

DEMARIO JEROME ELLIS

PETITIONER

WRIT OF CERTIORARI

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

~~DEMARIO JEROME ELLIS~~ -PETITIONER
(Your Name)

STATE OF INDIANA -RESPONDENT(S)

PROOF OF SERVICE

I, DEMARIO JEROME ELLIS, do hereby swear or declare that on this date, MAY - 12, 2022, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by personally handing the same to the appropriate staff at the New Castle Correctional Facility to be placed in the facility's prison legal mail system and deposit in the United States mail, First-Class postage prepaid

The names and addresses of those served are as follows:

OFFICE OF THE INDIANA ATTORNEY GENERAL, 302 WEST WASHINGTON STREET
I.G.C.S. 5th FLOOR, INDIANAPOLIS, INDIANA 46204, ^{INDIANA DEPUTY ATTORNEY GENERAL}
SAMUEL DAYTON,
INDIANA DEPUTY ATTORNEY GENERAL ^{SUPREME COURT OF THE UNITED STATES CLERK}
SIERRA A MURRAY, ^{1 FIRST STREET N.E. WASHINGTON, DC}
²⁰⁵⁴³

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY - 12, 2022

DEMARIO JEROME ELLIS PRO. SE #166596

NEW CASTLE CORRECTIONAL FACILITY

P.O. BOX 14

NEW CASTLE INDIANA

47362

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DEMARIO JEROME ELLIS

Petitioner

STATE OF INDIANA)
)
) SS:
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH SUPERIOR COURT
2020 TERM
CAUSE NO. 71D03 2002 PC 000004

- FILED -

DEMAJIO ELLIS,

OCT 07 2020

Petitioner
VS.

Clerk
St. Joseph Superior Court

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

STATE OF INDIANA,

Respondent

FINDINGS OF FACT¹

1. On June 5, 2018, Petitioner, Demajio Ellis, was convicted on two counts of Attempted Murder, a Class A felony, and two counts of Attempted Robbery, a Class A felony.
2. On July 5, 2018, Ellis received two consecutive fifty (50) year sentences with thirty (30) years suspended on the Attempted Murder Counts, and eight (8) years concurrent for the two Attempted Robbery Counts, concurrent with the Attempted Murder charges.²
3. On the day of sentencing Ellis expressed his wish to appeal his case. The St. Joseph Public Defender's Office was appointed to perfect Ellis' appeal.
4. His appeal raised two issues; first, that the Court committed fundamental error by allowing the State to call a witness knowing the witness would invoke the Fifth Amendment and, second, that there was a lack of evidence to convict him of Attempted Murder.
5. On April 25, 2019, the Court of Appeals affirmed Ellis' conviction³.
6. On February 10, 2020, Ellis filed a Petition for Post-Conviction Relief.
7. In his petition, Ellis alleged that he was denied effective assistance of appellate counsel, and the same two issues he raised on his appeal.

¹ State chose not to file proposed Findings of Fact or Conclusion of Law within the time frame ordered by the Court.

² The parties agreed that the A robbery convictions should be treated as Class C felonies because the A alleged serious bodily injury which used the same facts to convict Ellis of the Attempted Murder.

³ *Ellis v. State, 124 N.E.3d 660 (Ind. App. 2019) unpub.*

8. Ellis alleged that his appellate counsel's failure to file or to inform him in a timely manner concerning filing a petition for transfer to the Supreme Court was ineffective.
9. State raised the affirmative defense of Res-Judicata as to his appeal issues.
10. On September 11, 2020, a hearing was held.
11. Ellis called Ms. Y. Chambers the mailroom supervisor at the Pendleton Correctional Facility.
12. Chambers testified that all legal mail received at the facility is logged and Ellis received no mail from his appellate counsel and further an exhibit was entered supporting Chambers' testimony.⁴

CONCLUSIONS OF LAW

To show ineffectiveness of counsel, a petitioner must show that his lawyer's performance fell below objective standards of reasonable based on prevailing norms and there is a reasonable probability that, but for the attorney's error, the result of his appeal would have been different. Performance and prejudice prongs are separate and distinct. Failure to satisfy both prongs causes the petition to fail. *Strickland v. Washington*, 466 U.S. 688(1984), *Henley v. State*, 881 NE2d 639(Ind 2008).

The Court need not address the performance prong; because, Ellis failed to present any evidence to show that, had a petition for transfer been filed, there was a reasonable probability the Supreme Court would have granted it. *Martin v State* 760 NE2d 597(Ind. 2002). It is for this reason this Court finds that Mr. Ellis' Petition is DENIED.

ENTERED ON THE DATE FILE MARKED HEREON.

JEFFREY L. SANFORD, JUDGE
ST. JOSEPH SUPERIOR COURT

⁴ On April 22, 2020, appellate counsel Scott Duerring filed an affidavit stating that he sent Ellis a letter informing him of the adverse decision, that he did not think he could file a Petition to transfer in good faith and that Ellis had 30 days to file a petition for transfer. He attached the April 26, 2019, letter to his affidavit. The parties agreed that the affidavit would serve in lieu of his testimony.

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