

No.: 24 - 5477

IN THE
SUPREME COURT OF THE UNITED STATES

Gustavo D. Velez-Hernandez,
Petitioner

v.

The Attorney General of the
State of Pennsylvania, *et al.*
Respondent(s)

PETITION FOR WRIT OF CERTIORARI

Pro se Petitioner, Gustavo D. Velez-Hernandez, respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Third Circuit entered on May 3, 2024.



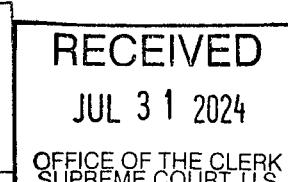
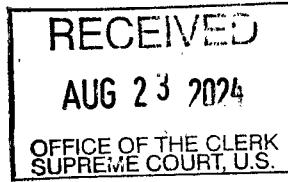
(s) Gustavo D. Velez-Hernandez

Inmate # QQ-1076

SCI Waymart

P.O. Box 256

Waymart, PA 18472



Question Presented for Review

1. Whether the prior court's fact-finding procedures were clearly erroneous where none of the lower court's made fact-findings at all on the fact question - trial counsel's ineffectiveness, his erroneous advice, combined with the spanish interpreters' deficiency - which were material to the adjudication of the appeal?

(Proposed Answer in the Positive)

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Federal Constitutional Provisions:

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Opinions Below

The order of the United States Court of Appeals for the Third Circuit entered on May 3, 2024 which dismissed his pro se habeas corpus petition is attached hereto as Appendix "A." A copy of the Order of the Superior Court of Pennsylvania, dated June 20, 2023, which denied the pro se PCRA petition is attached hereto as Appendix "B."

Jurisdiction

Jurisdiction is conferred upon this Court by 28 U.S.C.A. Section 1254, and 1257(3), to review by writ of certiorari a the order of the United States Court of Appeals for the Third Circuit entered on May 3, 2024 which dismissed his pro se habeas corpus petition.

Constitutional Provisions

The following provisions of the United States Constitution are involved:
U.S. Const. Amends. VI, XIV § 1. The relevant text of said provisions are as follows:

"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." *See* U.S. Const. Amend. VI.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]" *See* U.S. Const. Amend. XIV § 1.

Procedural History

Petitioner, Gustavo D. Velez-Hernandez, does not understand or speak the english language. On June 6, 2019, he was charged in Lehigh County, Pennsylvania, with one count of Criminal Homicide and one count of Criminal Conspiracy.

Through a Spanish interpreter, on December 6, 2019, he entered a negotiated guilty plea to one count of conspiracy to commit criminal homicide. He did so because he believed counsel's erroneous advice, as explained through the spanish interpreter that he could not receive a sentence of no more than 8 - 16 years. That same day, the court sentenced him to 20 to 40 years of incarceration. Trial counsel did not file post-sentence motions or a direct appeal. Gustavo filed an uncounseled PCRA petition arguing that he was deprived the constitutional right to effective assistance of counsel under the Sixth Amendment because if it were not for counsel's erroneous advice he would have rejected the plea, and chosen his constitutional right to a trial by jury. The PCRA court dismissed his petition as untimely. He then filed a timely notice of appeal to the Superior Court which affirmed the PCRA court's order. The Superior Court also found that he had failed to satisfy the newly discovered facts exception, and that his PCRA petition was time-barred.

Gustavo next filed his habeas petition in the Third Circuit District Court of

Pennsylvania. And argued there, that extraordinary circumstances - his lack of understanding of the english language - formed a barrier that prevented him from understanding that counsel's advice was erroneous. He claimed that counsel's ineffectiveness - combined with the spanish interpreters' deficiency - prevented him from properly asserting his trial rights. And that it effectively made his entering into the guilty plea involuntary, unknowingly, and unintelligently in violation of the Fourteenth Amendments Due Process Clause. However, on March 8, 2024, the United States Magistrate Judge, issued a Report & Recomendation that the Petition be dismissed with prejudice claiming that "Mr. Velez-Hernandez has not shown that he has been pursuing his rights diligently" and that he had not "shown any extraordinary circumstances that would entitle him to relief."

Thereafter, he appealed to the United States Court of Appeals which dismissed the matter on May 3, 2024.

Gustavo currently remains incarcerated in SCI Waymart.

Statement of the Case

Gustavo was charged with the murder of Nestor Luiz Ortiz-Deleon. During the homicide investigation, it was learned that the victim's girlfriend was also involved with Gustavo. When interviewed by detectives, he admitted to hiring an unknown individual to kill Deleon whom he considered a rival. He accepted a guilty plea through a spanish interperter, and under trial counsel's mistaken advice that he could not receive a sentence higher than 8-16 years.

The PCRA court did not conduct any fact-findings on this issue, and the Superior Court accepted the lower court's decision. And although the Third Circuit ordered the lower court clerk to file copies of all of the transcripts of notes of testimony, Gustavo never received copies. The Third Circuit court did not make findings at all on a fact question material to the adjudication of the appeal and did not make findings of the sort or in the manner requiring deference. Neither did the Federal appellate court.

Reasons for Granting the Writ

Trial Counsel's misunderstanding of the applicable law, and erroneous advice rendered him ineffective under the Sixth Amendment to the United States Constitution. Which prevented petitioner from asserting his constitutional rights to a jury trial under the Fourteenth Amendment. Petitioners' language barrier, combined with the spanish interpreters deficieny, constitutes unusual and extraordinary circumstances which should have excused any procedural defects.

The Sixth Amendment, applicable to states through the Due Process Clause of the Fourteenth Amendment, guarantees the accused the "right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. The right to counsel is the right to the effective assistance of counsel, and counsel can deprive a defendant of the right by failing to render adequate legal assistance. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984).

In this case, Petitioner was deprived of the Sixth Amendment right to effective assistance of counsel because of trial counsels' erroneous advice. Extraordinary circumstances presented here were: (i) the petitioner's lack of understanding of the english language; (ii) counsels' ineffectiveness; combined with (iii) the spanish intreperters' deficiency. This clearly formed a barrier that prevented him from understanding that counsel's advice was preventing him from properly asserting his trial rights, and effectively made his entering into the guilty plea involuntary, unknowingly, and unintelligently in violation of the 14th Amendment Due Prôcess Clause. *See Boykin v. Alabama*, 395 U.S. 238, 242 - 243

(1969) ("a plea of guilty is more than an admission of conduct; it is a conviction . . . [and s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial.").

In addition, other federal violations which occurred here includes "the privilege against self-incrimination . . . the right to a trial by jury . . . and the right to confront one's accusers." *Id.* at 243. Petitioner unknowingly gave up all of these rights upon the misleading, and erroneous advice of counsel that under Pennsylvania law he could not receive any more than 8 - 16 years if he plead guilty to murder of the third degree. This was not true. The lawful penalty for murder of the third degree in Pennsylvania is in fact a maximum sentence of no more than 40 years. *See* 18 Pa.C.S. § 1102(d) ("a person who has been convicted of murder of the third degree . . . shall be sentenced to a term which shall be fixed by the court at not more than 40 years.") If not for counsel's erroneous advice petitioner would have rejected the plea, and instead chosen his constitutional right to a trial by jury.

Accordingly, the Pennsylvania court's decision is unconstitutionally infirm, and Gustavo was deprived the right to effective assistance of counsel, denied a right to a fair trial by jury, and an adequate opportunity to present a defense as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

Conclusion

Based upon the foregoing points and authorities, Gustavo respectfully requests this Honorable Court to grant the within writ and reverse judgment of the Courts below.

(s) Gustavo D. Velez-Hernandez
Inmate # QQ-1076
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P.O. Box 256
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Dated: 6/18/2024