

ORIGINAL

NO. 24-5251

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IN THE
SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SKS

KEITH VERNON DAVIS- PETITIONER

vs.

DAVIS CLOSE, SUPERINTENDENT, S.C.I. HOUTZDALE-RESPONDENT

"PETITION FOR WRIT OF CERTIORARI" "PETITION FOR REHEARING

FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
WHICH RENDERED AFFIRMATION OF THE JUDGMENT OF DENIAL FOR THE
UNITED STATES DIATRICT COURT FOR THE WSTERN DISTRICT OF

PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

KEITH VERNON DAVIS NF 9296
S.C.I. HOUTZDALE
209 INSTITUTION DRIVE
HOUTZDALE PA 16698
(814) 378-1000

PRO SE PETITIONER

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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 below.

OPINIONS BELOW

The opinion of the UNITED STATES COURT OF APPEALS appears at Appendix A to this petition and is unpublished.

LIST OF PARTIES AND RELATED CASES

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KEITH VERNON DAVIS v. BARRY SMITH SUPERINTENDENT S./C.I. HOUTZDALE
No. 3:22-CV-00152

COMMONWEALTH v KEITH VERNON DAVIS
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Petitioner was previously granted In Forma Papuris status by the Court

This petition for rehearing should be held to "Less stringent standards than formal pleadings drafted by a lawyer. *Hanes v. Kerner* 404 U.S. 519 (1972)

IN THE
SUPREME COURT OF THE UNITED STATES

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit decided my case was

January 19, 2024

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part:

"The right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures."

The Fifth Amendment to the United States Constitution provides in relevant part:

"Prohibition against compelled self-incrimination."

The Sixth Amendment to the United States Constitution provides in relevant part:

"In all criminal prosecutions, the accused shall...have assistance of counsel for his/(her) defence"

The Fourteenth Amendment to the United States Constitution provides in relevant part:

"No state shall deprive...or deny any person within it's jurisdiction Due Process or Equal Protection under the law"

STATEMENT OF THE CASE

On December 21, 2017, Appellant was sentenced to a term of 7 1/2 to 15 years to include a mandatory life-time registration requirement not disclosed after trial counsel deceptively entered a plead of guilty on behalf of the appellant to one count each charging violations of the PA. Crimes Code of Involuntary Deviate Sexual Intercourse (IDSI) (18§3123§§A7) Person Less Than 16 Yrs. Age and Aggravated Indecent Assault-Comp. Less than 16.

Appellant filed a timely Post Conviction Collateral Relief Act (PCRA) petition on January 9, 2020 which gives rise to the instant Writ of Certiorari asking that his sentence be vacated due to ineffective assistance of his counsel who failed in his clear obligation under well-settled law in this Supreme Court of the United States to fully disclose to Appellant, then advise him that a Plea had been offered and about certain pre-trial discussions counsel had with the prosecution about the last minute offer.

The trial court appointed counsel to defend Appellant [Appendix H]. counsel had various discussions with the prosecution about the possibility of a plea. Indeed, a plea offer was made {in violation of Pa. R. Prof. Cond. 3.8 (a) [Appendix C p.10]; these conversations were not passed on to the appellant as they should have been and the offer was not disclosed until counsel "simply" plead guilty on behalf of the appellant omitting the mandatory life-time registration requirement. [Appendix D]. The point of this petition for rehearing for writ of certiorari is simple. This supreme Court of the United States has held that defendant's in a criminal case have the constitutional right to be fully advised about all plea offers and discussions and then receive counsel's informed opinion as to what plea should be entered. Boria v. Keane 99 F.3d 492 (2d cir. 1996), Boria v. Keane 88 F.3d 48 (1996); United States v. Purdy 144 F.3d 241 (2d Cir. 1998) Boria, interpreting the seminal ineffective assistance of counsel case of Strickland v. Washington 466 U.S. 668 (1984) holds that whee counsel does not provide such information, advice and professional opinion to Appellant, Counsel has preformed ineffectively. Boria, gose on to hold that counsel is not excused from preforming his duty under the Sixth Amendment simply because Appellant told counsel that he was innocent and that he would not plead guilty. Assertions of innocence matter not where Boria has clearly held because of the accurate and full receipt of counsel's advice and opinion concerning the plea offer could and often does change the Appellant's thinking on "critical issues of whether or not Appellant would have plead guilty. Boria simply recognizes the realities of counsel's pivotal plea bargaining role in today's criminal justice system grounded in the Sentencing Guidelines. Counsel who does not inform and advise Appleant in this area has not preformed effectively accord the Sixth Amendment and a sentence made by such a failure should be vacated where appellant was one of two similarly-situated defendant's charged with IDSI in violation of 18§3123 §§A7 of the Pennsylvania Crime Code as his "Codefendant was also charged with the same thing her pleading guilty and receiving a non-custodial sentence not disclosed to Appellant predicated on her cooperation (agreement) to testify against Appellant and his conviction. Giglio v. United States 405

U.S. 150 (1972) [Appendix G]. Appellant alone amongst those charged with IDSI actively refused to plead and alone amongst those charged received a prison sentence. Appellant's pot plea guideline calculations were influenced by unconstitutionally seized evidence in violation of the Fourth Amendment never tested [N.T. 10/30/2017, p.13.] [Appendix F] where Appellant's Co-defendant who did not go to trial her sentence was imposed on the basis of very different guidelines, was informed and advised of a plea opportunity, thus, Appellant's co-defendant's case was "nipped in the bud." While §3123§A7; §3125§§A8 of the Pa. Ccrimes Code requires some actus reus or mens rea for the sexual element...the statues are at mosr an "impure strict liability [crime where] culpability is required with respect to a least one material element. Commonwealth v. Hacker 15 A.3d 333 (2011); Commonwealth v. Samuels 778 A. 2d 1149 (Pa. 2000). [Appendix C p.10] Trial counsel's having not informed Appellant of a the last minute offer and his omission of a mandatory life-time registration requirement is the central violation accord the Fourteenth Amendment's "Due Process Clause" [Appendix E]. Where applant's counsel never afforded him his Sixth amendment guaranteed constitutional right to counsel's opinion about the last minute plea offer or even whther Appellant should have seriously considered the offer. Counsel. Counsel explained his failure to inform and advise by noting [allegedly] that Appellant had ecided to plea after the DNA resultst [never tested] came back "not in his favor," where the Appellant was strongly motivated primarily by a strong desire to avoid prison. [Appendix C] Trial counsel knew of this desire, yet "at every pre-trial meeting or telephone conversation [between counsel and the prosecutor] Appellant was not informed or advised by counsel or present nor had counsel related the September 19, 2017 offer from the prosecutor prior to the scheduled "call of the list" to be held.[Appendix E] all trial counsel's actions [and inactions] have essentially been refuted by the United State circuit court without review or their merit in violation of the Fourteen Amendment. Hence Appellant and the Circuit Court part in their analysis of the proper legal conclusion to be drawn. The Ciruit Court has concluded that even if counsel failed in his Sixth Amendment obligation to communicate to Appellant that aplea had been

offered [Appendix D] his failures had not prejudiced the Appellant where it found Appellant's actual innocence claim to be an inadequate conclusory claim in contrast to his guilty plea without review of the record at Commonwealth v. Keith Davis CP-11-CR-0000474-2017. Here the irrefutable evidence demonstrates that Appellant would not have been deaf to the siren call of "a probable different outcome a trial to include: (i) The suppression of the Commonwealth's unconstitutionally seized evidence {Appendix F] at Incident No. 20170122M1328 in violation of the Fourth Amendment as a warrant had never issued. Commonwealth v. mslili 555 A.2d 1254, 1260 (1989) (citing Chandler, 505 Pa. at 126; 477 A.2d at 857. (ii) Trial Court and trial counsel's failure to inform or advise Appellant of the Commonwealth Attorney's "biological relationship" to counsel or to obtain a waiver of conflict accord Pa. R. Prof. Cond. 1.7. [Appendix H] Armienti v. United States 234 F.3d 820 (2d Cir. 2009) (quoting Cuyler v. Sullivan 466 U.S. 335 (1980); [N.T. 9/3/2020, p.5] Despite these undisputed circumstances never reviewed by the circuit Court it concluded that simply because of Appellant's protestations of innocence Appellant knowingly plead guilty [Appendix A] excusing counsel's failure to inform and advise which runs counter not only to the clear instructions of Boria's that appellant's protestations of innocence does not excuse counsel's sixth Amendment duty to inform or advise Appellant of a plea offer but counters as well the indisputable realities of this case. [Pa. R. Prof. Cond. 1.18 (4) because trial counsel had a fundamental disagreement with the course of action pursued by the Appellant. Appellant does not cite this evidence from the record to argue formally that the Court should have favored this evidence over that of the other side as there "was no' evidence to refute any of the foregoing reasons which compellingly shows that the Appellant would have pursued the offer had he been informed or properly advised of the offer. [Appendix D] Here, the Appellant offers the above-cited evidence to demonstrate the practical wisdom of the Boria's holding as applied to this case, namely, it is illogical [not to mention contrary to Boria's precedent] to find that constitutionally required advise [the very purpose of which to effect Appellant's thinking] need not be given simply because of Appellant's assertion of his innocence suggests that absent not

being informed and without counsel's informed opinion that this Appellant would have plead guilty. [Appendix D; Appendix E] The United States Circuit Court of Appeals impermissibly and improperly used Appellant's protestions of innocence as the sole basis for it's findings that Appellant was not prejudiced by trial counsel's failures without review of the merits of Appellant's ineffective assistance of counsel claims and thus Appellant had knowingly plead guilty as trial counsel had done his duty. As a matter of law this Supreme Court of the United States held that Appellant's assertions of innocence simply can not excuse trial counsel's failure to inform Appellant of an offer and then advise. "The very purpose of advice is to have effect on Appellant's view of what he should do." See supra. pp.20-21; [Appendix's A, D; E]

IN THE
SUPREME COURT OF THE UNITED STATES

QUESTIONS INVOLVED

**I. DOES A CRIMINAL DEFENSE LAWYER RENDER CONSTITUTIONALLY
INEFFECTIVE ASSISTANCE WHERE COUNSEL FAILS TO INFORM CLIENT THAT
THE GOVERNMENT HAS OFFERED A PLEA**

**II. DOES A CRIMINAL DEFENSE LAWYER RENDER CONSTITUTIONALLY
INEFFECTIVE ASSISTANCE WHERE COUNSEL FAILED TO CHALLENGE THE
GOVERNMENT'S EVIDENCE UNCONSTITUTIONALLY SEIZED**

**III. DOES A CRIMINAL DEFENSE LAWYER RENDER CONSTITUTIONALLY
INEFFECTIVE ASSISTANCE WHERE COUNSEL FAILED TO SUBJECT THE
GOVERNMENT'S LACK OF ACTUS REUS OR MENS REA TO ANY ADVERSARIAL
TEST AS REQUIRED BY LAW.**

REASONS FOR GRANTING WRIT

There is a conflict amongst the Circuits on the exact point involved in this case. The Third Circuit reasoning is "Flawed" where the Circuit court held that a claim of actual innocence is an inadequate conclusory claim in contrast to a guilty plea and needs not be reviewed on its merit. [Appendix A] Here, the Second Circuit reasoning correctly captures the requirements of Strickland v. Washington as in Boyd v. Warden State Corr. Inst. Waymart 579 F.3d 330 (2d Cir. 2009) the Supreme Court "pointed to prevailing' norms of practice as reflected in the American Bar Association standards as guides 'to determining what is reasonable". Boria 99 F.3d 492, 496 (2d Cir. 1996) (citing Strickland 466 U.S. at 668). According to the ABA's standard '[a] defense lawyer in a criminal case has a duty to advise his client...fully..." See id. (emphasis omitted) (citing Model Code of Professional Responsibility EC7-7 (1992). The performance required of defense counsel is not merely telling the client that there is a plea bargain offer or even telling the client the nature of the offer. Rather, the constitutionally required performance is that of "full" disclosure in conjunction with "full" advise and counsel regarding the client's... options regarding plea bargains and the potential consequences with respect to each option. [Appendix D] In this particular case, in addition to not communicating the offer "at all" to petitioner trial counsel did not counsel petitioner about the advantages or disadvantages of the plea offer or going to trial. Thus petitioner was in "no position" to make a "reasonably informed decision" regarding the plea because counsel failed to advise him about the differences between the options he faced. Counsel "never told" the petitioner he could receive a mandatory life-time of registration. As a result he had no participation in the "decision-making" process September 19, 2017 regarding the last minute plea offer. In sum petitioner's counsel performance was "well-below" the range of competence demanded of attorney's in criminal cases. There was in effect "a complete lack" of meaningful assistance with respect to the guilty plea process. [Appendix's D;E] The Circuit Court's conclusion that "counsel's actions [and inaction]" can

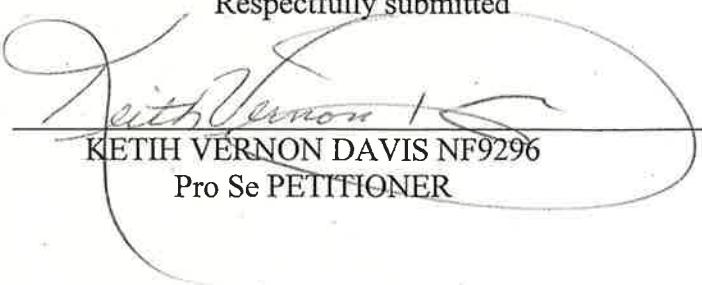
not be deemed ineffective was an unreasonable application of "clearly established" federal law as determined by this Supreme Court because it was based on the Circuit Court's findings that petitioner's counsel "informed" him of the existence of the last minute government plea bargain offer which itself was an unreasonable determination of the "facts" in light of not reviewing the case on its merits. [Appendix's A; B] In Boria (quoting Anthony G. Amsterdam Trial Manual 5 for the Defense of Criminal Cases (199) (emphasis omitted). It is well settled that defense counsel have a "constitutional duty to convey" any plea offer from the "government" and advise their client of the "crucial decision" whether to accept [or reject] a plea offer. Pham V. United States 317 F.3d 178,182 (2d Cir. 2003) (citing Boria at 498) There is a significant disparity between the sentence the... petitioner received because of counsel's "deceptive entrance of a plead of guilty" and a possible acquittal had he gone to trial provides objective evidence that petitioner was prejudice by trial counsel's failure to adequately inform the petitioner of any plea options. [Appendix e].

CONCLUSION

For the all reasons stated herein the Petitioner respectfully prays that this Honorable Court specifically GRANT petitioner Writ of certiorari, vacate judgment and sentence and "ORDER" Petitioner's release forthwith.

Date October 28, 2024

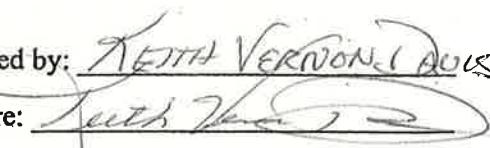
Respectfully submitted


KEITH VERNON DAVIS NF9296
Pro Se PETITIONER

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Keith Vernon Davis

Signature: 

Name: _____

Attorney No. (if applicable): _____

IN THE
SUPREME COURT OF THE UNITED STATES

CERTIFICATE OF SERVICE

I, KEITH VERNON DAVIS, pro se petitioner do hereby declare pursuant to 28 U.S.C. §1746 that I caused to be served a true and correct copy of the document titled Petition for Writ of Certiorari Petition for Rehearing upon the following below:

VIA U.S. MAIL

SOLICITOR GENERAL OF THE UNITED STATES
ROOM 5614 DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE, N.W.
WASHINGTON D.C. 20530-0001

DATE: October 28, 2024


Keith Vernon Davis
KEITH VERNON DAVIS NF9296
PRO PETITIONER

**Additional material
from this filing is
available in the
Clerk's Office.**