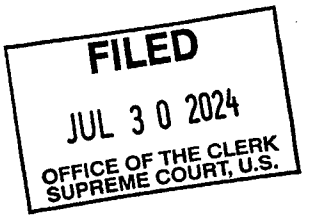
No. 24-5266

ORIGINAL




IN THE

SUPREME COURT OF THE UNITED STATES

DARRELL GUNN — PETITIONER
(Your Name)

vs.

STATE OF NEW YORK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE STATE OF NEW YORK
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRELL GUNN 03B2443
(Your Name)
Sullivan Correctional Facility
P.O. Box 116
325 Riverside Drive
(Address)

Fallsburg, New York 12733-0116
(City, State, Zip Code)

(Phone Number)

## QUESTIONS PRESENTED

WHETHER CAPITAL DEFENSE TEAM FAILED TO PRESENT MITIGATING EVIDENCE REGARDING THE PETITIONER'S HISTORY OF MENTAL ILLNESS?

WHETHER THE NEW YORK STATE CONSTITUTION ARTICLE 1, § 2 VIOLATED PETITIONER'S GUILTY PLEA THAT WAS IN WAIVES OF A JURY TRIAL IN WHICH THE CRIME CHARGED MAY BE PUNISHABLE BY DEATH?

WHETHER PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN ASSIGNED COUNSEL'S FAILURE TO PRESERVE THE WITHDRAWAL OF GUILTY PLEA WHEN PETITIONER WAS DENIED DUE PROCESS BECAUSE THE RE-SENTENCE VIOLATED PETITIONER'S STATUTORY RIGHT TO HAVE PETITIONER'S RE-SENTENCE TO BE PRONOUNCED WITHOUT UNREASONABLE DELAY?

WHETHER THE PEOPLE FAILED TO DISCLOSE EXCULPATORY MATERIAL?

## LIST OF PARTIES

[x] 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

IN RE Quiming, No. H050201, Court of Appeal for the Sixth District, California. Judgment entered March 28, 2024. 2024 WL 1328253

People v. Ledesma, Criminal No. 21436, Crim. No. 23178, Supreme Court of California, Judgment entered January 2, 1987.

## TABLE OF CONTENTS


OPINIONS BELOW ..... 1

JURISDICTION ..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 3

STATEMENT OF THE CASE ..... 4-14

REASONS FOR GRANTING THE WRIT ..... 15

CONCLUSION ..... 16


## INDEX TO APPENDICES


APPENDIX A — State of New York Court of Appeals ORDER DISMISSING Leave. Judgment entered July 17, 2024.

APPENDIX B — Appellate Division, Fourth judicial Department, Docket No. KA 24-00392 Judgment entered May 9, 2024. ENTERED MAY 13, 2024

APPENDIX C — State of New York Court of Appeals ORDER DENYING LEAVE. Judgment entered June 4, 2024.

APPENDIX D — Appellate Division, Fourth Judicial Department, Docket No. 05-00836 Judgment entered March 15, 2024.

APPENDIX E — State of New York Court of Appeals Certificate Denying Leave. Judgment entered March 5, 2007

APPENDIX F — State of New York Court of Appeals Certificate Denying Application For Reconsideration. Judgment entered May 4, 2007.

APPENDIX G — Appellate Division, Fourth judicial Department, Docket No. KA 11-02329 Judgment entered February 3, 2017.

**INDEX TO APPENDICES CONTINUED**


| | |
|---|---|
| APPENDIX H | Appellate Division, Fourth Judicial Department Docket No. KA 05-00836 Judgment entered July 17, 2020. |
| APPENDIX I | State of New York Court of Appeals ORDER DENYING LEAVE. Judgment entered December 30, 2020 |
| APPENDIX J | Appellate Division, Fourth Judicial Department, Docket No. KA 05-00836 Judgment entered December 23, 2022. |
| APPENDIX K | State of New York Court of Appeals ORDER DENYING LEAVE. Judgment entered March 15, 2023 |
| APPENDIX L | Appellate Division, Fourth Judicial Department, Docket No. KA 24-00624 Judgment entered June 17, 2024. |

TABLE OF AUTHORITIES CITED


| CASES | PAGE NUMBER |
|---|---|
| Andrus v Texas, 590 U.S. 806 (2020) | 813-815 |
| DeLuca v. Lord, 858 F.Supp. 1330 (S.D.N.Y. 1994 | 1350-1352 |
| Lopez v. Ercole, 2010 WL 1628994 | *20, *21, *22, *23, *24, *27, *28 |
| Strickland v. Washington, 466 U.S. 668 (1984) | 694 |
| Lafler v. Cooper, 566 U.S. 156 (2012) | |
| Missouri v. Frye, 566 U.S. 134 (2012) | |
| Wiggins v. Smith, 539 U.S. 510 (2003) | 527-28 |
| Stokes v. Stirling, 10 F.4th 236 (2021) | 246-247 |
| Maples v. Thomas, 565 U.S. 266 (2012) | |
| McCoy v. Louisiana, 584 U.S. 414 (2018) | |
| Martinez v. Ryan, 566 U.S. 1 (2012) | |
| People v. Jackson, 202 A.D.3d 1483 (4th Dept. 2022) | |
| People v. Droz, 39 N.Y.2d 457 (1976) | 462 |
| People v. Oliveras, 21 N.Y.3d 339, 346 (2013) | 348 |
| People v. Graham, 129 A.D.3d 860 (2015) | |
| People v. Benevento, 91 N.Y.2d 708 (1998) | 712 |
| People v. Williams, 14 N.Y.3d 198 | *213 |
| People v. Boyd, 12 N.Y.39 390 (Pigott, J. dissenting (2009) | 396 |
| Brady v. Maryland, 373 U.S. 83 (1963) | 87-88 |
| People v. Rosario, 9 N.Y.2d 286 (1961) | |
| People v. Matthews, 212 A.D.3d 512 (2023) | |
| People v. Poole, 48 N.Y.2d 144 (1979) | 149 |

STATUTES AND RULES

New York Criminal Procedure Law § 250.10

New York Criminal Procedure Law § 380.30

New York Criminal Procedure Law § 380.50

New York Penal Law § 70.85

OTHER

Withdrawal of guilty plea dated August 28, 2003. EXHIBIT 1

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 _____ 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 _____ to the petition and is

[ ] reported at _____; 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 A to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Appellate Division, Fourth Department court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[X] 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 _____.

[ ] 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).

☒ For cases from **state courts:**

The date on which the highest state court decided my case was July 17, 2024
A copy of that decision appears at Appendix A.

[ ] 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

The Fifth Amendment right to due process; the Sixth Amendment right to counsel in the right to effective assistance of counsel; the Fourteenth Amendment § 1, right to due process of law; New York Constitution Article 1, § 2 under the constitution of this State, as hereinafter set forth on the ground that a jury trial may be waived by the defendant in all criminal cases, except those in which the crime may be punishable by death penalty; New York Constitution Article 1, § 6 right to due process of law and right to counsel; and New York Penal Law § 70.85 is in violation of right to withdraw a guilty plea due to an illegal sentence.

## STATEMENT OF THE CASE

Petitioner's Capital Defense Team, George F. Hildebrandt, Esquire, William T. Easton, First Deputy Capital Defender, and Thomas Kidera, Deputy Capital Defender failed to present mitigating evidence regarding petitioner's history of mental illness and the Capital Defense Team failed to provide a defense for my guilty plea to avoid the death penalty where an extreme emotional disturbance defense could have been presented. See New York Criminal Procedure Law § 250.10 (b) and see Andrus v. Texas, 590 U.S. 806, 813-815 (2020).

This means that, had a extreme emotional disturbance defense been presented, the result of the proceeding would have been different. See DeLuca v. Lord, 858 F.Supp. 1330, 1350-1352 (S.D.N.Y. 1994), affirmed 77 F.3d 578 (2d Cir. 1996). In Lopez v. Ercole, 2010 WL 1628994, *20, *21, *22, *23, *24, *27, *28 petitioner was denied effective assistance of counsel when the Capital Defense Team failed to raise the defense of Extreme Emotional Disturbance, here the petitioner must show there is a reasonable probability that, but for Capital Defense Team's unprofessional errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668, 694 (1984); Lafler v. Cooper, 566 U.S. 156 (2012); Missouri v. Frye, 566 U.S. 134 (2012); Wiggins v. Smith, 539 U.S. 510, 527-28 (2003); Stokes v. Stirling, 10 F.4th 236, 246-247 (2021).

Moreover, no preliminary hearing was never held in this matter and the petitioner was indicted by a Onondaga Supreme Court Grand Jury by

Indictment Number 03-242-I which was filed with the Court on the 2I st day of day of November, 2003, charging petitioner with the crimes of Murder in the First Degree (2 counts), and Murder in the Second Degree (2 counts), Burglary in the First Degree, Aggravated Criminal Contempt, Criminal Contempt First Degree, Criminal Possession of a Weapon in the Second Degree, Criminal Use of a Firearm in the First Degree, Attempted Murder in the First Degree, Attempted Murder in the Second Degree, and Assault in the First Degree.

Then petitioner on August 2I, 2003 pled guilty to the crimes of Murder in the First Degree and Attempted Murder in the First Degree. Shortly thereafter, before sentencing October 2, 2003 petitioner made a withdrawal of guilty plea under duress of threats of being beat-up if I didn't plead guilty and petitioner would not receive pictures of his infant son given to George F. Hildebrandt, Esq. whom said "since I will not plead guilty I can't have my pictures of my son." Also, the I20 day extension to file the Notice of Intent to Seek the Death Penalty was granted 30 days so George F. Hildebrandt, Esq. could get married and honeymoon in Hawaii. See Exhibit I. Hereupon William T. Easton, First Deputy Capital Defender promised to prepare and file petitioner's appeals in state and federal courts and then abandoned petitioner after admission of petitioner's guilt despite the fact that petitioner remained silent with speech and thought disorder during the waiver of appeal admission. See Maples v. Thomas, 565 U.S. 266 (20I2 )(noting that a client cannot be charged with the acts or omissions of an attorney whom has abandoned him, and neither can a client be

faulted for failing to act on his own behalf when he lacks reason to believe his attorney of record, in fact, are not representing petitioner. It is respectfully submitted and alleged that McCoy v. Louisiana, 584 U.S. 414 (2018) was decided in May 2018, while petitioner direct appeals was final. Since petitioner did not raise any prior post-conviction motion, that the Capital Defense Team reasonably believed that admitting guilt afforded petitioner the best chance to avoid death sentence - not required by New York Constitution Article 1, § 2 states under the constitution of this State, as hereinafter set forth on the ground that a jury trial may be waived by the defendant in all criminal cases, except those in which the crime may be punishable by death penalty. In wake of the Supreme Court's holding in McCoy v. Louisiana, 584 U.S. 414 (2018), should be applied retroactively in collateral challenges to state criminal convictions.

Keep in mind, that assigned appellate counsel Philip P. Rothschild, senior appeal attorney and Joseph Tifft, Esquire both filed appellate brief for petitioner. Here, both assigned appellate attorneys refused to speak with petitioner or visit petitioner in prison. Then they submitted the brief without petitioner approval and reading or review the arguments raised. That means that, petitioner's assigned appellate attorneys was ineffective and thus, this may establish cause for petitioner's procedural default of a claim of ineffective assistance at trial. See Martinez v. Ryan, 566 U.S. 1, (2012). Which authorizes federal court's to excuse a petitioner's default if (1) state post-conviction relief counsel's performance was itself constitutionally

deficient, and (2) the petitioner's underlying ineffective assistance of the Capital Defense Team claim is "substantial," Id. at 14, 132 S.Ct. 1309. Petitioner's Capital Defense Team has a duty to conduct appropriate investigations, both factual and secure an expert to support an Extreme Emotional Disturbance defense. See People v. Jackson, 202 A.D.3d 1483 (4th Dept. 2022)(quoting People v. Oliveras, 21 N.Y.3d at 348)). Counsel must "make reasonable investigations" or "make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

This means that, meaningful representation includes the right to assistance by a lawyer whom has taken the time to review and prepare both the law and the facts relevant to the defense. See People v. Droz, 39 N.Y.2d 457, 462 (1976). A defendant's right to effective representation entitles him "to have counsel conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed." People v. Oliveras, 21 N.Y.3d 339, 346 (2013), People v. Graham, 129 A.D.3d 860 (2015). New York State applies a "flexible standard" to evaluating the claim of ineffective assistance of counsel (People v. Benevento, 91 N.Y.2d 708, 712 (1998)).

The pivotal issues in the present case is whether petitioner suffers from: (1) dysfunctional home life, (2) difficult childhood, (3) mental illness is in the family history to establish element of murder in the first degree. Petitioner is therefore entitled to an opportunity to

establish that he was deprived of meaningful legal representation, and Capital Defense Team failure to secure an expert to support and Extreme Emotional Disturbance defense. Capital Defense Team's investigation should cover the petitioner's "psychological history," which "could explain or lessen the petitioner's culpability for the underlying offense."

What's more, petitioner appeared with George F. Hilbebrandt, esquire for re-sentencing proceedings on October 18, 2011. The county court, County of Onondaga, State of New York, sentenced the petitioner to a determinate sentence of 25 years for the Attempted First Degree murder but did not impose a period of post-release supervision during the plea or the sentencing proceedings. The trial court indicated that the case was being heard for the imposition of post-release supervision. The trial court indicated that because the sentence was part of a negotiated plea disposition, the People were willing to consent to the trial court not imposing the post-release supervision. The trial court judge Joesph E. Fahey then remarked, "so we're all done here."

Petitioner's defense counsel then asked the trial court to adjourn the proceedings. Defense counsel admitted:

> "When defendant was brought back, he wasn't aware, I didn't communicate with him why he was coming back. I assumed he knew. He was not allowed to bring his legal paperwork with him today. He would like to be able to brief the court on what he like to do."

The trial court maintained that the only issues, was whether it will impose post-release supervision. The people affirmed that they were not asking for post-release supervision since it was not part of the plea agreement.

Petitioner then asked to know his rights. The trial court stated that defense counsel could explain them, but petitioner asserted that defense failed to do so. Petitioner then sought to withdraw his guilty plea. The trial court stated, "I'm not going to do that." Petitioner once again asked to be informed of his rights, and requested an assigned attorney.

The trial court ignored petitioner's inquires and requests, confirmed the prior sentence. However, petitioner was dragged out of court proceedings by the Jail Deputy Guard. This is clearly a violation of petitioner's rights under New York Criminal Procedure Law § 380.50.

Moreover, petitioner's lack of notice as to being a "designated person" under New York C.P.L. Section Law § 380.30, which mandates that a sentence must be pronounced without reasonable delay. In furtherance of that statutory directive, the New York Court of Appeals has held that an unexplained delay of several years between conviction and sentencing results in the loss of jurisdiction over petitioner. In the case at bar, however, the record does not indicate that the petitioner ever received the written notification that he was such a "designated person" under New York Correction Law § 601-d. That is just over eight years passed between petitioner's sentence of October 2, 2003, and the re-sentence of October 18, 2011. Therefore, the trial court's re-sentence violated petitioner's due process to the undue delay between sentences, without notice that he was a "designated person" according to New York Criminal Procedure Law § 380.30. See People v. Williams,

14 N.Y.3d 198, at *213.

Nevertheless, it is respectfully submitted that in People v. Boyd, 12 N.Y.3d 390, 396 (Pigott, J. dissenting 2009), the New York State Court of Appeals stressed that when a court fails to advise a defendant of post-release supervision at his plea allocution, the defendant is entitled to reversal of his conviction. At the very least, a hearing should be granted to allow defendant to withdraw his guilty plea at re-sentencing proceedings dated October 18, 2011.

On this point, a petitioner has a constitutional right in People v. Boyd, 12 N.Y.3d 390, 396 (2009)(Pigott, J., dissenting), the New York State Court of Appeals noted that:

> I recognize that section 70.85 was also added in part as a response to our Catu precedent. As the legislative history explains:
>
> "When a defendant who plead guilty has not been informed that the sentence would include a term of PRS, the defendant may later seek for the plea to vacated. This bill allows the District Attorney to consent to re-sentencing to the previously imposed determinate term without any term of PRS. By allowing defendants in this situation the benefit of their plea bargains, there should be no need for the pleas to be vacated" (Senate introducer's mem in Support of 2007 NY Senate Bill S8714, reprinted in 2008 McKinney's Session Laws of NY, at 1820).

> Consequently, the statutes permits the District Attorney to consent to a re-sentence to a term without any post-release supervision in situations where the defendant has moved to vacate his plea on the ground that it was obtained in violation of his constitution rights under Catu. Although the amendment provides a defendant with an opportunity to seek a new, more favorable sentence, when a constitutional error under Catu is involved, there must be a new plea. Neither the Court nor the Legislature can require a defendant to accept a plea that was unconstitutionally obtained.
>
> It is therefore clear that, as applied to this case, New York State Penal Law § 70.85 is unconstitutional because it is in direct conflict with our prior precedent. As we recently stated in Hill: "In that the constitutional defect lies in the plea itself and not in the resulting sentence, vacatur of the plea is the remedy for a Catu error since it returns a defendant to his or her status before the constitutional infirmity occurred" (9 N.Y.3d at 191). Thus, I see no need for further litigation on the issues since defendant's plea was unconstitutional obtained and he therefore is entitled to vacatur thereof. (Id.).

The record reflected that petitioner was completely and utterly confused by the nature of the proceedings. It is respectfully submitted that the record is silent when the defendant was dragged out of court proceedings, while the re-sentencing minutes did not indicate

that petitioner had had acts of disruptively conduct, or warned that continued disruptive conduct will result in removal. All told, the trial court ignored petitioner inquires, confirmed the prior sentence and defense counsel did not make a timely objection to an error and New York Criminal Procedure Law § 380.50 (i). The instant proceedings may have seemed to be routine to the trial court and defense counsel, but to petitioner they were important. Petitioner deserved as required by New York Criminal Procedure Law § 380.50 (i) to ask whether he had "any right to withdraw his guilty plea" and to show why re-sentencing should not be pronounced, which assigned defense counsel obviously did not do so. Furthermore, petitioner was not allowed to make a statement personally on his behalf.

It is respectfully submitted that the victim Aiesha Jackson's letter has had a crucial and constitutional role to play in ensuring that the Village of East Syracuse Court remained silent with the letter that provides the Capital Defense Team to lift a court order of protection and not to prosecute the case was the goal of the deceased victim Aiesha Jackson. This letter was submitted to the People, not to the petitioner in this case. It was by a sure and pure accident that the petitioner even discovered this document. The deceased victim's letter that the petitioner is presenting to the court is clearly exculpatory Brady material that was withheld from the petitioner.

The People did not want this letter admitted to the court, due to it was there mistake on not affording the defendant his due process right to have all evidence before him, whether it be against him or for him to have possession.

This imperative also means that, neither the prosecution, nor Judge Francis J. Murphy, Jr., East Syracuse Village Court, 204 North Center Street, East Syracuse, New York 13057 was apprised or informed of the letter concept with respect to the deceased victim Aiesha Jackson. Neither, has this information been disclosed prior to sentencing, which strengthening of the red flag granting the vacatur of the motion in the lower court to the extent of deceased victim Aiesha Jackson states that:

> I Aiesha L. Jackson would like a dismissal of all restrictions against Darrell Gunn. This indicates the order of protections that is brought against him. The reasons for this request is Darrell and I are going to be together and someday get married. The order of protection was not brought upon my request. I am not in fear either my life is threaten by Darrell. His parole officer requested counseling for him which I am going to participate in thank you.

The same result should ensure here. There was no person that looked

into this on behalf of the petitioner. All in all, the two were in love, and there was no malice between the two. Here, the prosecution failed to turn over important exculpatory materials as required under Brady v. Maryland, 373 U.S. 83, 87-88 (1963), and Rosario material to which the Capital Defense Team was entitled to at pre-trial. People v. Rosario, 9 N.Y.2d 286 (1961), the lower court should conduct an in camera review of the deceased victim Aiesha Jackson's letter of the responding Judge Francis J. Murphy, Jr., East Syracuse Village Court. Because the petitioner articulated a factual basis for believing that statements of the deceased victim Aiesha Jackson were recorded therein. See, People v. Matthews, 212 A.D.3d 512 (2023)(quoting People v. Poole, 48 N.Y.2d 144, 149(1979).

At the very least, a hearing should be granted to allow petitioner or prosecution to see whether People's committed a violation pursuant to Brady/Rosario by not disclosing the deceased victim Aiesha Jackson's letter to conduct a separate investigation, which has been the relationship to the case against the petitioner. See, People v. Garret, 23 N.Y.3d 878, 884 (2014)(requiring prosecutors to disclose evidence favorable to the accused ... where the evidence is material either to guilt or to punishment. The conviction will be vacated unless the People prove beyond a reasonable doubt that the outcome was not affected.

## REASONS FOR GRANTING THE PETITION

Capital Defense Team George F. Hildebrandt, Esquire, William T. Easton, first deputy capital defender and Thomas Kidera, deputy capital defender failing to present mitigating evidence regarding the petitioner's history of mental illness; failing to raise the defense of Extreme Emotional Disturbance; failing to preserve petitioner's Due Process rights in the violation of New York Constitution Article I, § 6; and that New York Constitution Article I, § 2 in violation under the constitution of this State, as hereinafter set forth on the ground that a jury trial may be waived by the defendant in all criminal cases, except those in which the crime may be punishable by death penalty; petitioner did submit credible documentary evidence establishing that the prosecutor did fail to disclose material exculpatory evidence; and New York Penal Law is in violation of petitioner's right to withdraw his guilty plea when he received an illegal sentence under New York Penal Law § 70.85.

All-things-considered, these are mixed questions of fact and law and prejudice resulting in a reasonable probabilty that, but for counsel's and the prosecutor's unprofessional errors, the result of the proceedings would have been different. A reasonable probability sufficient to undermine confidence in the outcome

As noted above, this case presents an important federal question on the issues which has engendered conflict among state and federal courts.

## CONCLUSION

This case presents issues of far reaching and important ramifications far beyond the significant interests of the parties involved.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darrell Gunn

Darrell Gunn 03B2443

Date: July 29, 2024