

21-7651
No.

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Manuel Martinez — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Appellate Court of Illinois, Fourth District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Manuel Martinez
(Your Name)

P.O. Box 1000
(Address)

Menard, Illinois 62259
(City, State, Zip Code)

1-618-826-5071
(Phone Number)

QUESTION(S) PRESENTED

- 1) At a Third Stage Evidentiary Hearing, Defense Counsel Testified that he had never before seen DNA evidence of this nature. Had "NO HANDLE ON THE DNA EVIDENCE," An. "Inability to comprehend the significance of DNA evidence," Did not obtain an expert interpretation of the DNA evidence and then stated "The DNA evidence did not support the state's theory" of the case. In light of these facts, where the defendant relied on defense counsel's comments, that DNA evidence was inconclusive and did not support state's theory, as the basis to decline a plea agreement of time served in county jail and two (2) years probation, did the Appellate Court Err in deciding counsel was not ineffective and that defendant did not show prejudice, despite his 57 year sentence?
- 2) Where the interrogating officer never asked the defendant if he wanted to waive his Miranda Rights and defendant, even though extremely intoxicated, stated he had an "Attorney Here" and during the interrogation told the officer he had requested an attorney, Did the Fourth District Appellate Court Err in relying only upon State case law in finding his request was equivocal?
- 3) Where DNA samples from the victim contained DNA from three (3) separate, but unidentified, Hispanic Male contributors, and even the prosecutor ultimately gave 3rd stage testimony that the DNA evidence did not support the State's theory of the case. Did the Appellate Court err when it decided that trial counsel's decision not to obtain a DNA expert was a viable trial strategy and therefore did render effective 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:

RELATED CASES

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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 Circuit Court of the 6th Judicial 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.

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. 21 A 483.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was June 21, 2021. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: July 14, 2021, and a copy of the order denying rehearing appears at Appendix F.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including April 23, 2022 (date) on February 16, 2022 (date) in Application No. 21 A 483.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

1) U.S. CONST., AMEND. V, in pertinent part:

The accused shall not be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

2) U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

3) U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner was charged with predatory criminal sexual assault of a child, criminal sexual assault, and 3 counts of aggravated criminal sexual abuse. (C. 1-3, C. 31-32) The charges alleged that he fondled the breast and digitally penitrated the vagina of 13 year old M.M. and that he licked the leg, and digitally penitrated the vagina of 11 year old T.M.

A sexual assault kit was administrated to both girls, with vaginal swabs taken from each. (R. XXVII. 414, 439) Swabs of T.M.'s legs, and of M.M.'s Neck, were also obtained. (R. XXVII. 427, 449)

The vaginal swab of T.M. evinced a presence of sperm cells. The vaginal swab of M.M. showed no sperm cells present, but a P-30 protein presence was interperated to indicate a SEMEN like substance. (R. XXIX. 570-577) Appendix G

The Neck swab of M.M. contained a mixture of DNA from three (3) separate unidentified Males, and defendant - as well as 95% of unrelated Males - could not be excluded. (R. XXIX. 619) Appendix G

STATEMENT OF THE CASE

The State's trial strategy was that petitioner was the only male to have contact with either victim that day. Defense, trial counsel never cross-examined M.M. as to how, or why, the DNA of three different males came to be found on her body.

As police Detective Rawdin initiated a video recorded interrogation of petitioner, Martinez, though highly intoxicated (R. XXVII. 493) and slurring his speech (R. XXVII. 494-495) responded to questions (R. XXVIII. 513-514). Martinez stated he wanted "Attorney Here" (St. ex. 10A,2). A second subsequent statement was made by Martinez that he "Probably needs some kind of attorney here..." (St. ex. 10A,2).

Pretrial defense counsel, Mr. McClellen, told the petitioner that the State would not be using the DNA evidence at trial.

Prior to trial, The State Made several offers for plea agreements, including a very generous one for time served in the county jail, plus two years probation. The Petitioner declined all of the State's offer and proceeded to a jury trial.

STATEMENT OF THE CASE

The Jury found Martinez guilty of two counts of aggravated criminal sexual abuse, one count of criminal sexual assault, and one count of predatory criminal sexual assault of a child. (R. XXIX.773)

The Trial Court denied the petitioner's post-trial motion for a new trial. (R. XXX. 7)

The Petitioner filed a timely appeal wherein the Appellate Court of Illinois, Fourth District, affirmed defendant's convictions, finding that defense counsel's decision not to employ a DNA expert was valid trial strategy and that defendant's statements to the interrogating officer did not constitute an unambiguous unequivocal invocation of his right to counsel. (Appendix D) Martinez, 2013 IL App. (4th) 120337-U

Leave to Appeal to the Supreme Court of Illinois was denied (Appendix D) No. 116638

In February 2014, A petition for writ of certiorari was filed with the Clerk of The Supreme Court of The United States, and was denied in April of 2014.

STATEMENT OF THE CASE

In October of 2014, Petitioner filed a pro-se post-conviction petition, alleging ineffective assistance of Appellate Counsel. At the second stage, post-conviction counsel was appointed and filed an amended petition, adding claim of ineffective assistance of trial counsel.

In February of 2016, The Champaign County Circuit Court denied defendant's amended post-conviction petition.

Petitioner filed a timely appeal, wherein The Appellate Court of Illinois, Fourth District, reversed The Circuit Court's judgement dismissing the defendant's post-conviction petition, and remanded the case for further second stage proceedings. (Appendix E) Martinez, 2018 IL App. (4th) 160151-11

Defendant's newly appointed counsel filed a second amended post-conviction petition alleging numerous claims, including that trial counsel was ineffective during plea negotiation process, as well as a claim of ineffective assistance of Appellate Counsel for failing to raise the above issue on Appeal.

The Circuit Court dismissed all claims in defendant's amended petition, except for the claim of ineffective assistance of trial counsel during plea negotiations.

STATEMENT OF THE CASE

After a third stage hearing on the issue of ineffective assistance during the plea negotiations, In September 2019, The Circuit Court dismissed the defendant's remaining post-conviction claims. (Appendix B)

Petitioner filed a timely appeal, wherein The Appellate Court of Illinois, Fourth District, affirmed The Circuit Court's denial of post-conviction petition, after the third-stage evidentiary hearing, on June 21, 2021. (Appendix A) Martinez, 2021 IL App (4th) 190668-U

Defendant's Petition for Leave to Appeal to The Supreme Court of Illinois was denied on December 29, 2021. (Appendix C)

This Petition for writ of certiorari to The Supreme Court of The United States, now follows.

REASONS FOR GRANTING THE PETITION

(Issue 1)

This petition should be granted seeing that any attorney who testifies he had "No handle on the DNA evidence" and an "Inability to comprehend the significance of the DNA evidence" could not possibly have rendered effective assistance in advising his client about the potential role that evidence would play if defendant chose to go to trial.

The Appellate Court of Illinois, Fourth District erroneously construed the issue too narrowly, down to defence counsel McClellan's advice on whether or not the State intended to use the DNA evidence at trial. (Appendix A, p. 13)

The greater issue is that McClellan failed to explain the significance of what that evidence could be used to prove or suggest to the jury. McClellan rendered ineffective assistance of counsel when he improperly advised defendant on what the DNA evidence was and potential inferences the jury could draw from it. (Appendix H, p. 1-3, c. 900)

REASONS TO GRANT PETITION

Issue 2)

This Court should grant the petition, due to the fact that the reviewing court's reliance on state law is clearly contrary to federal law on the validity of defendant's request for an attorney, made prior to the officer's reading of Miranda rights to the defendant. (Appendix D)

Although the Court's ruling was made September 2013, it relied solely upon Illinois state case law in determining defendant's pre-Miranda warning request for an attorney was invalid. All of which predate the holdings of the Supreme Court of the United States in Berghuis V. Thompkins, 560 U.S. 370 (2010), in which the Court abrogated any prewaiver/post waiver distinction.

Furthermore, the State Court misapprehending the Supreme Court's holding in Smith V. Illinois, 469 U.S. 91, 100 (1984), where it found "Post-Request responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself."

Here, the statement in question was reaffirming

REASONS TO GRANT PETITION

defendant's request for counsel, not casting doubt on it. (Appendix D p.14)

The Supreme Court has stated the prophylactic effect of Miranda was designed to counteract the "Inherently Compelling Pressures" of custodial interrogation. Miranda V. Arizona, 384 U.S. 436, (1966)

Clearly established Federal Law holds that:

"Once a suspect asserts the right, not only must the current interrogation cease, but he may not be approached for further interrogation until counsel has been made available to him." McNeil V. Wisconsin, 501 U.S. 171 (1991)

If the police do subsequently continue questioning in the absence of counsel, the suspect's statements are presumed involuntary and therefore inadmissible at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards. McNeil V. Wisconsin, 501 U.S. 171 (1991)

This is "designed to prevent the police from badgering a defendant into waiving his previously

REASONS TO GRANT PETITION

asserted Miranda rights." (Michigan V. Harvey, 494 U.S. 344, 350 (1990)) ~~as~~ the police did in this case.

As such the Appellate Court's ruling is contrary to clearly established Federal Law.

Issue 3)

The petition should be granted because the Appellate Court's determination that trial counsel was not ineffective, in the light that his decision not to call a DNA expert as a witness was a matter of sound trial strategy, is contrary to well established Federal Law and the holdings of the Supreme Court of the United States. (Appendix D)

The DNA evidence was decidedly complex. Multiple rounds of testing and re-testing of multiple samples were conducted. DNA from three different Hispanic Males was found. (Appendix G)

The State called two DNA experts, Dana Pitchford and Amanda Humke, who provided over 100 pages of testimony (R. 550 - 664) in support of its theory.

Obviously, where the DNA evidence never identified

REASONS TO GRANT PETITION

the defendant's DNA on the vaginal swabs, and 95% of the male population could not be excluded (Appendix G), trial counsel should have retain an experts opinion to bolster the defense's case.

The Brevity of counsels cross-examination of the States experts is comparable to that discussed in Leonard where the Court found:

"Defense Counsel's cross-examination of the States experts was minimal and failed to ADDRESS any areas of controversy, such as methodology, human error, contamination, lack of expertise, or bias."

Leonard V. Michigan, 256 F.Supp. 2d 723 (2003)

REASONS TO GRANT PETITION

"The State Court's determination that defense counsel was not ineffective for not calling... experts was an unreasonable application of clearly established Federal Law, since such testimony was critical to defense... [and] would have increased chance of acquittal although it might still be less than 50%. Miller V. Anderson, 255 F.3d 455 (7th Cir. 2001)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark J. Murphy

Date: April 14, 2022