No. 22-5555

IN THE
Supreme Court of the United States
October Term, 2022

ORIGINAL

DENNI VALDEZ,

Petitioner,

v.

ECKERT STEWART, Superintendent of Wende Correctional Facility,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Denni Valdez
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June, 2022

QUESTION PRESENTED

1. Did the Court of Appeals violate Appellant's Constitutional right to Due Process by not issuing a Certificate of Appealability or granting a hearing upon Appellant's request for a reconsideration or rehearing en banc.

2. Was the District Court confronted with substantial Constitutional violations in Appellant's Petition for a Writ of Habeas Corpus, and;

3. If so, did the District Court violate Appellant's right to Due Process by finding that there were no substantial Constitutional Claims made therein.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

PETITION FOR A WRIT OF CERTIORARI

Denni Valdez, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Department in this case.

OPINIONS BELOW

The Decision of the Court of Appeals denying rehearing/rehearing en banc is attached at Appendix A. The decision of the Court of Appeals denying the Application for a Certificate of Appealability is attached at Appendix B. The Decision of the District Court denying the Petition for a writ of habeas corpus is attached at Appendix C.

JURISDICTION

On April 14, 2022, the Court of Appeals denied the application for a rehearing by the panel and rehearing en banc. The jurisdiction of this Court is invoked under 18 USC §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions:

New York State Statutes:

STATEMENT OF THE CASE

Appellant, Denni Valdez, respectfully petitions for a writ of certiorari to appeal the Court's decision of December 1, 2021, which denied Appellant a rehearing and rehearing en banc.

This petition is based on the fact that the Court should have issued a COA as the application made a showing of the denial of a constitutional right.

FACTS

Relevant Factual and New York State Court Procedural Background.[1] Mr. Valdez was indicted and charged with Murder in the Second Degree (in violation of New York Penal Law ("NYPL") §125.25), and other crimes, in the Supreme Court of the State of New York, New York County.

During pre-trial proceedings, the mental competency of Mr. Valdez became apparent. His defense counsel served a notice indicating his intent to offer psychiatric evidence at trial (the "Notice"). (ECF Doc. 10-1, pp.10-11). In addition, counsel requested the trial court issue an examination order, pursuant to New York Criminal Procedure Law §730.20, directing Mr. Valdez be examined to determine whether he was mentally competent to stand trial. (ECF Doc.16-5, p.10, 16-6, p.17). In response, the trial court issued an examination order.

Mr. Valdez was then examined by a psychologist and a psychiatrist. The doctors issued reports which, among other findings, determined Mr. Valdez's IQ was 59 classifying him as having Mild Mental Retardation. (ECF Doc. 10-1, p.35, 39). In their reports, the doctors opined that Mr. Valdez was mentally incapacitated and unfit to stand trial.

[1] The recitation of the relevant factual and procedural background is derived from information in documents in the U.S. District Court (SDNY) docket in the proceeding below in Valdez v. Stewart, 17 cv 4121 (KPF). Citations to "ECF Doc" followed by a number refer to documents on the docket.

Subsequently, the trial court held a competency hearing. Both doctors testified at the hearing. At the hearing, among other testimony, the doctors testified that (1) Mr. Valdez was highly suggestible and easily led. (ECF Doc.16-3, p.14); (2) during discussions with Mr. Valdez about his plea options a, he seemed suggestible and confused and he seemed to be agreeing with whatever they were saying. (ECF Doc.16-3, p.28); (3) Mr. Valdez might be more suggestible than an average defendant and that he was easier to trick or mislead with questioning. (ECF Doc.16-2, p.18); and (4) Mr. Valdez was apt to agree with leading questions. (ECF Doc. 16-2, p.47)

During the hearing, the prosecution showed documents to the doctors who had not been made available to them prior to their examination and testimony. Both doctors indicated their opinions might change after reviewing these documents. As a result, the trial court did not issue a ruling on Mr. Valdez's competency to stand trial and ordered a follow-up examination to be conducted by the doctors.

The doctors conducted a follow-up examination of Mr. Valdez. In their reports, they concluded he was fit to stand trial.

The trial court then conducted a follow-up competency hearing. During the hearing, among other testimony, one doctor testified she was aware that during a

guilty plea allocution (in Mr. Valdez's prior criminal case), Mr. Valdez did not use his own words and instead, responded to leading questions by the Judge. (ECF Doc. 16-5, p.28). She indicated that, although she changed her opinion about Mr. Valdez being fit to proceed, this case was a close call and not certainly not one of the most clear-cut of cases she had seen. (ECF Doc. 16-5, p.24).

Subsequent to the follow-up competency hearing, the trial court ruled that Mr. Valdez was fit to proceed. It stated it was willing to impose a sentence of 18 years to life if Mr. Valdez was willing to plead guilty to the Indictment. (ECF Doc. 16-6, p,24)

In response to the court's plea offer, Mr. Valdez pled guilty to the Indictment. The transcript of the plea proceeding (ECF Doc. 16-6) is submitted as an Exhibit to this Memorandum.

On July 19, 2012, Mr. Valdez was sentenced to a term of eighteen years to life imprisonment.

Mr. Valdez appealed his conviction to the Appellate Division of the Supreme Court of the State of New York. Relevant to the matter at bar, on appeal, Mr. Valdez argued his guilty plea must be vacated because it was not knowing and voluntary. This claim was denied and the conviction was affirmed. People v.

Valdez, 27 N.Y.3d 873 (2016). Regarding the voluntariness of the guilty plea, the Appellate Division stated:

> **[W]e find that the plea was knowing, intelligent and voluntary. During the plea proceeding, whenever defendant made a statement that could be viewed as negating an element of the crime or raising a defense, the court asked clarifying questions that ensured that the allocution ultimately cast no doubt on defendant's guilt or the voluntariness of his plea. Defendant had been found competent after extensive CPL article 730 proceedings, and there was nothing to warrant an inquiry into whether defendant's mental condition impaired his ability to understand the proceedings, or into whether he waived any potential psychiatric defenses. 27 N.Y.S.3d at 873.**

Leave to appeal to the New York State Court of Appeals was denied. People v. Valdez, 27 N.Y.3d 1156 (2016).

By the pro se petition filed in the U.S. District Court for the Southern District of New York, entitled Valdez v. Stewart, 17 cv 4121 (KPF), Mr. Valdez sought issuance of a writ of habeas corpus (the "Petition"). (ECF Doc. 1). Relevant to the matter at bar, the Petition – subsequently supported by a supplemental submission from the undersigned counsel (ECF Doc. 26) – sought habeas review based upon a claim that due to his mental state, Mr. Valdez' guilty plea was not knowing and voluntary (the "Claim").

The Petition was referred to a Magistrate Judge for issuance of a Report and Recommendation ("R&R). The Magistrate issued an R&R which analyzed the

finding of the Appellate Division and the trial court's plea colloquy. (ECF Doc. 27).

The R&R recommended: denial of the Claim; dismissal of the Petition; and, that a Certificate of Appealability ("COA") not be issued. Id. Thereafter, the District Court issued an Opinion and Order which adopted the R&R and declined to issue a COA (the "Opinion and Order"). (ECF Doc. 31).

Subsequently, by the undersigned counsel, Petitioner filed a Notice of Appeal and moved for issuance of a COA.

Pursuant to 28 U.S.C. §2253(c)(1)(B), a habeas petitioner cannot appeal the denial of a habeas petition unless a circuit justice or a district judge issues a C.O.A. In the matter at bar, since the District Court and this Court both declined to issue a COA, petitioner appears before this court asking for a rehearing and/or rehearing enbanc based upon the decision to deny the issuing of a C.O.A.

28 U.S.C. §2253(c)(2) directs a C.O.A. may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court interprets this requirement as follows:

> **To obtain a COA under §2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that ... includes showing that reasonable jurist could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues**

presented were adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 483-4 (2000) (internal quotations and citations omitted)

Clarifying this standard in Miller-El v. Cockrell, 537 U.S. 322 (2003), the Supreme Court stated:

> **... This threshold inquiry does not require full consideration of the factual or legal basis adduced in support of the claims. In fact, the statute forbids it ... [O]ur opinion in Slack held that a COA does not require a showing that the appeal will succeed. Accordingly, a court should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with §2253 that a COA will issue in some instances where there is no certainty of ultimate relief [at all]. After all, when a COA is sought, the whole premise is that the prisoner "has already failed in that endeavor." Id. at 336-37.**

The Application For A COA Demonstrated That Jurists Of Reason Would Find It Debatable As To Whether The District Court's Ruling Was In Error By Denying The Claim.

By this motion, Appellant seeks a rehearing or rehearing enbanc for the issuance of a COA. The COA should have been issued since jurists of reason would find it debatable as to whether the district court's ruling was in error when it denied Appellant's Petition for a writ of habeas corpus. The latter contended that

due to appellant's mental state, his guilty plea was not knowing, intelligent and voluntary.

It is unequivocal that the claim presented in the original application for a COA fell within the purview of 28 U.S.C. §2253(c)(2). The claim was based upon the denial of a Constitutional right. The United States Supreme Court has ruled that a guilty plea must have been knowing, intelligent and voluntary. See, e.g., Boykin v. Alabama, 395 U.S. 238 (1969) ("It was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary.").

The transcript of Mr. Valdez's guilty plea proceeding -- coupled with his mental health examination and proceedings -- demonstrate that reasonable jurists may differ on the issue of whether Mr. Valdez's guilty plea was knowing, intelligent and voluntary.

In recommending the denial of the Claim, the R&R (as adopted by the District Court) evaluated the guilty plea "in light of the totality of the circumstances," coupled with him being represented by competent counsel, and concluded it was knowing and voluntary. As such, the R&R, and District Court,

held Mr. Valdez was not entitled to habeas relief under either 28 U.S.C. 2254(d)(1) or (d)(2).[2] (ECF Doc. 27, R&R, p.28-31, citation omitted).

A COA should have been issued for the Claim because it can be reasonable argued that the R&R (and the Opinion and Order) erred in holding that the Appellate Division's finding -- that Mr. Valdez's guilty plea was knowing and voluntary -- constituted an unreasonable application of clearly established Federal Law pursuant to 28 U.S.C. §2254(d)(1) and was based upon an unreasonable determination of the facts in light of the evidence pursuant to 28 U.S.C. §2254(d)(2).

There Are Numerous Facts And Circumstances Which Could Reasonably Lead Jurists To Reach A Different Conclusion.

First, the transcript of the plea proceeding indicates that, even though he was pleading guilty, Mr. Valdez denied culpability. (ECF Doc. 16-6, p. 26-42, submitted as an Exhibit to this Memorandum). At one point during the plea allocution Mr. Valdez denied he had any intent to kill (an element of Murder in the Second Degree) when he stated "I didn't mean to kill him." (ECF Doc. 16-6, p.39).

[2] 28 U.S.C. §2254(d)(1) permits the granting of a writ if a lower court's adjudication of the merits of the claim asserted in the writ "results in a decision that ... involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."

28 U.S.C. §2254(d)(2) permits the granting a writ if the state court adjudication "was based upon an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

This was not the first instance where he denied intent. The denial of intent is also noted in the reports of the psychiatrist and psychologist which had been provided to the trial court. See ECF Doc. 10-1, p. 36, 44, 50 and 63.

Second, during his plea colloquy, in response to questions by the trial court, Mr. Valdez made statements asserting various potential affirmative defenses based upon mental impairment. For example, during the plea allocution, he asserted "he wasn't in the right state of mind" when he shot the victim. (ECF Doc. 16-6, pp. 31-32).

This statement -- coupled with information gleaned during the course of the competency proceedings -- reiterated, to the trial court, that Mr. Valdez had potential mental disease based affirmative defenses to the charge of Murder in the Second Degree. These defenses included extreme emotional disturbance, see NYPL §125.25(1)(a), and that he suffered from a mental disease or defect at that time of the offense, see NYPL §40.15.

Third, during plea allocution, Mr. Valdez made several statements which supported justification as an affirmative defense under NYPL §§35.00, 35.10, 35.15. Among other statements, Mr. Valdez contended the victim was: bullying him (ECF Doc. 16-6, p.30); had been following him (ECF Doc. 16-6, p.31); had a pistol (ECF Doc. 16-6, p.36); had his fist raised toward him (ECF Doc. 16-6, p.36);

was robbing him (ECF Doc. 16-6, p.33); and was going to be attacking him (ECF Doc. 16-6, p.36).

Accordingly, in order to ensure Mr. Valdez's plea was knowing, intelligent and voluntary, it was incumbent upon the trial court to conduct an inquiry into whether Mr. Valdez knowingly waived any potential psychiatric or affirmative defenses. However, the trial court did not make any inquiry regarding a waiver of these defenses. However, instead of making such inquiry, the trial court halted the plea proceeding and directed Mr. Valdez to confer with his counsel. (ECF Doc. 16-6, p.33).

When the plea proceeding resumed, instead of eliciting a knowing waver of potential defenses, the trial court proceeded on a different tack. Its allocution questions were posited in a hostile and leading manner. (ECF Doc. 16-6, pp. 34-41). Arguably, a review of the transcript of this portion of the plea proceeding appears to indicate the trial court was more intent upon getting through the proceeding than ensuring the guilty plea was intelligent, knowing and voluntary.

As noted above, prior to taking the guilty plea, the trial court was well versed in Mr. Valdez's mental health issues. It had been provided with competency reports. It had presided over competency hearings. It had been provided with competency reports. It had presided over competency hearings. It knew Mr.

Valdez had a low IQ which classified him as suffering from mild mental retardation. It knew he was susceptible to suggestion and agreeing with leading questions. As such, the trial court knew this was not going to be a mine run guilty plea. Instead, it was one which needed to be undertaken with extraordinary prudence.

Yet, the transcript of the guilty plea indicates that instead of asking what the Appellate Division deemed "clarifying questions" -- in a non-leading manner especially after hearing Mr. Valdez deny intent and assert affirmative defenses -- the trial court questioned Mr. Valdez in a highly leading and suggestive manner. (ECF Doc. 16-6, pp. 34-41). This portion of the transcript appears to indicate the trial court was pressing Mr. Valdez into making specific affirmative statements regardless of their veracity.

The Appellate Division's finding that trial court inquiry was merely engaging in 'clarification' is contradicted by the overt hostility the trial court exhibited toward Mr. Valdez. Knowing that Mr. Valdez was classified as mildly retarded, and barely competent to stand trial, the judge belittled him and stated that he is "not smart enough to look me in the face and lie to me and get away with it." (ECF Doc. 16-6, p. 33). The trial court also accused Mr. Valdez of engaging in uncharged crimes such as selling marijuana on the day of the shooting (ECF Doc. 16-6, p. 30) and

that the charged offense was actually a murder for hire for which he could be sentenced to life imprisonment without parole (ECF Doc. 16-6, p. 33).

In light of the foregoing, issuance of a COA was warranted because reasonable jurists could debate whether the District Court's denial of the Petition was in error due to there being merit to the Claim that the Appellate Division's holding -- which found that Mr. Valdez's guilty plea was knowing and voluntary and that inquiry into a waiver of his potential defenses was not warranted -- was an unreasonable application of governing Federal Law pursuant to 2254(d)(1) and was an unreasonable determination of the facts in light of the evidence presented during the state court proceeding pursuant to 2254(d)(2).

This Court should grant appellant's request for a writ of certiorari to examine whether or not a certificate of appealability should have been issued based upon Appellant's previous application.

REASONS FOR GRANTING THE WRIT

Reason One, Two and Three

(a) DID THE COURT OF APPEALS VIOLATE APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS BY NOT ISSUING A CERTIFICATE OF APPEALABILITY OR GRANTING A HEARING UPON APPELLANT'S REQUEST FOR A RECONSIDERATION OR REHEARING EN BANC; (b) WAS THE DISTRICT COURT CONFRONTED WITH SUBSTANTIAL CONSTITUTIONAL VIOLATIONS IN APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS, AND; (c) IF SO, DID THE DISTRICT COURT VIOLATE APPELLANT'S RIGHT TO DUE PROCESS BY FINDING THAT THERE WERE NO SUBSTANTIAL CONSTITUTIONAL CLAIMS MADE THEREIN.

An appeal to the United States Court of Appeals is a continuation of the litigation in the District Court. Even so, the United States Supreme Court has ruled that it is a distinct step. Hohn v. United States, 524 U.S. 236, 241 (1998).

Under AEDPA, an appellate case is commenced upon the filing of an application for COA. Hohn, 241. In order for the Supreme Court to evaluate whether the Court of Appeals should have granted a COA, a determination must be made of what appellant herein must show to satisfy the requirements of §2253(c).

28 U.S.C.A. §2253(c) requires that a COA may issue only upon the substantial showing of the denial of a constitutional right. In the case at bar, the Respondent will contend that it is the State's position that no appeal can be taken

when the lower court and District Court relied on procedural grounds to dismiss appellant's petition – and that only constitutional rulings can be appealed.

The United States Supreme Court has held that "In setting forth the preconditions for issuance of a COA under §2253(c), Congress expressed no intention to allow trial court procedure error to bar vindication of substantial constitutional rights on appeal." (Slack v. McDaniel, 529 U.S. 473 (2000)).

In the case at bar the District Court was wrong to summarily dismiss the habeas petition, the Court of Appeals should have granted the COA, and as a result of both courts' erring, the request for rehearing and/or rehearing en banc should have been granted.

It bears repeating that High Court continually relies on construction of the AEDPA that a COA may not issue unless "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c).

This being the case, appellant herein can demonstrate that he was convicted in violation of the Constitution and demonstrate that the District Court was wrong to dismiss the petition on procedural grounds. To that end, Appellant submits to the Court that (a) under AEDPA, your Appellant was entitled to be issued a COA by the Court of Appeals since in his papers he made a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253(c). Also, the authority for this standard lies in the Court's ruling in Barefoot v. Estelle, 463 U.S. 880, 894 (1983).

Congress adopted the meaning the Barefoot ruling gave to the words in the standard. Williams v. Taylor, 529 U.S. 362 (2000).

With the extension of Barefoot, the standard also calls for the showing that reasonable jurists could debate that the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." Barefoot @ 893.

Appellant's due process right was violated by the District Court's failure to rule on the merits and basically foreclose Appellant from proceeding further since it only ruled on procedural grounds and not the substantive, meritorious aspect of the petition.

The only recourse for Appellant herein, was to demonstrate, as he did, to the Court of Appeals that jurists of reason would find it debatable whether his petition stated a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the District Court was correct in its procedural ruling. Slack v. McDaniel, @ 484. This Construction by the Court gives meaning to the requirement that Appellant show the substantial underlying constitutional claims and is in conformity with the standard of "substantial showing" (Barefoot, @ 893) and the statute (28 U.S.C. §2253(c)).

The reasons set forth herein illustrate the underlying constitutional issues originally presented in the petition. In conformity with the statute, the application

for COA and rehearing/rehearing en banc contains illustrations of the procedural aspect. In this way, though apparently inartfully presented, both prongs are fully before Your Honor(s).

CONCLUSION

WHEREFORE, for the foregoing reasons, Your Honor should grant the writ of certiorari so that Appellant can fully brief the issues before the panel and any further or just relief deemed proper by Your Honor.

Dated: June 30, 2022

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

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