

GARNER *v.* YEAGER, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 704. Decided November 6, 1967.

Petitioner's request for federal habeas corpus, on the ground that the prosecution concealed the existence of a promise to recommend a specific sentence or leniency for an accomplice who testified for the State against petitioner, was rejected by the District Court and the Court of Appeals. Thereafter, the New Jersey Supreme Court granted petitioner's co-defendant a new trial after a court hearing on similar allegations. *Held*: The case, in light of the State Supreme Court's action, is remanded to the District Court for reconsideration, which may include whether petitioner must first exhaust any available state remedies.

Vacated and remanded.

PER CURIAM.

Certiorari was granted in this case on October 9, 1967. The judgment of the Court of Appeals for the Third Circuit is vacated and the case is remanded to the District Court of New Jersey for further proceedings consistent with this opinion.

Petitioner sought federal habeas corpus on the ground, among others, that prior to his state trial, the assistant prosecutor who handled the prosecution concealed the existence of a promise or agreement to recommend a specific sentence or leniency for an accomplice who testified as a State's witness against petitioner. The District Court rejected the claim without a hearing and upon its examination of the trial record, the record upon a motion for new trial, and the decision of the Supreme Court of New Jersey at 43 N. J. 209, 203 A. 2d 177. However, subsequent to the entry of the judgment of the Court of Appeals on April 7, 1967, the Supreme Court of New Jersey, on July 5, 1967, in a state post-conviction pro-

ceeding brought by petitioner's co-defendant Taylor, under N. J. Rev. R. 3:10A, granted Taylor a new trial after a trial court hearing on similar allegations. *State v. Taylor*, 49 N. J. 440, 231 A. 2d 212. In that circumstance the judgment of the Court of Appeals is vacated and the case is remanded to the District Court for reconsideration of petitioner's claim in light of the action of the Supreme Court of New Jersey in *State v. Taylor*. The District Court's reconsideration may include whether petitioner should be required first to exhaust any remedy which may be available in the state courts.

It is so ordered.