ORIGINAL

No. 03-7418

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT

OF THE UNITED STATES

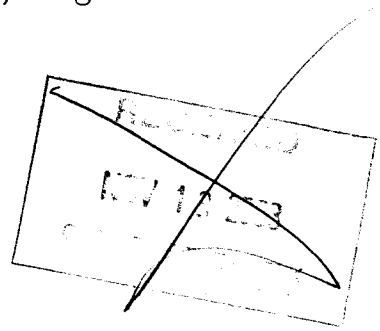
OCTOBER TERM, 2003

In re YUESEYUAN CRUEL

ON WRIT OF HABEAS CORPUS AD SUBJICIENDUM

PETITION FOR AN EXTRAORDINARY WRIT UNDER THE SUPREME COURT'S ORIGINAL ACTION

Yueseyuan Cruel #96075-071
Federal Correctional Institution, Edgefield
501 Gary Hill Road
Edgefield, S.C. 29824



QUESTIONS PRESENTED

1. WAS THE SEARCH OF CRUEL'S HOME ILLEGAL AND ITEMS SEIZED IN VIOLATION OF THE CONSTITUTION BY FEDERAL AND STATE AUTHORITIES?

2. DID CRUEL WAIVE HIS RIGHT TO PROTECTION UNDER THE CONSTITUTION AGAINST ILLEGAL SEARCH AND SEIZURE BY PLEADING GUILTY?

3. DOES THE RECORD ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL?

STATEMENT OF CASE

1. WAS THE SEARCH OF CRUEL'S HOME ILLEGAL AND ITEMS SEIZED IN VIOLATION OF THE CONSTITUTION BY BOTH THE FEDERAL AND STATE AUTHORITIES?

On 08-17-99, Charles F. Jones (hereon refered to as "informant") was arrested along with two other suspects by the Greenville County Sheriff's Department for attempt to pass a counterfiet payroll check at a Publix grocery Store in Greenville, South Carolina. The informant gave a statement saying that on two occassions Cruel provided the suspects with these checks and provided Cruel's address to the officers. Micheal Fortner, Deputy Sheriff over the case, then contacted Roy L. Godwin, Special Agent of the U.S. Secret Service and along with the City Police surronded Cruel's residence and demanded that he open the door. Cruel did as he was told, and with weapons drawn, the officers rushed into the home and ordered Cruel to get on the floor and Cruel was immediately handcuffed. The officers began a searc of the home and removed several items that would later be used as evidence to convict Cruel. At no time was Cruel presented with a search warrant. Cruel was then escorted to the Law Enforcement Center where he was read his rights and placed under arrest. Cruel made several request to his attorney, the courts and the prosecution for a copy of said warrants only to be told that they were not relevant to his case (see exibits, appeal brief and 2255). only through Freedom of Information Act in Febuary 2002 did Cruel finally obtain a copy of the State issued warrants that led to his arrest and Federal conviction.

An arrest pursuant to a warrant which is defective on its face is actionable. A police officer is persumed to know the law, or held liable as if he did know it; and if the process on which he relies is void on its face,

it affords no protection. An officer is charged with knowledge of the superficial requirements of a valid warrant, and an arrest is unlawful based on a void or invalid search warrant. Detective Fortner never saught to sware out a search earrant before a judge. Instead he merely went on the word of an informant and rushed into Cruel's home in total disregard to Cruel's protected Rights. The arrest warrant was obtained because of the items found in Cruel's home, so both the items and the arrest was illegal. Furthermore, since both the seizure and the arrest were unlawful, the conviction in federal court is also unlawful and void. According to Fed.R.Crim.P, Rule 4, "a warrant must be issued and signed by a judge to be in proper form." See also **U.S. CONSTITUTION, 4TH AMENDMENT**, provides that, "the validity of a search and seizues, though made by state officials must be judged as if made by federal officers if evidence obtained therefrom is to be used in federal prosecution.

2. DID CRUEL WAIVE HIS RIGHT TO PROTECTION UNDER THE CONSTITUTION AGAINST ILLEGAL SEARCH AND SEIZURE BY PLEADING GUILTY?

The Government argues and the Panel Court affirmed that Cruel's knowing and voluntary guilty plea constitues a waiver of any claim of unlawful search and seizuure based on the **4th Amendment** and challenges to defects in the indictment. The **9th Amendment of the Constitution** states:

> "The enumeration in the Constitution of certain rights shall no be construde to deny or disparage others retained by the people."

Webster's dictionary decribes Rights as an individual's absolute perogative to correctness, justice and to that which is honorable, what one has coming. The

judgements is applicable, relief is not a discretionary matter, relief is mandantory, **Orner, 30 F.3d 1310.**

3. DOES THE RECORD ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL?

~~The government contends that the record does not conclusively show that~~ Cruel's attorney provided ineffective assistance. On May 10, 2001, the U.S. District Court for the District of South Carolina summarily dismissed Cruel's motion to pursuant to 28 U.S.C. § 2255 in which he claimed ineffective assistance of counsel for his counsel's failure to file his direct appeal. On October 2, 2001, the United States Court of Appeals for the Fourth Circuit vacated the court's dismissal and remanded for further proceedings. See United States v. Cruel, No. 01-7039, 2001 WL 1261839 (4th Cir. Oct. 22, 2001). The Fourth Circuit remanded the case with instustions to conduct an analysis under Roe v. Flores-Ortega, 528 U.S. 470 (2000). The district court ordered the government to analyze whether Cruel's attorney consulted with Cruel concerning the filing of an appeal, ordered November 20, 2001.

An attorney's failure to consult with a client regarding the right to appeal if the client demonstrates an interist in filing an appeal constitutes ineffective assistance of counsel. See Roe v. Flores-Ortega, at 480. The Distric Court's finding on March 27, 2002, was "Base on the facts as presented in this case, the court vacates Cruel's sentence...This action will allow Cruel to take a timely appeal...". The record, therefore, does show conclusively that Crue's attorney provided ineffective assistance, and further shows that counsel submitted an affidavit stating that he did in fact consult with Cruel concerning his appeal and the court found it to be faulse.

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JUDGMENT

FILED: April 14, 2003

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

NO. 02-4973
CR-02-858

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

YUESEYUAN CRUEL

Defendant - Appellant

Appeal from the United States District Court for the
District of South Carolina at Greenville

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor

CLERK

PER CURIAM:

Yueseyuan Cruel pled guilty to making, uttering, and possessing counterfeit securities drawn on American Federal Bank, and aiding and abetting, in violation of 18 U.S.C. §§ 2, 513 (2000). Cruel was sentenced to thirty months imprisonment and we affirmed his conviction and sentence on direct appeal. See United States v. Cruel, No. 02-4305, 2003 WL 115122 (4th Cir. Mar. 14, 2003) (unpublished). One of the arguments Cruel raised in his direct appeal was that the Secret Service and the district court lacked authority to adjudicate the matter. Id. Cruel now appeals from the same criminal proceeding alleging that the district court erred by denying his motion to dismiss the indictment against him and his "Motion to Dismiss for Lack of Territorial Jurisdiction," on the ground that the district court lacked jurisdiction over him. Because we addressed and rejected Cruel's jurisdictional arguments in his direct appeal, we decline to entertain the issue again. Thus, we affirm the orders of the district court. We dispense with oral argument as the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED