

No. _____

In The

Supreme Court of The United States

Washington DC

Paul Douglas Jackson - petitioner

vs.

Bobby Lumpkin - respondent

Motion for Leave to file, A

Motion for Rehearing

Petition for writ of Certiorari

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In The
Supreme Court of the United States
of Washington, DC.

Paul Douglas Jackson
Petitioner.

v.

Bobby Lumpkin
Director, TDCJ-CID
Respondent.

No. _____

Motion for Leave to file.
Motion for Rehearing

To The Honorable Supreme Court said:

Comes Now, Paul Douglas Jackson, Petitioner, pro-Se
pursuing a Motion for leave to file, A Motion for Rehearing,
In Good Faith and not for delay, from the Denied on 6-27-2022
in No. 21-7716

Jurisdiction

This Court has jurisdiction over the parties and the
subject of the matter. Petitioner Jackson seek this
Court Consideration, In Good Faith and not for delay,
to presented this Motion for Rehearing with accuracy, brevity
and Clarity. under 28 U.S.C. § 1254(1) of Rule 44 of this Court.

(1).

Statement of Case

Applicant was indicted by the Dallas County, Texas Grand Jury, on or about July, 2006, with two counts of indecency with a child in Cause Number F06-66697-W(A) and F06-66698-W(A). On the date of September 10, 2007, Applicant appeared before the court because of a plea bargain struck between trial counsel and the Assistant District Attorney and entered a plea of guilty, "with the benefit of the plea bargain," to the offenses charged in the two indictments. The trial court accepted the plea and sentenced Applicant to the maximum sentence which could be assessed for a second degree felony of twenty (20) years respectively. The records reflect Applicant waived appeal.

On April 20, 2017, Applicant filed his first Application for writ of Habeas Corpus. The State filed a response on May 4, 2017. The State's response did not include whether the former Judge (now District Attorney, Honorable Faith Johnson), and previous trial counsel, (Honorable Gray) also does not have a "clear recollection of this plea from ten (10) years ago." Neither of the two were provided with an order to respond to the ground in this application. The trial court issued an order to the trial counsel who responded to the court and that affidavit was attached to the trial court's "Findings of Facts".

Statement of Fact

On August 23, 2017, this Court issued an order to the trial court to conduct additional fact-findings related to Applicant's grounds for relief concerning the trial counsel's ineffectiveness. Applicant's ground alleges that:

"Trial Counsel was ineffective for failing to investigate and interview eye-witnesses made known to counsel at least one week before trial"

"Trial Counsel, Mr. Humphreys was ineffective for failing or refusing to subpoena Applicant's family members who want to testify in Applicant's behalf before sentencing"

In essence, the grounds for relief could be said to be one or multiple reasons why trial counsel was ineffective.

When Applicant and trial counsel had their initial interview, Applicant told counsel that he wanted to subpoena several critical witnesses that included, but was not limited to, the Applicant's family member who were available to testify and wanted to testify in Applicant's behalf at sentencing. Because Applicant's defense was that he did not commit the offense of aggravated assault, Applicant's family member was available to testify and would have testified that the complainant had told one of her teachers that Applicant did not do anything to her but that her mother was angry with Applicant and had told complainant what to say and how to say it. Had the trial counsel conduct a "live" evidentiary hearing the record would show

that the Complainant was Pressured into making the allegations against Applicant.

Applicant informed trial counsel that Applicant wanted to subpoena and present the testimony of the employee for the Texas Dept. of Child Protective and Regulatory Service who was available to testify and would have testified that the Complainant, during the interview, told her that "NO ODC" has ever touched her or looked at her inappropriately and she would tell her mother if that happened. The trial Counsel knew there was no witness who would have testified that Applicant committed the offense, ~~But~~ trial Counsel never contacted any of the witnesses before trial.

Ground of Issue

Whether Jackson is entitled to relief, where the test for determining, whether trial Counsel was effective at the punishment phase and whether Counsel was reasonably likely to render effective assistance or, Counsel reasonably rendered effective assistance, where Counsel's failure to investigate and call witness (family members) or subpoena them as witness ~~on~~ the petitioner's behalf, that was ready to testify on his behalf.

Argument and Authorities

I. Standard of Review:

The Supreme Court in *Strickland v. Washington* states: The Sixth Amendment right to counsel is the right to the effective assistance of counsel and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. . . . (p. 2063-2064).

A defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or setting aside of a death sentence requires that the defendant must show, first, that counsel's performance was deficient and second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial (at p. 2064-2069, at (A), 2064-2067 and (B) at p. 2067-2069).

This principle governing ineffectiveness claims apply in federal collateral proceedings as they do on direct appeal or in motions for a new trial. And in a federal habeas challenge to a state criminal judgment, a state court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court to the extent stated by 28 U.S.C. § 2254(d)(1)(2) (at p. 2069-2070).

(See *Miller v. Dretke* 420 F.3d. 356 (5th Cir 2006), . . . as stated: At this end, a conscious and informed decision on trial tactics and strategy cannot be the basis for constitutionally ineffective assistance of counsel unless "it is so ill-chosen that it permeates the entire trial with obvious unfairness."

A Reversal is required on ineffective assistance of counsel ground on direct appeal when defense counsel declined to participate in jury selection, declined to enter a plea for his client, declined to make opening or closing argument, declined to cross-examine any of state witnesses or witnesses for the defense, declined to make any objection, declined to offer any defense, declined to request and special jury instruction and declined to offer any evidence or argument with respect to punishment because counsel stated was simply unprepared to go forward. Quoting in *United States v. Cronie*, 466 U.S. 648, 658-59 (1984): (see) *Cannon v. State* 252 S.W.3d. 342, 349 (Tex Crim. App. 2008)

A. In the Instance Case.

Applicant asserts, his trial Counsel failure to subpoena his family members as witnesses, prejudiced him that deprived him of his 6th and 14th Amendment and the State Judge, Faith Johnson and Honorable Gary stated, they don't have a clear recollection of his this plea from 10 years ago. On page 3, 4 of the Statement of Fact of this Motion.

Applicant asserts, this premented the entire the whole trial with unfairness, due to counsel failure to subpoena and where the complainant said "NO ONE" ever looked or touch her in a inappropriate way due the interview.

Reason for Granting the Petition

Whereas Petitioner Jackson prays that this Honorable Court Grant the relief sought, petitioner present this Motion for Rehearing, in Good Faith and not for delay, with accuracy, brevity and clarity of sufficient reason for this Courts discretion

Conclusion

The petition for a Motion for Rehearing
Should be Granted as vacated of the Sentence and
Judgment.

Respectfully Submitted

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Date: August 3, 2002