

Docket No. 23-5594

IN THE
SUPREME COURT OF THE UNITED STATES

BRIM BELL—PETITIONER

vs.

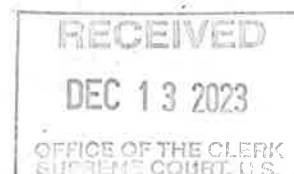
STATE OF NEW HAMPSHIRE—RESPONDENT

Re: THE STATE OF NEW HAMPSHIRE/SUPREME COURT Case No. 2019-0047

ON PETITION : FOR REHEARING UNDER U.S. SUPREME COURT RULE 44 TO THE
SUPREME COURT OF NEW HAMPSHIRE'S OPINION; 11-18-22

PETITION : FOR REHEARING OF CERTIORARI
UNDER; 28 U.S.C. § 1257(a)

Brim Bell (pro se petitioner)
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The grounds for rehearing of certiorari, stem from 'Stare-Decisis'. But only under the New Latin definition: "to stand by things that have been settled". For example; the core or heart of the matter, is clearly a 'Strickland-Claim' regarding ineffective assistance of counsel. On both trial & appellate counsel, that were without any doubt 'Constitutionally Deficient Representation'. To date, there are numerous cases that set precedent on the federal level pertaining to 'Ineffective Assistance of Counsel'. Therefore, the petitioner asserts that, this court will need no departure from well established precedent; as to prevent the perpetuation of injustice in this case. See: Strickland v. Washington, 466 U.S. 668 (1984) HN4: "The benchmark for judging any claim of ineffectiveness of counsel must be whether counsel's conduct so undermined the proper functioning of the 'Adversarial-Process' that trial cannot be relied on as having produced a just result". The relevance Strickland has, shadows the numerous issues raised in the petitioner's 'Writ of Certiorari'. To keep this petition short and concise, the petitioner will only focus on the clear and obvious fact, that trial-counsel failed to conduct any resemblance of a 'Meaningful Adversarial-Testing' of the prosecutions case. Especially, the historical event titled; 'Side-bar Conference' that occurred during opening statements. (sidebar begins at 11:29 a.m.) MS. LANE: "I just wanted to note for the record the State's objection to the Defense opening-statement, in reference to the Randy Young phone call. Defense -- which our Defense is reference to the Randy Young phone call. The Defense is aware that the State is not going to call Randy Young. If the Defense were to call Randy Young themselves, I don't see how that evidence comes in as not hearsay, so I just believe that it was". See: T-T pg. 37/line 9-16 'THIS SEGMENT INFERS A MISTRIAL OCCURRED'

Robert J. Watkins (trial-counsel) made it perfectly clear, in his opening-statement, as to what the Defense was going to entail. In which, The State Government witnessed prior to the sidebar conference. Therefore, Ms. Lane (state-prosecutor) knowingly, willingly, & purposely, attempted to prevent the defendant's Defense from taking place. She knew at this point, if her chief-witness (Sgt. Young) was not called to the stand, the Defense would loss the opportunity to 'Cross-Examine' their exculpatory-witness, that conducted the warrantless search of Mr. Bell's home & auto-business. This fact proves The State, was not attempting to seek justice, whatsoever. Because Officer Young's Testimony, would have exposed the fact that all The State's-Witnesses, Mr. Bell's bank-records, text-messages, e-mails, & most importantly the photographs taken by the investigating officer, of highly sensitive documents inside the home & business of Brim Bell; were inadmissible evidence. Revealing the fact that this case is a 'Farce' and the trial was a complete 'Sham'. If there was a moment in this trial, for defense-counsel to test the 'Crucible of Meaningful Adversarial Testing'; this was the moment to call for a mistrial. But, after Watkins witnessed Lane entreat The Court, to exclude Sgt. Young's testimony and the wire-tap recording (Exhibit-A); that does in fact prove on the first day of his investigation of Mr. Bell's auto-business, an 'Illegal Search & Seizure' occurred by the Stratford P.D.. The key element that shows true ineffectiveness, can be found on the trial-record, just after Lane stopped showing extreme desperation to have Judge Howard exclude Officer Young's Testimony. Attorney Watkins states; "Oh, no, absolutely. In fact, I'll get into that during Mr. Young's testimony". See:T-T pg. 38/line 10-11 Defense counsel fails to call for a mistrial & fails to call Young to the stand. Adversarial Testing can not be found, nor any creditability of Robert J. Watkins in the eyes of the jury pool, causing a guilty verdict.

During trial, the jury was informed of the Defense of the defendant by Attorney Watkins. He laid the tracks for the entire Defense that was going to take place. Also, gave the jury a sample of some of the illegal-acts of Sgt. Randy Young, during Mr. Watkins' opening-statement; Quoting-Watkins/T-T pg.32/line 6-11 "At some point when Mr. Young testifies, a Sergeant's going to testify to the conversation with Brim, during that conversation which occurred in January of 2017. He said 'listen; you've got to come up with a couple of \$100,000 dollars, or you're going to prison for a long time'. And that was pretty much the end of Brim's business". See: Strickland/LEdHN [12] : "In representing a criminal defendant, counsel owes the client a duty of loyalty; a duty to avoid conflicts of interest, a duty to advocate the defendant's cause, a duty to consult with the defendant on important decisions, a duty to keep defendant informed of important developments in the course of the prosecution, and a duty to bring to bear such skill and knowledge as will render the trial a reliable 'Adversarial Testing Process". This quote from federal caselaw is relevant to this case, because trial-counsel failed on every duty that's required of Defense-Counsel. The trial-record shows Watkins, violated Mr. Bell's Sixth-Amendment Rights repeatedly, causing 'Fundamental-Unfairness' in the proceedings. See: CRIMINAL LAW § 46.6 MEANINGFUL ADVERSARIAL TESTING (is the underlying ground of this petition).

ADA Lane sent Mr. Watkins a Memo/Discovery pg. 790 that clearly exposes perjury to The Grand-Jury, by Officer Randy Young. At this time defense-counsel should have motioned for a probable-cause hearing, to challenge the validity of the indictments. See: Diaz-Nieves v. United States, 128 F. Supp. 3d 449 (2015) HN10: "Generally a Grand-Jury indictment establishes 'Probable-Cause'. However, this presumption of probable-cause may be rebutted, for example, by evidence that the indictment was obtained through the use of perjury".

The constructive denial of effective counsel, in this case, is the equivalent to Gideon v. Wainwright, 372 U.S. 335, 344 (1963); in which, trial-counsel was denied all together. Trial Counsel Watkins, failed to 'voir dire' the jury, failed to object to inadmissible evidence, excluded his client from the last two days of trial, and misled the jury repeatedly. The petitioner asserts, that these monumental or cardinal issues; can not be misconstrued as 'Reasonable Trial Strategy'. See: United States v. Cronic, 466 U.S. 648 (1984) Quoting-Footnote [8 ¶] "Time has not eroded the force of Justice Sutherland's opinion for the Court in Powell v. Alabama, 287 U.S. 45 (1932): 'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small & sometimes no skill in science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill & knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant & illiterate, or those of feeble intellect. If in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore of due process in the Constitutional-Sense" Id. , at 68-69. 'PETITIONER WAS DENIED THE SIXTH AMENDMENT GUARANTEE'

CONCLUSION

The 'Petition For Rehearing' should be granted; based on well established federal caselaw from this Court. Also, the trial record of the petitioner, clearly infers the great possibility that he was in fact denied his Constitutional Right to Effective Assistance of Counsel; at trial and on direct appeal. See: The United States Constitution Amendment Six. (all trial-transcripts & Discovery raised in this petition, can be seen in the appendix of the 'Writ of Certiorari' that was docketed on September 15, 2023 as No. 23-5594.)

Dated: November 10,

Respectfully submitted,

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Manchester, N.H. 03104
Tel. (603) 782-6127

Signature: 

Brim Bell

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PROOF OF SERVICE

I, Brim Bell, do swear or declare that on this date, Nov. 10, 2023, as required by Supreme Court Rule 29, I have served the enclosed 'PETITION FOR REHEARING': due to this Court's denial of the UNTIMELY PETITION: FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in The United States Mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. (the names and addresses of those served are as follows):

(1) Thomas P. Velardi (county-attorney) of The Strafford County Attorney's Office @ 259 County Farm Road suite #102 Dover, N.H. 03820 Tel. (603) 749-2808

(2) Weston R. Sager (assistant attorney general) of The New Hampshire Attorney General's Office @ 33 Capitol Street Concord N.H. 03301 Tel. (603) 271-3671

"I declare under penalty of perjury, that the foregoing is true & correct". Executed on: November 10, 2023.

Signature: 

Brim Bell (pro se petitioner)