

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY HATCHER -- PETITIONER

vs.

STATE OF LOUISIANA -- RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL, FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

NAME: ANTHONY HATCHER #565264
 CAMP "C" WOLF 1
 LOUISIANA STATE PENITENTIARY
 ANGOLA, LOUISIANA 70712

QUESTION(S) PRESENTED

- #1 Was Petitioner's constitutional rights violated pursuant to the ruling handed down in *Santobello v. New York*, where Petitioner, the State court, and District Attorney agreed that in return for Petitioner's plea of guilty to one count of Armed Robbery, while the State would make it's recommendation for Petitioner to receive ten (10) year sentence and to have the remaining counts brought against Petitioner dismissed?
- #2 Did the Defense Counsel render ineffective assistance in violation of his constitutional right pursuant to the 6th Amendment right to assistance of counsel, where counsel allowed the ten (10) year plea deal to be rejected without objection to the trial court's sentencing range? See *Missouri v. Frye*.

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

☒ For cases from **federal courts**:

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

☒ reported at Docket No. 17-30730; 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☒ is unpublished.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 R to the petition and is

☒ reported at USDC No. 3:14-CV-390; 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☒ is unpublished.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 L to the petition and is

☒ reported at Louisiana Supreme Court, Docket No. 2013-KH-2611; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Appeals, First Circuit court appears at Appendix J To the petition and is

☒ reported at 2013-KW-1315; 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 March 28, 2018.

☒ 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 June 13, 2014. 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

U.S. Constitution

6th Amendment to the United States Constitution

14th Amendment to the United States Constitution

Louisiana Constitution of 1974, Article 1, Section 13

Statutory

La. R.S. 14:27/14:64 – Attempted Armed Robbery

La. R.S. 14:27/14:30 – Attempted First Degree Murder

La. R.S. 14:64 – Armed Robbery

La. R.S. 14:27/14:30.1 – Attempted Second Degree

La. C.Cr.P. Art. 559(A)

La. C.Cr.P. Art. 841

La. C.Cr.P. Art. 930.3

STATEMENT OF THE CASE

Petitioner was charged by Bill of Information with one count of attempted armed robbery (R.S. 14:27/14:64); one count of attempted first degree murder (R.S. 14:27/14:30); two counts of armed robbery (R.S. 14:64); and one count of attempted second degree (R.S. 14:27/14:30.1).

On February 22, 2010, Petitioner trial was sent to commence. Meanwhile, during break, both counsels reached agreement upon the term of ten (10) years in return for Petitioner's plea of guilty as to count three (3).

However, the trial court rejected their oral agreement enforcing its sentencing range of 15 to 40 years, in violation of Petitioner's 14th Amendment right to "Due Process of Law."

REASONS FOR GRANTING THE PETITION

Breach Of Contract

Petitioner sought federal relief / review of his State court conviction and was advised by the Honorable United States Magistrate, Mr. Bourgeois that he reached the standards of 2254(D) (2). But denied Petitioner request for a contradictory hearing arguing that during Petitioner's *Boykinization*, it was clear that no such agreement had been made or adopted by the trial court. (Furthermore) Petitioner cites that during sentencing in these matters, he submitted the facts that offers had been made by the State District Attorney for a ten (10) year sentence which induced Petitioner's guilty plea and the defense attorney advised Petitioner he would receive the lowest sentence for armed robbery. The Hon. Bourgeois argued in its recommendation, Petitioner's *Boykinization* with the trial court expressly contradicted his assertion that he was assured of any particular sentence, and that Petitioner is unable to point out any conversation where another person were present which could contradict testimony in open court. Even if there was a discussion about a lower sentence prior to Petitioner entering the instant plea it is clearly shown at sentencing the only agreement made or reached in exchange by the trial court is the trial court's sentencing range of 15 to 40 years (whereas) for the sentence imposed of 25 years, the terms of any agreement reached or made was fulfilled by all parties for that reason. The Magistrate stated there was no need to grant an evidentiary hearing, as such the trial court failure to conduct any hearing and denial on post conviction were not contrary to and involved an unreasonable application of clearly established federal law. See *Dunn v. Collieran*. Wherein the court held when prosecutor breaches plea agreement. Here, she violates defendant's "Due Process" rights by implicating consideration and voluntariness upon which that plea was based.

U.S.C.A. Const. Amend. 14.

Petitioner submits that his plea of guilty to a charge of armed robbery was not knowingly, intelligently, and voluntarily entered. That is, where he was INDUCED by a plea bargain agreement for a sentence of (10) years. When his Court-appointed counsel, Scott Collier, and Assistant District Attorney, Jeff Traylor, on the day trial was set and before trial began, off record, during break, they negotiated the terms of an agreement for a sentence of (10) years and to dismiss all other charges brought against him in the bill of information. In exchange for his guilty plea to the charge of armed robbery, pursuant to La. R.S. 14:64. However, when court resumed, the court acknowledged that the defense had come in terms to enter a plea of guilty. The court, however, on agreed to a sentencing range of 15 to 40 years. *Id* (See *Boykin* ex. Pages 3-4) in support. In addition, although the court made a thorough *Boykin* examination that was not refuted by the defense, he maintained his belief that at the time of sentencing, he would still receive the sentence of (10) years offered to him by the District Attorney, which was not ... refuted or objected to by the Assistant District Attorney ... before sentencing was imposed (during the sentencing process). (*Id* pages 3-4).

Thus, during the *Boykin* examination the ADA therefore breached its part of the plea bargain agreement for a sentence of (10) years in exchange for his guilty plea under armed robbery pursuant to La. R.S. 14:64.

Furthermore, Petitioner submits that there is reasonable probability that, the trial court, during sentencing, would have sentenced him to (10) years on the armed robbery charge under La. R.S. 14:64. Moreover, or in the alternative, the trial court would have allowed him to withdraw his guilty plea to the armed robbery before sentencing was imposed pursuant to La.

C.Cr.P. Art. 559(A). That, but for the District Attorney's errors, the trial court would have vacated his guilty plea to the charge of armed robbery and would have reinstated his initial plea of *not guilty* to the armed robbery charge, and all other counts brought against him in the bill of information.

The Federal and State Constitutions provides that "No person shall be deprived of life, liberty, or property, without "Due Process of Law." The Fourteenth Amendment right to the Constitution of the United States. U.S. Const. Amend. XIV. See *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 496, 30 L.Ed.2d 427 (1971). The Courts held that guilty plea must of course, be voluntary and knowing and if it was induced by promises, the essence of these promises must in some ways be made known. *Id.* at 261-262. 92 S.Ct. 495, *quoting Dunn v. Collieran, supra*. If prosecutor fails to fulfill promises contained in plea agreement, ... whether purposefully or inadvertantly that (breach) must be remedied regardless of whether the defendant was prejudiced thereby.

Ineffective Assistance Of Counsel

The Petitioner further submits that during the day of his trial, before trial commenced, off the record, his Court-appointed counsel, Scott Collier, and Assistant District Attorney conducted a negotiation process for a sentence of (10) years and to have all other charges brought against him in the bill of information dismissed in exchange for his guilty plea to the charge of armed robbery under La. R.S. 14:64. However, when court resumed, the court acknowledged that the defense had come in terms to enter a plea of guilty. The court, however, on agreed to a sentencing range of 15 to 40 years. Therefore, counsel "knew" or "should have known" that the District Attorney (breached) its part of the plea agreement, which induced him to enter a plea of

guilty to the charge of armed robbery. Whereafter, the ADA failed to recommend the sentencing agreement of (10) years, to the trial court. In spite the fact Petitioner didn't refute the trial court *Boykin* examination, he maintained his belief that at the time of sentencing, he would still receive the (10) years that was offered to him by the ADA.

Therefore, counsel representation fell below an objective standard of reasonableness, and that there is a reasonable probability that if, counsel would have informed him of his rights to withdraw his guilty plea pursuant to La. C.Cr.P. Art. 559(A), that he would have invoked his right to withdraw his guilty plea to a charge of armed robbery. That, but for counsel's errors, he would have not plead guilty and would have insisted on going to trial. *Id* See the *Boykin* examination pages 3-4. Thus, see also sentencing pages 3-4, in support of the aforesaid mention.

In addition, counsel denied him of his Federal and State Constitutional right to the effective assistance of counsel for his defense, "that is where counsel failure to raise any (objections) in the trial court, to the court's ... sentencing range of 15 to 40 years," which prevented him from obtaining post conviction relief, based on the issues of a negotiated plea-agreement for a sentence of (10) years in an application for post conviction relief, under La. C.Cr.P. Art. 930.3 and see La. C.Cr.P. Art. 841. Thereby, Petitioner plea of guilty was not "knowingly, intelligently and voluntarily entered," as a result of ineffective assistance of counsel.

The Sixth Amendment right to the Constitution provides, in pertinent part, as follows: In all criminal prosecutions, an accused shall enjoy the right to the assistance of counsel for his defense. U.S. Const. Amend VI. *Quoting* also the Louisiana Constitution of 1974, Article 1, Section 13, when a defendant is represented by counsel, the voluntariness of the plea depends on whether "counsel's" advice was within the range of competence demanded of attorneys in

criminal cases. *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203 (1983); quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970).

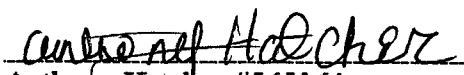
In *Hill*, the Court stated that the standards for determining the effectiveness of counsel in a guilty plea proceeding is the two-prong test set forth by the Courts in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

The defendant must show that counsel's representation fell below an (objective) standard of reasonableness, and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Hill, supra*, 474 U.S. at 369-370; quoting *Strickland, supra*, 466 U.S. at 2068. The failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the *Strickland* analysis adopted by the majority, as such an omission cannot be said to fall within "the wide range of professionally competent assistance demanded of the Sixth Amendment. *Hill v. Lockhart, supra*, 474 U.S. at 62, 106 S.Ct. at 372; quoting *Strickland v. Washington, supra*, 466 U.S. at 690, 104 S.Ct. at 2066.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


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Date: June 5TH 2018