

22-7348

No. _____

FILED

APR 11 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Joel Suarez — PETITIONER
(Your Name)

vs.

Chris Brewer — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court For The Western District Of Missouri Western Distric
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joel Suarez
(Your Name)

1115 East Pence Road
(Address)

Cameron , Mo. 64429
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Ineffective Assistance Of Counsel

Counsel failed to get a interpreter.

Counsel was ineffective in the plea-bargain process.

Counsel failed to object to trial court's characterization of deliberation requirement necessary to convict for murder in the First-Degree.

LIST OF PARTIES

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

☐ 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:

RELATED CASES

State v. Suarez, No. 1416-CR4138-01, Circuit Court of Jackson County Missouri.

Judgment Date: July 21, 2016

State v. Suarez, No. WD80177, Missouri Court of Appeals.

Judgment Date: October 26, 2019

State v. Suarez, No. SC97802, Missouri Supreme Court.

Judgment Date: March 26, 2019

Suarez v. Brewer, No. 1916-CV12975, Circuit Court of Jackson County Missouri.

Judgment Date: July 24, 2020

Suarez v. Brewer, No. 22-0413-CV-W-DGK-P, United States District Court Western District of Missouri Western Division.

Judgment Date: September 12, 2022

Suarez v. Brewer, No. 22-3180, Eight Circuit Court of Appeals.

Judgment Date: January 17, 2023

Suarez v. Brewer, No. 223180, Eight Circuit Court of Appeals.

Judgment Date: January 24, 2023

Suarez v. Brewer, No. Do not have yet. Supreme Court Of The United States.

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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

☐ For cases from **federal courts:** N/A

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☐ is unpublished.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 _____ to the petition and is

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☐ is unpublished.

☒ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix E 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 Mo. Court of Appeals Western District court appears at Appendix G to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**: N/A

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 Feb. 2, 2022.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date:
Jan. 17, 2023, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

United States Constitution Amend V.

No person shall be held to answer for a capital, or infamous crime, unless on a presentment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Amend 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 wherein the crime shall have been committed. Which 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 in his favor, and to have the assistance of counsel for his defense.

United States Constitution Amend XIV.

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 law.

MISSOURI CONSTITUTION

Missouri Constitution Article I. §10.

That no person shall be deprived of life, liberty or property without due process of law.

Missouri Constitution Article I. §18(a).

In criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause or the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by impartial jury of the county.

Missouri Constitution Article V. §3.

The Supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this State, the constitution of the revenue laws of this State, the title to any State and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the Supreme Court.

MISSOURI STATUTORY PROVISIONS

RSMo. 565.020.

A person "commits the crime of murder in the First-Degree if he or she knowingly causes the death of another person after deliberation upon the matter".

RSMo. 565.021(2).

The offense of murder in the second degree is a class A felony, and the punishment for second degree murder shall be in addition to punishment for commission of a related felony or attempted felony, other than murder or manslaughter.

RSMo. 565.023(2).

The defendant shall have the burden of injecting the issue of influence of sudden passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

STATEMENT OF THE CASE

Joel Suarez was denied his right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 18(a) of the Missouri Constitution, in that Mr. Suarez's trial counsel failed to communicate the State's entire plea offer involving all alleged offenses.

Mr. Suarez pleads three claims: (i) Mr. Suarez's trial counsel was ineffective for not getting a interpreter to communicate with him about the plea offer in a language he could understand before his court date; (ii) Mr. Suarez's trial counsel was ineffective in the plea-bargaining process for failing to negotiate the State's plea offer for all offenses other than murder; and (iii) Mr. Suarez's trial counsel was ineffective in failing to object to the trial court's characterization of the deliberation requirement necessary to convict for murder in the First-Degree.

The record shows trial counsel failed to communicate the State's most favorable plea offer to Mr. Suarez, and the record of plea negotiations shows that Mr. Suarez's belief-that offenses other than the murder were not subject of the plea negotiations-was well founded. To be quite fair, the only charge that was really negotiated on is the murder in the First-Degree count. Trial counsel was never able to tell Mr. Suarez specifically what he would be getting sentenced to on burglary and armed criminal action charges if he were to take a guilty plea on second degree murder. Had Mr. Suarez been informed that his sentences would be served concurrently, he would have accepted the State's offer.

Trial counsel failed to make sure Mr. Suarez understood what was being said to him. Trial counsel did not get a interpreter to communicate with Mr. Suarez in Spanish. Had Mr. Bailey (Trial counsel) done this Mr. Suarez could of and would of taken the plea offer the State offered.

"The Sixth Amendment right to effective assistance of counsel includes representation during the plea bargainng process" *Mayfield v. United States*, 955 F.3d 707, 711 (8th. Cir. 2020) (citing *Missouri v. Frye*, 566 U.S. 134, 143-47 (2012)). "If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it" *Id.* (quoting *Lafler v. Cooper*, 566 U.S. 156, 163 (2012)). "As in all claims of ineffective assistance of counsel, the test for determining whether defense counsel was ineffective during plea negotiations is the two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668 (1984)". *Williams v. State*, 367 S.W.3d 652, 655 (Mo. App. E.D. 2012) (citing *Frye*, 566 U.S. at 147; *Lafler*, 566 U.S. at 163).

In *Lafler*, 566 U.S. at 165 ("The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice").

Mr. Bailey was ineffective in failing to get an interpreter to communicate the State's entire plea offer in a language Mr. Suarez could understand. Not until Mr. Suarez was in court did he have a interpreter to speak to in his language. This left no time for Mr. Suarez to make a decision about his choices. If not for Mr. Bailey's deficient performance, a plea bargain

would have been presented to the trial court. This ineffective assistance of counsel led to Mr. Suarez's loss of a plea bargain that was in his best interest.

Mr. Suarez was denied his right to effective assistance of trial counsel, to a fair trial, and to due process of law, as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and Article I, section 10 and 18(a) of the Missouri Constitution. Because no interpreter was used by trial counsel before trial, Mr. Suarez could not knowingly, voluntarily, and intelligently enter into a plea bargain. Mr. Suarez was prejudiced by all of the above action.

Trial counsel Thomas Baily provided ineffective assistance of counsel when he failed to negotiate with the State as to all of the terms of any potential plea agreement. Trial counsel failed to advise Mr. Suarez to the terms of all potential sentences. Mr. Bailey focused his efforts on negotiating a plea on the charge of murder in the First-Degree and did not work out terms of a plea for any of the other charges.

Mr. Suarez was not advised of all terms of any potential plea agreement, so he could not make an informed decision as to whether to take a plea or not. By not having the necessary and relevant information for any potential plea, Mr. Suarez lost a opportunity to a more favorable resolution of his case.

The Sixth Amendment guarantees an accused the right to the effective assistance of counsel at all critical stages of criminal proceedings.

Missouri v. Frye, 132 S. Ct. 1399, 1405 (2012); Strickland v. Washington, 104 S. Ct. 2052 (1984). The negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel. Padilla v. Kentucky, 130 S. Ct. 1473, 1486 (2010). Plea negotiations are a critical phase because ours "is for the most part a system of pleas, not a system of trials". Frye, 132 S. Ct. at 1407; quoting Lafler v. Cooper, 132 S. Ct. 1376, 1388 (2012).

Claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set out in Strickland. Frye, 132 S. Ct. at 1405; citing Hill v. Lockhart, 474 U.S. 53, 57 (1985). To prove ineffective assistance of counsel under Strickland, a defendant must show that counsel's performance did not conform to the degree of skill, care, and diligence of a reasonable competent attorney, and defendant was thereby prejudiced. Strickland, 104 S. Ct. at 2064.

In Lafler, 566 U.S. at 165 ("The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice"). Therefore, trial counsel was ineffective in failing to communicate the State's entire plea offer, including the proposed sentences Mr. Suarez would serve for offenses other than murder.

The Lafler court noted that a criminal defendant who loses out on a favorable plea offer due to ineffective assistance of counsel "may be prejudiced from either a conviction on more serious counts or the imposition

of a more severe sentence". Id. at 1386. The court reasoned that a remedy must neutralize the taint of a constitutional violation, while at the same time not grant a windfall to the defendant or needlessly squander State resources. Id. 361, 364 (1981).

In some situations, noted the Lafler court, resentencing alone will not fully redress the constitutional injury, as in the case where the State was offering to reduce the level of seriousness of a charge or count. Id. at 1389. In such circumstances, the proper exercise of discretion to remedy the constitutional injury is to require the prosecution to reoffer the plea proposal. Id. The United States Supreme Court thus clearly recognized the power of a postconviction motion court to order the State to reoffer the plea agreement. This is consistent with numerous Missouri cases recognizing that the motion court retains broad discretion to determine the appropriate remedy in a postconviction case. See, e.g. *Evans v. State*, 28 S.W.3d 434, 439 (Mo. App. S.D. 2000); *McKelvey v. State*, 303 S.W.3d 612, 615 (Mo. App. S.D. 2010).

Because Mr. Suarez was not advised as to all terms of his potential sentences, he could not knowingly, voluntarily, and intelligently enter a plea bargain. By failing to negotiate all terms of the plea agreement and failing to give Mr. Suarez the necessary advice to permit Mr. Suarez to make an informed decision in his best interests, Mr. Bailey (trial counsel) provided ineffective assistance of counsel, and Mr. Suarez was prejudiced, by way of a deprived opportunity for a favorable result.

Mr. Suarez's Fifth, Sixth, and Fourteenth Amendments to the United

States Constitution and Article I. section 10 and 18(a) of the Missouri constitution as well due process of law were denied by ineffective assistance of counsel.

No one can dispute that the State's offer was more favorable than the outcome at trial. The worst outcome for Mr. Suarez under the State's offer, an offer of a minimum sentence of twenty years in prison, with no maximum sentence would have been a sentence of life in prison with the possibility of parole. See RSMo. §565.021.2. Instead Mr. Suarez received a sentence of life in prison with no possibility of parole. Trial counsel prejudiced Mr. Suarez by his deficient performance. A proper remedy "is to order the State to reoffer the plea agreement.

A defendant's right to due process are protected under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the Missouri Constitution. See *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1909 (2016); See also *Doughty v. Dir. of Revenue*, 387 S.W.3d 383, 387 (Mo. banc 2013) (The due process clauses of the United States and Missouri Constitution are coextensive). A defendant's right to a fair trial are protected under the Sixth Amendment to the United States Constitution and Article I, §18(a) of the Missouri Constitution. See *State v. Hartman*, 479 S.W.3d 692, 698 (Mo. App. W.D. 2015) (Sixth Amendment right to a fair trial applies to States through the Fourteenth Amendment; *Estelle v. Williams*, 425 U.S. 501, 503 (1976); *State v. Richards*, 300 S.W.3d 279, 281 (Mo. App. W.D. 2009) (Discussing the right to a fair trial under the Missouri Constitution). A trial court fundamental misunderstanding the law related to the defendant's mens rea implicates due process and the defendant's right

to a fair trial.

Trial judges are presumed to know the law and apply it in making their decision's; State v. Amick, 462 S.W.3d 413, 415 (Mo. banc 2015). That presumption is rebutted when a trial court's findings demonstrate a misunderstanding of the applicable law. See Dunlap v. State, 452 S.W.3d 257, 262 (Mo. App. W.D. 2015); Stirling v. Maxwell, 45 S.W.3d 914, 916 (Mo. App. W.D. 2001).

Here, the trial court in explaining his rationale just before finding Mr. Suarez guilty of First-Degree Murder, the trial court Stated:

What I have before me is not one or two stab wounds but 18 at least separate and distinct injuries, two of which are the coup de gras, two of which were the death blow. I teach classes at -- I have the honor and the privilege of teaching classes at MCC and UMC, criminal law and evidence, and I tell them routinely when talking about the degrees of murder, the concept of deliberation, the concept of cool reflection upon the matter for any length of time no matter how brief. I tell them that I'll give you one stab, I'll give you one shot, I'll give you one maybe even two plunges of the knife. But at three or five or eight or ten or 18, those subsequent plunges of that knife take deliberation, at the very least.

Trial counsel Mr. Bailey did not object, nor did he otherwise challenge this statement by the court. This statement by the court expresses a fundamental misunderstanding of how the number of wounds inflicted in a killing relates to a finding of deliberation.

There is nothing inherent in multiple stab wounds that mandates a finding of deliberation. This amount of stab wounds could occur in First-Degree murder, Second-Degree Murder, or Manslaughter. A person "commits the crime of murder in the First-Degree if he or she knowingly causes the death of another person after deliberation upon the matter". RSMo. 565.020.

The trial court's mistaken belief about the conclusive nature of multiple stab wounds precluded the trial court from undertaking a legally accurate assessment of deliberation in Mr. Suarez's case, which is a seriously disputed issue in the case.

In Mr. Suarez amended motion of his Rule 29.15 it is stated "Mr. Bailey will testify that the court's comments in question here caught his attention, and that he believed that the court's comments reflected a misunderstanding of the law as it relates to deliberation in a First-Degree Murder case. Mr. Bailey will testify that despite his concerns about the court's misunderstanding of the law relating to deliberation, he did not object, nor did he argue to the court that the court's explanation of deliberation was in error".

Thomas Bailey provide ineffective assistance of counsel when he failed to object to the court's statements about deliberation and/or failed to

argue that the court misunderstood and had misstated the law as it pertains to deliberation for murder in the First-Degree. The trial court's misunderstanding of how the number of stab wounds could be considered with respect to deliberation was erroneous and prejudicial to Mr. Suarez. That misunderstanding resulted in the trial court prejudging deliberation. This statement was made in open court, after a bench trial, and just before finding Mr. Suarez guilty of First-Degree murder. Which requires a sentence of life without parole.

The judge knew he was on record when he made his statement, the judge knew the case would be appealed, and he knew his statements would be scrutinized. Taking the trial court's statement at face value, the issue of whether a third or subsequent plunge of the knife takes deliberation. It does not. AS held by the Missouri Supreme Court in State v. Cole, 71 S.W.3d 163,169 (Mo. banc 2002), "while the evidence of multiple wounds is not conclusive, numerous wounds or repeated blows may support an inference of deliberation". The number of stab wounds is not conclusive as to deliberation.

When trial court made it's statement:

"I tell them that I'll give you one stab, I'll give you one shot, I'll give you one maybe even two plunges of the knife, but at three or five or eight or ten or 18, those subsequent plunges of that knife take deliberation, at the very least".

The trial court shows it misunderstood the law and demonstrated a prejudging bias on the issue of deliberation.

The defendant has the burden of injecting the issue of influence by sudden passion arising from adequate cause. RSMo. 565.023.1(2). therefore to advocate on the behalf of Mr. Suarez. Trial counsel should have objected to trial court's statement and argued passion influenced Me. Suarez's actions rather than reason.

By not doing this trial counsel fell well below an objective standard of reasonableness. State v. Zamora, 2003 Ariz. App. Unpub. Lexis 8. "Through statutory definitions sometimes stretch or narrow common usage there are limits to what language will bear. Without some anchorage in common understanding, law would pass beyond the looking glass where words mean just what arbitrary power chooses them to mean--neither more nor less"

Strickland cautioned that "judicial scrutiny of counsel's performance must be highly differential". Strickland, supra, at 689, "A fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time" But "this measure of deference ... must not be watered down into a disguised form of acquiescence". Bouchillon v. Collins, 907 F.2d 589, 595 (5th. Cir. 1990).

Thomas Bailey fell well below an objective standard of reasonableness and his performance was deficient. In Mr. Bailey's own words he did not object to trial court's explanation of deliberation as it relates to murder in the First-Degree.

REASONS FOR GRANTING THE PETITION

This petition should be granted because Mr. Joel Suarez was denied his right to effective assistance of counsel. As guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 18(a) of the Missouri Constitution.

Mr. Suarez's counsel failed when trial counsel provided deficient performance in Mr. Suarez's case.

Mr. Bailey failed in the plea bargaining which is a critical phase of litigation. Mr. Bailey failed to communicate the State's entire plea offer to Mr. Suarez. Mr. Bailey failed to object to trial court's fundamental misunderstanding of the law as it relates to deliberation.

Mr. Bailey fell well below the standard of reasonableness. His performance was deficient. In Mr. Bailey's own words he did not object to trial court's explanation of deliberation as it relates to murder in the First-Degree.

Mr. Bailey in his own words said the court's comments in question here caught his attention, and that he believed that the court's comments reflected a misunderstanding of the law as it relates to deliberation in a First-Degree murder.

Mr. Bailey also said despite his concerns about the court's misunderstanding of the law relating to deliberation he did not object nor did he argue to the court that the court's explanation of deliberation was in error.

For the reasons above this petition should be granted for Mr. Suarez.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joel Suater ~~____~~

Date: April 11 2023