 25, 2019 with hearing on December 10, 2019. Habeas was denied July 30, 2020. Certificate of Probable Cause to Appeal Habeas was filed September 3, 2020 and denied February 1, 2021.

REASONS FOR GRANTING THE PETITION

Habeas court erred in denying writ because appellate counsel was ineffective for failing to investigate the facts of the case, legal advice pertaining to the acceptance of the guilty plea to life, and plea counsel's ineffectiveness concerning plea advice and case information. *United States v. Woods*, 487 F.2d 1218 (5th Cir. 1973) states that an attorney cannot render reasonably effective assistance unless the attorney has become acquainted with the law and facts of the case.

The Supreme Court of Georgia erred in affirming judgment of the trial court since, per *Boykin v. Alabama*, 395 U.S. 238 (1969), a plea of guilty that is based on the fear of a non-existent penalty can be neither knowing nor intelligent and this flaw colors the fundamental fairness of the entire proceeding.

Trial court erred in denying Motion to withdraw Guilty Plea because "significant misleading statements of counsel can rise to a level of denial of due process of law and result in a vitiation of the judicial proceeding because of ineffective assistance of counsel." *Walker v. Caldwell*, 476 F.2d 213 (5th Cir. 1973). Counsel informing Petitioner that death penalty was being sought and advising her to plead guilty to life, which carries a minimum of 30 years, denied Petitioner due process. Had counsel never informed

Petitioner of the non-existent penalty of death, Petitioner would have gone to trial. In *Parks v. State*, 230 Ga. 157 (1973), if a defendant is found guilty of murder he automatically receives a life sentence under O.C.G.A. 26-1101(c) if the death penalty was not being asked for in the case. Since the death penalty was never sought, although Petitioner was informed otherwise, Petitioner took a plea to a sentence that could have been received if she lost at trial. Counsel's fraudulent misrepresentation deprived Petitioner of her Fifth, Sixth, and Fourteenth Amendment rights.

The importance of this case and others like it is the need to stop counsel from intimidating defendants with the death penalty to get them to plead guilty to life sentences. When asked during plea hearing if threatened and/or coerced, defendants answer "no" because misinformation is not delivered in a forceful, threatening manner, but as facts. It is not until after the plea has been accepted that a defendant finds out that the state never filed to seek death penalty, depriving defendant of the right to withdraw guilty plea prior to sentencing, since it is all one proceeding, and of the right to trial. Prior to the state accepting a plea of guilty to a life sentence, defendant should be asked on the record if he/she has ever been advised that the death penalty was being sought against them. That will ensure that pleas to life are

not taken due to false information. It will ensure the voluntariness of a plea that affects the rest of a defendant's life.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kiera Shanice Graham

Date: April 28, 2021