

21-7768 ORIGINAL

IN THE

FILED
APR 27 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

Jowell Travis Le Gendre

— PETITIONER

(Your Name)

vs.

Commonwealth of Virginia

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Virginia

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

PETITION FOR WRIT OF CERTIORARI

Jowell Travis Le Gendre

(Your Name)

PO Box 970

(Address)

Pound, VA 24279

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

- Were my rights to due process of law under the Fifth Amendment and Section 1 of the Eighth Amendment prejudiced when the Circuit Court for the City of Charlottesville failed to conduct inquiry concerning pre-trial claims of Ineffective Counsel, when the court failed to conduct inquiry following my request for new Counsel just prior to trial and/or when Counsel refused to conduct preliminary hearing?
- Was there a conflict of interest, and did prejudice arise from this conflict when Defense Counsel Holly Vradenburgh allowed the Commonwealth's Attorney's request that she consider the witness's comfort, to influence her decision to refuse conducting preliminary hearing on my behalf, and was denied effective assistance of Counsel?

LIST OF PARTIES

- [x] 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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Decision of Court of Appeals of Virginia
APPENDIX B	Decision of the Circuit Court for the City of Charlottesville
APPENDIX C	Decision of the Supreme court of Virginia
APPENDIX D	Copy of Petitioner's Letter to Pretrial Counsel Concerning Preliminary Hearing
APPENDIX E	Pretrial Counsel's Response to Appendix D

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Holloway v. Arkansas	435 U.S., 475, 55 L. Ed. 2d 426, 98 S. Ct. 1173 (1978)
Cuyler v. Sullivan	446 U.S., 335, 64 L. Ed. 2d 333, 100 S.Ct. 1708 (1970)
Wheat v. United States	486 U.S., 153, 100 L. Ed. 2d 140, 108 S. Ct. 1692 (1988)
Monroe v. United States	389 R. 2d 811 (D.C. 1978)
Mc Fadden v United States	614 A. 2d 11, 15 (D.C. 1992)
Nelson v. United States	601 A. 2d 582, 591 (D.C. 1991)
Mc Fadden v United States	614 A. 2d 17, 18 (D.C. 1992)

STATUTES AND RULES

- Fifth Amendment to the United States Constitution
- Sixth Amendment to the United States Constitution
- Fourteenth Amendment to the United States Constitution
- Article 11 of the Universal Declaration of Human Rights

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.

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

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Court of Appeals of Virginia court appears at Appendix A to the petition and is

- [] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Circuit Court for the City of Charlottesville appears at Appendix A to the petition and 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 02/01/2022. A copy of that decision appears at Appendix C.

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

- **Amendment V to the United States Constitution**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall 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; nor shall private property be taken for public use, without just compensation.

- **Amendment VI to the United States Constitution**

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 where in 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 him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

- **Amendment XIV, Section 1 of the United States Constitution**

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 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 within its jurisdiction the equal protection of the laws.

- **Article 11 of the Universal Declaration of Human Rights**

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

STATEMENT OF THE CASE

On May 23, 2019, Defense Attorney Holly Vradenburgh told me that she would not take part in a preliminary hearing if I chose to exercise my right to have one. Part of her reasoning referenced the inconveniences witnesses would suffer. I pointed out to her that my rights trumped the witnesses' comfort. Ms. Vradenburgh agreed but still refused.

On May 24, 2019, I mailed a letter to Ms. Vrandenburgh and the Circuit Court for the City of Charlottesville capturing the previous day's conversation between myself and Ms. Vrandenburgh so that it would be stored in my file.

On June 24, 2019, Ms. Vrandenburgh wrote me a letter requesting that I recant my May 24th letter. I denied her request. She made no attempt to deny my claims addressed in the letter.

On July 9, 2019, a hearing was held to address my letter to Ms. Vrandenburgh, as well as her motion to withdraw herself from my case as Defense Counsel. As the record will show on the 3rd line of the 4th page of the July 9th transcript. Part of Counsel's reasoning stated that the Commonwealth's Attorney requested that my attorney have "consideration and respect" for their victim. This in turn robbed me of the opportunity to obtain testimony on record, as well as other crucial information.

On October 3, 2019, a hearing was held to address Defense Counsel's Motion to Withdraw, submitted at my request. Motion was denied without proper inquiry and/or an opportunity for me to present the rationale for my request. Commonwealth's Attorney Joseph Platania influenced fill-in judge, Honorable Judge Humes J. Franklin Jr. by stating that Ms. Vrandenburgh was the 2nd attorney I asked to withdraw from my case, as shown on lines 15-18 of page 6 of the October 3rd transcript. The July 9th shows Holly Vrandenburgh's request to withdraw. It also shows me clearly tellin the court that I was not requesting that my attorney withdraw, as shown on lines 4-6 of the 3rd page of the July 9th transcript.

REASONS FOR GRANTING THE PETITION

My Pre Trial Counsel, Holly Vrandenburgh, refused to conduct a preliminary hearing on my behalf. Letters between myself and Counsel discussing my dissatisfaction of her refusal can be found in Appendices D and E. On record, Counsel stated that part of her refusal was a result of the Commonwealth's Attorney's request that she consider the witness's comfort. The resulting conflict of interest denied me my rights to both effective assistance of Counsel and due process of law.

In Holloway v. Arkansas the Supreme Court indicated that when a conflict of interest involving an accused's Counsel is shown, prejudice arising from this conflict is presumed for purposes of determining whether the accused has been deprived of effective assistance of Counsel. The Sixth Amendment's guarantee to the assistance was among those Constitutional Rights so basic to a fair trial that their infraction could never be treated as a harmless error.

In many cases, Cuyler v. Sullivan for example, showing an actual conflict of interest was sufficient to obtain relief. The prejudice suffered by my attorney's refusal to go through with a preliminary hearing at the request of the Commonwealth emphasizes the need for this Honorable Court to intervene and grant relief.

In Wheat v. United States, the Supreme Court said that a court that is confronted with a possible conflict of interest involving an accused's Counsel was required to take adequate steps to ascertain whether such conflict warranted necessary intervention. The transcript for the July 9, 2019 hearing shows both conflict and prejudice.

On October 3, 2019, a hearing was held to address a Motion to Withdraw submitted by Defense Counsel Anthony Martin, at my request, due to a claim of Ineffective Counsel. The motion was denied without any inquiry. I was not allowed to give input, other than whether I would keep Martin as Counsel or represent myself until after the ruling was made. In Monroe v. United States, the court said that if a Defendant claims that Counsel is providing Ineffective Counsel Assistance before the trial or acceptance of Plea Agreement the court must, before trial or acceptance of Plea Agreement, "conduct an inquiry sufficient to determine the truth and scope of Defendant's allegations". This did not take place in my case.

Please see also McFadden v. United States and Nelson v. United States. "When a Defendant requests new counsel, based on pretrial...ineffectiveness, several weeks before trial, and the court conducts no inquiry, this court will remand for findings on the issue. The court will also remand when the Defendant has made a pretrial request for new Counsel immediately before trial, but no inquiry has been made, and thus there is no basis on which to determine whether the claim may have merit. On the other hand, if there is sufficient evidence on the record to sustain the ruling of the Trial Court in spite of the court's failure to make proper inquiry before ruling, this court will affirm. We will reverse outright, however, where there is obvious prejudice, or when the Trial Court's conclusions are unsupported by the pretrial record." McFadden v. United States.

Commonwealth's Attorney Joseph Platania argued against my request for new Counsel by telling the court that I had abused my right to counsel by requesting Holly Vrandenburgh's removal. Evidence of this claim can be found in the transcript for the October 3, 2019 hearing. The July 9, 2019 hearing transcript irrefutably shows Defense Counsel Holly Vradenburgh stating that it was her request to withdraw. Record will also show me clearly stating that I was not asking my attorney to withdraw, in contrast to the Commonwealth's Attorney's claim of my abusive actions, calling for the reversal referenced in McFadden v. United States.

For the stated reasons, I request that this Honorable Court grant this petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Verified by pdfFiller

Towell Travis Le Gendre

04/26/2022

Date: 04/26/2022