

JUL 07 2023

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No. 23-5346**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

MARCREASE DELANCE FARMER — PETITIONER

(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

EIGHTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARIMARCREASE DELANCE FARMER(Your Name) REG. NO. 40764-044FCC-Yazoo City MEDIUM U.S.P.(Address) P.O. Box 5000Yazoo City, MS 39194-5000

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Is it a constitutional Fifth and Sixth Amendment violation when during voir dire and motivated by a single juror's racial identity, Counsel of Record intentionally withholds knowledge of damaging information from defendant that justifies a juror's removal for cause and deliberately refrains from asking juror any questions to satisfy his own strategy decision?
2. Is it a constitutional Fifth and Sixth Amendment violation when during voir dire and motivated by a single juror's racial identity, Counsel of Record intentionally withholds knowledge of damaging information from a sidebar meeting with the court, prosecution, and juror that would cause an instant removal by the court to satisfy his own strategy decision?

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

(1) U.S. v. MACCREAISE FARMER, No. 1:19-CR-00183-GRC,
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI,
SOUTHEASTERN DIVISION - CAPE GIRARDEAU -
JUDGMENT ENTERED DEC. 8, 2021 - DOC. #128 -

(2) U.S. v. MACCREAISE FARMER, No. 21-3906, U.S.
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,
JUDGMENT ENTERED MARCH 8, 2023 -

(3) U.S. v. MACCREAISE FARMER, No. 21-3906,
U.S. COURT OF APPEALS FOR THE EIGHTH
CIRCUIT, REHEARING DENIED APRIL 12, 2023 -

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OTHER

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**:

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,
 is unpublished.

INCLUDES REHEARING DENIAL —

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,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MARCH 8, 2023. SEE APPENDIX A —

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: APRIL 12, 2023, and a copy of the order denying rehearing appears at Appendix A.

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).

THE THEREFORE, THIS COURT HAS JURISDICTION
AND IS RIPE FOR REVIEW PURSUANT TO
28 U.S.C. § 1254(1) —

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutes:

21 U.S.C. § 841(a)(1)

21 U.S.C. § 841(b)(1)(B)(viii)

A) Constitutional Provisions:

U.S. Const. Amend. V

U.S. Const. Amend. VI

B) Rules:

Fed. R. Crim. P. 33(a)

Fed. R. Crim. P. 33(b)

Fed. R. Crim. P. 29

STATEMENT OF THE CASE

I. This Court Must Decide The Questions Raised Herein In Order To Afford Guaranteed Constitutional Protections To Those Individuals Who Exercise Their Right To Trial But Are Withheld Damaging Information From Counsel That Justifies A Juror's Removal For Cause During The Voir Dire, That Upon Discovering Counsel Had Damaging Information And Withheld It The Court Order An Evidentiary Hearing To Make Its Inference Of The Totality Of The Circumstances In Making A Decision Under Rule 33(b)-

On December 3, 2019, a grand jury returned an Indictment against Marcrease Farmer for three counts of distribution of a controlled substance. Doc 1. The Court held a two-day jury trial for Farmer on July 21-22, 2021. During the voir dire after the Court had asked questions about knowing witnesses, including Mr. Farmer, there was no response. Later a recess was called and during the recess one of the jurors recognized Farmer's sister, Jahvashea, while she was conversing with Mr. Farmer's attorney. Jahvashea had recognized the juror during the voir dire and was informing Mr. Farmer's attorney about the juror and a prior altercation between both of them that caused Jahvashea concern for her brother's trial and possible vindictive retaliatory motive because of that prior altercation. Once the juror saw them watching her, she immediately disclosed to the courtroom deputy that she knew the defendant's family, causing a sidebar between the court, juror, prosecution, and Mr. Farmer's attorney. Mr. Farmer was not informed as to what was said at the sidebar, nor did Counsel inform Mr. Farmer of the encounter with his sister Jahvashea and the prior altercation she had with juror 11 and the lies she was telling the judge about not knowing his family. Because counsel withheld all damaging information about juror 11 from Mr. Farmer, he was denied a right to challenge juror 11 for cause and denied the right to peremptorily strike juror 11.

See Doc. 93; see also id. at pp. 102-09. Because Farmer was withheld all of the damaging information about juror 11 because of Counsel's own strategy decision motivated by racial identity (where she was the only African American juror on the panel), it would have been impossible for Farmer to raise any question, issue, or concern with respect to juror 11 before the jury rendered its verdict.

The jury unanimously found Farmer guilty of three counts of distributing a controlled substance, in violation of 21 U.S.C. § 841(a)(1). Doc. 90. At the time of filing a Motion for a New Trial, Farmer was able to contact his sister and discovered her meeting with his attorney during the recess and warning his attorney about juror 11 and a prior altercation she had with juror 11 and that juror 11 knew the family. Mr. Farmer told his sister that a sidebar was held after the recess that did not include him, but that his attorney was at the sidebar and told him there was nothing important. When Mr. Farmer finally contacted his counsel, he asked his counsel why he never told him about what his sister had warned him about in regards to juror 11. It was then that counsel told Mr. Farmer that his strategy was keep juror 11 on the panel because she was the only black African American and that did not produce the result he was anticipating. Mr. Farmer asked for a new trial and counsel filed a Motion For New Trial, Or In The Alternative, Motion For Judgment or Acquittal. Doc. 99.

In the Motion For New Trial, there were a number of issues in seeking a new trial under Rule 33 of the Federal Rules of Criminal Procedure, or a Judgment of Acquittal under Rule 29(c). id. Counsel did not want to disclose his knowledge of the prior altercation and the relationship between juror 11 and his family. Instead, counsel raised on one ground that juror 11 should disclosed more of her knowledge of Mr. Farmer's family and that juror 11 should not have served as a juror.

Id. at pp. 4-5. The United States filed a response in opposition to Farmer's post-trial motion for new trial, but counsel's continued deficient performance included not filing a response/reply/rebuttal to counter the government's opposition leaving Mr. Farmer no chance at all to be granted a new trial.

Once Mr. Farmer discovered juror 11's prior altercation with his sister, the lies and false statements made during the voir dire, due diligence set in and Mr. Farmer immediately asked his sister if she could prepare an Affidavit with all the chain of facts, the altercation, the relationship with the family, and when she had shared all this damaging information to his attorney. Farmer then asked his sister if she could get the police report and/or the complaint she had filed regarding the incident that occurred between juror 11's son and Jahvashea, that resulted in an altercation between her and juror 11.

As imperative that the jurors voir dire answers be truthful and complete, false and/or misleading answers may result in the juror being discharged by the court, challenge for cause by counsel, or stricken through the exercise of peremptory challenge. The seating of such a juror could and would probably result in a miscarriage of justice. See e.g., In re Mossie, 589 F.Supp. 1397 (8th Cir. 6/15/1984). Counsel's own strategy to keep juror 11 on the panel because she was the only black African American backfired and literally prevented Mr. Farmer any chance of new trial. Any reasonable jurist would wonder why counsel failed to communicate with Mr. Farmer and inform him of what was told to him about juror 11's knowledge and relationship with his family, and a prior altercation juror 11 had with his sister, Jahvashea. Any reasonable jurist would also agree that a prior altercation between a juror and a member of the defendant's family that involved the juror's own son, a complaint being filed on her son, and that police had came to the

house investigating the complaint, would most definitely be reason enough to have a retaliatory motive when sitting on a jury panel to hear a case that now involved Jahvashea's brother. Juror 11 was upset with Jahvashea for intervening with the police, that caused the altercation. Jahvashea was upset because juror 11's son caused damage to her vehicle. That would also cause an altercation. Both parties' reasons to be upset and caused an altercation, would be sufficient enough for cause and a high probability of partiality. See e.g., Hubbard v. Fleet Mortg. Co., 810 F.2d 778 (8th Cir. 4/1986). Because counsel withheld this information and failed to commun[icate] with Mr. Farmer, he was denied any right to exercise peremptory challenges. See McDonough Power Equip v. Greenwood, 464 U.S. 548, 555, 104 S.Ct. 845, 78 L.Ed.2d 663 (1984)(where a defendant [like Mr. Farmer] was prejudiced with the right of peremptory challenge and that a new trial was necessary to cure the error of a juror's failure to respond affirmatively to a question during voir dire seeking elicit information about previous injuries to members of the juror's immediate family). Counsel knew about the altercation, there was a sidebar and counsel said nothing, and when juror 11 came forward about recognizing a member of Mr. Farmer's family, counsel not only refrained from asking any questions but also never questioned juror 11 about the altercation and the partiality it would cause or egregious enough to imply bias. U.S. v. Needham, 852 F.3d at 840 (8th Cir. 2017).

When counsel's own motivated strategy failed, it was too late for Mr. Farmer and denied him a right to a new trial because the court assumed that Mr. Farmer, not counsel, had made a gamble to keep juror 11 on the panel because of juror 11 being the only African American venireperson. The totality of the circumstances gave rise to the inference that Mr. Farmer had made that decision, not counsel. Whether juror 11 was African American, white or Chinese, common sense would be that if

you were the defendant and a prospective juror had a prior altercation with a member of your family, that would substantially give reason for defendant to assume that there would be some type of retaliatory motive because of that prior altercation to have that juror immediately removed. And because counsel remained silent and withheld all of the damaging information from the court and from Mr. Farmer, the court inferred that Mr. Farmer's reasoning for remaining silent was to "gamble" for a favorable verdict by allowing juror 11 to remain on the panel because she was the only African American on the panel. It was not Farmer "complaining for a New Trial." It was counsel covering up his ineffective selfish strategic decisions, resulting in Mr. Farmer having no chance in meeting any burden to be granted a New Trial under Rule 33(b).

A. This Court Must Decide That Is It Necessary To Hold An Evidentiary Hearing Post-Trial Before Accepting A Motion For A New Trial Upon Discovering a Discrepancy Between Defendant and Counsel, In Order To Hear All The Facts To Then Make Its Inference Of The Totality Of The Circumstances In Making A Decision Under Rule 33(b) -

In order for the court to make an inference of the totality of the circumstances before making a decision on a New Trial Motion under Rule 33(b), there is a demand for an Evidentiary Hearing for the Court to hear both sides (defendant and counsel). When Mr. Farmer discovered that Counsel remained silent and withheld damaging information from both the court (sidebar meeting) and defendant (during void dire), it was practically too late for Mr. Farmer to meet his burden to be granted a New Trial under Rule 33(b); (1) the court determined Mr. Farmer, not counsel, remained silent; (2) the court determined Mr. Farmer, not counsel, took a gamble for a verdict that would favor him; (3) the court determined Mr. Farmer, not counsel, made the decision to keep juror 11 because juror 11 was the only African American in the jury pool; and

finally; (4) by remaining silent, allowed the juror to come forward and admit she knew Mr. Farmer's sister and bypass giving any information regarding the altercation with her, preventing Mr. Farmer from showing bias or partiality.

Although Mr. Farmer can now raise his ineffective assistance of counsel claims on a § 2255 Petition to Vacate, Set-Aside or Correct his Sentence, there is a substantial difference in the time period between the jury verdict (where the trial is still hot/ripe for filing post-trial motions) and filing a § 2255 Motion (where under 28 U.S.C. § 2255 there is one-year to file from final adjudication and that there is no rule as to how long a judge has to make a ruling on a § 2255 Motion).

Mr. Farmer has the right to a fair trial and the right to effective assistance of counsel. An Evidentiary Hearing post verdict /trial, would have been necessary for the court to hear both sides (counsel and defendant), which would have substantiated Mr. Farmer's Motion For New Trial claims as opposed to the court not knowing all the facts by denying Mr. Farmer's New Trial Motion because of his actions and decision, not counsel's actions and decision. An Evidentiary Hearing would also prevent counsel from filing a frivolous motion knowing what he did wrong and keeping it hidden / unknown by raising issues Mr. Farmer can not have any chance of winning or have any chance of meeting any burden for the Court to grant a new trial. An Evidentiary Hearing is therefore necessary for the court to determine all the facts from both sides (defendant and counsel) before making its inference from the totality of all facts to grant or deny a new trial or filing for a new trial.

REASONS FOR GRANTING THE PETITION

(4)

The Court should GRANT this Writ of Certiorari by REMANDING this case back to the District Court for an Evidentiary Hearing and allow both sides (defendant - Mr. Farmer and counsel of record) and allow the court to hear all the facts and then make its inference on the totality of all the facts in making its decision to grant or deny a New Trial, AND ALLOW MR. FARMER TO REAP ALL BENEFITS OF A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL AFTER EXERCISING HIS RIGHT TO TRIAL.

(4) HARVES v. KERNER, 404 U.S. 519, 520-21 (1972) WHERE
MR. FARMER IS A PRO SE LITIGANT)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Monroe Farmer

Date: JUNE 30, 2003