22-5330

No. _____

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Demetrius Wade # 1240734 — PETITIONER
(Your Name)

vs.

Harold Clarke, Director
for Virginia Dept. of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Demetrius Jermaine Wade #1240734
(Your Name)
GreenRock Correctional Center
Post Office Box 1000
Chatham, Virginia 24531
(Address)

Chatham , Virginia 24531
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Claim # 1 on instant Writ of Certiorari.
Was issue # 1 on application for Certificate of Appealability.
Was claim # 1 on § 2254 Writ of Habeas Corpus.

(1). Was petitioner's 5th and 14th Amendment Rights violated when police tampered with evidence and removed bullet fragments recovered from the victim at his autopsy, and failed to submit them to the forensic scientist for comparison against bullets test fired from the alleged murder weapon?

Claim # 2 on instant Writ of Certiorari.
Was issue # 2 on application for Certificate of Appealability.
Was claim # 2-b on § 2254 Writ of Habeas Corpus.

(2). Was petitioner prejudiced after his trial counsel was ruled to be deficient in this claim for failing to investigate the missing bullet fragments that were removed from the victim and submitted to police; but police " tampered with evidence, and did not submit all the fragments to the forensic scientist for testing?

Claim # 3 on the instant Writ of Certiorari.
Was issue # 3 on application for Certificate of Appealability.
Was claim # 2-d on § 2254 Writ of Habeas Corpus.

(3). Was petitioner prejudiced after his trial counsel was ruled to be deficient in this claim for providing him with incorrect information when he first negotiated and presented him with a potential plea that had limited time to accept restrictions?

Claim # 4 on the instant Writ of Certiorari.
Was issue # 4 on application for Certificate of Appealability.
Was claim # 2-e on § 2254 Writ of Habeas Corpus.

(4). Was petitioner prejudiced after his trial counsel was ruled to be deficient in this claim for advising petitioner, while coercing him to take a plea, that upon a conviction of 4 murders, that he would be punished for 4 murders, although there was only 2 victims?

LIST OF PARTIES

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

[x] 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:

The Supreme Court of Virginia denied petitioner's state habeas corpus petition.
The U.S. District Court for The Western District of Virginia upheld the denial of petitioner's state habeas petition; And denied a certificate of appealability as well.
The United States Court of Appeals for The Fourth Circuit denied petitioner's certificate of appealability / re-hearing denied.

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TABLE OF AUTHORITIES CITED

STATUES AND RULES **PAGE NUMBERS**

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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals 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 United States district 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.

[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 appears at Appendix _____ to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was January 20, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 22, 2022, 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).

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

The date on which the highest state court decided my case was May 20, 2019. 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).

PETITION FOR WRIT OF CERTIORARI

Petitioner DEMETRIUS WADE, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals For The Fourth Circuit, denying petitioner's application for Certificate of Appealability.

OPINIONS BELOW

The following opinions and orders are pertinent here, all of which are unpublished: [1] Opinion on direct appeal by the Virginia Court of Appeals, confirming petitioner's conviction and sentence by (re-hearing) denied; 2/17/2017; [2] The Virginia Supreme Court upheld the decision of the Virginia Court of Appeals by (re-hearing) denied 3/22/2018; [3] State Habeas Corpus denied by Virginia Supreme Court 5/20/2019; [4] Federal §2254 Habeas Corpus in the U.S. District Court for The Western District of Virginia (Hon. Elizabeth K. Dillon) , order denying Writ of Habeas Corpus and denying Certificate of Appealability 5/21/2021 ; [5] Order by The United States Court of Appeals for The Fourth Circuit by (re-hearing) denied request for Certificate of Appealability 4/22/2022.

STATEMENT OF JURISDICTION

The District Court and The Court of Appeals for the Fourth Circuit denied petititoner's request for Certificate of Appealability. In Hohn v. United States ,524 U.S. 236 (1998), this court held that , pursuant to 28 USC § 1254 (1), the United States Supreme Court has jurisdiction, on certiorari, to review the denial of a request for a Certificate of Appealbility by a circuit court judge or a panel of a Federal Court of Appeals.

STATUTORY PROVISIONS INVOLVED

The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 USC § 2254. The standard for relief under " AEDPA " is set forth in 28 USC §2254 (d) (1).

STANDARD OF REVIEW

Denial of Certificate of Appealability

In Miller-El v. Cockrell ,537 U.S. 322,123 S.Ct. 1029 (2003), this court clarified the standards for issuance of a Certificate of Appelability [here after " COA]:

A prisoner seeking COA need only demonstrate a " substantial showing of a denial of a Constitutional Right." A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the district court's resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further..... We do not require petitioner to prove , before issuance of a Certificate of Appealbilty, that some jurist would grant the petition for habeas corpus. Indeed, a claim can be debatable even though jurist of reason might agree, after the Coa has been granted and the case has received full consideration, that petitioner will not prevail. Id; 123 S.Ct at 1034, citing Slack v. McDaniel , 529 U.S. 473,484 (2000).

STATEMENT OF THE CASE

On February 22,2016, petitioner entered a plea of no contest to two counts of second degree felony murder(§ Va.Code 18.2-33) and two counts of use of a firearm (§ Va.Code 18.2-53.1) in the Circuit Court for the City of Roanoke, Virginia. On June 1, 2016, petitioner was sentenced to 20 years a piece for each murder count(40 yrs), and three years for the first use of a firearm, and five years for the second count for use of a firearm (8 years). All for a total of 48 years.

STATEMENT OF PERTINENT FACTS

The incidents relevant to this petition occured on January 4, 2015, at about 3:00 am , at 3626 Shenandoah Av. N.W. in Roanoke, Virginia. Police responded to calls of a shooting at this location and upon their arrival, they discovered two people had been shot and killed, and four others had been wounded by gunfire as well. The vacant building was being rented for the purpose of being unlawfully operated as a nightclub where alcohol was being served, and music was being provided. At the time of the incident, about 20 patrons were present and most were intoxicated. Police received minimal cooperation from witnesses. Police secured the scene where they collected various firearms, various shell casings , bullet fragments,drugs and more.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th, 6th, and 14th Amendments of the United States Constitution

28 USC § 2254 (d)(1)
28 USC § 1254 (1)

§Va Code 18.2-33

§Va Code 18.2-53.1

REASONS FOR GRANTING THE PETITION

SEE THE ATTACHED PAGES No.s 1-13
FOR THE ATTACHED MEMORANDUM WHICH
IS WHERE THE REASONS FOR GRANTING
THE WRIT IS LOCATED.....

REASONS FOR GRANTING THE WRIT

ARGUMENT SUMMARY ;

(1). The police , after receiving bullet jacket and fragments from the office of the Medical Examiner , which were recovered from one of the victims at their autopsy, tampered with evidence and removed some of the fragments before submitting them to the ballistics department which prevented the forensic scientist from being able to compare those particular fragments to those test fired from the alleged murder weapon, a 9 m.m. pistol. It deprived the petitioner's defense of also being able to test the fragments and potentially present evidence which could've exonerated petitioner, or have reasonably weakened the Commonwealth's case against him. Barbee v. Warden , 331 F.2d 842(HN4)·

Because the description of other scars are consistent in measurment with different caliber, and some being of the same caliber gun shot wounds described in the victim's autopsy report, there's a high probability that the victim was wounded by, and or a 9m.m. pistol, a 40 caliber pistol, or a 45 caliber pistol. There's also probability that the victim was shot twice in the same place with a different or same caliber gun. There was the collection of 9m.m. shell casings fired from two different weapons recovered at the scene. Also, 45,40, and 50 caliber shell casings and fragments were recovered. " In support of this claim, please see the expert opinion in : Mills v. Warden Lieber Correctional Institution , U.S. Dist LEXIS 93916. "

The Va.Sp.Ct. in its opinion to deny petitioner's state habeas corpus, acknowledged that petitioner's trial counsel failed to share the victim's autopsy report with him before he entered a plea.

In the instant case, Jennifer Bowers, M.D., acting Medical Examiner for the City of Roanoke,Virginia, reports on victim Lenard Hamlett's autopsy that, " the bullet path terminated within the skeletal muscle of the left chest wall, where " multiple" deformed bullet and jacket fragments were recovered. " The "majority" of the fragments were recovered 14" from the top of the head and 6" left of midline. " All " jacket and bullet fragments are submitted as evidence.

However, an amended certificate of analysis dated March 18, 2015, prepared by Ms. Wendy Gibson, Forensic Scientist states that item # 705 is a single " bullet jacket " recovered at the autopsy of victim Lenard Hamlett. She makes no mention of fragments being received or tested.

However, during the autopsy of the other victim Ronald Ramey, the Medical Examiner, Ms. Jennifer Bowers, reports that the " majority " of the bullet jacket and fragments terminate themselves and embed within the anterior aspect of the 3rd lumbar vertebrate, 26" from the top of the head and midline. " " Recovered are multiple deformed jacket and bullet fragments, which have been submitted as evidence. " Unlike in the case of victim Lenard Hamlett, police submit " all " the bullet and jacket fragments to Forensic Scientist, Ms. Wendy Gibson for testing. Ms. Gibson reports in detail that she received and tested a bullet jacket, two(2) bullet jacket fragments and two(2) metal fragments in regards to the items received from the autopsy of Ronald Ramey.

Forensic Scientist, Ms Wendy Gibson stated in an affidavit that her notes doesn't reflect receiving fragments in regards to victim Hamlett, only a single bullet jacket.

And although there was confusion with the certificate of analysis dated January 18, 2015, and the amended cerificate dated March 18, 2015, in reference to the description of what was received from both victims, the medical examiner's autopsy report has never changed.

The Supreme Court of Virginia concluded in this claim that the officer chose not to submit duplicative evidence in regards to victim Lenard Hamlett. However, the Commonwealth has the obligation of presenting this evidence, even if it does appear to be repetitive. Almeida v. Warden , 195 F.2d 815,33 (3rd cir 1952) Note 15.

Likewise, the duty to disclose is that of the state , which ordinarly acts through the prosecuting attorney; but if he too is a victim of police suppression of material information, the state's failure is not on that account excused. Barbee v. Warden, 331 f.2d 842 HN3.

Evidence is favorable to the accused for the purposes of BRADY if it's either exculpatory or impeaching. If information would be advantageous to the defendant, or would tend to call the government's case into doubt, it is favorable.

Evidence is favorable to a defendant even if it's minimal. Comstock v. Humphries , 786 F.3d 701 (9th Cir 2005).

In the instant case, The United States Fourth Circuit Court of Appeals upheld the decision of the Supreme Court of Virginia, and that of the U.S. District Court for the Western District of Virginia where they ruled that because petitioner entered a knowingly and voluntary plea of no contest, and that exculpatory evidence is a trial right, there is no constitutional right to exculpatory evidence. States v. Ruiz ,536 U.S. 620.

However, as stated in United States v. Nelson ,59 F. Supp.3d 15 at [* 21-22], quoting Ruiz , 536 U.S. at 628-30, because Ruiz took a fast track plea, she was not entitled to " specific types " of exculpatory evidence. The same court (Ruiz) made no clear distinction between Brady exculpatory and impeachment material and a defendant's right to it prior to entering a plea; and that Ruiz does not foreclose a Brady v. Maryland violation from being the basis of a claim that a guilty plea is involuntary.

At Nelson [* 26], here the government concedes that it misrepresented the completeness of Nelson's discovery packet. At [* 27] ; the court ruled that, even if Nelson wasn't generally entitled to Brady v. Maryland materials before entering his guilty plea, once the government represented that it had given Nelson a complete copy of the e-mail exchange between Nelson and Palchak, the government was obligated to do so. C.F. United States v. Russell, 686 F.2d 35,39 222 U.S. App D.C. 313 (D.C. cir 1982).

As was in the case of Nelson quoting Russell , 686 F.2d at 41, in the instant case, the petitioner was entitled to treat the prosecution's submissions as truthful. The government may not have had the obligation to speak, but " because the prosecution chose to speak , and spoke incorrectly, to the instant petitioner's prejudice, his plea cannot be considered voluntary.

Also, in the instant case, it was acknowledged by the courts that petitioner's trial counsel had exercised in his discretion to view all the Commonwealth's discovery relevant to petitioner in accordance with their open file policy.

And the court approved Private Investigator viewed discovery on behalf of petitioner as well.

In the case of King v. DeMatteis , 2020 U.S. Dist. LEXIS 182209 at [*-3-4], in February of 2014, Deleware State Police and the Department of Justice began investigating criminal misconduct occuring in the Controlled Substance Unit of the OCME. (Office of The Chief Medical Examiner). The investigation revealed that some drug evidence sent to the Ocme for testing had been stolen by Ocme employees in some cases and was unaccounted for in other cases.

As a result of this conduct, Deleware's Office of Defense Services and Conflict Counsel filed more than 700 Rule 61 motions on behalf of numerous defendants convicted of drug related charges. The court has held two hearings to gather evidence regarding the events at the Ocme lab. The first hearing, which started on July 8,2014, involved defendants Dilip Nyala (" Nyala ") and Michael Irwin (" Irwin "). The second hearing,which was held in late August 2014, involved defendants Hakeem Nesbit (" Nesbit ") and Braheeim Reed (" Reed ") . During that August hearing, testimony uncovered that evidence in the Reed case had a significant discrepancy between what the officers seized, and what was actually tested at the independent lab retained by the state. As a result, the state entered a Nolle Pro Se Qui of the Reed case.

Unlike in the instant case, petitioner King , 2020 U.S. Dist. LEXIS 182209 at [*27] significantly,does not dispute that drugs seized and tested in his case were not what they purported to be; he admitted his guilt during the plea culloquy etc.

The court stated in Lawson v. Vaughn , 2006 Dist LEXIS 77123, that assuming, for the sake of argument, that police on the scene malicioulsy tampered with evidence, this is clearly a claim that petitioner's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA. To the extent that petitioner is arguing not that police were malicious with regards to the crime scene, but that they were allegedly negligent with regard to forensic evidence in this case, this is clearly a claim that petitioner's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA.

In the instant case, this issue was unknown to petitioner prior to him entering a plea which was the day of trial.

(2) Trial counsel for the petitioner was constitutionally deficient because he failed to exercise due diligence when investigating the forensic aspect of petitioner's case. The state habeas court ruled that petitioner's trial counsel was deficient in this claim, but ruled that petitioner wasn't able to show prejudice because he couldn't show how it would've changed his decision to enter a plea.

As was stated in the last claim, police tampered with evidence when they removed fragments that were recovered at victim Lenard Hamlett's autopsy by Medical Examiner, Ms. Jennifer Bowers.

Ms.Bowers' report indicates that she removed deformed bullet and jacket fragments from the victim's body and submitted them all as evidence which was to be picked up by police. However, Forensic Scientist, Ms. Wendy Gibson's report indicates that she received and tested a single bullet jacket. However, in regards to the other victim, Ronald Ramey, Medical Examiner, Ms. Jennifer Bowers reports that she recovered multiple bullet and jacket fragments that were deformed from him as well, and that she submitted them all as evidence which was to be picked up by police. And the report of Ms. Wendy Gibson, Forensic Scientist indicates that she received all the bullet and jacket fragments in regards to victim Ronald Ramey to which she describes in detail; A bullet jacket, two(2) bullet jacket fragments, and two(2) metal fragments.

This is clearly not an issue where petitioner just sat on his hands , and as was stated in the previous claim, the state habeas court ruled that petitioner's trial counsel obviously failed to share the victim's autopsy report with petitioner before he entered a plea.

These issues deprive the petitioner from the fairness in the process because there's just no way of telling what those missing fragments would have revealed. The accuracy of the ballistic results and what was supposed to be tested has been compromised and is no longer reliable. Based on expert opinion in Mills v. Warden Lieber Correctional Institution , U.S. Dist LEXIS 93916, those fragments could've been the result of two bullets

In the instant case, the state habeas court found that counsel was deficient in this claim, but that petitioner couldn't show prejudice because counsel's errors did not affect the outcome of the plea process. The state habeas court ruled that petitioner speculated that the Commonwealth would have been willing to negotiate a more favorable plea had his trial counsel possessed correct information during negotiations .

The State habeas court also stated that it strains belief that petitioner would accept a plea offer to avoid the risk of being sentenced to two life terms plus 138 years if he was unwilling to accept an offer to avoid the possibility of four life term plus 138 years.

In response to the respondent's response on the petitioner's § 2254 federal habeas corpus petition, petitioner motioned the court to ask leave to amend his federal habeas petition, which was granted. Inside his amendment on this claim, petitioner added that the state habeas court's decision to deny this claim involved an unreasonable application (or was contrary to) clearly established federal law as determined by the Supreme Court of the United States in Lafler v. Cooper , 566 U.S. 156,164 (2012), which was implied in every habeas petition filed by petitioner.

It is the position of the petitioner that he can show prejudice in this claim because the state habeas court ruled that trial counsel was deficient when he provided incorrect information when he advised petitioner of the proposed plea offer; And the prejudice prong is met because petitioner ultimately recevied a 48 year sentence which is 13 to 28 years more than he would have received had he taken the first offer of 20 to 35 year capped plea that lapsed because of trial counsel's actions.

The state and federal courts seem to ignore and not exercise stare decisis in the United State Supreme Court precendent that's set in Lafler v. Cooper , 566 U.S. 156 (2012) and Missouri v. Frye , 566 U.S. 132 (2012). Instead, they use the scenario that petitioner is unable to show prejudice because he speculated, " only in his habeas petition," that trial counsel could've negotiated a more favorable plea, which is not irrational thinking.

Secondly, petitioner fails to demonstrate how counsel's incorrect statement of the number and severity of the charges affected the outcome of the plea process. Hill , 474 U.S. at 59.A

As was stated in petitioner's response to the respondent's response to petitioner's amended petition. (1) Petitioner merely suggested that his trial counsel could've re-negotiated the offer with the possession of correct information on his habeas corpus petition. At no time while speaking with his trial counsel did petitioner make this suggestion. At that time, petitioner was simply trying to gain a better understanding of the correct amount of offenses he faced and their true punishments. Petitioner lacked the " correct " information needed to factor the consequences vs. the benefits he would suffer or gain by accepting the plea he was being offered. Moreover, trial counsel never stated that in his affidavit or elsewhere, that petitioner wanted him to negotiate a more favorable plea. However, he did admit to providing inaccurate information to petitioner purposely in order to pursuade acceptance of the offer. (2) Also, as was stated in petitioner's amended petition, the appropriate remedy for counsel's error was to re-offer the plea bargain, and conduct further proceedings in state court rather than directing that the plea bargain be enforced as was in Lafler v. Cooper , 566 U.S. 156 (2012). Under the circumstance, and in the interest of judicial convience, it's rational to conclude that the Circuit Court would've accepted the offer of 20 to 35 year capped plea resolution. It left the judge with the option of imposing a maximum of 35 years in his discretion. Moreover, because the Commonwealth imposed a time limit suggests that they wouldn't have withdrawn the offer. It was close to the date of trial and the liklihood of intervening circumstances were low.

Petitioner simply lacked the full understanding of the risk of going to trial. He was unable to make an'intelligent'choice of whether to accept a plea deal or take his chances in court. United States v. Grammas , 376 f.3d 433,436-37 (5th cir). Failing to properly advise a defendant on the maximum sentence that he could receive falls below the objective requisite Strickland standard. Teague v. Scott , 60 f.3d 512 514 (5th cir)

Commonsense, not to mention " judicial precedent ", recognizes that there is more to consider than simply the liklihood of success at trial.

The decision to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. When those consequences are, from the defendant's perspective, similarly dire, even the smallest chances at success at trial may look attractive. Lee v. United States 137 S.Ct. 1958.

(4). Trial counsel for the petitioner was constitutionally deficient in this claim according to the 5th,6th, and 14th, Amendments of the U.S. Constitution. Although occuring at different times in the petitioner's case, this claim is similar to the previous claim. However, petitioner didn't realize until he transferred to prison and researched legislation, that his trial counsel had given him bad advice about being convicted and " punished " on four murders for two victims in this claim. (Trial counsel stated this in his summary of advising petitioner of his rights and also pressured petitioner on the day of trial using this bad information.) Unlike in the previous claim, trial counsel failed to address this issue in his affidavit.

The Virginia Supreme Court and The U.S. District Court for the Western District of Virginia ruled, which was upheld by the United States Court of Appeals For the Fourth Circuit, in denying petitioner's certificate of appealability, that petitioner's trial counsel was deficient, but that petitioner is unable to show prejudice. They ruled that petitioner must convince the court that a decision to reject a plea agreement would have been rational under the circumstance. Padilla v. Kentucky,539 U.S. 356, 372 (2010). United States v. Fugit , 703 F.3d 248,260 (4th cir 2012).

The court stated that given the alleged overwhelming strength of the Commonwealth's evidence, a decision to reject a plea agreement with knowledge petitioner faced two life sentences would have been no more reasonable than had he faced four. see Pilla v. United States ,668 f.3d 368,373, (6th cir 2012).

While petitioner's federal §2254 Habeas Corpus was pending, petitioner motioned the federal court to ask leave to amend this particular claim in his petition. That leave was granted because justice so required.

In the petitioner's amended petition, petitioner added that the Virginia Supreme Court's decision to deny this claim involved an unreasonable application of (or was contrary to) clearly established federal law as determined by The United States Supreme Court ,§2254 (d) (1), in Lee v. United States , 137 S.Ct. 1958; 18 L.ed 2d 476 ;(2017).

As in the instant case, in the case of Lee,137 S.Ct.1958 [*1966], Lee argues that he can establish prejudice under Hill because he never would have accepted a guilty plea had he known that he would be deported as a result. Lee insist he would have gambled on trial, risking more jail time for whatever small chance there might be of an aquittal that would let him remain in the United States. The Government responds that, since Lee had no viable defense at trial, he would almost certainly have lost and found himself still subject to deportation, with a lengthier prison sentence to boot. Lee, The Government[***15] contends, cannot show prejudice from accepting a plea where his only hope at trial was that something unexpected and unpredictable might occur that would lead to an aquittal.

Lee[*1966] The Government ask that we, like the Court of Appeals below, adopt a per se rule that a defendant with no viable defense cannot show prejudice from the denial of his right to trial. Brief for United States26. As a general matter, it makes sense that a defendant who has no realistic defense to a charge supported by sufficient evidence will be unable to carry his burden of showing prejudice from accepting a guilty plea. But even in elevating this general proposition to a per se rule, the Government makes two errors. First, it forgets that categorical rules are ill suited to an inquiry that we have emphasized demands a " case by case " examination of the totality of evidence Williams v. Taylor , 529 U.S. 362. And more fundamentally, the Government overlooks that the inquiry we prescribed in Hill v. Lockhart , focuses on a defendant's decisionmaking, which may not turn solely on the likihood of conviction after trial.

Lee[*1966] A defendant without any viable defense will be highly likely to lose at trial. And a defendant facing such odds will rarely be able to show prejudice from accepting a guilty plea that offers him a better resolution than would be likely after trial. But that is not because the prejudice inquiry in this context looks to the probability of a conviction for its own sake. It is instead because defendants obviously weigh their prospects at trial in deciding whether to accept a plea. See Hill . Where a defendant has no plausible chance of an aquittal at trial, it is likely

that he will accept a plea if the government offers one.

But commonsense (not to mention our precedent) recognizes that there is more to consider than simply the liklihood of success at trial. The decision whether to plead guilty involves assessing the respective consequences of a conviction after trial and by plea. When those consequences are, from the defendant's perspective, similarly dire, even the smallest chances of success at trial may look attractive. For example, a defendant with no realistic defense to a charge carrying a 20-year sentence may nevertheless choose trial, if the prosecution's plea offer is 18 years. Here Lee alleges that avoiding deportation was the determining factor for him; deportation after some time in prison was not meaningfully different from deportation after somewhat less time. He says he accordingly would have rejected any plea leading to deportation- even if it shaved off prison time- in favor of throwing a " Hail Mary " at trial.

Lee[*1967] The Government urges that, in such circumstances, the possibility of an aquittal after trial is " irrelevant to the prejudice inquiry," pointing to our statement in Strickland that [a] defendant has no entitlement to the luck of a lawless decisionmaker". 466 U.S. at 695 . That statement, however, was made in the context of discussing the presumption of reliability we apply to judicial proceedings . As we have explained, that presumption has no place where, as here, a defendant was deprived of a procceding altogether. Flores-Ortega , 528 U.S. at 483. In a presumptively reliable proceeding, "the possibilty of arbitariness, whimsy, ' nullification,' and the like " must by definition be ignored. Strickland, 466 U.S. at 695. But where we are instead asking what an individual defendant would have done, the possibility of even a highly improbable result may be pertinent to the extent it would have affected his decisionmaking.

In the instant case, trial counsel advised petitioner that he would be punished for 4 murders upon a conviction for just 2 victims.

Because petitioner in the instant case faced what appeared to be overwhelming evidence, dose not diminish the fact that he may have still took his chances at trial had he known he only faced two life sentences and could only be punished for 2 murders. Petitioner questioned his trial counsel on this issue on numerous occasions. Trial counsel assured him that it could and would be done.

The decision to plead guilty involves assessing the respective consequences and a conviction after trial and by plea. When those consequences

are, from the defendant's perspective, " similarly dire," even the smallest chances of success at trial may look attractive. Lee , 137 S.Ct. 1958.

Petitioner was 39 years old at the time he was sentenced to serve 48 years which is essentially two life sentences.

Trial counsel's deficient performance in the instant case arguably led not to a judicial proceeding of disputed reliability, but rather the forfeiture of the proceeding itself. Flores-Ortega , 528 U.S. 470.

The error in the instant case is one that affected the petitioner's understanding of the true consequences of pleading guilty versus going to trial.

Trial counsel never changed his advice, even after petitioner entered a plea.

Petitioner is able to show prejudice in this claim under Hill because the 48 years he received is direly similar to two life sentences because petitioner was 39 years of age at the time of sentencing.

The courts have ignored the precedent set by Lee v. United States , 137 S. Ct. 1958, and how it should be applied to the instant claim because of such close similarity of counsel's ineffectiveness and the prejudice suffered by both petitioners.

Reasons why petitioner's due process rights have been violated.

Petitioner has shown that his due process rights were violated, 5th & 14th Amend. in claim 1. Police tampered with evidence which was aknowledged by the state court and also by statement from forensic scientist. Petitioner entered a plea on the date of trial , and the Commonwealth beforehand, had represented that all discovery was made available to trial counsel. Because of the type of evidence involved, it calls for the court to take action to protect and to assure petitioner was afforded his rights. Loud Hawk, 628 f.2d 1139 (9th cir) 1979.

Petitioner's trial counsel was derelict in his duty to provide petitioner with competent counsel which is demanded by the 5th, 6th, and 14th, Amendments of the U.S. Constitution in claim 2. Trial counsel was ineffective as found by the Court according to the first prong in Strickland . Based on all the factors in claim 1 & 2 of this petition, petitioner has met the prejudice prong in claim 2 as well. Lawson v. Vaughn , 2006 Dist LEXIS 77123.

Petitioner's trial counsel was ruled to be deficient in claim 3 by the state habeas court. And because the state court's assessment of this claim is contrary to the precedent set in Lafler v. Cooper by this court, the prejudice prong is met because petitioner ultimately received more time than he would have received had he taken the first plea that expired because of his trial counsel's actions.
Trial counsel admitted in an affidavit that he intentionally provided petitioner with incorrect information to coerce a plea. Prejudice has been demonstrated in regards to this claim.

Petitioner has made the required showing in claim 4 which is that his trial counsel's ineffectiveness prejudiced him. Although situated differently as far as offenses goes, however, the instant case and that of Lee v United States , 137 S.Ct. 1958, both petitioner's suffered the same style prejudice at the hands of their trial counsel's very similar actions. The circumstances of Lee and the instant claim are identical. The courts, in the instant case, have ignored the precedent set in Lee v.United States, 137 S.Ct 1958 .

CONCLUSION

Petitioner prays that after a careful review of the claims presented herein, that this Honorable Court will conclude that petitioner's rights were indeed violated and that the decisions of the lower courts were and still are in conflict with other circuits, and more importantly, decisions of this court. And that;

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 7-25-2022