

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 84-1103

**TITLE** WILLIAM LLOYD HILL, Petitioner V. A. L. LOCKHART, DIRECTOR.  
ARKANSAS DEPARTMENT OF CORRECTION

**PLACE** Washington, D. C.

**DATE** October 7, 1985

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(202) 628-9300  
20 F STREET, N.W.  
WASHINGTON, D.C. 20001

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x  
3 WILLIAM LLOYD HILL, x

4 Petitioner x No. 84-1103

5 v. x

6 A. L. LOCKHART, DIRECTOR, x

7 ARKANSAS DEPARTMENT OF x

8 CORRECTION x  
9 -----x

10 Washington, D.C.

11 Monday, October 7, 1985

12 The above-entitled matter came on for oral  
13 argument before the Supreme Court of the United States  
14 at 10:58 o'clock, a.m.

15 APPEARANCES:

16 JACK T. LASSITER, ESQ., Little Rock, Arkansas; appointed  
17 by this Court, on behalf of the Petitioner.

18 JOHN STEVEN CLARK, ESQ., Attorney General of Arkansas,  
19 Little Rock, Arkansas; on behalf of the Respondent.

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on behalf of the Petitioner	
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on behalf of the Respondent	
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1 PROCEEDINGS

2 CHIEF JUSTICE BURGER: Mr. Lassiter, I think  
3 you may proceed whenever you are ready.

4 ORAL ARGUMENT OF JACK T. LASSITER, ESQ.

5 ON BEHALF OF THE PETITIONER

6 MR. LASSITER: Mr. Chief Justice, and may it  
7 please the Court, the issue presented in Hill v.  
8 Lockhart is rather a technical and narrow issue, but one  
9 I think is significant in the daily workings of the  
10 criminal courts.

11 Petitioner William Hill entered a guilty plea  
12 in the Pulaski County Circuit Court in 1979 to charges  
13 of murder and theft of property. He received a 35-year  
14 sentence on the first degree murder conviction and a  
15 concurrent ten-year sentence on the theft of property  
16 conviction.

17 In his habeas petition which he filed pro se,  
18 which appears in the joint appendix at 8 and 9 he  
19 alleged that he pled with the understanding that he  
20 would receive a 35-year sentence and that he would be  
21 parole eligible after serving one-third of his sentence,  
22 less good time.

23 QUESTION: What page does that appear at, Mr.  
24 Lassiter?

25 MR. LASSITER: It's at 8 and 9 in the joint



1 appendix. The petition for habeas corpus is set forth  
2 there.

3 QUESTION: Mine only goes to page --

4 MR. LASSITER: Eight and 9.

5 QUESTION: Oh, 8 and 9.

6 MR. LASSITER: I'm sorry, Your Honor.

7 QUESTION: Thank you.

8 MR. LASSITER: He also indicated that his  
9 lawyer told him that the Court would impose a 35-year  
10 sentence. He alleged that his lawyer told him that he  
11 would be out in six years if he stayed out of trouble.

12 He alleged that he was not advised of Act 93  
13 which rendered him parole ineligible until serving  
14 one-half of his sentence less good time, since he was a  
15 second offender.

16 QUESTION: Does he allege that he had told --  
17 or told his lawyer all of his factual background so that  
18 his lawyer would know that Act 93 was applicable?

19 MR. LASSITER: Justice Rehnquist, that does  
20 not appear in his pleading. At a hearing, if we were  
21 granted a hearing in this matter, of course this is not  
22 of record, that would be his testimony.

23 QUESTION: But it wasn't in his petition for  
24 habeas that we're reviewing here?

25 MR. LASSITER: That's correct. Of course, our

1 position is that if he didn't tell counsel, counsel  
2 should have inquired about that, that that would be part  
3 of the diligence that counsel should demonstrate in  
4 defending one in a criminal case, and I think we could  
5 also demonstrate that at a hearing.

6 QUESTION: Does the record reflect that Mr.  
7 Hill understood when he entered the plea that had he  
8 gone to trial he would serve half of whatever sentence  
9 was imposed?

10 MR. LASSITER: No, the record does not reflect  
11 that. There was no advice from the Court concerning  
12 potential parole eligibility if he pled or if he went to  
13 trial.

14 QUESTION: But the law in Arkansas at the time  
15 was that had he gone to trial he would serve half of any  
16 sentence resulting from a conviction?

17 MR. LASSITER: Regardless of whether he pled  
18 or went to trial, he would be parole ineligible until  
19 serving one-half, less whatever good time had accrued.

20 QUESTION: As I understand it, Mr. Lassiter,  
21 your client here does not make any claim that his guilty  
22 plea was not intelligent or knowing. It is a challenge  
23 to the assistance of counsel he received?

24 MR. LASSITER: We allege voluntariness. We  
25 allege that the plea was not voluntarily entered.

1 QUESTION: By reason of erroneous advice from  
2 the lawyer?

3 MR. LASSITER: That's correct.

4 QUESTION: No claim of erroneous advice from  
5 the Court?

6 MR. LASSITER: That's correct, and we also do  
7 not claim that the Court was under a duty to advise  
8 Petitioner as to potential parole eligibility. We don't  
9 make that claim.

10 We make the claim that his counsel  
11 affirmatively misadvised him; that is, he told him that  
12 he would be parole eligible at serving one-third less  
13 good time, that he told him that would be about six  
14 years if he stayed out of trouble, that he would not  
15 have entered the plea except for that advice, that he  
16 would not have entered the plea if he had known that he  
17 would not be parole eligible until serving one-half less  
18 good time.

19 QUESTION: Mr. Lassiter, who was the lawyer,  
20 now deceased?

21 MR. LASSITER: His name is William Patterson.  
22 He was the Deputy Public Defender.

23 QUESTION: Patterson?

24 MR. LASSITER: Yes, Your Honor. Mr. Patterson  
25 died in the summer of 1980.

1 QUESTION: Would you mind explaining what the  
2 law in Arkansas is on alleging and proving prior  
3 convictions to enhance or determine parole eligibility?  
4 If I understand it correctly, the State is not required  
5 to allege and prove the prior conviction.

6 MR. LASSITER: That's correct, Your Honor.

7 QUESTION: That's a determination to be made  
8 by the parole board after the conviction and the  
9 sentence, is that right?

10 MR. LASSITER: It is determined by the  
11 Arkansas Department of Corrections. When the inmate is  
12 received at the Department of Corrections they will  
13 check his prior record through the Arkansas Crime  
14 Information Center and the FBI, and then if they find a  
15 prior felony conviction for which he was incarcerated,  
16 then they use that in computing his parole eligibility  
17 that date.

18 The State does not have to allege and prove  
19 prior convictions as part of the trial process or plea  
20 process. The District Court dismissed the petition  
21 without a hearing. The Eighth Circuit affirmed, the  
22 Eighth Circuit holding that details of parole  
23 eligibility are a collateral and not a direct  
24 consequence of the plea and therefore cannot render Mr.  
25 Hill's plea involuntary.



1           Also, the Eighth Circuit looks at the Fourth  
2 Circuit cases of Strader versus O'Tuel discussed in the  
3 brief and finds here that counsel's misadvice, alleged,  
4 does not rise to the level of gross misinformation as  
5 addressed in Strader and O'Tuel.

6           There is one matter here that I would like to  
7 address initially because the cases cited in the brief,  
8 a number of them, distinguish between what we call  
9 positive misadvice and statements by counsel that are  
10 called a mere prediction, or present only a hope of  
11 leniency.

12           The State argues that in the situation that  
13 Mr. Hill found himself in, and with the series of events  
14 as alleged by Mr. Hill, that this could only -- that  
15 counsel's advice here could only be of a speculative  
16 nature, just an estimate, and cannot rise to the level  
17 of being positive misadvice, and the State argues that  
18 that is so because under the Arkansas Rules of Criminal  
19 Procedure, the trial judge does not have to accept the  
20 recommendation of the State.

21           Now, that is correct, under the Arkansas Rules  
22 of Criminal Procedure the trial judge does not have to  
23 accept the recommendation of the State. But we're not  
24 sure exactly what happened here.

25           Mr. Hill alleged that counsel told him that

1 the judge would accept the plea under the Arkansas Rules  
2 of Criminal Procedure. There is a provision which  
3 allows the attorneys to discuss the plea with the Court  
4 beforehand, and the Court can either accept or indicate  
5 that the Court will accept or reject. That may have  
6 happened here, we're not sure.

7 If we had a hearing on this matter, I also  
8 think that I could show that this particular judge at  
9 that time in 1979 accepted almost all recommendations  
10 from the State on negotiated pleas, and it was his  
11 practice, if he was not going to accept that  
12 recommendation, to allow the defendant to --

13 QUESTION: Well, under this plea the highest  
14 potential sentence that could have been imposed was up  
15 to 50 years, is that correct?

16 MR. LASSITER: Five to 50, or life.

17 QUESTION: And had the judge given the maximum  
18 sentence, then this Mr. Hill would not have had to serve  
19 longer than the time he is objecting to here, isn't that  
20 true? A third of 50 would be how much?

21 And how is he prejudiced, then, by the fact  
22 that he got a lesser sentence that he has to serve half  
23 of, which wouldn't be any more than had he received the  
24 maximum sentence and served a third of it?

25 MR. LASSITER: Well, the allegation is that he

1 entered the plea based on advice by counsel that he  
2 would receive the 35 years, and he did receive the 35  
3 years, and that he relied on that in entering the plea.  
4 If he had received a 50-year sentence then the same  
5 parole laws would have been in effect. He would have  
6 had to have served one-half less good time and not  
7 one-third less good time, as counsel told him he would  
8 have to serve.

9 QUESTION: But, now, when the judge asked him  
10 whether any promises were made to him to get him to  
11 enter the plea agreement, his response was, no, nothing  
12 that didn't appear on the agreement.

13 Are you relying for purposes of this case on a  
14 promise that he would get 35 years maximum, or not?  
15 Because, that would be in conflict with the face of the  
16 plea agreement and I hadn't understood that you had  
17 raised that and were relying on that.

18 I understood that you were relying only on an  
19 allegation that the lawyer had told him something about  
20 his parole eligibility date, not that he had been  
21 promised that he would get a 35-year sentence, maximum.

22 MR. LASSITER: Well, I think I have to address  
23 the issue of what sentence that the lawyer told him he  
24 would get, in order to demonstrate that the lawyer's  
25 advice concerning potential parole eligibility was not

1 just an estimate or a prediction, if he were in the  
2 situation where nobody knew what Mr. Hill was going to  
3 receive when he walked up there and pled.

4 QUESTION: Well, he really didn't, did he? He  
5 didn't know what he was going to get. The Judge wasn't  
6 bound. They could have given him 50 years.

7 MR. LASSITER: He could have, but that was not  
8 that judge's practice and counsel advised him that the  
9 Court would impose whatever the recommendation was.  
10 That is correct, under the Arkansas Rules of Criminal  
11 Procedure the judge did not have to take the  
12 recommendation.

13 QUESTION: Let's assume he expected to get 35  
14 years and the judge gave him 50. Do you think he would  
15 have some right to habeas corpus just based on that, if  
16 that's all that happened?

17 MR. LASSITER: It depends on what happened  
18 before and if it was a negotiated plea where the judge  
19 had in no manner whatsoever participated in it, and if  
20 counsel had not advised him that he was going to get 35  
21 years and he walked up there and the judge gave him 50  
22 years. No, he --

23 QUESTION: Mr. Lassiter, you keep changing the  
24 question. I'm looking at the question presented for  
25 review to this Court, and I read it as saying that he



1 alleges that the attorney misadvised him as to his  
2 potential parole eligibility date, not that he had been  
3 promised that he would get a 35-year maximum sentence.

4 MR. LASSITER: That's correct, Your Honor.  
5 That's the question.

6 QUESTION: So, you are arguing something now  
7 that I didn't understand was encompassed in this  
8 question at all. I understood you were basing it on the  
9 allegation that the lawyer said, you're going to be  
10 eligible for parole after serving a third of your  
11 sentence, whatever it is.

12 MR. LASSITER: That is correct, Your Honor.  
13 That's the question presented.

14 QUESTION: So, we don't have to consider this  
15 discussion this morning about a promise of 35 years  
16 maximum, right?

17 MR. LASSITER: That's correct.

18 QUESTION: Okay.

19 MR. LASSITER: That's correct. I only  
20 mentioned that in trying to show that we have possibly  
21 misadvice here, and that we're not dealing with  
22 speculation.

23 QUESTION: Now, in the habeas petition, Mr.  
24 Lassiter, did your client make the contention that had  
25 he been properly advised as to parole eligibility he

1 would not have entered into this plea bargain?

2 MR. LASSITER: Your Honor, he does not in his  
3 habeas petition. That does appear, however, in the  
4 objections to the proposed order of the Magistrate, and  
5 that's at -- it appears -- that is in the joint appendix  
6 at 46 and 47.

7 QUESTION: Is it your argument that the  
8 Constitution requires that in plea bargaining, in  
9 hearing before the trial court, that always there is a  
10 right, a constitutional right to know the earliest date  
11 at which parole may be pursued?

12 MR. LASSITER: No, Your Honor. We are not  
13 arguing that. I'm not arguing that. I am arguing that  
14 the Constitution places a duty on the attorney to advise  
15 properly when he does that, and to not overlook an  
16 easily accessible published statute that controls parole  
17 eligibility. That's what we argued.

18 QUESTION: Let me ask one other factual  
19 question. You indicated that the basis for the claim  
20 that he would not have entered an innocent plea if he  
21 had known the true facts, is in your objections rather  
22 than in the habeas -- that's apparently, though, that's  
23 a document that you prepared? That's not under oath?

24 MR. LASSITER: That's correct, Your Honor.

25 QUESTION: I mean, there's no way you could

1 testify to this. So, is it proper in your view for the  
2 record to be made up of, in effect, factual statements  
3 in a brief in support of your position? That's  
4 essentially what it is.

5 MR. LASSITER: Well, if you take it as it is,  
6 he prepared this pro se petition. He is not a lawyer.  
7 He is not a scholar. I can only -- I came in after the  
8 Magistrate had prepared his recommendations for the  
9 district court and then I filed the objections.

10 I can only, at this point, tell the Court what  
11 his testimony would be.

12 QUESTION: See, one other fact kind of puzzles  
13 me a little bit. I guess for Act 93 to apply there has  
14 to have been a prior felony conviction, is that it?

15 MR. LASSITER: Yes, Your Honor.

16 QUESTION: Is it clear that the lawyer who is  
17 now deceased was advised about the existence of the  
18 prior felony conviction?

19 MR. LASSITER: Not on the record.

20 QUESTION: So, you really don't know if the  
21 lawyer did anything but tell him, according to his best  
22 knowledge, what the law was? I'm just speculating,  
23 because in your answer to Justice O'Connor you pointed  
24 out that the correction office checks this at the time  
25 of parole eligibility?

1 MR. LASSITER: That's correct.

2 QUESTION: But apparently the judge thought it  
3 was a third. It doesn't seem to be, anybody was  
4 conscious of the prior conviction, as far as I can tell.

5 MR. LASSITER: Again, as I said a moment ago,  
6 I think counsel is under a duty to inquire about prior  
7 convictions even if we had a situation here where  
8 petitioner didn't tell him. And also, let me address --

9 QUESTION: Just one other observation. The  
10 lawyer who is now deceased, and apparently died just  
11 shortly before the habeas corpus petition was filed,  
12 apparently if he was a public defender, I'm amazed he  
13 wouldn't know about Act 93 but I could understand how he  
14 might not know about a prior conviction.

15 MR. LASSITER: Well, yes. It surprises me  
16 also.

17 QUESTION: Mr. Lassiter, couldn't your client  
18 have amended his habeas corpus petition if at the time  
19 you were objecting to the Magistrate's report it  
20 appeared to you that it had not said enough on the  
21 subject of whether he would have entered this plea had  
22 the advice been correct?

23 MR. LASSITER: I believe he could, and as I  
24 say I raised that in the objections.

25 QUESTION: But it's not in any verified way.



1 MR. LASSITER: That's correct.

2 QUESTION: You certainly can't speak for him.

3 MR. LASSITER: Well, that would be my error,  
4 that that was not done.

5 QUESTION: So, we really don't know that by  
6 his statement. We don't know that he would not have  
7 entered exactly the same plea even if he had received  
8 the correct advice.

9 MR. LASSITER: Not based on the allegations  
10 that appear in the original petition. I think that is  
11 correct.

12 QUESTION: Well, not based on any other  
13 statement by him in the record, isn't that correct?

14 MR. LASSITER: It does not appear at page 8  
15 and 9 in his allegations.

16 Justice Stevens, you raised a question a  
17 moment ago concerning what the Court said about the  
18 defendant being required to serve one-third. I would  
19 like to clear this up. There is some misunderstanding  
20 about that.

21 Whatever the Circuit Court Judge would have  
22 said at that time would have had no effect on the  
23 potential parole eligibility date of the petitioner.  
24 That is strictly controlled by Act 93 and that would  
25 have been set once he reached the Department of

1 Corrections.

2 I believe that that was probably just a result  
3 of having at that time some of the judges continuing to  
4 do that, because prior to the enactment of Act 93 if one  
5 was under the age of 21 and he would be immediately  
6 parole eligible upon being sent to the Arkansas  
7 Department of Corrections as a first offender, and the  
8 judge could make him serve one-third less good time by  
9 saying he had to serve a third.

10 I think that was just force of habit. His  
11 statement that he was to do one-third would have had no  
12 effect whatsoever on the amount of time that he was to  
13 serve.

14 QUESTION: Mr. Lassiter, assuming that the  
15 Court were to feel that the allegation somehow rose to  
16 the level that a hearing would be appropriate, what  
17 standard should be applied to determine, what legal  
18 standard should be applied to determine the  
19 ineffectiveness of assistance claim in a plea bargain  
20 situation?

21 MR. LASSITER: I think we can take Strickland  
22 v. Washington and place it on this situation and ask,  
23 first of all, was counsel diligent in his representation  
24 of the defendant, did he breach some duty owed, some  
25 investigatory duty or some other duty owed to the

1 defendant, and we would ask that question first.

2 Petitioner would testify --

3 QUESTION: Or perhaps ask first whether there  
4 was prejudice.

5 MR. LASSITER: That's the second problem with  
6 the test, and the prejudice here would be that he would  
7 not have entered the plea except for this advice and  
8 that he waived his right to go to trial.

9 QUESTION: If the facts appear that he had  
10 made such --

11 MR. LASSITER: Yes, of course.

12 QUESTION: May I ask one other -- I'm sorry to  
13 take so much of your time, but your brief refers to the  
14 previous Florida conviction. Where in the record do we  
15 know exactly what the Florida conviction is for and when  
16 it was entered?

17 MR. LASSITER: It doesn't appear.

18 QUESTION: It does not appear?

19 MR. LASSITER: No, I don't --

20 QUESTION: Well, is it conceivable -- I'm not  
21 suggesting this happened, that the defense counsel knew  
22 about the Florida conviction but the prosecutor and the  
23 judge didn't and he thought it would be a little smarter  
24 not to mention it?

25 Is that possible, consistent with what we know

1 in the record?

2 MR. LASSITER: It's possible but it would have  
3 been very ill-advised because the Department of  
4 Correction would have caught it once he arrived there.

5 QUESTION: Yes, but on the other hand, maybe  
6 if they'd known -- I don't know what that conviction  
7 was. It might have been something that might have made  
8 the prosecutor ask for a more severe sentence.

9 I just don't know, and if you get a hearing  
10 that you've asked for, the testimony will be presented  
11 by your client about his conversation with a now  
12 deceased lawyer, a kind of unsatisfactory state of  
13 affairs.

14 MR. LASSITER: I would have to assume that --  
15 again, we would speculate here, but I would have to  
16 assume that the prosecutor was aware of that because  
17 routinely they run an FBI check on people that are  
18 charged with serious crime.

19 QUESTION: Well, is it your suggestion the  
20 prosecutor didn't know about Law 93 either? If he knew  
21 about it -- I find it rather surprising that trained  
22 lawyers in the criminal -- in prosecuting criminal cases  
23 wouldn't know of the existence of that statute. Isn't  
24 that fairly common?

25 MR. LASSITER: Yes, it certainly is, and



1 that's one of the first things that your client wants to  
2 know if you are negotiating a plea. So, criminal  
3 defense attorneys are, and certainly should be, well  
4 aware of the defect of Act 93 because everybody wants to  
5 know that.

6 If you're going to negotiate a plea they want  
7 to know when is the earliest possible date that they  
8 could be released.

9 I think we could show at a hearing by putting  
10 on attorneys that this kind of advice is extremely  
11 important during the course of representing a client  
12 when negotiating a plea. I think that we could prove  
13 that rather easily and I think we could show that if an  
14 attorney misadvises in this manner that it would be a  
15 breach of a duty owed a client, and a breach of  
16 diligence, which was, I think, the term used in  
17 Strickland v. Washington.

18 We are asking for a hearing here on the  
19 allegations in this case that the advice by counsel was  
20 not speculative in nature but positive.

21 QUESTION: I suppose we can assume that the  
22 testimony of the prisoner, who is not here, would be  
23 just as it is set out in your brief, that is, that he  
24 was misadvised?

25 MR. LASSITER: Yes, Your Honor.

1 QUESTION: And the lawyers -- suppose the  
2 lawyer says, no, that's not so, contrary testimony?  
3 What have we got except a decision on credibility?

4 MR. LASSITER: That's where it would lodge, at  
5 that point. That's what you'd have.

6 QUESTION: Well, except the lawyer's dead.

7 MR. LASSITER: That's correct.

8 QUESTION: I'm speaking of the general rule of  
9 cases that you would make out of this?

10 MR. LASSITER: That's right, it would simply  
11 be the lawyer's testimony against the Petitioner's.

12 QUESTION: Well, that wouldn't be the end of  
13 it, even if you believed him.

14 MR. LASSITER: That's correct, in that you  
15 would have to show that he wouldn't have entered the  
16 plea unless --

17 QUESTION: Wouldn't the ineffectiveness claim  
18 really boil down to the same issue as the voluntariness  
19 of the confession?

20 MR. LASSITER: Yes, I believe so,  
21 voluntariness of the plea.

22 QUESTION: Of the plea, yes.

23 MR. LASSITER: Yes, I think so.

24 QUESTION: Did the State ever raise in its  
25 defense of this kind of provision the habeas rules that

1 allows dismissal of habeas where the delay in bringing  
2 it in has prejudiced the State's ability to defend  
3 against the claim?

4 MR. LASSITER: I would like to point out that  
5 the initial circuit court pleading which Mr. Hill filed,  
6 which he styled a "Motion for Correction of Sentence,"  
7 which talked about what he understood that the plea was  
8 supposed to be, was filed prior to Mr. Patterson's death.

9 I would like to save what time I have left for  
10 rebuttal, Your Honor.

11 CHIEF JUSTICE BURGER: Very well.

12 Mr. Attorney General.

13 ORAL ARGUMENT OF JOHN STEVEN CLARK, ESQ.

14 ON BEHALF OF THE RESPONDENT

15 MR. CLARK: Mr. Chief Justice, may it please  
16 the Court, the facts in this case are simple and  
17 direct. It is true that Mr. Hill was charged with  
18 murder one and theft of property. It is also important  
19 for this record to remember that on April 6th, 1979, the  
20 defendant in this case entered into a plea agreement.

21 In that specific agreement, in which the  
22 plaintiff waived, knowingly waived and informedly waived  
23 his constitutional rights to a trial, to confront  
24 witnesses, to testify in his own behalf, that document,  
25 executed by the defendant with the help of his counsel,

1 in fact is a form which they completed together.

2 On that form the defendant entered "zero" as  
3 to prior convictions, without -- with assistance of  
4 counsel. That same day the defendant and his counsel  
5 appeared before the trial court in order to enter his  
6 voluntary plea of guilty.

7 The Court inquired as to the terms of the plea  
8 agreement, specifically if it was accurate, specifically  
9 if the defendant had relied upon any promises, threats  
10 or other offers from the prosecution, specifically as to  
11 whether the defendant was satisfied with representation  
12 of counsel, and specifically if the defendant had any  
13 other comments that he would like to offer to the  
14 Court. The defendant said no.

15 I submit to you that the central issue in this  
16 case --

17 QUESTION: Just so I can find it in the  
18 record, the plea agreement is the one on 28 and 29 of  
19 the joint appendix, and where is it that he says "no" as  
20 the prior convictions?

21 I just want to make sure I --

22 MR. CLARK: Your Honor, on the plea agreement,  
23 it is a form and there is a space which says "prior  
24 convictions." There is a space.

25 QUESTION: Would you just tell me where it is

1 in the record so I can look at -- is it 28 and 29?

2 MR. CLARK: Yes, sir, it is. It is not --

3 QUESTION: Well, then where is the part about  
4 the "zero"?

5 MR. CLARK: In the second paragraph, in the  
6 first sentence, Your Honor: "You are charged with a  
7 felony and with zero prior convictions." That "zero" is  
8 not underscored but it was a blank on the plea agreement  
9 itself, Your Honor.

10 QUESTION: I see.

11 MR. CLARK: The simple issue, I submit to the  
12 Court in this case, is whether the Court of Appeals  
13 erred in finding that the Petitioner was not  
14 constitutionally entitled to an evidentiary hearing in a  
15 collateral attack of his voluntary guilty plea.

16 I submit to you, the Court of Appeals did not  
17 make error. This Court on several occasions has  
18 emphasized the validity and importance of plea  
19 bargaining process, and likewise stated, for the plea  
20 bargaining process to work, a guilty plea must be  
21 accorded a great measure of finality.

22 In this instance, the truthfulness and the  
23 accuracy of this guilty plea, this voluntary guilty  
24 plea, is evidenced by the record. I submit that  
25 generally speaking, parole eligibility is not a direct



1 but rather a collateral consequence of any guilty plea.  
2 It is unnecessary to advise the defendant who desires to  
3 plead guilty as to parole eligibility, and the fact that  
4 the defendant is misadvised does not in itself per se  
5 negate that voluntary plea.

6 In fact, we have found in the Federal Criminal  
7 Rules of Procedure, Rule 11, that the -- we have stated  
8 in the comments that not only is the question as advise  
9 as to when someone might make parole or be parole  
10 eligible, but whether, and that is true in Arkansas as  
11 there is no requirement to advise as to parole  
12 eligibility.

13 In the case at bar the record clearly  
14 demonstrates, I submit to this Court, that parole  
15 eligibility was not a part of the plea bargain, and that  
16 this Petitioner was not wrongfully induced to plead  
17 guilty based on some assertion.

18 I would further submit to this Court that a  
19 better rule of law is that even if the defendant was  
20 ill-advised or misinformed as to what the precise  
21 eligibility is to be for parole, that fact alone does  
22 not away from guilt or the desire to enter a plea of  
23 guilty. There must be some demonstration of prejudice.

24 QUESTION: Just while I've got it on my mind,  
25 does the record tell us of anywhere that we might have

1 missed as to what the nature of the Florida conviction  
2 was, when it occurred, what the offense was?

3 MR. CLARK: Your Honor, the record does not.  
4 The offense, however, was aggravated assault and  
5 breaking and entering, of which he was convicted in '77  
6 and served until '78, at which time he came to Arkansas.

7 QUESTION: I see. Thank you.

8 QUESTION: And the Government knew that when  
9 this plea bargaining was going on?

10 MR. CLARK: Your Honor, I do not know that the  
11 Government knew that.

12 QUESTION: Have you ever seen the Government  
13 negotiate without a rap sheet?

14 MR. CLARK: Your Honor, I have not, but in  
15 this instance the rap sheet that we had came from the  
16 Arkansas State Police. Whether it was complete or not,  
17 I do not know.

18 The allegation -- the need for finality in the  
19 criminal justice process is imperative, I submit to you,  
20 particularly when those challenges come from some  
21 collateral attack some years later, and are only  
22 allegations of ineffective assistance of counsel.

23 This allegation has become a very common  
24 vehicle for those incarcerated to seek relief by simply  
25 placing the system and their attorney on trial by

1 realizing their petition as petitioner, at worst cases,  
2 merely the status quo, "I voluntarily entered my plea of  
3 guilty, I made an informed decision to waive my rights  
4 and was sentenced, but maybe I can receive a more  
5 favorable sentence later if I will file this collateral  
6 attack on that sentence."

7 In particular, I submit to you today, what  
8 troubles me about this case is that the so-called  
9 inducement to plea asserted by Petitioner is actually  
10 only that individual's unilateral expectation, an  
11 expectation which rarely, as in this case, if ever can  
12 be tested by any objective standard, and which submits  
13 virtually every guilty plea, and in Arkansas there are  
14 some 10,000 entered each year, to attack collaterally at  
15 any time when the defendant upon incarceration  
16 determines that his expectations, whatever they may have  
17 been, that being denied a right to vote would not have  
18 occurred, or being denied the right to hold a hunting  
19 licence or a barber's licence would not have occurred.

20 If he asserts, then, that because of his  
21 expectation he can challenge, collaterally challenge the  
22 voluntariness of that plea and be entitled to an  
23 evidentiary hearing because of his own individual  
24 expectations, and this instance has been stated before  
25 clearly, a competent and dedicated and respected public

1 defender, now deceased, cannot be heard as to what in  
2 fact did go on in terms of contradicting or supporting  
3 the Petitioner's case.

4 But in this instance we have a record that  
5 demonstrates that that competent and dedicated public  
6 defender, who in my opinion did know the law, saw from  
7 the defendant an assertion that there were zero prior  
8 convictions.

9 QUESTION: General Clark, on page 16 of the  
10 joint appendix, there begins what apparently is the  
11 State's response to the federal habeas petition, and  
12 which appears to be a transcript of a proceeding before  
13 the district court, or at least the State's version of  
14 what happened before the Arkansas trial court.

15 On page 18, the paragraph towards the bottom  
16 of the page, after the indented observation where the  
17 Court says something, and this apparently is the State's  
18 paraphrase, it says, "The Trial Judge then stated that  
19 Petitioner would be required to serve at least one-third  
20 of his sentence before becoming eligible for parole."

21 Now, is that contested in any way that you  
22 know of by opposing counsel?

23 MR. CLARK: No, it is not contested by  
24 opposing counsel.

25 I would further submit to this Court that

1 though I recognize there will be those who would appear  
2 at this bar and argue that parole was the only factor to  
3 be considered by the defendant in pleading guilty, "When  
4 do I get out," if you will, that a better rule of law  
5 and policy requires that you take into consideration two  
6 very important factors, and those are simply these, and  
7 must be remembered and balanced against that assertion:  
8 the multiplicity of imponderables that can affect  
9 parole, not the least of which is the conduct of the  
10 defendant or changes in regulations or policy, perhaps,  
11 by policy making bodies.

12 I submit that as in this case, when this  
13 Petitioner pled guilty voluntarily and in an informed  
14 way waived those constitutional rights that are  
15 protected, and was sentenced to 35 years which was the  
16 agreed recommended sentence, he is not, and I repeat  
17 not, constitutionally entitled to serve anything less  
18 than 35 years.

19 QUESTION: Are there any circumstances, in  
20 your view, when an attorney's erroneous legal advice on  
21 parole eligibility could rise to the level of  
22 establishing ineffective assistance of counsel?

23 MR. CLARK: Your Honor, I have considered that  
24 question carefully. It would be my opinion that perhaps  
25 you could make the case where the erroneous advice, or



1 such an inducement to the plea, and on the record the  
2 defendant indicated that this was a material fact, to  
3 the Court, that, "I wanted this Court to consider," and  
4 therefore if the Court did not consider it you might  
5 make such a case.

6 But, in this instance the record is devoid of  
7 such an assertion.

8 QUESTION: Wouldn't it, in any event, have to  
9 undermine the voluntariness of the plea?

10 MR. CLARK: Yes, Your Honor. I think it would  
11 have to undermine the voluntariness, as I have  
12 determined that voluntariness to be, the informed waiver  
13 of those rights.

14 QUESTION: What if the defendant's lawyer just  
15 advised him that parole is available and usually, if you  
16 behave yourself, it will be one-third, and it turns out  
17 that for this crime parole just isn't available at all,  
18 which is true of some crimes?

19 MR. CLARK: Yes, Your Honor, it is. In that  
20 instance, if in fact because of that representation, and  
21 it was an inducement to that plea, the defendant  
22 thinking he would make parole when in fact he could not,  
23 you may have prejudice that attaches that allows such a  
24 hearing.

25 QUESTION: If those were the facts in this

1 case, would you say that he was entitled to a hearing or  
2 not? I thought your submission was that misadvice about  
3 parole really shouldn't amount to a constitutional  
4 violation at all.

5 MR. CLARK: It is my submission, Your Honor,  
6 that misadvice does not amount to a constitutional  
7 violation unless prejudice attaches in some form, that  
8 is, there was no voluntary waiver.

9 QUESTION: But you would say -- if the facts  
10 in my example were the facts of this case, would you say  
11 that this gentleman should have been given the hearing?

12 MR. CLARK: The facts of your example, Your  
13 Honor, is that there would be no parole but he was  
14 advised there could be parole, is that correct?

15 Perhaps in that instance he is entitled to a  
16 hearing, yes, Your Honor.

17 QUESTION: In the district court on his  
18 application for habeas?

19 MR. CLARK: Yes, Your Honor.

20 In summary to this Court, I would submit this,  
21 that the policy as I have stated, which is a better  
22 policy, is one in which the defendant is not  
23 constitutionally entitled to information as to parole  
24 eligibility, and that the need for finality of judgment  
25 should continue to be afforded great weight and a

1 measure of finality when a voluntary plea is challenged  
2 on a collateral attack in terms of petition for habeas  
3 corpus.

4 For all those reasons, I submit to you that  
5 the decision below should be affirmed.

6 QUESTION: Counsel, if a sufficient allegation  
7 were made to justify holding the hearing, what standard  
8 do you think should be applied, legal standard, to  
9 determine the issue?

10 MR. CLARK: Your Honor, I think that standard  
11 would be --

12 QUESTION: Do you agree it should be some  
13 adaptation of the Strickland standard?

14 MR. CLARK: Your Honor, it should be some  
15 adaptation of the Strickland standard, not necessarily  
16 the Strickland standard as to an adversarial  
17 proceeding. I think that standard is that in this  
18 instance the defendant was induced to make a decision.

19 If it shows it was not an informed waiver  
20 because of facts upon which he relied, either  
21 demonstrated by the prosecution or by the defendant or  
22 by the Court, then it's not the same test as Strickland  
23 as to that adversarial nature of the full litigation in  
24 terms of a plea of not guilty.

25 QUESTION: May I just ask one other question?

1 MR. CLARK: Yes, Your Honor.

2 QUESTION: I must confess, this keeps  
3 troubling me. Now, your police statement says, "You are  
4 charged with a felony with zero prior convictions." And  
5 you have told us -- well, maybe I shouldn't ask it  
6 because it's off the record, the conviction is a year or  
7 two before.

8 This was after four months after the plea of  
9 not guilty, there was a pretrial proceeding, the plea  
10 was changed and so forth. Is it conceivable that  
11 neither the prosecutor nor defense counsel knew this  
12 fellow had spent a year in jail right before this  
13 incident?

14 MR. CLARK: Your Honor, it's possible although  
15 I don't know that it's probable.

16 QUESTION: It seems improbable. To whom  
17 should the zero -- should we hold that against your  
18 opponent or against your -- I just don't know.

19 QUESTION: It didn't say zero, did it?

20 MR. CLARK: Your Honor, he entered a zero into  
21 the form. The form has a "Prior Convictions" blank.  
22 There was a zero actually, physically written in.

23 QUESTION: By whom?

24 MR. CLARK: By the defendant and the  
25 defendant's counsel, prepared by them.

1 QUESTION: Thank you.

2 QUESTION: What should the State do if it  
3 knows that that's wrong, and the State is a party to the  
4 plea agreement? What if the prosecutor had the rap  
5 sheet right in front of him and knew that there was a  
6 prior conviction, read the agreement, knew the defendant  
7 had entered the wrong information?

8 MR. CLARK: I think the prosecutor as an  
9 officer of the court would have the duty to inform the  
10 Court what the correct information was.

11 QUESTION: Thank you.

12 CHIEF JUSTICE BURGER: Is there anything  
13 further, counsel?

14 ORAL ARGUMENT OF JACK T. LASSITER, ESQ.

15 ON BEHALF OF PETITIONER -- REBUTTAL

16 MR. LASSITER: One matter, Mr. Chief Justice.  
17 In regard to the police statement form, I think perhaps  
18 we need to talk about that for just a moment, and that's  
19 a place where you have a blank for prior convictions. I  
20 believe the purpose of that, and I think probably what  
21 happened here, is to enter the number of prior  
22 convictions that the individual is charged under the  
23 Habitual Offender Act.

24 I don't know that we can conclude too much one  
25 way or another by the insertion of a zero there. I



1 think the language --

2 QUESTION: You don't dispute that -- who put  
3 the zero in?

4 MR. LASSITER: Well, we don't know who put it  
5 in. I would imagine --

6 QUESTION: The Attorney General says that the  
7 defendant and his counsel did.

8 MR. LASSITER: I would imagine counsel did  
9 that and then presented it to his client.

10 QUESTION: You imagine it? I mean, you don't  
11 contest that statement, do you?

12 MR. LASSITER: No, no. I wouldn't contest  
13 that. I don't know actually lifted the pencil and put  
14 it in there.

15 QUESTION: But you don't claim the prosecutor  
16 did?

17 MR. LASSITER: No, Your Honor, no.

18 That's all I have.

19 CHIEF JUSTICE BURGER: Thank you, gentlemen.

20 The case is submitted.

21 [Whereupon, at 11:38 p.m., the case in the  
22 above-entitled matter was submitted.]

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24

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 84-1103 - WILLIAM LLOYD HILL, Petitioner V. A. L. LOCKHART, DIRECTOR,

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY

Paul A. Richardson

(REPORTER)

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