

23-6363
IN THE
UNITED STATES SUPREME COURT

PROVIDED TO TOMOKA
CORRECTIONAL INSTITUTION
ON 7/28/23
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CASE NUMBER: _____
(to be assigned)

Supreme Court U.S.
FILED
JUL 26 2023
OFFICE OF THE CLERK

MATTHEW REID HINSON,
Petitioner,

v.

SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL STATE OF FLORIDA,
Respondent.

ON REVIEW FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPEAL NUMBER: 22-11032

PETITION FOR WRIT OF CERTIORARI

Matthew Reid Hinson, DC# J50319
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124
Petitioner, Pro 'Se

ORIGINAL

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QUESTIONS PRESENTED

DOES AN ATTORNEY ADVISING HIS CLIENT TO ENTER A GUILTY PLEA WITHOUT FIRST INVESTIGATING THE CASE AND/OR INTERVIEWING WITNESSES THEN DISCUSSING VIABLE DEFENSES WITH HIS CLIENT CONSTITUTE A VIOLATION OF THE SIXTH AMENDMENT'S GUARANTEE OF A FAIR AND IMPARTIAL TRIAL, AND COMPETENT REPRESENTATION OF COUNSEL, AND THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW?

The question presented in this petition arose from the proceedings in: the Fourth Judicial Circuit Court in and for Duval County, Florida (case number 12-CF-009883); the First District Court of Appeals (State of Florida) (case number 1D14-0375); the United States Middle District Court of Florida (Jacksonville Division) (case number 3: 18-CV-1306-J-32JRK); and in the United States Court of Appeals for the Eleventh Circuit (case number 22-11032-F).

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 as follows:

RELATED CASES

Hinson v. State, 150 So3d 1137 (Fla. 1st DCA 2014)

Hinson v. State, 2014 Fla. App. LEXIS 17865 (Fla. 1st DCA 2014)

Hinson v. Sxhoonover, 166 So3d 771 (Fla. 1st DCA 2015)

Hinson v. State, 190 So3d 661 (Fla. 1st DCA 2016)

Hinson v. State, 220 So3d 1242 (Fla. 1st DCA 2017)

Hinson v. Bias, 927 F3d 1103 (11th Cir. 2019)

Hinson v. Sec'y, Fla. Dep't. of Corr., et al, 2022 U. S. Dist. LEXIS 37899 (M. D Fla 2022)

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APPENDIX

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- B U. S. District Court Order Denying 2254 Petition
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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 of the Fourth Judicial Circuit in and for Duval County, Florida, and the *per curiam* affirmation of that judgment, without a written opinion, by the First District Court of Appeal, Florida.

OPINIONS BELOW

[X] 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.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at *Hinson v. Sec'y Fla. Dep't of Corr., et al*, 2022 U. S. Dist. LEXIS 37899 (M. D. Fla. 2022); or,

has been designated for publication but is not yet reported; or,

is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

reported at *Hinson v. State*, 150 So3d 1137 (Fla. 1st DCA 2014); 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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 27, 2023

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).

[X] For cases from state courts:

The date on which the highest state court decided my case was September 3, 2014. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: October 15, 2014, 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

The Constitutional provisions involved in this petition are the Sixth Amendment right to competent representation of counsel and a fair trial, and the Fourteenth Amendment right to due process and equal protection of the law.

Sixth Amendment (Rights of the Accused)

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 against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fourteenth Amendment (Citizens of the United States)

Section 1: 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 laws.

STATEMENT OF THE FACTS

On October 7, 2012 Petitioner was waiting for his wife in the foyer of Fion MacCools, restaurant/bar, in Jacksonville, Florida when the victim sat down and proceeded to grab Petitioner, from behind, around his shoulder/neck area. In fear for his life, due to this sudden and unprovoked attack, Petitioner unclipped his [common] pocketknife and while defending himself Petitioner accidentally and unknowingly stabbed the victim in the throat. After the incident Petitioner was described, by witnesses, as being "out of it" or "in a trance." In a total state of shock Petitioner left the restaurant/bar and was subsequently stopped and arrested by the Jacksonville Sheriff's Office (J.S.O.).

Petitioner was charged with second degree murder and after entering an open plea was adjudicated guilty as charged and sentenced to life.

Petitioner's direct appeal was per curiam affirmed without a written opinion.

Petitioner filed a Motion for Post Conviction Relief, pursuant to *Fla R. Crim P. 3.850 (b) (2)*, raising ten (10) claims of ineffective assistance of counsel one (1) claim of manifest injustice and one (1) claim of cumulative error in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. APPENDIX B. Petitioner then filed a Federal Petition for Writ of Habeas Corpus, pursuant to 28 USC § 2254, raising one (1) claim of ineffective assistance of counsel (with twelve (12) sub-grounds) alleging a violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. APPENDIX C.

REASONS FOR GRANTING A WRIT OF CERTIORARI

After months of, what Petitioner assumed was preparation for trial (ie deposing witnesses, consulting a PTSD expert, etc) counsel advised Petitioner that "there was no good defense" for him.

Petitioner avers that an attorney has a duty to conduct a reasonable investigation into the facts and law surrounding a case and then discuss viable defenses with his client

Had counsel conducted even a preliminary investigation:

1) Counsel would have known that Petitioner could not recall all the details of what had happened and felt that he was [involuntarily] under the influence of some unknown drug when the offense occurred. Counsel would have known that Lindsay Blackwell, who was friends with Petitioner's wife, was at the restaurant/bar and had access to Petitioner's drink and that, on the same night as Petitioner, she was arrested for possession of four (4) 7.5 mg Hydrocodone Bitartate pills and based on the fact that Petitioner's mental state, at the time the offense, was a critical issue had Petitioner been advised that involuntary intoxication was a viable defense he never would have entered an [open] guilty plea and would have proceeded to trial.

2) Counsel would have known that, after his arrest, Petitioner was diagnosed with PTSD, which supports a viable defense of insanity at the time of the offense. Had Petitioner been advised that insanity was a viable defense he never would have entered an [open] guilty plea and would have proceeded to trial.

3) Counsel would have known that Petitioner was attacked from behind and because he was in fear of his life, his reaction was in self defense which supports a viable defense of stand your ground. Had Petitioner been advised that self defense/stand your

ground was a viable defense he never would have entered an [open] guilty plea and would have proceeded to trial.

4) Counsel would not have [mis]advised Petitioner that he would get the death penalty if he went to trial, thereby scaring/coercing Petitioner into pleading guilty. Had Petitioner been advised that second degree murder did not carry the death penalty he never would have entered an [open] guilty plea and would have proceeded to trial.

5) Counsel would not have [mis]advised Petitioner that the judge would sentence him to the bottom of the guidelines. Had Petitioner been advised that the guidelines only established the lowest permissible sentence and that the judge could sentence him to anything from the bottom of the guidelines to life in prison he never would have entered an [open] guilty plea and would have proceeded to trial.

6) Counsel would have known that Petitioner was being treated with psychotropic medication that altered his thinking to such a degree that Petitioner was incapable of making an intelligent, informed, and knowledgeable decision, which renders his plea involuntary.

7) Counsel would have known about and deposed witness Kimberly Russell who would have testified that the victim was extremely intoxicated and how he had been in several altercations, with other people, prior to attacking Petitioner. While she could not testify to seeing the victim actually attack Petitioner her testimony would have bolstered Petitioner's claim of self defense. Had Petitioner been advised of this witness and her statement to police he would not have pled guilty and would have proceeded to trial.

8) Counsel would have known that during Petitioner's interrogation, by J.S.O., Petitioner was extremely distressed and intoxicated making him incapable of making an

informed and knowledgeable decision to waive his right to remain silent, which would have supported a motion to suppress his confession.

9) Counsel would have known that there was not enough evidence to convict, and/or support a factual basis for a plea, for second degree murder and counsel could have moved for dismissal/reduction of the second degree murder charge. Had Petitioner been advised that there was not enough evidence for a second degree murder conviction he never would have entered an [open] guilty plea and would have proceeded to trial.

The record clearly shows that counsel did not conduct any investigation whatsoever. Petitioner avers that because it was not a conscious choice between two legitimate and rational alternatives and was not borne of reasoned deliberation but was borne from inattention, and/or neglect counsel's decision, not to investigate, cannot be characterized as strategic see *Wiggins v Smith*, 539 US 510, 123 S Ct 2527 (2003) (Holding: A cursory investigation does not automatically justify a strategic decision. Furthermore failure to investigate thoroughly that resulted from inattention, is not a reasoned strategic judgment); cf *Strickland v. Washington*, 466 US 668, 104 S Ct 2052 (1984).

It is well established that a lawyer has a duty to conduct a thorough investigation see *Porter v. McCollum*, 558 US 30, 130 S Ct. 447 (2009); and *Rompilla v. Beard*, 545 US 374, 125 S Ct 2456 (2004) (Holding: Counsel has a duty to make reasonable investigations) cf *Williams v. Taylor*, 529 US 362, 120 S Ct 1495 (2000); *Wiggins v Smith*, 539 US, @ 527, 123 S Ct 2527; and *Strickland v. Washington*, 466 US, @ 688, 104 S Ct 2052. These cases make it clear that counsel's unconsidered decision, not to conduct any investigation, is not a reasonable strategic decision. The only conceivable strategy that might support counsel's forgoing his ethical obligations under these circumstances would

be a reasoned conclusion that further investigation is futile and thus, a waste of valuable time. There is nothing in the record to suggest that counsel ever reached such a conclusion. See *Wood v. Allen*, 558 US 290, 130 S Ct 841 (2010); *Wessinger v. Vannoy*, 2003 L Ed 2d 427, 2018 US LEXIS 1519 (2018) (Holding: The decision not to investigate did not reflect reasonable professional judgment and constitutes deficient performance); see also *Williams v. Taylor*, 529 US @ 396, 120 S Ct 1495 (Holding: Deficiency found where counsel did not fulfill obligation to conduct a thorough investigation); cf *Porter v. McCollum*, 558 US @ 39-40, 130 S Ct 447.

Petitioner recognizes that counsel is afforded deference, as to strategic decisions, however for this deference to apply there must be some evidence that the decision was reasonable see *Strickland v. Washington*, 466 US, @ 690-691, 104 SCt 2052.

Petitioner avers that had counsel been prepared and advised him of the available defenses Petitioner would not have entered an open plea and would have proceeded to trial

CONCLUSION

Petitioner avers that there is no evidence that counsel made a reasonable, considered decision not to investigate and whether from inattention, or neglect he simply failed to do so.

Petitioner avers that the lower courts' decisions are contrary to or an unreasonable application of federal law as determined by this Court's precedent.

Wherefore, based the foregoing facts, argument, and cited authorities, the Petitioner prays that this court will grant certiorari.

Date: 9/22/23

Respectfully submitted,
Matthew R. Hinson Petitioner pro se
Matthew Reid Hinson, DC# J50319