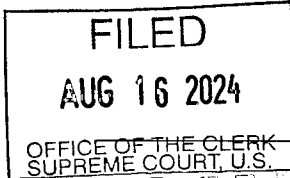


24-5487

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

MICHAEL RAVY – PETITIONER

VS.

STATE OF LOUISIANA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
STATE OF LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MICHAEL RAVY, #119971
ALLEN CORRECTIONAL CENTER
3751 LAUDERDALE WOODYARD RD.
KINDER, LA 70648

QUESTION(S) PRESENTED

This Honorable Court is being asked to determine whether an evidentiary hearing, following a collateral attack on a conviction, constitutes a critical stage of a criminal proceeding requiring counsel pursuant to United States Constitution Amendment VI made applicable to the states via United States Constitution Amendment XIV.

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

STATE OF LOUISIANA v. MICHAEL RAVY, Louisiana Supreme Court, N°. 2023-KH-01367, Reported at 385 So.3d 242. Order Denying Review of the Court of Appeal, First Circuit's ruling.

STATE OF LOUISIANA v. MICHAEL RAVY, Louisiana Court of Appeal, First Circuit, N°. 2023-KW-0671, Unpublished Opinion, 2023 WL 5955167. Order Denying Review of the 20th Judicial District Court's ruling denying Application for Post-Conviction Relief.

STATE OF LOUISIANA v. MICHAEL RAVY, Louisiana Court of Appeal, First Circuit, N°. 2021-KW-1077, Unpublished Opinion, 2021 WL 5150013. Order Granting Review of Application for Post-Conviction Relief pursuant to State v. Harris.

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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

☐ 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- ☐ is unpublished.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 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 _____ 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

☐ 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. _____.

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 5/21/2024.
A copy of that decision appears at Appendix B.

☐ 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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VI (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 defense.

U.S. Const. Amend. XIV (Due Process and Equal Protection Clauses) -- . . . 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.

La. Const. of 1974, Article 1 § 13 (Rights of the Accused) – When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. . . .

La. Code Crim. P. Art. 930.7(C) – The Court shall appoint counsel for an indigent petitioner when it orders an evidentiary hearing on the merits of a claim, or authorizes the taking of depositions or requests for admissions of fact or genuineness of documents for use as evidence in ruling upon the merits of a claim.

STATEMENT OF THE CASE

The facts of this case were not developed due to the case being resolved by way of a plea agreement. On February 12, 1987, Ravy was charged by indictment with having committed the offense of Armed Robbery, La. R.S. 14:64. On November 2, 1987, following jury selection for trial, Ravy withdrew his previous not guilty plea and entered a plea of guilty to the charge of Armed Robbery based on the advice of counsel. On December 10, 1987, Ravy was sentenced to ninety-nine (99) years at hard labor after the court denied his *pro-se* motion to set aside his guilty plea without having received and reviewed the motion. Several Applications for Post-Conviction Relief ("APCR"s) have been filed in this case prior to the APCR at issue. All were denied.

On May 10, 2021, Ravy timely filed an APCR claiming ineffective assistance of counsel at sentencing pursuant to *State v. Harris*, 2018-1012 (La. 7/9/20), 340 .3d 845. On June 23, 2021, the district court summarily denied the APCR. Writs were sought with the Court of Appeal, First Circuit and on November 5, 2021, the First Circuit remanded the case back to the district court to review the case in light of *State v. Harris*, *supra*. *State v. Ravy*, 2021-1077 (La. App. 1 Cir. 11/5/21), *unpub. op*, 2021 WL 5150013. On April 4, 2022, an evidentiary hearing was held concerning the *Harris* claim. On April 29, 2022, the trial court denied the APCR. Ravy sought writs with the Court of Appeal, First Circuit but was denied writs with reasons stating that Ravy did not provide evidence that he requested counsel to assist on September 11, 2023. (See Appendix "A" – Denial of Writs, Court of Appeal, First Circuit). Ravy sought writs with the La. Supreme Court and was denied review without reasons on May 21, 2024. This application for Writ of Certiorari timely follows.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant this writ because Ravy was denied the assistance of counsel at what should be deemed a critical stage of a criminal proceeding which warrants a presumption of prejudice and reversal of the denial of his Application for Post-Conviction Relief ("APCR"). In as early as 1932, this Court unmistakably declared that the right to the aid of counsel, granted by the Sixth Amendment, is fundamental and essential to a fair trial and made obligatory upon the states by the Fourteenth Amendment. *Powell v. Alabama*, 287 U.S. 45, 68, 53 S.Ct. 55, 63, 77 L.Ed. 158 (1932). Reemphasizing that point, this Court said, "[w]e concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution." *Grosjean v. American Press Co.*, 297 U.S. 233, 243-244, 56 S.Ct. 444, 446, 80 L.Ed. 660 (1936). Not long after, this Court said, "[The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done." *Johnson v. Zerbst*, 304 U.S. 458, 462, 58 S.Ct. 1019, 1022, 82 L.Ed. 1461 (1938); *Avery v. Alabama*, 308 U.S. 444, 60 S.Ct. 321, 84 L.Ed. 377 (1940); *Smith v. O'Grady*, 312 U.S. 329, 61 S.Ct. 572, 85 L.Ed. 859 (1941).

Finally, it was unequivocally stated in *Gideon v. Wainwright*, "[f]rom the very beginning, our state and national constitutions and laws laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial

tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 796-97, 9 L.Ed.2d 799 (1963).

In this case, following the remand and recommendation from the appellate court, the trial judge held an evidentiary hearing on the merits of Ravy's [*State v.*] *Harris* [, 2018-1012 (La. 7/9/20), 340 So.3d 845] claim. At that point, the trial court was responsible for ensuring that Ravy was represented by counsel pursuant to La. Code Crim. P. art. 930.7(C). La. Code Crim. P. art. 930.7(C) states in pertinent part, as follows: "[t]he court **shall** appoint counsel for an indigent petitioner when it orders an evidentiary hearing on the merits of a claim, or authorizes the taking of depositions or requests for admissions of fact or genuineness of documents for use as evidence in ruling upon the merits of a claim" (emphasis added). The highest court in the state of Louisiana has followed the mandate of art. 930.7(C) when issuing orders concerning evidentiary hearings requiring that the trial court appoint counsel but refused to grant writs in Ravy's case.¹

The shall language of the Louisiana statute makes it mandatory. La. Code Crim. P. art. 5. During the hearing, the State contended that Ravy could have subpoenaed people to come testify at the hearing. (See Appendix "E" - Evidentiary Hearing Transcript, 4/4/2022, p. 11, lines 22-32). This further bolsters the need for counsel on Ravy's behalf

¹ *State ex rel. Thomas v. State*, 2017-0975 (La. 3/2/18), 237 So.3d 497 (per curiam) ("[i]f the district court orders an evidentiary hearing, it shall appoint counsel. La. C. Cr. P. art. 930.7(C)."); *State ex rel. McElveen v. State*, 2015-1920 (La. 1/25/17), 209 So.3d 91 (per curiam) ("[f]inally, in the event the district court finds an evidentiary hearing is warranted, relator (if he is indigent) will be entitled to the appointment of counsel La. C. Cr. P. art. 930.7(C)."); *State ex rel. O'Keefe v. State*, 2015-1101 (La. 6/17/16), 194 So.3d 1107 (per curiam) ("The trial court is ordered to appoint counsel and conduct an evidentiary hearing to determine whether relator pled guilty involuntarily as a result of his misunderstanding of his eligibility for release on parole.")(citations omitted).

in preparation for the evidentiary hearing. The failure to file any subpoenas is an issue that counsel would have been able to resolve considering Ravy is incarcerated with limited resources. Despite the State's argument, Ravy was not aware of the April 4, 2022, hearing until the day of the hearing as he was being transported by the prison. Although the APCR was filed *pro se*, Ravy was at a severe disadvantage not having counsel present. His right to due process was not protected. His constitutional right to counsel was violated. In *U.S. v. Gouveia*, this Honorable Court explained that:

interpretation of the Sixth Amendment right to counsel is consistent not only with the literal language of the Amendment, which requires the existence of both a "criminal prosecution[n]" and an "accused," but also with the purposes which we have recognized that the right to counsel serves. We have recognized that the "core purpose" of the counsel guarantee is to assure aid at trial, "when the accused [is] confronted with both the intricacies of the law and the advocacy of the public prosecutor." Indeed the right to counsel "embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel."

U.S. v. Gouveia, 467 U.S. 180, 188-89, 104 S.Ct. 2292, 2297-98, 81 L.Ed.2d 146 (1984) (internal citations omitted).

"An accused's right to be represented by counsel is a fundamental component of our criminal justice system." *United States v. Cronin*, 466 U.S. 648, 653, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). Criminal defense lawyers' presence is essential because they are the means through which the other rights of the person on trial are secured. *Id.* "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *Id.* at 654, 104 S.Ct. 2039 (citation and internal quotation marks omitted).

Recognizing that the assistance [of counsel] guaranteed by the Sixth Amendment would be less than meaningful if it were limited to the formal trial itself, *United States v. Ash*, 413 U.S. 300, 310, 93 S.Ct. 2568, 37 L.Ed.2d 619 (1973), this Honorable Court has made clear that criminal defendants have a right to counsel at all "critical stages" of criminal proceedings. *United States v. Wade*, 388 U.S. 218, 224, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967). The accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. *Id.* at 226, 87 S.Ct. 1926. Thus counsel must be present during any critical stage, absent an intelligent waiver by the defendant. *Id.* at 237, 87 S.Ct. 1926 (quoting *Carnley, v. Cochran*, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962)) (internal quotation marks omitted).

A Louisiana Supreme Court case that is on point with Ravy's case is *State ex rel. Cherry v. Cormier*, 281 So.2d 99 (La. 1973). In that case, Mr. Cherry presented in his application for certiorari the claim that the evidentiary hearing held by the court on his first habeas petition was not full, fair, and impartial because the district court did not appoint counsel to represent him. *Id.* at 100. Like Ravy, Mr. Cherry also contended that he was not notified that the district court had granted a hearing on his first petition until the day of the hearing. *Id.* The *Cherry* court reasoned that:

It is inconceivable that a prisoner asserting many claims in a petition for habeas corpus [post-conviction] relief could have adequate opportunity to accomplish outside investigation to bolster his factual claims. Nor could a relator so incarcerated have sufficient opportunity to secure and interview witnesses who would be able to testify in his behalf at an evidentiary hearing. To accomplish these ends we feel that counsel must be appointed to assist the habeas petitioner in the presentation of his claims. We cannot allow ourselves to lose sight of the fact that an evidentiary hearing granted in a habeas corpus matter is an adversary proceeding in which the respondent has at its disposal the resources of the State's prosecutorial

team and virtually unlimited access to any witnesses and evidence it may care to present. The habeas petitioner, who has the burden of establishing his claims, is without adequate access to the witnesses he may need, and without the legal expertise which would enable him to properly present his claims and counter the State's arguments with the framework of this unfamiliar legal proceeding. We thereto fore conclude that, except under special circumstances where counsel will not be of assistance, appointment of counsel to represent a habeas petitioner at his evidentiary hearing is necessary to insure a full, fair, and impartial proceeding.

We are of the opinion that the relator in the instant case was not afforded a full, fair, and impartial hearing and did not have the opportunity, at the hearing held, to fully present his habeas claims.

For the reasons assigned we vacate the judgment of the district court and remand to that court with instructions to appoint counsel for relator and to conduct an evidentiary hearing to determine the merits of relator's claims in his first habeas petition.

Id at 102-103.

The legislature later codified this in *La. Code Crim. P. art. 930.7*, N°. 429 § 1, eff. Jan. 1, 1981 amended by Acts 1990, N°. 523 § 1.

As the court found in *Cherry*, Ravy asked the La. Supreme Court to find that he was not afforded a full, fair, and impartial hearing and did not have the opportunity, at the hearing held, to fully present his *Harris* claim due to the lack of counsel. Unfortunately, the high court refused to hear the case.

Where counsel is absent during a critical stage, the defendant need not show prejudice. Rather, prejudice is presumed, "because the adversary process itself has become presumptively unreliable." *Roe v. Flores-Ortega*, 528 U.S. 470, 483, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) (quoting *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 2047, 80 L.Ed.2d 657, n.25, (1984)). This Honorable Court in *Strickland* stated, "[i]n certain Sixth Amendment contexts, prejudice is presumed. Actual or

constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *Strickland v. Washington*, 466 U.S. 668, 692, 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674 (1984).

Harmless error does not apply to Ravy's case either. "Structural defects in the constitution of the trial mechanism . . . defy analysis by harmless-error standards." *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (internal quotation marks omitted). This Court has recognized that the Sixth Amendment right to counsel is among those "constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." *Chapman v. California*, 386 U.S. 18, 23 & n. 5, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). The Sixth Amendment guarantee applies to all critical stages of the proceedings. *Wade*, 388 U.S. at 224, 87 S.Ct. 1926.

This Honorable Court has not delineated all of the critical stages at which a defendant is entitled to the presence of counsel under the Sixth Amendment. A stage is determined to be "critical" where circumstances indicate that counsel's presence is necessary to ensure a fair process. See *Rothgery v. Gillespie Cty., Tex.*, 554 U.S. 191, 212, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008) ("[W]hat makes a stage critical is what shows the need for counsel's presence."). A critical stage in the process is thus one where the "accused require[s] aid in coping with legal problems or assistance in meeting his adversary. *Ash*, 413 U.S. at 311. As noted previous, at the evidentiary hearing the State of Louisiana stated that Ravy could have subpoenaed people to come testify at the hearing. Counsel's presence was necessary to ensure a fair process.

Ravy was in an adversarial posture with the State of Louisiana on whether counsel was ineffective for failing to object to the ninety-nine (99) year sentence issued by the trial

judge for a 1st time offender, which is the maximum sentence allowed by law, and counsel's failure to file a motion to reconsider the constitutionally excessive sentence. The evidentiary hearing constituted a critical stage of a proceeding during which he was denied access to an attorney.

The only question, then, is whether Ravy intelligently waived his right to counsel. Waiver is the intentional relinquishment or abandonment of a known right. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). "Courts indulge every reasonable presumption against waiver of fundamental constitutional rights" and "do not presume acquiescence in the loss of fundamental rights." *Camley*, 369 U.S. at 514, 82 S.Ct. 884 (quoting *Johnson*, 304 U.S. at 464, 58 S.Ct. 1019) (internal quotation marks omitted). Ravy acknowledging his filing of the pleading *pro se* or in proper person does not amount to a knowing intentional waiver of Ravy's right to counsel. (See Appendix "E" – Evidentiary Hearing Transcript, 4/4/2022, p. 2, lines 24-27). There is nothing in the record to suggest that Ravy intended to waive his right to counsel. The trial judge never asked if Ravy was waving his right to counsel. Therefore, Ravy did not waive his right to counsel.

CONCLUSION

Ravy respectfully prays that this Honorable Court GRANT the instant writ and thereafter issue a per curiam to the Court of Appeal, First Circuit commanding it to remand the case back to the 20th Judicial District Court, Parish of West Feliciana, with instructions to reverse the denial of the Application for Post-Conviction Relief, appoint counsel, and schedule an evidentiary hearing on the merits of Ravy's *Harris* claim.