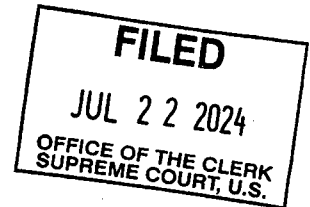


24-5282

# 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)

## **QUESTION(S) PRESENTED**

WHETHER APPELLANT COUNSEL WAS INEFFECTIVE FOR STRONG  
APPELLATE CLAIM THAT A WITHDRAWAL OF GUILTY PLEA WAS MADE PRIOR TO  
SENTENCING?

## 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 is as follows:

## RELATED CASES

Chambers v. Lilly, No. 1:22-cv-4368 (NRM)(LB), U.S. District Court for Eastern District of New York. Judgment entered June 3, 2024.

Robinson v. Zaken, Civil Action No. 21-5621, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered June 7, 2024.

Lamar Brown v. Ronald Oliver, 2:22-cv-00564-RFB-BNW, U.S. District Court for the State of Nevada. Judgment entered June 26, 2024.

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Brady v. United States, 397 U.S. 745 (1970)	755
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## STATUTES AND RULES

28 U.S.C. § 2254 (d)

## 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☐ is unpublished.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.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D 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 ~~Appellate Division, Fourth Judicial Department~~ court appears at Appendix A to the petition and is

☒ reported at 225 A.D.3d 1243; or,  
☐ 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 6/4/24.  
A copy of that decision appears at Appendix D.

☐ 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 Sixth Amendment right to counsel in the right to effective assistance of counsel was not obtained because assigned appellate counsel did not submit standard representation, and submitted poorly drafted arguments unsupported by the record completely failed in his duty to marshal arguments on appellant's behalf that he made a withdrawal of guilty plea before sentencing, herefore, making it preserved for appellate review. This resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. See 28 U.S.C. § 2254 (d)(2).



## STATEMENT OF THE CASE

If I did not plead guilty I would have faced the death penalty trial. And prejudice can be shown if I did not plead guilty, I would have suffered a more severe sentence, which is, death by lethal injection according to my Capitol Defense Team, prosecutor, and judge "considering all off the relevant circumstances." Petitioner was never given a hearing despite the fact that after his guilty plea on August 2, 2003, petitioner made a withdrawal of guilty plea on August 28, 2003, seven days later, in which, 35 days elapsed before sentencing on October 2, 2003 that petitioner's case does fall within the rare exception for review when a guilty plea id deemed 'voluntary' if it is not the product of actual or threatened physical harm and mental coercion overbearing the appellant's will or the appellant's sheer inability to weigh his options rationally. See, Bousley v. United States, 523 U.S. 614, 618, 19 (1998)(quoting Brady v. United States, 397 U.S. 742, 748-57 ( 970); See also, Miller v. Angliker, 848 F.2d 1312, 1323 (2d Cir. 1988).

After all, petitioner was threatened by his Capital Defense Team. George Hildebrandt, Esq , William T. Easton, First Deputy Capital Defender, Thomas J. Kidera, Deputy Capital Defender, and Private Investigator, Richard Luciano, they said they "will come in and beat me up if I don't plead guilty" also, George Hildebrandt Esq., said "I will not give pictures of your infant son to you that was given to me by your parents, unless you plead guilty," even more, George Hildebrandt, Esq., asked for 30 day extension to allow District

Attorney to file the 20 day deadline to file Notice of Intent to Seek the Death Penalty so h e could get married and honeymoon in Hawaii. Caught in the terrible truth, William T. Easton, First Deputy Capitol Defender, promised that "I will do your appeals and visit you in prison" then abandoned me before the August 21, 2003 guilty plea.

## REASONS FOR GRANTING THE PETITION

Petitioner submits that this case is a reasonable and meritorious candidate for review and reversal because there is a sharp conflict of authority among federal and state courts relating to the sufficiencies of Guilty Pleas and Withdrawal of Guilty Pleas made under threats, promises, coercion and duress and the ineffective assistance of appellate counsel, when there was an involuntary plea induced, by misrepresentation and unfillable promises because there was a mixed question of fact and law and prejudice resulted and a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

As noted above, this case presents an important federal question on an issue 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 03B2443  
Darrell Gunn 03B2443

Date: July 16, 2024