

Cullen B Campbell
#332961

2014
000635

Whether counsel rendered ineffective assistance of counsel during critical stage of adversarial process

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Argument

OCT 29 2014

Applicant states that his constitutional right to counsel was violated under Cuyler v. Sullivan, 440 U.S. 335 (1980) when plea counsel represented conflicting interests.

The 'Cuyler' court ruled that a defendant can demonstrate a Sixth Amendment violation by showing that (1) ~~the~~ counsel was actively representing conflicting interests and (2) the conflict had an adverse effect on specific aspects of counsel's performance. However, when the defendant alleges that a guilty plea resulted from counsel's conflict of interest, the defendant must show that, but for the effect of the conflict on ~~counsel's~~ counsel's advice, a reasonable probability existed that he or she would have insisted on a trial. Thomas v. Toltz, 818 F.2d 470, 482 (6th Cir. 1987).

Applicant states that him and his co-defendant was represented by attorney James Cheeks during their guilty plea. Plea counsel advised the Applicant that the State was making everybody plea to armed robbery and that nobody would plea to a lesser-included offense. Applicant ~~states~~ states that plea counsel advised him that the hand of one is the hand of all and under this theory all defendants is to be charged as principals.

The record clearly reflects that the Applicant plead guilty upon the advice of counsel. See, Tr. pg. 24, lines 8-15.

Applicant states that had plea counsel fully advised him that the State could not charge nor convict him of armed robbery because the State could not prove that the Applicant had in his possession a deadly weapon. Plea counsel's advice was not within the range of

reasonable professional assistance. Applicant states that the record clearly reflects that plea counsel was actively representing conflicting interests.

Applicant states that in interpreting the prejudice prong, the Supreme Court has identified a narrow category of cases in which prejudice is presumed: when there has been an "actual or constructive denial of the assistance of counsel altogether"; when counsel is burdened by an actual conflict of interest; or when there are "various kinds of state interference with counsel's assistance." In these situations, prejudice is so likely to occur that a case-by-case inquiry is unnecessary. Carrion v. United States, 466 U.S. 648, 658 (1984).

Applicant states that had he known the actual facts that the state could not convict him of armed robbery, he would not have pled guilty to armed robbery. Applicant states that prejudice is presumed in this matter without a requirement of showing.

INEFFECTIVE ASSISTANCE COUNSEL

Applicant alleges that his guilty plea was not intelligently, knowingly, or voluntarily entered.

Applicant states that the burden is on the state to prove that his guilty plea was knowingly, intelligently, and understandingly made. CARNLEY v. COCHRAN, 369 U.S. 500, 825. CT. 884, 8 C. ED. 2d 19102

Applicant also states that Public Defender Richard Wheelchel, also Plea Counsel James Cheeks advised him that he and his co-defendants is being charged under accomplice liability theory meaning the hands of one the hands of all. Applicant also stated he was advised by Public Defender Richard Wheelchel, also Plea Counsel James Cheeks that he and his co-defendants would all plead guilty and be charged and convicted of Armed Robbery. Applicant also states that he was given a 20 year violent sentence for Armed Robbery and his co-defendants were only given 10 years non-violent sentences for common law robbery which is a lesser included offense of Armed Robbery.

APPLICANT STATES THAT PUBLIC DEFENDER RICHARD WHELCHER, ALSO
DICA COUNSEL JAMES CHEEKS ERRONEOUSLY ADVISED HIM TO
PLEA GUILTY TO A CHARGE THAT HAD APPLICANT WENT TO TRIAL
THE PETIT JURY WOULD'VE FOUND HIM NOT GUILTY OF ARMED
ROBBERY. THE PUBLIC DEFENDER RICHARD WHELCHER, ALSO DICA
COUNSEL JAMES CHEEKS ADVISE PREJUDICE THE DEFENDANT
AND APPLICANT WOULD'VE HAD PLEAED GUILTY HAD HE
ACTUALLY KNOWN THE FACTS AND WOULD'VE INSISTED
ON GOING TO TRIAL.

APPLICANT ALSO STATED THAT NOT ONLY DID PUBLIC DEFENDER RICHARD WHEELER, ALSO PLEA COUNSEL JAMES CHEEKS ERRER BUT ~~THE~~ THE TRIAL COURT ALSO ERRED. AS A RESULT OF THIS ERROR, APPLICANT WAS PREJUDICED BECAUSE HE COULD ALSO HAVE BEEN GIVEN A 10 YEAR NON-VIOLENT SENTENCE JUST AS HIS CO-DEFENDANTS WERE GIVEN. APPLICANT ALSO STATED THAT IF HE HAD KNOWN THAT HE COULD HAVE BEEN GIVEN A 10 YEAR NON-VIOLENT SENTENCE THEN HE WOULD HAVE NOT PLEAD GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL.

APPLICANT ALSO STATES THAT PUBLIC DEFENDER RICHARD WHEELER, ALSO PLEA COUNSEL JAMES CHEEKS WAS INEFFECTIVE IN ADVISING HIM TO PLEA GUILTY TO ARMED ROBBERY.

APPLICANT STATES THAT IN SOUTH CAROLINA, THE STATUTE FOR ARMED ROBBERY CLEARLY STATES THAT ARMED ROBBERY IS THE WILLFUL TAKING OF A PERSON PROPERTY WHILE ARMED WITH A DEADLY WEAPON. SEE S.C. CODE ANN § 16-11-30(A).

APPLICANT HEREBY OFFERS THE STATEMENT OF THE VICTIM AS AN EXPEDIT TO PROVE HIS INNOCENCE STATING THAT THE APPLICANT WAS NOT ARMED WITH A DEADLY WEAPON NOR WAS THE GUN MAN IN THIS SITUATION.

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