

No.

24-6930

ORIGINAL

IN THE SUPREME COURT OF
THE UNITED STATES

Supreme Court, U.S.
FILED
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DEMETRIS ROBINSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent,

On Petition for a Writ of Certiorari to the United States Court of
Appeals For the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

By: Demetris Robinson

64572-056

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QUESTIONS PRESENTED

1. At issue herein is whether the District Court erred by allowing evidence obtained in violation of petitioner's constitutional rights by State officials to be introduced at petitioner's Federal trial and whether the Fourth Circuit Court of Appeals erred in failing to correct the lower court's error.
2. Whether the lower courts' ruling that petitioner's counsel offered effective assistance of counsel conflicted with the requirements of effective assistance of counsel set by this Court and the United States Court of Appeals

LIST OF PARTIES

All parties appear on the caption of the case on the cover page.

STATUES

18 U.S.C. 2113

18 U.S.C. 924 (c), (1), (A), (iii)

18 U.S.C. 922 (g), (1)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Demetris S. Robinson petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Fourth Circuit resolved this case on September 4, 2024, in which it affirmed the lower court's ruling.

JURISDICTION

The Fourth Circuit Court of Appeals denied petitioner's timely rehearing petition on September 4, 2024. This petition is filed within 90 days of that date as required by rule 13.3 of the Supreme Court Rules. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1)

STATEMENT OF THE CASE

Petitioner, (Demetris S. Robinson) was charged in a three-count indictment with the armed robbery of a PNC bank in Lumberton N.C. on January 23, 2018. Gunfire was exchanged between the four suspects and pursuing officers. There were no injuries reported. The suspects fled the vehicle into a wooded area. In the following days four suspects are apprehended. Petitioner became the fifth individual apprehended on February 2, 2018. Petitioner pled not guilty and proceeded to trial on April 29, 2019, where he was found guilty of all counts. On December 11, 2019, petitioner was sentenced to concurrent life sentences on Counts One and Three and a 120-month consecutive sentence on Count Two as well as Five years supervised release.

Petitioner's direct appeal was denied on June 15, 2021. Petitioner's U.S.C. 2255 petition was denied in District Court on May 30, 2023, and a COA was denied by the Fourth Circuit Court of Appeals on June 27, 2024. Petitioner timely filed a petition for rehearing that was denied on September 47, 2024.

REASONS TO GRANT WRIT

The questions presented herein should be reviewed by this Court given that the lower courts' decision conflicts with relevant decisions of this Court as well as various United States Court of Appeals on the same important matter. Accordingly this Court should grant certiorari in the instant case pursuant to Supreme Court Rule 10 (a,c) which provides for review on certiorari if "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter" and "decided an important federal question in a way that conflicts with the relevant decisions of this Court".

Given the exceptional importance of the legal questions presented herein, this Court should grant the instant petition.

As for the first question, did the District Court ignore the teachings of this Court by introducing evidence obtained in violation of petitioner's constitutional rights at his federal trial and did the Court of Appeals err in failing to correct the lower court's error in denying a COA? In *United States v. Elkins* 364 U.S. 206, 80 S. Ct 1437, 4 L. Ed. 2d 1669 (1960) this Court rejected a doctrine that would freely admit in federal criminal trial evidence seized by state agents in violation of the defendant's constitutional rights. The Fourth Circuit has followed this teaching stating "evidence obtained illegally by state authorities may not be used in a federal prosecution". *Hall* 2013 U.S. Dist..... Lexis 98383 at 20 (4th Cir. 2013) A conclusion reached by various United States Court of Appeals. *United States v. Lee* 723 F.3d 134 (2nd Cir. 2013); *United States v. Woodall* 2024 U.S. App Lexis 15936 (6th Cir.); *United States v. Cozzi* 613 F.3d 725 (7th Cir. 2010)

The lower courts' ruling conflicts with the established precedent concerning this matter. In the order denying petitioner the appropriate relief the government cites the offense specific limitations of the Sixth Amendment while relying on *United States v. Holness*, 706 F.3d 579, 590-91 (4th Cir. 2013). The lower courts, however, have failed to consider the teachings of this Court as evidence obtained in violation of petitioner's constitutional rights was introduced at his federal trial.

The evidence complained of is an incriminating statement that was obtained through clear violations of petitioner's constitutional rights including his Sixth Amendment right to effective assistance of counsel. As established by this Court and the United States Court of Appeals "evidence illegally obtained by state officials is inadmissible in federal proceedings". The fact that petitioner had not been appointed counsel for the federal charges he faced does not affect the admissibility of the evidence nor does it do away with the Sixth Amendment violation on the state level that produced the incriminating

statement. The evidence was illegally obtained thus inadmissible at petitioner's federal trial. In *Murphy v. Waterfront Comm-n of NY Harbor* 378 U.S. 52 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964) Justice Harlan relying on Elkins stated "increasing interaction between the State and Federal governments speaks strongly against federal officials to make prosecutorial use of testimony which state has compelled when that same testimony could not have been compelled by the federal government".

A critical distinguishing feature between the present case and the case of Holness is the fact that federal authorities have been involved with this case from its onset and were actively involved in the misconduct that violated petitioner's constitutional rights. Federal authorities tactically encouraged state officials in the disregard of petitioner's constitutional rights then participated in obtaining the incriminating statement. State and Federal authorities now seek to avoid the attendant ramifications for this misconduct by manipulating the offense specific limitations of the Sixth Amendment. Petitioner was prejudiced by the admission of the tainted evidence and now respectfully request this Court to grant the appropriate relief and correct the lower courts' errors.

The incriminating statement was the fruit of ineffective assistance of counsel due to a conflict of interest, government interference with petitioner's attorney-client relationship and coercion. This statement was secured by state officials and introduced at petitioner's federal trial in violation of his Sixth and Fifth Amendment rights.

To establish a claim of ineffective assistance of counsel based on a conflict of interest, a defendant must demonstrate that (1)"an actual conflict of interest" (2)"adversely affected his lawyer's performance". *Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S. Ct 1708, 64 L. Ed. 2d 333 (1980) To establish that there was an actual conflict of interest, the defendant must "show that his interest diverged from his attorney's with respect to a material factual or legal issue or to a course of action". *Id*

Petitioner's court appointed attorney for state charges involving this case was Attorney Danny Britt. Attorney Danny Britt is the younger cousin of Johnson Britt, who was the Robeson County District Attorney and prosecutor of the state charges petitioner faced. This close relation to the prosecutor burdened Attorney Britt with an actual conflict of interest that had an adverse effect on his representation. Attorney Britt, accompanied by private investigator Mark Locklear visited petitioner at Robeson County Jail approximately three hours after being appointed to petitioner's case. During this visit they pressured petitioner to provide the government with an incriminating statement. Also, during this meeting Locklear informed the petitioner that a call directly from the District Attorney's Office was the reason for their pre-mature visit. This shows Johnson Britt's influence on his younger cousin Attorney Britt as he directed his actions.

Attorney Britt's sole objective was to convince the petitioner to provide the government with an incriminating statement. Petitioner, however, repeatedly expressed his desire not to provide a statement but rather to contest the charges against him. This is where the potential conflict sharpened into an "actual" conflict as it caused the petitioner's desire to diverge from that of his attorney. Being that petitioner repeatedly expressed his desire not to provide a statement but rather to contest the charges against him conducting an investigation and determining what could be elicited by way of defense would have been the reasonable course of action for Attorney Britt to take. He, however, was unable to defend the petitioner due to his conflicting loyalty. Three hours was not enough time for Britt to review any evidence, conduct an investigation, or make any sound decisions on how to proceed with petitioner's case. Britt's advice lacked any strategical reasoning as he advised petitioner to provide the incriminating statement on the record without any protection. In *Strickland*, the Court noted that the "government violates the right to effective assistance of counsel when it interferes in certain ways with the ability of counsel to make any independent decisions of how to defend the defendant". *Strickland*, 466 U.S. at 688 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

The government hindered Attorney Britt's ability to make any independent decisions of how to defend the petitioner. Every action taken by Attorney Britt was directed by the government. The District Attorney's Office personally notified him of his appointment then instructed him to convince the petitioner to provide an incriminating statement. Failing to persuade the petitioner Attorney Britt colluded with Eric Hackney (investigator for D.A. J. Britt) secretly arranging a meeting with government officials without petitioner's consent or notifying him of the meeting. Attorney Britt then forced petitioner to join this meeting despite his repeatedly expressed desire not to attend the meeting or provide a statement. Attorney Britt was clearly rendered ineffective due to a conflict of interest and the standard for establishing this articulated by this Court is met here. *Sullivan* 446 U.S. at 348

Petitioner's incriminating statement was also involuntary as it was secured through multiple means of coercion. Whether a statement is involuntary "is a question of fact to be determined from 'the totality of all the surrounding circumstances, both the characteristics of the accused and the details of the interrogation'". *United States v. Wertz*, 6215 F.2d 1128, 1134 (quoting *Schneckloth v. Bustamonte* 412 U.S. 218, 226 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)) The proper inquiry is whether the defendant's will has been overborne or his capacity for self-determination is critically impaired. *United States v. Braxton* 112 F.3d 777 780-81 (4th Cir. 1997)

The "totality" of the circumstances surrounding petitioner's statement did overwhelm him. It is common knowledge segregation is a form of punishment. Petitioner

was apprehended placed directly in segregation and held in incommunicado custody for several days. Petitioner made several requests to be removed from segregation that were all denied without explanation. After several days of incommunicado custody, petitioner is led to a small room where he is threatened with life imprisonment and the arrest of family members if he does not provide the government with an incriminating statement. He is demoralized with these threats then led back to segregation. The following morning petitioner is transported to Robeson County Courthouse under the guise of an appearance in Court. He is instead met by Eric Hackney of the District Attorney's Office and Attorney Britt. Petitioner is then badgered with more threats of life imprisonment and the arrest of family members if he does not provide the statement. He is then forced into a pre-arranged meeting with various government officials that he had no prior knowledge of. At this meeting he is induced by Agent Healey with the promise his younger sister will not be arrested if he provides the incriminating statement. This promise led petitioner to provide the statement as these unwarranted threats against members of his family had critically impaired his self-determination. It was also not until after providing the incriminating statement that petitioner was removed from segregation.

This was not petitioner's first encounter with law enforcement but to be isolated and threatened in such a manner was a shock to his conscience. Noted by this Court a confession cannot be extracted "by any sort of threats or violence, or... by any direct or implied promises, however slight, or by the exertion of any improper influence." *Hutto v. Ross*, 429 U.S. 28, 30 97 S. Ct. 202, 50 L. Ed. 2d (1976) Petitioner's statement was the direct result of the expressed threats of continued incommunicado custody, life imprisonment, and the arrest of family members. The promise from Agent Healy not to arrest petitioner's younger sister aided the extraction of the statement. Part of the government's coercive conduct is caught on a recording. Detective Whitley can be heard threatening to arrest petitioner's younger sister despite her innocence. Whitley states "we can still arrest your sister" petitioner responds "she didn't do anything" Whitley in turn shouts "it doesn't matter". Considering the "totality" of the circumstances surrounding petitioner's statement, the statement was clearly involuntary as it was not the product of a free and unconstrained will. The circumstances here would cause even the strongest willed individual to relinquish their constitutional rights. In similar situations this Court as well as other United States Court of Appeals have deemed statements involuntary. *United States v. Finch*, 998 F.2d 349 (6th Cir. 1993)(threat to arrest members of suspects family); *Haynes v. Washington*, 373 U.S. 503, 83 S. Ct. 1336, 10 L. Ed. 2d 513 (1963)(suspect held incommunicado and request to use phone denied); *Rogers v. Richmond* 365 U.S. 534, 81 S. Ct. 735, 5 L. Ed. 2d 760 (1961)(suspect threatened with the arrest of his wife); *United States v. Tingle* 658 F.2d 1332 (9th Cir. 1981)(suspect threatened with a long prison sentence and

not seeing child for a long time) Statements all held involuntary the lower courts' ruling clearly conflicts with the relevant decisions of this Court concerning this important matter.

In answer to the first question the District Court did in fact fail to follow the teachings of Elkins when it allowed evidence obtained clearly in violation of petitioner's constitutional rights to be introduced at his federal trial. The Fourth Circuit Court of Appeals also erred in denying petitioner a COA thus failing to correct the lower court's error despite being guided by this Court and the relevant decisions of other United States Court of Appeals concerning this matter.

Concerning the second question did the lower courts' fail to use the standard articulated by this Court and followed by the United States Court of Appeals when considering effective assistance of counsel?

Petitioner's trial counsel Attorney Howard was ineffective in several aspects:(1)he failed to conduct a pre-trial investigation or review evidence;(2)failed to seek suppression of petitioner's involuntary statement;(3)failed to prepare a defense;(4)failed to call any witnesses or effectively cross examine government witnesses;(5)denied petitioner the right to testify in his defense

To offer effective assistance of counsel the Court has stated a criminal defense lawyer possess a duty to conduct a pre-trial investigation that is "reasonable under prevailing professional norms". Strickland U.S. at 688, 6876, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) Attorney Howard neglected this duty as he failed to conduct any pre-trial investigation. Petitioner provided Howard with the name and contact information of a witness who could confirm his whereabouts on the day of the crime and been an alibi defense. Attorney Howard, however, failed to investigate this information and represented petitioner at trial without making any effort to determine what could be elicited by way of defense. A review of the record will show there was no clear defense offered by Attorney Howard. Other United States Courts of Appeals have deemed this kind of uninformed inaction as ineffective assistance of counsel. Heard v. Addison 728 F.3d 1170, 1180 (10th Cir. 2013); Blackburn v. Foltz 828 F.2d 1171 (6th Cir. 1987); Fisher v. Gibson 282 F.3d 1283 (10th Cir. 2002)

Petitioner requested Attorney Howard to submit a renewed motion to suppress his involuntary statement prior to trial as a previous attorney offered no argument on the issue at a suppression hearing but rather preserved the issue. Petitioner informed Attorney Howard of the circumstances surrounding the statement. Howard chose not to submit a renewed motion to suppress the statement and erroneously advised the petitioner that he could not submit a renewed motion to suppress the statement. Attorney Howard was

ineffective here as the statement would not have been admissible in state proceedings, so it should not have been allowed at petitioner's federal trial. This teaching was handed down by this Court in Elkins. Attorney Howard should have been aware of this established precedence. In claiming ineffectiveness for counsel's failure to file a motion to suppress the prejudice prong has two components petitioner must show both:(1)that the motion was meritorious and likely would have been granted, and (2) a reasonable probability that granting the motion would have affected the outcome of trial. Kimmelman v. Morrison, 477 U.S. 365, 375 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) Due to the constitutional violations that produced the statement had Attorney Howard submitted a renewed motion to suppress the statement prior to trial it would have been granted. Had this statement been absent from the proceedings the outcome of petitioner's trial would have been different as the statement was the focal point of the jury's deliberations. Trial TR. Vol. IV D.E. 351 at 3-4

Attorney Howard failed to effectively cross-examine government witnesses Officer Boddie. Officer Boddie gave a detailed description of the suspect the government allegedly claimed was the petitioner in his report to Agent Healy. See Attachment 2. The petitioner fits no part of this description. In spite of this, Attorney Howard failed to question Officer Boddie about this specific description. The lead agent of the case Agent Healy testified at a pre-trial hearing that he learned through his investigation that the suspects were able to elude law enforcement by hiding in the woods for 24-plus hours. Petitioner was tracked and apprehended via the GPS system in his Tahoe SUV. The GPS system shows the petitioner is hours away from this crime in Moncks Corner SC during this 24-hour timeline. See Attachment 3 Attorney Howard failed to call Agent Healy as a witness and failed to present this exculpatory evidence to the Court. These errors were due to Attorney Howard's failure to review the evidence prior to trial. This became clear to the petitioner when Attorney Howard responded "I don't know" to petitioners' inquiries of evidence the prosecution may present at trial.

The 10th and 2nd Circuit United States Court of Appeals have noted that the correct way to analyze the effect of counsel's errors is to examine the cumulative weight of them rather than the effect of them standing alone. Pavel v. Hollins, 261 F.3d 210, 216 (2nd Cir. 2001); Fisher v. Gibson 282 F.3d at 1307 The numerous errors by Attorney Howard clearly prejudiced the petitioner. Howard's ineffectiveness allowed an inadmissible statement to be introduced at petitioner's trial to his detriment. He failed to present exculpatory evidence to the Court in the form of the GPS system, an alibi witness, and the petitioner not matching the detailed description of the suspect given by Officer Boddie. Howard also denied petitioner the right to testify in his defense after a request to do so while he failed to articulate any reasonable doubt theory to the jury. Had counsel not made these numerous errors the outcome of petitioner's trial would have been different.

Attorney Howard represented petitioner on appeal also and was equally ineffective. Petitioner requested the 4th Circuit Court of Appeals for new counsel due to Howard's ineffectiveness which led to an irreconcilable conflict between them. The Court of Appeals erred in this matter as petitioner's request was denied despite a showing of good cause for substitute counsel. *United States v. Gillette*, 738 F.3d 63 (3rd Cir. 2013)

To establish that the appellate counsel was ineffective for failing to pursue a claim on direct appeal the applicant must normally demonstrate "that appellate counsel performed deficiently and that a reasonable probability of a different result exists." *Bell v. Jarvis* 236 F.3d 149, 164 (4th Cir. 2000) "Only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome." *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993)

The petitioner repeatedly requested Attorney Howard to raise the issue of his involuntary statement that was employed against him at trial on direct appeal. Attorney Howard rejected this request and misadvised the petitioner that this issue could not be raised until he initiated 2255 proceedings. See Attachment 1 This erroneous advice led to the issue becoming procedurally defaulted. Howard instead chose to pursue issues that were far less compelling, which is the opposite of "effective appellate advocacy". *Jarvis* 236 F.3d 149, 164 (4th Cir. 2000) Being aware of the constitutional violations that exacted the statement Attorney Howard's decision not to raise this issue on appeal was unreasonable. Had he raised this issue on direct appeal the appeal would have been successful. Howard's failure to raise this issue did amount to ineffective assistance from counsel that substantially prejudice the petitioner.

The lower courts failed to judge Attorney Howard's representation pre- and post-trial by the standard articulated by this Court for effective assistance of counsel. The lower courts' ruling clearly conflicts with the relevant decisions of this Court and other United States Court of Appeals concerning this matter the ruling denying a C.O.A. was unjust.

CONCLUSION

Based on the foregoing, Petitioner Demetris Robinson respectfully request that this Court grant his writ of Certiorari and hear the merit of the questions presented herein. Alternatively, this Court should grant the petition, vacate the judgement of the lower court and remand for the appropriate relief the petitioner is entitled to.