

No. 21-7192

IN THE
Supreme Court of the United States

Thomas Johnny WILKINS

v
Bobby Lumpkin, DIA. TDCJ-1D

Petition for Writ of Certiorari
Rehearing

This Petition for a Rehearing is being filed under Rule 44.2 of the Supreme Court Rules and within the 25 days of the denial of the Petition for a Writ of Certiorari.

The Petition stated Justice Marshall stated the appropriate question under the Sixth Amendment is whether an actual, relevant conflict existed during the proceeding, if it did, the conviction must be reversed. The denial of a Motion to Withdraw is reversed for abuse of discretion. *U.S. v. Powell*, 354 F.3d 362 (5th Cir. 2003). The trial judge ordered trial counsel to continue his representation after a hearing. Trial counsel had shown sufficient cause for substitution of counsel when he cited the conflict of interest, an actual conflict, and explained a lack of communication whereas he was unable to adequately defend his client. The Judge found merit as he signed an order to Withdraw on 13 June 2016 and filed it with district clerk on 14 June 2016 at 9:47am. The Judge at hearing denied and further stated "But nevertheless if you have to defend yourself on a quixense because I'm keeping you in the case, I will commit the Court to paying..." possibly showing Judicial Bias. The district court's ruling worked to the Defendant's actual and substantial disadvantage by reflecting his entire

Trial with error of constitutional dimensions. *U.S. v Frady* 456 US 152 (1982) In *U.S. v Greig* 967 F2d 1018 (5th Cir 1992) the court concluded that the district court's failure to hold a "Garcia hearing" after learning counsel had an actual conflict, which later affected his performance, entitled him to a new trial. The district judge did not seek any response from the defendant. A failure to inquire would be Sixth Amendment error warranting reversal. see *Mickens v Taylor* 535 US 162 (2002)

It is patently improper for a prosecutor to comment on the creditability of a witness or express a personal belief that a particular witness is lying. *US v Young* 470 US 1 (1985) *Vierich v US*, 318 US 236 (1943) The Supreme Court rebuked a prosecutor for telling jury to do your duty. In this case at 6RR 92 (19-20), 6RR 94 (3-6) 6RR 94 (19-23), 6RR 114 (14-16) 6RR 120 (8-9) 6RR 120 (15), 6RR 120 (24) said Defendant is lying, he stated the jurors at 6RR 121 (16-19) must bring justice to Traci and Denise, he told the jury at 6RR 113 (2-3) the fact that 12 folks on a grand jury indicted him. The prosecutor's comments were a denial of his constitutional rights. *Chapman v Calif.* 386 US 18 (1967)

Trial counsel's failure to object to prosecutorial comments and the results amounted to a constitutional denial of Counsel. *Gritz v Yand* 501 F3d 743 (citing *Chong* 466 US at 659) The assistance of counsel was below the standards cited *Strickland v Washington* 466 US 668. The attorney failed to conduct an investigation and failed to interview any witnesses. *Bayant v Scott*, 28 F3d 1411 (5th Cir 1994)

Attorney failed to obtain defendant's medical records or consult with doctors regarding his back injury. *Richards v Quarterman* 516 F3d 553 (5th Cir 2002) The attorney failed to investigate defendant's prior conviction from May 1991 as it fell below level of reasonable performance. *Rompella v Beard* 125 S Ct 2456 (2005)

This case involves a violation of the Fifth Amendment's Double Jeopardy Clause. The same offense resulted in multiple convictions and punishments *Brown v Ohio*