No. 24-7306

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM T. HILL- PETITIONER

vs.

UNITED STATES OF AMERICA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

EIGHTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Mr. William T. Hill # 17344-029

FCI-Victorville Medium II/ P.O. Box 3725

Adelanto, CA. 92301

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether the district court abused its discretion by Summarily Denying Ground One as to his claim of ineffective assistance of counsel claim, thus, failure to investigate and file a Motion to Suppress Evidence without conducting an Evidentiary Hearing ?

QUESTION NUMBER TWO:

Whether the district court abused its discretion by Summarily Denying Ground Three as to his claim of ineffective assistance of counsel by his ex-lawyer's failure to review Jenacks Act material and Discovery material with him and failing to request his consent and without his knowledge entered two Stipulations required further factual development through prompt an Evidentiary Hearing, see Schiro v. Landrigan, 550 U.S. 465, 474 (2007) ?

QUESTION NUMBER THREE:

Petitioner Hill, states that did the district court abuse its discretion by Summarily Dismissing Ground Four and Ground Six as it conflicts with U.S. Supreme Court precedents in Conley v. United States, 355 U.S. 41, 45-46 (1957), and Blackledge v. Allison, 431 U.S. 63, 80-83 (1977) ?

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:

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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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A, to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits 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 _____ court appears at Appendix _____ to the petition and is

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 08, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10/03/2024

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A_____.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1), and 28 U.S.C. 2253 (c) (2).

[ ] For cases from **state courts:**

The date in which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

[ ] 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

PAGE NUMBER

STATEMENT OF THE CASE

On July 07, 2021, Petitioner Hill filed his 2255 Motion to Vacate. After full briefing commenced, however, the district court denied 2255 Motion to Vacate without conducting an Evidentiary Hearing on April 08, 2024. A timely Notice of Appeal was filed and the Eighth Circuit Court of Appeals declined to issue a Certificate of Appealability on August 08, 2024. A timely Motion for Panel Rehearing or Rehearing En Banc was filed and denied on October 03, 2024. Moreover, the Eighth Circuit Court of Appeals denied Petitioner Hill's request for a Certificate of Appealability without issuing a reason for such denial, thus, rendering it difficult for adequate higher court review by the U.S. Supreme Court in the case at bar.

Petitioner Hill, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, and Three or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Hill, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition

for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Hill, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, and Three as relevant to question # 1, Mr. Hill, argues that he suffers from ineffective assistance of counsel when his former trial counsel failed to investigate and file a Motion to Suppress Illegal Search of Hill's iPhone, thus, the failure to conduct a prompt evidentiary hearing was an abuse of discretion. Regarding question # 2, William T. Hill argues that he suffers from ineffective assistance of counsel by his former attorney's failure to review Jenacks Act material and Discovery material with him and failing to request his consent and without his knowledge entered two Stipulations required further factual development through prompt an Evidentiary Hearing. Regarding question # 3, William T. Hill, contends that the district court abuse its discretion by Summarily Dismissing Ground Four and Ground Six as it conflicts with U.S. Supreme Court precedents, thus, a prompt Evidentiary Hearing should have been conducted in the case herein. Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack** and **Miller-El,** thus, William T. Hill is entitled to issuance of Certificate of Appealability as to Questions 1, 2, and 3, in the matter herein.

QUESTION NUMBER ONE:

Whether the district court abused its discretion by Summarily Denying Ground One as to his claim of ineffective assistance of counsel claim, thus, failure to investigate and file a Motion to Suppress Evidence without conducting an Evidentiary Hearing ?

In the instant case, Petitioner Hill, states that his former trial counsel Attorney Priscilla E. Forsyth advised him that no pre-trial Motion to Suppress could be filed and his ex-lawyer's failure to adequately investigate a pre-trial Motion to Suppress as it relates to the iPhone and fruits obtain from that illegal search without a warrant, thus, violated his Fourth Amendment rights of the U.S. Constitution.

Mr. Hill's iPhone when the Officers arrested him was on his person and during and after Mr. Hill's arrest, his iPhone received test messages from a California number later identified as belonging to Ross. In the messages, Ross told Mr. Hill to answer his phone and to find them another hotel room. Ross also asked Mr. Hill why he was not answering his phone and warned Mr. Hill that, if he did not respond soon, the group would leave.

Officers located Ross' vehicle at the Town and Country Motel in Sioux City. Sioux City is in the Northern District of Iowa. Watts had rented the hotel room and had listed a California-plated vehicle, which belonged to Ross, on her registration. Officers executed a search

warrant for the hotel room and the vehicle. Inside the hotel room, officers found Poellnitz, Ross, and Watts. Police also seized two pounds of methamphetamine from the engine compartment of Ross' vehicle.

In reviewing Mr. Hill's phones, law enforcement discovered communications between Mr. Hill and Monell. These communications occurred "between late October 2017 up to November 8, 2017."

Officers also found a significant numbers of calls and messages exchanged between Mr. Hill and Ross during the same time period, but they were unable to retrieve the content of the messages to review.

The testimony made by Tri-State Drug Task Force Officer Heather Albrecht indicates that the Officers arrested William T. Hill and viewed digital data on his iPhone cell phone on **November 8, 2017, however, did not have a warrant to search his iPhone until November 14, 2017, see Magistrate Cases No. 17-mj-375) (AFG 4; AFF 4).** See Attachment D (A copy Transcripts of Preliminary Examination and Detention Hearing before U.S. Magistrate Judge Kelly K.E. Mahoney dated November 14, 2017).

Even when law enforcement agents permissibly seize a phone when making an arrest, they do not have carte blanche to do whatever they wish with it. The Fourth Amendment's prohibition

of unreasonable searches places at least one limitation on law enforcement's ability to examine a phone after a lawful seizure, preventing the viewing of the digital data stored on the phone without a warrant. See **Riley v. California,** 573 U.S. 373, 134 S. Ct. 2473, 2495 (2014) ("Our answer to the question of what police must do before searching a cell phone seized incident to arrest is.... simple—get a warrant.").

The Tri-State Drug Task Force could have never discovered Ross (Officers did not recover any communications between Monell and Ross. Monell testified that he and Ross never communicated or knew each other. Monell testified he "[n]ever heard of the man."), and the others location absent the illegal search without a warrant of Hill's iPhone in which violated his Fourth Amendment Rights of the U.S. Constitution. The fruits of the illegal search must be suppressed as well in the case herein. **Wong Sun v. United States,** 371 U.S. 471, 488 (1963).

The district court abused its discretion by denying Question One by its reliance upon the Eighth Circuit's Ruling in **Morgan,** 842 F.3d 1070 (8th Cir. 2016), in which is factually distinguishable from the facts and circumstances surrounding Mr. Hill's case as in **Morgan** he shared information about his contacts with the detective and the Eighth Circuit recognize that: **"This is unlike officers looking on their own through**

the contents of a cell phone." See Riley v. California, 134 S. Ct. 2473, 2480-82 (2014). Id. 842 F.3d at 1075-76 (8th Cir. 2016). Moreover, in light of the U.S. Supreme Court's Ruling in **Carpenter,** 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), thus, the district court abused its discretion without conducting an Evidentiary Hearing in the case herein. Thus, the district court failed to resolve a critical factual question **"is it possible to review text messages popping up on a cell phone if the cell phone is locked," however, it appears that this is not possible unless you log onto AT & T or unlock the phone to read the text messages or ask Siri to read messages.** See Attachment E. Contrary to Officers prior testimony it appears that such text messages were viewed by other means as discussed above herein and entailed within Attachment E, thus, violating his Fourth Amendment rights of the U.S. Constitution. See United States v. Slim, 34 F.3d 642 (8th Cir. 2022) (the Eighth Circuit held that: "when law enforcement physically manipulates a phone or otherwise tries to access the information inside, a search occurs and a warrant is required.").

Petitioner Hill, argues that he has demonstrated that absent his ex-lawyer's failure to adequately conduct pre-trial investigations and file Motion to Suppress, thus, there is a reasonable probability that the outcome of the proceedings would have been different or the result of his Jury Trial was fundamentally unfair or unreliable in

violation of Petitioner Hill's Sixth Amendment Rights of the U.S. Constitution in the case herein. See **Strickland,** 466 U.S. at 687, 691-92 (1984), and **Lockhart v. Fretwell,** 113 S. Ct. 838, 844 (1993) (the Supreme Court explained that under **Lockhart,** the fundamental fairness of the proceedings is measured by whether "the ineffectiveness of counsel... deprives the defendant of any substantive or procedural right to which the law entitles him.").

It follows that consistent with the U.S. Supreme Court's Ruling in **Harris v. Nelson,** 394 U.S. 286, 300 (1969) (the petitioner must show reason to believe that he "may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief.); and **Schriro v. Landrigan,** 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). It is well established that under **Strickland** counsel has a duty to conduct a reasonable investigation into the facts of a defendant's case, or to make a reasonable determination that an investigation is unnecessary. See **Wiggins v. Smith,** 539 U.S. 510, 522-23 (2003).

A COA should issue as to Question Number One as it is debatable amongst jurists of reasons whether the district court abused its

discretion by failing to conduct a prompt evidentiary hearing in the case herein. See **Slack,** 529 U.S. ____, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Question Number Two:

Whether the district court abused its discretion by Summarily Denying Ground Three as to his claim of ineffective assistance of counsel by his ex-lawyer's failure to review Jenacks Act material and Discovery material with him; failing to interview witnesses; failing to properly cross-examine witnesses especially Shane Brown; and failing to request his consent and without his knowledge entered two Stipulations required further factual development through prompt an Evidentiary Hearing, see Schiro v. Landrigan, 550 U.S. 465, 474 (2007) ?

The Government's Corrected Trial Memorandum supports that trial counsel agreed to at least two Stipulations without Mr. Hill's knowledge and consent, see Attachment F, thus, violating the ABA Standards-Rule 1.4 (a) (1) and (2) Communications. See **Strickland,** 466 U.S. at 668, 104 S. Ct. 2052 (1984); and Cox v. Hutto, 589 F.2d 394, 395-96 (8th Cir. 1979) (The Eighth Circuit held that: "Thus, the stipulation was the functional equivalent of a guilty plea, and the state trial counsel was required to question Cox to determine whether he knowingly and voluntarily agrees to the stipulation. Id. at 244, 89 S. Ct. 1709. The admission into evidence of the stipulation, without inquiry

into Cox's knowledge and consent, amounted to constitutional error." The Eighth Circuit REVERSED the denial of petitioner's Writ of Habeas Corpus Petition) (emphasis added).

Trial counsel's failure to interview the Government's key witnesses who testified at his Jury Trial and discuss a trial strategy with William T. Hill and go over Discovery and Jenacks Act material certainly constitutes 'deficient performance' in which satisfies the first prong of **Strickland** test. See Noland v. Dixon, 808 F. Supp. 485 (W.D.N.C., 1992) (Counsel's failure to consult with petitioner compounded by other errors constitutes ineffective assistance of counsel); Goodwin v. Balkcom, 684 F.2d 794 (11th Cir. 1982) (Trial counsel's lack of pretrial investigation, which deprived defendant of potential defense, constituted ineffective assistance); Miller v. Wainwright, 798 F.2d 426 (11th Cir. 1986) (Trial counsel's failure to investigate alternative lines of defense may constitute ineffective assistance of counsel); and United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (Trial counsel's failure to interview government's witness and identify or interview witnesses who would corroborate defendant's testimony, constitutes ineffective assistance); and Wade v. Armontrout, 798 F.2d 304 (8th Cir. 1986) (Trial counsel's failure to conduct a pretrial investigation, failed to interview prosecution's witnesses, constituted ineffective assistance of counsel and required an

evidentiary hearing) (emphasis added).

Petitioner Hill, argues firmly that a factual dispute exists between William T. Hill's Affidavit and trial counsel Attorney Priscilla E. Forsyth, see Aff. at Doc. # 11, pages 4, 5, and 6, regarding Ground Three, thus, a prompt Evidentiary Hearing is required in the matter herein. See **Townsend v. Sain,** 372 U.S. 293, 313 (1963) (where a factual dispute exist an evidentiary hearing is mandatory); and Walker v. Solem, 648 F.2d 1188, 1191 (8th Cir. 1981) (factual disputes require a hearing, thus, the Eighth Circuit REVERSED AND REMANDED for evidentiary hearing). The district court abused its discretion by denying Ground Three as it relates to ineffectiveness by his ex-trial counsel failing to review Jenacks Act material and Discovery material with him and failing to request his consent and without his knowledge entered two Stipulations requires further factual development through a prompt Evidentiary Hearing as required consistent with U.S. Supreme Court precedents. See Schriro v. Landrigan, 550 U.S. 465, 474 (2007).

A COA should issue as to Question Number Two, as taken as true the factual allegations of Mr. Hill a prompt Evidentiary Hearing should have been conducted, thus, such claim is debatable amongst jurists, see **Slack,** 529 U.S. ___, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

QUESTION NUMBER THREE:

Petitioner Hill, states that did the district court abuse its discretion by Summarily Dismissing Ground Four and Ground Six as it conflicts with U.S. Supreme Court precedents in Conley v. United States, 355 U.S. 41, 45-46 (1957), and Blackledge v. Allison, 431 U.S. 63, 80-83 (1977) ?

First, Mr. Hill, argues that the district court abused its discretion by failing to understand and recharacterizing Ground Four claim as Jury Instruction No. 5, as it relates to Count One, Conspiracy actually Impermissible Amendment of his Indictment as it fails to charge the information regarding Mr. Hill's prior drug conviction from Fresno County, California. See United States v. Farr, 536 F.3d 1174, 1181-82 (10th Cir. 2008) (The language employed by the government in its indictments becomes an essential and delimiting part of the charge itself, such that if an indictment charges particulars, the jury instructions and evidence introduced at trial **MUST** comport with those particulars.);

Second, Mr. Hill, asserts that the district court held that Ground Six was without merit as the Court did not recall a copy of the indictment being delivered to the jury, however, it appears in most instances a copy of the indictment is in fact delivered to the jury. See United States v. Hosseini, 2014 U.S. Dist. LEXIS 197339, at * 11 (N.D. IL.,

Sept. 12, 2014) (Hosseini argued that an incorrect version of the indictment was delivered to the jury and the court affirms that redacted version was ordered to be given to the jury of the indictment); McMillian v. United States, 481 F. Supp. 10 (N.D. IA., 1979) (The jury was given a copy of the indictment which contained the proper allegation); and United States v. Van Dyke, 820 F. Supp. 1160 (N.D. IA., 1993) (A copy of Indictment was delivered to the jury). The omission of the Indictment in which included his prior drug convictions and his former trial counsel's failure to object constituted ineffective assistance of counsel in violation of his Sixth Amendment rights of the U.S. Constitution. See Lombard v. Lynaugh, 868 F.2d 1475, 1482 (5th Cir. 1989) (the Fifth Circuit Court of Appeals held that: "Thus, Cahoon's failure to object at trial to the references to Lombard's prior convictions may well have been a costly error. Had the issue of trial counsel's ineffectiveness been raised on appeal, the Texas Court of Appeals might have determined that such an error alone constituted ineffective assistance of trial counsel warranting reversal of the conviction." The Fifth Circuit reversed the denial of petitioner's prisoner's petition for habeas relief.); and United States v. Harriston, 329 F.3d 779, 789-90 (11th Cir. 2003) (The use of the California murder conviction being submitted to the Jury was highly prejudicial and merited a mistrial or reversal of the conviction. Thus, the Eleventh

Circuit **VACATED** Harriston's conviction and remanded for a new trial.) (emphasis added).

The U.S. Supreme Court's Ruling in Conley v. Gibson, 355 U.S. 41, 45-46 (1957) ("Summary dismissal is appropriate only in those cases where the pleadings indicate that petitioner can prove no set of facts to support a claim him to relief."); and Blackledge v. Allison, 431 U.S. 63, 80-83 (1977) (A North Carolina state inmate 2254 writ of habeas petition was Summary Dismissed, however, the U.S. Supreme Court held it to be improper holding: But Allison is "entitled to careful consideration and plenary proceeding of [his claim] including full opportunity for presentation of the relevant facts." Thus, the Supreme Court reaffirmed the Fourth Circuit's reversal and remand for an evidentiary hearing.), thus, the district court abused its discretion by Summarily Dismissing Grounds Four and Six in the situation herein. A Certificate of Appealability should issue in the case herein. It follows that a COA should issue as Question Number Three is that the question are adequate to deserve encouragement to proceed further. See **Slack,** 529 U.S. ___, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x William T. Hill

Date: 12/22/2024