

No. 23-6292

ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES

FILED
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RAY O. CROWELL, JR.,

Petitioner,

v.

MARK SEVIER

Respondent.

*On Petition for Writ of Certiorari to the
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

PETITION FOR REHEARING

Ray O Crowell

Petitioner, pro-se

Ray O. Crowell

Printed Name of Petitioner

DOC # 259697

New Castle Correctional Facility

P.O. Box A

New Castle, IN 47362

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PETITION FOR REHEARING

Petitioner Ray O. Crowell Jr. petition for rehearing of this Court's January 22, 2024 Order denying his petition for a writ of certiorari.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of substantial ... effect." Just last month the United States Court of Appeals for the Sixth Circuit issued its opinion in United States v. Burrell, 2024 U.S. App. LEXIS 1169 (6th Cir. 2024), and the United States Court of Appeals for the Tenth Circuit issued its opinion in United States v. Kearn, 2024 U.S. App. LEXIS 1471 (10th Cir. 2024). Both circuit appeal courts agree that courts are to look for conduct or statements made before the trial court by defendants for contemporaneous evidence as to the defendants preferred preference on whether to plead guilty. The United States Court of Appeals for the Seventh Circuit is in the view that those statements are confined to those made in post-conviction relief proceedings.

The Sixth Circuit's and Tenth Circuit's decision warrents this Court's rehearing and grant of Crowell's petition for certiorari.

- I. The recent opinions from the Sixth Circuit and Tenth Circuit deepens the conflict that the Seventh Circuit's opinion has with other circuit courts of when courts are to look back to for contemporaneous evidence of a defendants expressed preference.

The Seventh Circuit's opinion was that since pro se Crowell did not specifically state he would not have plead guilty to a time-barred count in the post-conviction relief court, but did during briefing in the Indiana Court of Appeals ("state court"),

made these statements "post hoc" assertions and contemporaneous evidence of a defendant's expressed preferences are to be taken from the post-conviction proceedings. Seventh circuit district courts are now taking the same position that courts are to look to post-conviction relief proceedings instead of the actual trial court proceedings when the defendant plead guilty. "[I]gnoring petitioner's 'post hoc' claim that he would not have pleaded guilty to a time-barred count if he knew the statute of limitations had lapsed because petitioner raised it for the first time in his appellate post-conviction briefing in state court". Olden v. Greene, 2023 U.S. Dist. LEXIS 208910 (Ill. N. Dist. 2023) at *18. (citing Crowell v. Sevier, 77 F.4th 539, 545 (7th Cir. 2023).

The Sixth Circuit's recent decision in United States v. Burrell, 2024 U.S. App. LEXIS 1169 (6th Cir. 2024) was that "contemporaneous evidence at the pretrial - turned - plea hearing shows he would have plead guilty even if he had known that he could argue that his Ohio aggravated - robbery conviction did not count as a 'serious felon'" Id at *15. Even more compelling is the Tenth Circuit's recent decision in United States v. Kearns, 2024 U.S. App. LEXIS 1471 (10th Cir. 2024). "[T]he Supreme Court looked for contemporaneous evidence from the plea bargain process to bolster the defendant's testimony. It looked back at the time the plea was offered for conduct or statements made by Lee to support his 'post hoc' claim he would not have accepted the plea deal." Id at *18-*19. These cases are following this Court's holding in Lee v. United States, 582 U.S. 357 (2017) and applying it in the context in which it was meant to be.

Its "a straightforward inquiry when the last court to decide a prisoner's federal claim explains its decision on the merits in a reasoned opinion. In that case, a federal court simply reviews the reasons given by the state court and defers to those reasons if they are reasonable." Wilson v.

Sellers, 584 U.S. 122, 125 (2019). The state courts opinion was that although Crowell stated he would have rejected the plea, and gone to trial, the state court denied relief because in its opinion Crowell advanced no special circumstances to support that claim. The Seventh Circuits opinion completely mischaracterized the state court's opinion to deny relief. Applying this Courts precedent in the context in which it was given, and all other circuits have applied it, looking back to the time the plea was offered Crowells statements to the trial court support Crowells preferred preference was to have his appointed trial counsel dismissed, and not accept the states offered plea and proceed to trial.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant rehearing, grant the petition for a writ of certiorari, and review the judgment below.

Respectfully submitted,

Date: February 15, 2023



Petitioner, Pro se

Ray O. Crowell

New Castle Correctional Facility

P.O. Box 11

New Castle, IN 47362

CERTIFICATE OF COUNSEL

As petitioner, *pro-se*, I hereby certify that
this petition for rehearing is presented in good faith
and not for delay and is restricted to the grounds
specified in Rule 44.2

Ray O. Crowell
Signature

Ray O. Crowell JR.
Printed Name

No. 23-6292

IN THE
SUPREME COURT OF THE UNITED STATES

RAY O. CROWELL JR - PETITIONER

MARK SEVIER - RESPONDENT

PROOF OF SERVICE

I, Ray O. Crowell Jr., do hereby swear or declare that on this date, February 15th, 2024, as required by the Supreme Court Rule 24, I have served the enclosed PETITION FOR REHEARING on on each party above or the party's counsel, and have on every other person required to be served, by personally handing the same to the appropriate staff at the New Castle Correctional Facility to be placed in the facility's prison legal mail system and deposit in the United States mail, First-Class postage prepaid.

The names and addresses of those served are as follows:

Indiana Attorney General, Government Center, South
302 W. Washington St., 5th fl.
Indianapolis, IN 46204

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 15, 2024


Petitioner

STATEMENT OF MAILING
BY AN INCARCERATED PERSON

I declare under penalty of perjury under the laws of the United States of America that on the 15th day of February, 2024, the original of the PETITION FOR REHEARING, was personally handed to the appropriate staff at the New Castle Correctional Facility for deposit in the United States Mail, First-Class postage paid, to the United States Supreme Court, 1 First St. NE, Washington, DC 20543-0001

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: February 15, 2024.



Petitioner, Pro Se

Ray O. Crowell Sr.

New Castle Correctional Facility

IDOC # 259697

P.O. Box A

New Castle, TN 37362-1041