

RECEIVED

Nov 07 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

The Honorable Walton J. McLeod, IV, Circuit Court Judge

2017-CP-32-04132

Ivis Ahimara Reyes Yedra,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2019-001309

**APPLICANT'S PETITION FOR REHEARING
AND PETITION FOR REHEARING EN BANC**

Pursuant to Rules 221 and 240, SCACR, the Petitioner now requests a rehearing on the following points that this Court may have overlooked or misapprehended. In so doing, the Petitioner maintains all its prior arguments as set out in her Petition for a Writ Of Certiorari. Additionally, the Petitioner respectfully requests that the rehearing be heard en banc pursuant to Rule 219, SCACR, as the Petitioner believes the decision to deny the petition is in contravention to matters discussed *infra*. Furthermore, this proceeding also involves a question of exceptional

importance.

I.

This Court's denial of the petition is in contravention to the holding in Lomax v. State, 379 SC 93, 665 SE2d 164 (2008), which held that ineffective assistance of counsel occurred when counsel represented both a husband and wife in guilty pleas which arose out of related drug offenses, denying the wife her Sixth Amendment right to counsel. In the instant case the petitioner was living with her boyfriend at the property where the drug offense occurred. At no point was she counseled alone by her "attorney" and this same attorney testified he essentially represented all the codefendants in this case and couldn't remember if he even asked the Petitioner about a conflict of interest. *See* App. p. 116, lines 3-8; App. p. 48, lines 23-24; App. p. 90, lines 13-17; and App. p. 116, line 15 – p. 117, line 8; p. 119, lines 23-24.

Once an actual conflict of interest is shown, applicant does not have to demonstrate prejudice. By denying the petition this Court is also contravening the holding in Thomas v. State, 346 SC 140, 551 SE2d 254 (2001).

II.

Secondly, in denying the petition this Court is not following established law set forth in Judge v. State, 321 SC 554, 471 SE2d 146 (1996). A defendant is entitled to effective assistance of counsel during plea negotiations. By denying the petition this Court is taking the position that the Petitioner had adequate assistance of counsel during plea negotiations when she was given an incorrect plea offer. Counsel testified at the PCR hearing that the plea was "all or nothing", that is all the women

involved in the investigation must plead to the offer or none of them get the benefit of the plea deal. The State's attorney testified the opposite was true, that the offer was for each individual to take it or leave it. Petitioner pleaded guilty because she wanted all the other women to be able to get the benefit of the plea deal. See App. p. 118, lines 9-11; App. p. 151, lines 19-22; and App. p. 91, lines 3-9.

III.

Thirdly, not only does this Court's failure to grant the petition result in contravention to the holdings in Padilla v. Kentucky, 559 US 356 (2010), Lee v. United States, 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017), and Taylor v. State, 422 SC 222, 810 SE2d 862 (2018), but also involves a question of exceptional importance regarding adequate representation of a client when serious immigration issues are involved. In the instant case, counsel did not adequately give the Petitioner advice related to her immigration status. Not only did counsel advise that the Petitioner would never be able to obtain lawful permanent resident status (green card) but he did not adequately advise the Petitioner with correct information regarding possible deportation.

Under Padilla Id., an attorney must inform their client that the conviction carries a risk that the person will be deported. In Taylor Id., the South Carolina Supreme Court held that counsel must do more than "discuss immigration" or advise that their client may face adverse immigration consequences. Counsel testified that he couldn't even remember if told the Petitioner the dangers this conviction could have on her immigration status (App. p. 121, lines 4 – 9) and didn't even correctly

advise her of the immigration law concerning deportation at the time of her guilty plea (App. p. 120, lines 17-19; p. 120, lines 22-25; p. 120, line 25 – p. 121, line 1).

By not granting the petition this Court is in contravention to past precedent.

IV.

Finally, failure to grant the petition is also in contravention to Griffin v. Martin, 278 SC 620, 300 SE2d 482 (1983), which held that misinformation about parole eligibility is ineffective, as well as, Coats v. State, 352 SC 500, 575 SE2d 557 (2003), which help that counsel is ineffective when improperly advising a client on when they would be parole eligible.

Petitioner was advised that she would 18 months on her sentence when she in fact, served more time and she relied on that erroneous advice when she decided to plead guilty. *See* App. p. 122, lines 23-25; p. 123, lines 1-5; App. p. 97, lines 5 – 11.

Therefore, pursuant to Rule 219(a), SCACR, Petitioner requests that this Court grant this petition for rehearing and rehearing en banc and grant the petition for a writ of certiorari.

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO BOX 50536

COLUMBIA, SC 2205

803-219-1110

SC BAR No.: 71676

ATTORNEY FOR PETITIONER

November 7, 2022

RECEIVED

Nov 07 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable J. Walton McLeod, IV, Circuit Court Judge

Case No. 2017-CP-32-04132

Ivis Ahimara Reyes Yedra, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Petitioner’s Petition for Rehearing and Petition for Rehearing En Banc on Respondent by email and by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Megan H. Jameson
Sr. Asst. Deputy AG
mjameson@scag.gov

Lillian L. Meadows
Asst. Attorney General
lillianmeadows@scag.gov

Jennifer Jennison
Admin. Coordinator
jjennison@scag.gov

S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served. This 7th day of November, 2022.

ASHLEY A. MCMAHAN
ATTORNEY FOR PETITIONER



Ashley McMahan <ashley@macvance.com>

Yedra v. State

1 message

Ashley McMahan <ashley@mcmahantaylor.com>

Mon, Nov 7, 2022 at 3:37 PM

To: Megan Jameson <MJameson@scag.gov>, Lilly Meadows <LillyMeadows@scag.gov>, Jennifer Jennison <JJennison@scag.gov>

All-

Please find attached a copy of the petition for rehearing I am putting in the mail today and also filing by email.

Best regards,

Ashley A. McMahan

Attorney at Law

M^CMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

**Yedra, Ivis - petition for rehearing.docx.pdf**

90K

MCMAHAN LAW, LLC

November 7, 2022

Megan H. Jameson
Sr. Asst. Deputy Attorney General
c/o AAG Lillian L. Meadows
& Jennifer Jennison
PO Box 11549
Columbia, SC 29211-1549

Re: Ivis Ahimara Reyes Yedra v. State of South Carolina
2017-CP-32-04132
App. Case: 2019-001309

Dear Ms. Jameson:

Please find enclosed a copy of the Petition for Rehearing I filed electronically today with the Court of Appeals.

If you need any additional information or have any questions, please do not hesitate to contact me.

Best regards,



ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Ivis Ahimara Reyes Yedra