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SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 2021

ALLEN J. HARRISON

versus

STATE OF LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT, DOCKET NUMBER: 2022-00069; FROM THE COURT OF APPEAL, FIRST CIRCUIT, DOCKET NUMBER: 2021-0525; TO THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF SAINT TAMMANY, CASE NUMBER: 612593, THE HONORABLE ELLEN M. CREEL, JUDGE PRESIDING.

'PETITION FOR WRIT OF CERTIORARI'

FILED BY:

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ORIGINAL

QUESTION PRESENTED FOR REVIEW

Whether Petitioner was denied the due process of law under the Fifth and Fourteenth Amendments to the Constitution, when retained counsel admitted their fault concerning a plea bargain from a state-court conviction and sentence; and, whether this admission contributed to ineffective assistance of counsel under the Sixth Amendment to the Constitution?

LIST OF PARTIES TO PROCEEDING

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CORPORATE DISCLOSURE STATEMENT

I, Allen J. Harrison, do not own any parent corporation or any publicly held corporation or 10% of any corporation's stock in these United States of America.



ALLEN J. HARRISON

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CITATIONS OF REPORTS

State v. Harrison, No. 612593, (La. 22nd JDC 01/28/20),
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State v. Harrison, No. 2021-0525, (La. App. 1 Cir. 12/22/21)
_____ So.3d _____. (unpublished)

State v. Harrison, No. 2022-00069, (La. 03/15/22),
_____ So.3d _____.

BASIS FOR JURISDICTION

On March 15, 2022, the Louisiana Supreme Court denied the Petitioner's application for supervisory writs of his direct appeal. This is the order sought to be reviewed today.

It is the Petitioner's belief that the statutory provision that confers this Supreme Court's jurisdiction to review the order above is Title 28 U.S.C. S. 1257(a), and Title 28 U.S.C. S. 452.

The Petitioner has mailed a copy of this application to the Governor and Attorney General of the State of Louisiana.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States of America

The Fifth Amendment

The Sixth Amendment

The Fourteenth Amendment

CONCISE STATEMENT OF THE CASE

Allen J. Harrison was billed in St. Tammany Parish, 22nd Judicial District Court, State of Louisiana, with certain sex crimes. This bill was amended a year later.

On January 28, 2020, Allen J. Harrison, on advice of his retained attorneys, pled guilty to (2) counts of Molestation and (1) count of Oral sexual battery. The trial court sentenced Mr. Harrison to serve eight years imprisonment.

On February 28, 2020, Allen J. Harrison, through new counsel, filed a motion to withdraw guilty plea or in the alternative motion for reconsideration of sentence. After a hearing, the trial court denied this motion. On February 5, 2021, the trial court granted Petitioner's motion for appeal.

The Court of Appeal, First Circuit affirmed Petitioner's conviction and sentence on December 22, 2021. Petitioner sought a timely application for supervisory review in the Louisiana Supreme Court which denied his application on March 15, 2022.

Petitioner is now before this honorable court to seek review of whether he has been denied the due process of law under the Constitution.

CONCISE ARGUMENT

Allen J. Harrison was represented by two retained attorneys in the 22nd Judicial District Court, Parish of St. Tammany, State of Louisiana. Their affidavit is enclosed in the Appendix to this application. (See Appendix Page 35b.)

From this affidavit, it is clearly convincing and prima facie that Hank Graham and Kevin McNary provided ineffective assistance during his plea bargain with the St. Tammany Parish District Attorney's Office.

The subject-matter that puts Mr. Harrison before this Supreme Court is found in the Constitution. The Fifth Amendment states:

"...nor be deprived of life, liberty, or property, without due process of law..."

This provision of the supreme law of this land is exactly what Mr. Harrison has been subject to. The deprivation of his future liberty and life are the constants that deserve review in this Supreme Court today.

If this Bench would now see the Sixth Amendment to the Constitution, it states:

"...and to have the Assistance of Counsel for his defence."

It is clear by the affidavits of Hank Graham and Kevin McNary that they were ineffective at a critical stage in a state criminal prosecution. Strickland v. Washington, 466 U.S. 668 (1984).

If this Bench will now see the Fourteenth Amendment to the

Constitution, it states:

"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..."

It is clear from the trial court record that the State of Louisiana has enforced laws that abridge the privileges and immunities of a citizen of the United States - Mr. Allen J. Harrison.

It is also clear from the record that the State of Louisiana has deprived Mr. Harrison of future liberty and life without due process of law.

Your Supreme Honor(s), it is settled law that a guilty plea is constitutionally infirm when a defendant is induced to enter that plea by a plea bargain or by what the defendant justifiably believes is a plea bargain, and that bargain is not kept. In such a case a defendant has been denied 'due process of law' because the plea was not freely and knowingly. McKenzie v. Wainwright, 632 F.2d 649 (5th Cir. 1980).

At the Boykin hearing the retained attorneys gave Mr. Harrison 'new' advice that he would be eligible for parole upon serving 75% of the sentence imposed. That advice would have had Mr. Harrison serving only six years instead of the full '8' years he is currently serving, thus, depriving Mr. Harrison of his future liberty and life in society. Had Mr. Harrison been given 'correct' advice from his retained attorneys he would not

have pled guilty. (See Affidavit of Allen J. Harrison - Appendix Page 21.)

Mr. Harrison is before this Bench today because the State of Louisiana - through the trial court, the appellate court, and the state supreme court - has determined that since Mr. Harrison received a benefit of the plea bargain he is not entitled, as a citizen of the United States, to a withdrawal of his plea of guilty, contradicting their own language in State v. McCoil, 924 So.3d 1120 (La. App. 5 Cir. 02/27/06) and the dicta in McKenzie, Id. (See Appellate Court Opinion - Appendix Page 36.)

The reasoning that puts Mr. Harrison on this federal court comes from the dicta and language in Cuyler v. Sullivan, ~~xxx~~ where this Supreme Court determined that..."a guilty plea is open to attack on the ground that counsel did not provide the defendant with reasonable competent advice." (466 US 335 -1980)

The State of Louisiana has failed to recognize this authority in Mr. Harrison's only direct review of his conviction and sentence.

Also, the common law determined by this Supreme Court in Tollett v. Henderson, 411 U.S. 258 (1973), stated..."Even though defendant pleas guilty, counsel must still render competent advice/service."

The question presented to this Bench is whether the State of Louisiana denied Mr. Harrison the 'due process of law', where his attorneys admitted giving him the 'incorrect' advice.

Had Mr. Harrison been aware that he would be forced to serve this sentence in full - he attests to this Bench that he would not have pled guilty, and would have chosen to present his innocence to a jury of his peers. That fact is the true emotions of Mr. Harrison today.

Seeing that, this fact that was determined in Cuyler, that opens a guilty plea to review was brought before this Supreme Court in McMann v. Richardson, 397 U.S. 759 (1970), ten years prior to the Cuyler Court decision where the rule of law was that a guilty plea cannot be attacked based on inadequate legal advice unless counsel was not a reasonably competent attorney and the advice was not within the range of competence demanded of attorneys in criminal cases.

That view has changed with time and custom, and the Cuyler decision is paramount to Mr. Harrison's standing in this Supreme Court, alongwith his future liberty.

Although the McMann Court gave rules to stop attacking guilty pleas, the Cuyler Court opinion simply states that if an attorney gives unreasonable advice - the guilty plea is constitutionally infirm, thus causing a defendant like Mr. Harrison to receive the benefits of the judicial process and the Constitution, through a withdrawal of the plea.

Mr. Harrison contends that he is actually and factually innocent of a state 'sex crime'. Because of Mr. Harrison's legal advice he entered a 'best interest' plea which did not conform to the 75% law guarantee. Mr. Harrison believes today

that he was coerced to enter this plea of guilty and the State of Louisiana is enforcing it although his attorneys admitted they gave him 'incorrect' legal advice.

The opinion and rule in Flores v. Estelle, 44 U.S. 881 (1980), stated: "A coerced plea is not a voluntary plea, and coercion can result from psychological as well as physical pressure."

It is more than evident that Mr. Harrison believed he would only serve six years instead of eight. The attorneys admitted their fault. Under the progeny in Strickland, id., the performance prong is proven by the attorney's affidavit. The prejudice prong is proved where Mr. Harrison will be deprived of his life and liberty through the advice of his counsels.

This case before this Supreme Bench is 'extraordinary'. Example: If a trusted friend tells you, you can drive 85mph on a particular highway and you do - and a police car stops you and gives you a \$500.00, ticket for speeding - would you not have some question towards that trusted friend?

The same is true when an attorney is paid money for legal advice. A reasonable attorney at law should not misstate the law. A reasonable attorney at law should not coerce a client by misstating the law. A reasonable attorney at law fails his client and his profession by misstating the law.

The facts are never before this Bench. If this Bench will now see The Uniform Rules of Superior Courts, Rule 33.4,

it provides:

- A.) Defense counsel should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.
- B.) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him in reaching a decision.

The foregoing rule recognizes efficacy of the negotiated plea agreements, and, in fact, provides for certain guidelines to be followed in negotiating plea agreements. The Louisiana Supreme Court has thus violated the Fourteenth Amendment to the Constitution by denying Mr. Harrison the 'due process of law'.

Your Supreme Honor(s), it is well known that principles of contract law apply in state plea bargains. If this Bench will see the Restatement (Second) of Contracts, Section 24 (1981), it is evident that an essential element in any contract offer is a clear understanding of the terms and conditions of the offer. Mr. Harrison reasonably believed he would be eligible for parole. That fact is an essential element of his plea bargain in which he received through his retained counsels.

Mr. Harrison was an average defendant in a criminal proceeding where he maintained his innocence throughout all pre-Boykin hearings. Mr. Harrison is unschooled in the methods

which occasionally taint the criminal process. Mr. Harrison interpreted the offer by the St. Tammany Parish District Attorney's Office through his two retained attorneys - and that offer was broken. Mr. Harrison will not receive the 75% law of the sentence imposed, and because he will not - the plea is constitutionally infirm.

Is it fair to Mr. Harrison that his attorneys misstated the law indirectly coercing him to plea guilty? Is it fair to Mr. Harrison that the State of Louisiana and its courts are refusing to withdraw his plea because he received a benefit of the plea?

This 'fairness doctrine' is incorporated in the opinion of Cooper v. United States, 594 F.2d 12 (4th Cir. 1979), where the constitutional right to 'fairness' is wider in scope than that defined by the law of contracts. Did the State of Louisiana observe this doctrine which it too has incorporated in State v. Anthony, 746 So.2d 606 (1999)? Mr. Harrison believes the State of Louisiana did not and has violated the supreme law of this land - the Constitution.

Continuing on, this Supreme Court reached a precedent in 1971, which stated that the plea bargain process must be attended by safeguards to insure the defendant what is reasonably due in the circumstances; Santobello v. New York, 404 U.S. 257.

Mr. Harrison's attorneys should be faulted. The courts of the State of Louisiana have egregiously ignored Mr. Graham's and Mr. McNary's solemn admission causing Mr. Harrison to be deprived of a constitutional liberty.

The prejudice in this case is overwhelming. This case is not a case where the State of Louisiana has reneged a plea offer. It is, though, a case where Mr. Harrison's acceptance has been thwarted by his inability to obtain the offer communicated to him through his retained counsels.

The case law of this country, both at the State and Federal levels are replete with instances where appellate courts have set aside guilty pleas because those pleas were not knowingly, voluntarily, and intelligently entered by a defendant. And, it is a fact that a court will vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear, or inadvertence, but the State of Louisiana has ignored this causing a constitutionally infirm plea to remain valid.

Brady v. United States, 397 U.S. 742 (1970).

In closing, Herring v. Estelle, 491 F.2d 125 (5th Cir. 1974) held that: "...the constitutionally required minimum representations by counsel requires reasonably effective assistance.."

The Petitioner, Allen J. Harrison, is now before this Bench, and if he has gained favor by this Bench for the Great Writ of Certiorari, he humbly requests that counsel be provided for him by this one Supreme Court. (18 U.S.C. § 3006A(d)(6).)


In the interest of justice Petitioner now concludes this original application to the Supreme Minds of these Lands.

PRAYER FOR RELIEF

WHEREFORE, I, Allen J. Harrison, now pray that this Supreme Court accept this application and afford me all equitable relief consistent with the Constitution of the United States of America. May it so be.

Respectively Submitted,

04-26-2022
Date


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VERIFICATION

I, Allen J. Harrison, under the penalty of perjury, verify that the facts and statements made in the foregoing application are true and correct to the best of my information and belief, and I put myself on the United States of America.


ALLEN J. HARRISON