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FEB 15 2023

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN EARNEST SKRDLA - PETITIONER

vs.

STATE OF OKLAHOMA - RESPONDENT(S)

ON PETITION ON A WRIT OF CERTIORARI TO

THE OKLAHOMA COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

John Earnest Skrdla
Dick Conner Correctional Center
129 Conner Road.
Hominy, Ok 74035
Petitioner *Pro se*

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether the Oklahoma Court of Criminal Appeals ruled in contrary to *Strickland v. Washington*, 466 U.S. 668, 687(1984) when it determined Petitioner's trial counsel was not ineffective?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, John Earnest Skrdla, (hereinafter "Petitioner" or "Mr. Skrdla") respectfully prays that a writ of certiorari issue to review the judgment of The Oklahoma Court of Criminal Appeals below.

LIST OF PARTIES

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

OPINIONS BELOW

The date on which the highest states court decided Petitioner's case was November 17, 2022.

The opinion of the Oklahoma Court of Criminal Appeals (Pet. App. 1a-14a) appears at Appendix 1a-14a to the petition and is unpublished.

JURISDICTION

The Oklahoma Court of Criminal Appeals entered its Opinion on November 17, 2022.(Pet. App. 1a-14a) Pursuant to Supreme Court Rules 13.1 and 13.3, this petition has been filed within ninety days of the date on which the Oklahoma Court of Criminal Appeals issued its Opinion.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution provides, in relevant part, that "In all criminal prosecutions, the accused shall enjoy the right ...to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Fourteenth Amendment provides, in pertinent part, that "nor shall and State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

The Constitution of Oklahoma's Bill of Rights, § 7 provides, that "No person shall be deprived of life, liberty, or property, without due process of law."

The Constitution of Oklahoma's Bill of Rights, § 20 provides, in relevant part, that "In all criminal prosecutions the accused shall have the right to...have compulsory process for obtaining witnesses in his behalf. He shall have the right to be heard by himself and counsel;"

STATEMENT OF THE FACTS

In 2015, Skrdla became acquainted with Ronnie Bratcher¹ and his daughters, R.B. and K.B. after stopping to help them when their car broke down while moving from Medford, Oklahoma, to Caldwell, Kansas. Tr. II 118. R.B. was fourteen years old when she first met Mr. Skrdla and then turned fifteen. Tr. II 119 and K.B. was a year younger than R.B.. Tr. II 137

Thereafter, the Bratcher family would sometimes stay with petitioner at his home in Renfrow, Oklahoma, but they visited every day. Tr. II 119-120, Petitioner's mom stayed with Petitioner and he took care of her because she didn't move around well . Tr. II 139. Mr. Skrdla eventually learned the abuse of K.B. by a prior landlord and reported it to Mr. Bratcher, but nothing happened. Laverne Stika and Steve Kitchen² were always at Mr. Skrdla's home every day. Tr. II. In October, 2015, a confidential informant with the Enid Police Department reported that Mr. Skrdla had sent images of the girls being sexually abused by Kitchen and Stika. That's when Grant County decided to filed a felony Information on Petitioner for two counts of Possession of Juvenile Pornography and one count of Distribution of Juvenile Pornography on October 22, 2015. O.R. I at 1.

¹ Mr. Bratcher is the father of the girls and was also convicted and sentenced to a 7 year deferred sentence

² Petitioner's Farmhands who were the actual perpetrators in this case

The State filed an Amended Information on October 18, 2016, charging the same three counts, and adding one count of Sexual Abuse of a Child under 165. O.R. I at 33.

The first Preliminary hearing was held on July 17, 2017, before the Honorable Judge Loren Angle. On August 1, 2017, alleging six felony counts: two counts of Possession of Juvenile Pornography, one count of Distribution of Juvenile Pornography, one count of Sexual Abuse of Children, and two counts of Enabling Sexual Abuse of Children, the State filed a Second Amended Information. O.R. II at 8. The second Preliminary hearing was held on September 5, 2017 and was continued for a third hearing on September 25, 2017, at which Petitioner was bound over for trial on all six counts. III P.H. TR. at 24-25.

The jury was informed that the first time that Skrdla learned of an issue with R.B. was at a local Mexican restraint in Medford where the girls, their dad, and some of Skrdla's family had gathered, and in fact the day Skrdla attempted to contact the Grant County Sheriff's Department because of his concernment. The call was in fact on a speaker phone and was heard by family members, and as soon as the dispatcher heard that it involved Bratcher and his daughters, they never seem to entertain the issue, in fact no one in law enforcement showed up and Mr. Bratcher failed to report it, even after the situation was brought to his attention.

The jury was also informed that, Mr. Skrdla caught Kitchen and Stika being sexually active with the girls and took a few pictures as proof to Bratcher, but again he would not report it. Skrdla then again called the police and started calling DHS in Kansas to get someone to address the situation, but again it was a fail.

Defense counsel also told the jury that Skrdla took "learning disabled classes" when he was a kid, and that Skrdla was "a little slow." Tr. II 29. While Skrdla did not handle this situation in the best way, he did the best he could in trying to help the girls. ~~Id. 28-29~~

Thus, as framed by the parties during opening statements, the State presented a theory where Mr. Skrdla was a predator who took pictures of the abuse and perpetrated abuse himself; whereas the defense promised to show that Skrdla was not abusing the girls, but instead was trying to help them escape the situation by doing what he could report the abuse to Mr. Bratcher, the Sheriff, and to Kansas DHS authorities.

Formal arraignment was held on November 11, 2017, Petitioner's retained counsel, Stephen Jones indicated that he was going to move to withdraw as counsel based on unrelated issues. This motion was denied on April 26, 2018. O.R. III at 17.

However, a hearing was held on April 8, 2019, at which Counsel made a record regarding the conflict of interest between himself and Petitioner. The State filed a motion on April 11, 2019, seeking to allow Mr. Jones to withdraw as counsel. O.R. III at 41. On April 18, 2019, Mr. Jones also filed seeking to withdraw as counsel. O.R. III at 45

The District Court of Grant County granted the motions on April 18, 2019. O.R. III at 82

After a successful withdrawal of Mr. Jones as counsel, Kevin Adams entered his appearance in the case on August 12, 2019. O.R. III at 83.

Jury trial initiated on February 1, 2021. On February 26, 2021, the jury returned verdicts of guilty of all counts, and recommended punishment as follows: Count I: Possession of Child Pornography—10 years; Count II: Possession of Child Pornography; Count III: Distribution of Child Pornography—10 years; Count IV: Sexual Abuse/Exploitation of Child—30 years; Count V:

Enabling Sexual Abuse/Exploitation of Child—30 years; Count VI: Enabling Sexual Abuse/Exploitation of Child—30 years. Tr. III at 252-53; O.R. III at 160-62 (verdict forms. On April 1, 2021, Mr. Jones reentered his appearance in Petitioners case, and a motion to continue the sentencing hearing and new trial was filed. O.R. III at 163; 166; O.R. IV at 79.

On April 7, 2021, second retained counsel, Kevin Adams filed a motion to withdraw, and the State objected to his entry to appearance and motion for new trial. O.R. IV at 15, 17.

Mr. Jones filed a motion to recuse the district court on April 12, 2021 and a hearing was held, motion to disqualify Judge Woodward was denied, as well as the entry of appearance. O.R. IV at 63

Judge Woodward gave Mr. Skrdla a choice: either proceed with Mr. Adams(second retained counsel whom Petitioner tried to fire during the trial), or represent himself. Tr. 04/12/2021 at 18.

The court then proceeded with sentencing in accordance with the recommendation of the jury, ordering all counts to run consecutively to each other. Tr. 04/12/2021 at 24-25.

On May 7, 2021, The motion to disqualify was presented and denied by Presiding District Judge, Honorable Jill C. Weedon via video-conference. O.R. VI at 23 (written order).

On May 10, 2021, Petitioners *pro se* motion for new trial was denied by Judge Woodward.

Petitioner filed his notice of intent to appeal and designation of record in the district court on May 19, 2021. O.R. VI at 26.

on June 4, 2021, the Oklahoma Court of Criminal Appeals issued an order denying request for extraordinary relief in a case styled *SKrdla v. Hon. Paul Woodward*, No. MA-2021-430(OKla.Cr).

REASONS FOR GRANTING THE PETITION

- I. The Oklahoma Court of Criminal Appeals did not rule in contrary to *Strickland v. Washington*, 466 U.S. 668, 687(1984) when it determined Petitioner's trial counsel was not ineffective

The Sixth Amendment guarantees an accused "right to counsel is the right to effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d. 674 (1984).

In addition, the Sixth Amendment, applied to the States through the Fourteenth Amendment guaranteed that, "[I]n all criminal prosecutions, the accused shall... have the assistance of counsel for his defense." The core of this right has historically been, and remains today, "the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare a defense for trial." *Michigan v. Harvey*, 494 U.S. 344, 348, 110 S. Ct. 1176, 108 L. Ed. 2d 293 (1990) (quoting *Kansas v. Ventris*, 556 U.S. 586, 129 S. Ct. 1841, 173 L. Ed. 2d 801 (2009)).

Likewise, the Oklahoma Constitution guarantees the accused a right to "have compulsory process for obtaining witnesses in his behalf." as well as "to be heard by... counsel." Okla. Const. Art. 2, § 20; and guarantees "[n]o person shall be deprived of life, liberty, or property, without due process of law." Okla. Const. Art. 2 § 7.

Furthermore, This Court examines sixth amendment ineffective assistance of counsel challenges based on pre-trial counsel in which a defendant must establish (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced the defense. *Strickland*, *supra*,

466 U.S. 668, 687; (quoting U.S. v. Montan-Herrera, 351 F.3d 462 (10th Cir. 2003); see also Yang v. State, 12 P.3d 20, (Okla. Crim. App. 2000).

The Oklahoma Court of Criminal Appeals determined that the Petitioner "has failed to meet his burden as he has not shown a strong possibility that defense counsel was ineffective for failing to use the identified material." Appendix 4a. This determination is not in contrary to Strickland in light of facts that Pre-trial counsel failed present petitioners mental function, material evidence, and testimony.

This Court held that the "proper standard for attorney performance is that of reasonably effective assistance." Strickland, Supra, 466 U.S. 668, 687.

In this case at bar, defense attorney, Stephen Jones had represented Skrdla Pre-trial until a conflict of interest arose, in which caused Counsel Jones to withdraw on April 18, 2019. Defense attorney, Kevin Adams entered his appearance on August 12, 2019, six months prior to trial. As outlined below, trial counsel was ineffective under the Sixth amendment.

During trial the defense counsel presented Petitioner a defense of Petitioner being aware of his co-defendant, Kitchen and Stika molesting R.B. and K.B., and he took pictures for the sole purpose of proving to their father, Ronnie Bratcher, that it was true after continuously attempting to report it to him, and in fact, Petitioner reported the abuse by phone calls to the Sheriff's office and Kansas Department of Children and Families.

The phone records were attached to the motion to supplement filed in the OCCA. The fact, trial counsel had these records in his hand during the trial, however, the jury never saw them because trial counsel failed to admit them into evidence. Instead, he used them to refresh Petitioner's

memory of the date in which he called Grant County sheriff's office. Tr III at 71-72
The records of the phone calls was key to Petitioner's defense as it
shows the testimony given by petitioner was actually true, rather trial counsel
failed to corroborate his testimony with the written records, which led to
the rebuttal witnesses, Sheriff Sterling and Tracy (Kansas Department of Children and Families
witness), who both testified that no such phone calls existed in their system;
as well as Kitchen's testimony that he did not believe Petitioner called the
police. Tr III at 25-26 (testimony of Steven Kitchen); 140-141 (rebuttal testimony
of Sheriff Sterling). Followed by closing argument by the State, "they
didn't give you the phone records so that you could see them." In fact
the Kansas Department for Children and Families sent a letter to the
father, Ronnie, regarding an allegation made by K.B. against a prior landlord,
that has been tendered in the motion to supplement, although, the
jury had heard this information, they had no basis to believe Petitioner
had this information. Petitioner was given a copy of that letter Tr. III at 76-80,
this is important because Petitioner's defense was that he tried to
report the abuse to authorities, and testified he called nine times and
left five messages for a call back, but never received one. Id

Trial Counsel neither introduced the letter nor the phone records,
leaving the state more ammunition to paint Petitioner as a
liar to the jury. Tr III at 239

In furtherance to trial counsel's errors, Counsel also failed to
present relevant witnesses, such as his brother, Joseph Skrdla, who

also heard the call that Petitioner made and to corroborate such fact, Kitchen testified about Joseph being present at the time the call was made. Joseph was ready, willing, and able to testify; Ronnie Bratcher, who is the father to the girls, and also prosecuted and given a 7-year deferred sentence. see State v. Ronnie Lee Bratcher, No. CF-2015-29 (Grant County), like Joseph, Bratcher was listed as a witness prior to trial, but because of defense Counsel's uncertainty of law and allowing Ronnie to be called as a defense witness because he have been charged and therefore could invoke his right under the fifth amendment. Tr III at 217.

However, a suspect can waive his rights under the fifth amendment by voluntarily communicating about a topic. see Hammick v. State, 2019 OK CR 219-6, 449 P. 3d 1272 (right to counsel not violated because the accused initiated communications... and waived rights). Ronnie waived his rights twice. He told officers that Mr. Skrolla showed him the pictures and tried to get him to report it and deal with the situation, but he never did. This clearly corroborates with Petitioner's defense and testimony. The jury should have heard the corroborating testimony themselves. The statements of K.B. interview in Kansas regarding the allegations, stated helpful things to Petitioner but again defense Counsel failed to utilize them. As well as the affidavit from K.B., where she stated that she falsely accused Skrolla of sexual impropriety with R.B., but Counsel failed to provide the affidavit ~~from~~ ^{fully} in discovery and was precluded from using it. Not only did she make false allegations against Petitioner, but on a prior landlord as well. This is impeachment evidence going to the credibility of K.B. as a witness against Petitioner.

at trial and should have been utilized by defense counsel.

Lastly, defense counsel failed to utilize the expertise of Dr. Simmons in the mental functioning of Petitioner. Dr. Simmons concluded that Skrdla had a full Scale IQ of 86, which places him in the 18th Percentile and is characterized as "low average range of intellectual functioning" which presents problems for Skrdla processing complex information, makes him socially naive and slow to process information and motives of others. Utilization of the expert witness would have greatly assisted the trier of fact in understanding how and why Skrdla took the actions that he did.

The failure of defense counsel to comply with the discovery code was made even worse because he was presumably precluded from using the other affidavits as well, from R.B. exonerating him of wrongdoing and her father, Ronnie Bratcher, who asserted, Skrdla never touched his daughters inappropriately. Thus, Skrdla was unable to impeach R.B. as well with her own affidavit or to introduce the statement by Ronnie.

The fact, the prosecutor during closing arguments thanked defense counsel for not objecting to one of the phone calls that Stika talked about because the State had a theory that it corroborated the testimony of R.B. See Tr III, a 222.

Thus, the failures of defense counsel was deficient performance that resulted in real prejudice to Petitioner in front

of the jury.

This Court has determined that "[c]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Strickland, *Supra*, 466 U.S. 688.

wherefore, in the case at bar, Mr. Skrdla was denied effective assistance of counsel as guaranteed by sixth amendment right to counsel. In closing, Petitioner's counsel fell below an objective standard of reasonableness. 466 U.S. at 688. Therefore, this petition should be grant with appropriate relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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