

22-5047. ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUN 29 2022

OFFICE OF THE CLERK

MR. JERMAINE BLACKWELL — PETITIONER

VS.

FRANK B. BISHOP, JR. WARDEN; — RESPONDENT(S)
DOUGLAS F. GANSLER, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

MR. JERMAINE BLACKWELL ID#317-448

NBCI, 14100 MCMULLEN, HWY, SW

CUMBERLAND, MARYLAND 21502

QUESTION(S) PRESENTED

1. Did the lower Court error in Not finding that the Petitioner Trial Counsel committed ineffective assistance of Counsel when trial counsel misadvised the Petitioner that "he had nothing to lose if he elected to go to trial and reject a 20 years plea offer", when after trial he was sentenced to life plus 135 years ?
2. Did the Lower Court error in not finding that the Petitioner trial Counsel committed ineffective assistance of counsel when trial counsel failed to make clear the potential consequences and risks in going to trial ?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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STATUTES AND RULES

Lafler v. Cooper, 132 S. Ct. 1376 (2012)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 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 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 defence.

Amendment 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 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.

IN THE
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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 C to the petition and is

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[X] is unpublished.

The opinion of the STATE TRIAL (POST CONVICTION) court appears at Appendix B to the petition and is

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[X] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 23, 2022.

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 April 24, 2014. A copy of that decision appears at Appendix A.

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).

STATEMENT OF THE CASE

On the morning trial was to begin after having selected a jury the previous day the trial Judge, the prosecutor, the petitioner's counsel and counsel of the petitioner co-defendant discussed possible plea deals. The Judge made a offer to the petitioner of life suspended all but 20 or 25 years. The Judge then gave counsel a opportunity to discuss the plea offers with the clients.

At the Post conviction hearing petitioner trial counsel stated what took place when she relayed the plea offers to petitioner she stated:

"I conveyed to him that the offer was life suspend all but 20 years. And he asked me what did he have to lose. And I said I didn't think he [had] much, because at the time I was not experienced enough to realize that if he had been convicted, he would most likely get a life sentence. And so he asked me did he have anything to lose and I said I didn't think a Judge would sentence you - I didn't think a Judge would penalize you for trying a case. And I didn't think, in my wildest imagination at that time that he would get life plus 165 [sic] years."

Later on during the hearing, trial counsel was questioned by the State pertaining to petitioner guidelines, the following transpired.

"Q. You don't believe you would have mentioned the guidelines?

A. I don't think I would have said you're not going to get more then the guidelines. I didn't think he was going to get more than life suspend all but 20. So I really don't think I talked about you're going to get more than the guidelines or you're not going to get more than the guidelines.

REASONS FOR GRANTING THE PETITION

THE PETITIONER LIKE OTHERS WHO SUFFER FROM MENTAL CHALLENGES CANNOT DISCERN BETWEEN THEIR LAWYERS LEGAL ADVICE OR THEIR LAWYER'S STATED OPINIONS. TO A LAY PERSON ALL OF THEIR LAWYER'S RECOMMENDATIONS AND ANSWERS ARE LEGAL ADVICE TO HELP THEM.

ARGUMENT

Trial counsel admitted at the post conviction hearing that when she informed the petitioner of the offer of life suspended all but 20 years by the Judge he responded by asking trial counsel "what do I have to lose?" which shows petitioner was weighing his options but counsel response to the petitioner question was "I didn't think he [had] much" "I didn't think a Judge would penalize you for trying a case."

The response given to the petitioner was erroneous and aggrieved the petitioner because he had a lot to lose, which can be seen by his sentence after trial of life plus 135 years. Trial counsel admitted that she did not explain or inform the petitioner of the maximum penalties he faced if he went to trial, leaving him with the belief that he wouldn't receive more than what was offered cause he wouldn't be hurt if he went to trial. Petitioner's trial counsel's ineffectiveness violated his due process rights and his right to equal protection of the laws.

The lower court misconstrued the significance of *Lafler v. Cooper*, 132 S.Ct 1376 (2012), when he used the Petitioner's testimony as the major factor to deny petitioner's claim. Petitioner testified that he wanted to go to trial because his participation in this case did not amount to first degree murder. The lower court used petitioner's testimony to mean that petitioner did not want any plea deal.

Lafler v. Cooper; and *Missouri v. Frye* did not speak on or value the petitioner's thought process about the case, over trial counsel's

erroneous advice to petitioner within these cases. The Petitioner states that he only chose a trial by jury, because his trial counsel kept telling him. "He would not be hurt if he went to trial, because a Judge wouldn't penalize you for trying a case!" She never explained to the petitioner that by being involved in the robbery he could be convicted of first degree felony murder which also carried a life sentence. Plus a large number of years.

Trial counsel's advice on the legal process of petitioner's case denied petitioner due process and equal protection of the laws.

In this case trial counsel deprived the petitioner of the option to make an informed decision to plea guilty or go to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985) (voluntariness of guilty plea depends on adequacy of counsel advice) trial counsel's advice to petitioner was not adequate, nor correct.

The lower court is also saying that a opinion by counsel is basically meaningless as long as counsel is not stating that what they are saying is fact or based on a misinterpretation of the law. So under the guise of erroneous information being categorized as a opinion, a lawyer will be able to say anything to a defendant without any repercussions or the defendant having any course of action to seek judicial relief. Someone such as the petitioner who was young, naive, never been in trouble before and suffered from mental - challenges would be at a disadvantage trying to discern from counsel's advice based on his/her opinion verses advice based on the law.

CONCLUSION

Petitioner respectfully prays that this Honorable Court grants relief to the petitioner by giving him a opportunity to accept the plea offer.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Blackwell

Date: 6-28-22