

Case No. 21-6597

In The
Supreme Court of the United States

Jason C. Whren,
Pro se Petitioner

V.

United States,
Respondent

Memorandum of Law In Support
of a Petition For Writ of
Certiorari
to the Court of Appeals
for the
District of Columbia

Pursuant to Rule 44
Petition for Rehearing

Jason C. Whren 34809-007
Federal Correctional Institution - Bennettville
P.O. Box 52020
Bennettville, S.C. 29512

I. Standard of Review and Applicable Legal Principles

A. Conflict of Interest

Under the Sixth Amendment guarantee "representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflict of interest. See *Cuyler V. Sullivan*, 446 U.S. at 346. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." *Strickland V. Washington*, 466 U.S. at 688.

A Sixth Amendment violation warranting reversal will be established if a criminal defendant demonstrates that "an actual conflict of interest adversely affected his lawyer's performance." *Cuyler V. Sullivan*, 446 U.S. at 348.

"Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief." *Cuyler V. Sullivan*, 446 U.S. at 349-50.

B. Discussion

Petitioner opens the discussion as to, does counsel's erroneous advice to petitioner to plead guilty in the light of the circumstances of this

particular case amount to an actual conflict of interest?

c. Argument

Petitioner notes: This is a case where an attorney purposefully was misleading and dishonest to his client. Diverting his client from going to trial, and deceiving his client to accept a plea he never should have accepted. All because counsel believed his client was guilty. (Tr. 8:1-14 p. 114 at 14-17; Id. p. 117 at 1-2; Id. p. 116 at 7-18) App. A

1. Deficient Performance (actual conflict)

In petitioner's writ of certiorari motion petitioner explained that the underlying circumstances of this particular case is simple. (See Petition For Writ of Certiorari - Case no. 21-6597-p. 41-42). Though this particular case is an unusual case regarding a conflict of interest.

Black's Law Dictionary defines conflict of interest as, a real or seeming incompatibility between one's private interests and one's public or fiduciary duties. (Black's Law - Fifth Pocket Edition)

In this particular case, because counsel believed his client was guilty counsel totally abandoned his fiduciary duty of loyalty to his client and took up the interest of his opposition because of this belief. Though, contrast to counsel's belief that petitioner was guilty counsel testified that petitioner "always maintained his innocence and that he never had sex with the supposed complainant." (Tr. Id. p. 114 at 14-18) App. A.

Counsel's reason for not believing petitioner? Because allegedly petitioner "had a twitchiness in his eyes, and a smirk on his face." *ibid.*

Counsel was aware that it was highly unlikely that the supposed complainant would show up for trial. Not only from the circumstances and history of this particular case (Tr. 3:28:14 p. 16 at 9-p. 17 *in s.*), but also, as testified by counsel, petitioner had told him "repeatedly she wasn't going to show up"... when he found out she was here. (Tr. 8:1:14 p. 94 at 11-12) App. A.

This specific testimony alone demonstrates that counsel took none of the steps necessary for an appropriate and effective defense in the interest of his client. Nor did counsel inquire into the options available to him. Option one: "inform himself... fully on the facts and the law, thoroughly advise the client concerning all aspects of the case", and "keep the client informed of... developments in the case." A.B.A. Standards 4-3.8, 4-5.1(a); See *Strickland*, 466 U.S. at 688.

Option two: be truthful with his client regarding his investigation, or lack of investigation, and tell your client the truth—that counsel never physically seen the supposed complainant present, but that he was taking the prosecutor word that the supposed complainant was present

(Tr. *Id.* p. 116 at 7-18) App. A. See D.C. Rules of Professional Conduct 8.4(c), and allow his client to make the decision on if he wanted to plead guilty or if he wanted to go to trial. "Clearly, that decision must be made by the defendant."

Tollett v. Henderson, 411 U.S. at 271 (quoting *Brady v. United States*, 397 U.S. at 750). Counsel

did neither (See Petition For Writ of Certiorari - Case no. 21-6597 - p. 45-49 a. Counsel's Reasonableness)

The sequence of events in this particular case, and counsel's own testimony, permit only a single inference, namely, that counsel's inaction resulted from his conflicting interest. Indeed there is no other explanation in this record for counsel's failure to do that which counsel recognized he should have done. Especially not his lame excuse that this lawful independent investigation being "inappropriate." (Tr. 8/1/14 p. 116 at 11-18) App. A.

So are we to accept the notion that counsel, in his mind, rationally thought that the legal independent investigation of his clients interest, the "big ticket" of this particular case, was actually inappropriate?

Furthermore, are we to accept the notion that counsel thought that the interest of the government and their integrity was actually appropriate? That would be an insult to our intelligence.

Adding that petitioner told counsel "repeatedly" to independently investigate the supposed complainant. (Tr. Id. p. 94 at 11-12) App. A. This clearly shows an actual conflict of interest that adversely affected counsel's performance.

See *Cuyler v. Sullivan*, 446 U.S. at 348. also See Petition For Writ of Certiorari - Case no. 21-6597 p. 40-49.

2. Prejudice

The presumption of prejudice in cases presenting a conflict of interest that adversely

affected counsel's performance is warranted because the duty of loyalty to a client is "perhaps the most basic" responsibility of counsel and "it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interest." *Strickland v. Washington*, 466 U.S. at 692.

This difficulty in assessing prejudice resulting from a conflict of interest is due in part to the fact that the conflict may effect almost every aspect of the lawyer's preparation and presentation of the case. Because the conflict primarily compels the lawyer not to pursue certain arguments or take certain actions, it is all the more difficult to discern its effect. See *Holloway v. Arkansas*, 435 U.S. 475, 490.

(See Petition For Writ of Certiorari - Case no. 21-6597 - p 49 Prejudice (actual))

II. Summary

In applying the proper legal standards and principles, petitioner, Jason C. Whren, has demonstrated the actual conflict of interest, as established in *Cuyler v. Sullivan*, 446 U.S. at 348, that adversely affected his lawyers performance.

Mr. Whren also demonstrated that his defense counsel breached his duty of loyalty, as established in *Strickland v. Washington*, 466 U.S. at 688, 692, which denied Mr. Whren his Sixth Amendment guarantee to the effective assistance of counsel at all critical stages.

Furthermore, Mr. Whren demonstrates that a

defendant who shows that a conflict of interest actually affected the adequacy of his counsel's representation need not demonstrate prejudice in order to obtain relief, as established in *Cuyler V. Sullivan*, 446 U.S. at 349-50.

III. Conclusion

Wherefore, for all the aformentioned reasons, this petitioner, Jason C. Whren, respectfully request that The Supreme Court of the United States re-hear, and issue this Writ of Certiorari to the Court of Appeals for the District of Columbia.

Thank you.

Jason C. Whren
34809-007

J. C. Whren

Certificate of Service

I, Jason C. Whren, do hereby certify per the penalty of perjury pursuant to 28 U.S.C. § 1746, that have submitted an exact copy of a Memorandum of Law in Support of a Petition For Writ of Certiorari Pursuant to Rule 44 Petition for Rehearing to the Clerk of the Courts at the below listed address for the service of filing such upon the Supreme Court of the United States.

Clerk of the Court
Supreme Court of the United States
1 First Street N.E. Wash. D.C.
20543

By placing such in First Class U.S. Mail Service, postage prepaid, via F.C.I.'s Bennettsville internal mailing procedures.

Respectfully Submitted on this 4th day of February 2022

Jason C. Whren
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