

NO. _____

IN THE
SUPREME COURT OF
THE UNITED STATES

JOHN W. TAYLOR IV ,

PETITIONER,

v.

RICHARD BROWN

RESPONDENT,

ON PETITION FOR A WRIT

OF CERTIORARI TO UNITED

STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

APPEAL NO. 17-2504

PETITION FOR WRIT OF CERTIORARI

JOHN W. TAYLOR IV - PRO-SE

5501 S. 1100 WEST - A - A102

WESTVILLE, IN 46391

QUESTION(S) PRESENTED FOR REVIEW

WHETHER TAYLOR WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION? WHETHER THE LOWER COURT'S RULINGS ARE IN VIOLATION OF THE FIFTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION? WHEN TAYLOR'S TRIAL COUNSEL FAILED TO TENDER LESSER-INCLUDED OFFENSE INSTRUCTION TO HIS THREE COUNTS OF ATTEMPTED MURDER.

LIST OF PARTIES

☒ ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE

TABLE OF CONTENTS

	<u>PAGE</u>
OPINIONS BELOW _____	1
JURISDICTION _____	2
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED _____	3-4
STATEMENT OF THE CASE _____	5-8
REASONS FOR GRANTING THE WRIT _____	9-10
CONCLUSION _____	10

INDEX TO APPENDICES

APPENDIX A: ORDER FROM UNITED STATES COURT OF APPEALS
APPENDIX B: ORDER FROM UNITED STATES COURT OF APPEALS
APPENDIX C: TAYLOR'S PETITION FOR REHEARING
APPENDIX D: UNITED STATES DISTRICT COURT'S DECISION
APPENDIX E: INDIANA COURT OF APPEALS DECISION
APPENDIX F: TRIAL COURT'S DECISION
APPENDIX G: TAYLOR'S PETITION FOR CERTIFICATE OF APPEALABILITY
APPENDIX H: TAYLOR'S 2254 WRIT OF HABEAS CORPUS
APPENDIX I: TAYLOR'S REPLY TO RESPONDENT'S RETURN ORDER TO SHOW CAUSE

TABLE OF AUTHORITIES

CONSTITUTION

PAGE

THE V AMENDMENT OF THE UNITED STATES CONSTITUTION

3, 8, 10

THE VI AMENDMENT OF THE UNITED STATES CONSTITUTION

3, 8, 10

THE XIV AMENDMENT OF THE UNITED STATES CONSTITUTION

3, 4, 8, 10

CASES

STRICKLAND V. WASHINGTON, 446 U.S. 668 (1984)

5, 6, 10

BARNARD V. LANE, 819 F.2d 798 (7TH CIR.)

7

CHAMBERS V. ARMONTROUT, 967 F.2d 825 (8TH CIR.)

9

OPINIONS BELOW

THE ORDER OF THE UNITED STATES COURT OF APPEALS APPEARS IN APPENDIX A TO THIS PETITION & IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX D TO THIS PETITION & IS UNPUBLISHED.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS MARCH 20TH, 2018

A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS ON THE FOLLOWING DATE: MAY 16TH, 2018, & A COPY OF THE ORDER DENYING THE REHEARING APPEARS AT APPENDIX B.

THE JURISDICTION OF THE COURT IS INVOKED UNDER 28 U.S.C. § 1254(1)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

AMENDMENT V OF THE UNITED STATES CONSTITUTION:

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER, NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE; WITHOUT JUST COMPENSATION.

AMENDMENT VI OF THE UNITED STATES CONSTITUTION:

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY & PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE & DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, & TO BE INFORMED OF THE NATURE & CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, & TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

SECTION 1 OF AMENDMENT XIV OF THE UNITED STATES CONSTITUTION:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, & SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES & OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE

UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY,
OR PROPERTY; WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON
WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

STATEMENT OF THE CASE

TAYLOR HAS BROUGHT THE QUESTION PRESENTED FOR REVIEW BY THIS HONORABLE COURT IN PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, FILED IN THE FORM OF A 2254 "PETITION FOR WRIT OF HABEAS CORPUS" ON NOVEMBER 25TH, 2015 APPENDIX H, ON JULY 11TH, 2017 THE DISTRICT COURT DENIED TAYLOR 2254. ON JULY 24TH, 2017 TAYLOR BROUGHT THE QUESTION FOR REVIEW IN PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN THE FORM OF A "PETITION FOR CERTIFICATE OF APPEALABILITY" APPENDIX G, ON MARCH 20TH, 2018 THE UNITED STATES COURT OF APPEALS ISSUED A ORDER DENYING TAYLOR'S PETITION APPENDIX A, ON APRIL 2ND, 2018 TAYLOR FILED HIS "PETITION FOR REHEARING", AND ON MAY 10TH, 2018 THE UNITED STATES COURT OF APPEALS ISSUED A ORDER DENYING THE PETITION.

TAYLOR ASSERTS THAT THE QUESTION PRESENTED FOR REVIEW IS OF GREAT MERIT & IMPORTANCE. SEEING THAT THE LOWER COURT'S RULINGS ARE IN VIOLATION OF THIS HONORABLE COURT'S RULING ON STRICKLAND V. WASHINGTON 466 U.S. 668 (1984). ALSO THE LOWER COURTS ARE IN CONFLICT AS TO WHETHER 3 AGGRAVATED BATTERY & ATTEMPTED AGGRAVATED BATTERY ARE LESSER-INCLUDED OFFENSES OF ATTEMPTED MURDER, & WHETHER A FAILURE TO TENDER LESSER-INCLUDED OFFENSE INSTRUCTIONS CAN SATISFY A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

TAYLOR WAS DENIED HIS RIGHT OF EFFECTIVE REPRESENTATION, GUARANTEED BY THE UNITED STATES CONSTITUTION. WHEN HIS TRIAL COUNSEL ARGUED TAYLOR'S LACK OF INTENT TO KILL BUT FAILED TO PRESENT TAYLOR'S JURY WITH A REASONABLE VERDICT OPTION. COUNSEL'S STRATEGY TO ARGUE AN ABSENCE OF INTENT TO KILL WITHOUT INVESTIGATING & REJECTING LESSER-INCLUDED OFFENSE OPTIONS WAS UNINFORMED; AND SHOULD NOT BE GIVEN DEFERENCE UNDER STRICKLAND V. WASHINGTON.

HAD COUNSEL KNOWN THE LAWS & FACTS RELEVANT TO TAYLOR'S CASE, HE WOULD HAVE KNOWN HIS ARGUMENT WAS CONSISTENT WITH THE LESSER-INCLUDED OPTIONS RATHER THAN A ACQUITTAL. COUNSEL DID NOT CONSIDER THE APPROACH BECAUSE HE DID INVESTIGATE & UNDERSTAND THE STATUTE OF THE AGGRAVATED BATTERY OPTIONS, P.C.R. TR. pg. 44. COUNSEL ALSO DID NOT UNDERSTAND THE STATUTE FOR KNOWING & INTENTIONAL BEHAVIOR. COUNSEL ARGUED TAYLOR'S LACK OF INTENT TO KILL, WHICH IS THE VERY ELEMENT DISTINGUISHING ATTEMPTED MURDER FROM THE AGGRAVATED BATTERY OPTIONS. COUNSEL DID NOT REJECT LESSER-INCLUDED OPTIONS IN FAVOR OF AN "ALL OR NOTHING" DEFENSE. P.C.R. TR. pgs. 22-23. AT TAYLOR'S POST-CONVICTION EVIDENTIARY HEARING COUNSEL REPEATEDLY TESTIFIED HE DID NOT INVESTIGATE & REJECT THE LESSER-INCLUDED OFFENSE OPTIONS, WITH COUNSEL STATING THIS ERROR WAS NOT STRATEGIC RENDERS HIS PERFORMANCE DEFICIENT.

TAYLOR'S CASE MET THE ELEMENT REQUIREMENTS OF THE LESSER-INCLUDED OFFENSES. HAD HIS JURY BEEN READ THOSE INSTRUCTIONS THEY WOULD HAVE SEEN THIS. PREJUDICE IS "THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT." STRICKLAND 466 U.S. AT 694. THE LOWER COURT'S INTERPRETATION OF STRICKLAND IGNORES THE FACTS OF THAT CASE. COUNSEL FAILED TO PRESENT TAYLOR'S JURY WITH A REASONABLE VERDICT OPTION CONSISTENT WITH HIS ARGUMENT. COUNSEL CONCEDED TAYLOR'S ACT OF SHOOTING AT THE CAR THEN ASKED THE JURY TO ACQUIT TAYLOR OF ANY WRONGDOING, EFFECTIVELY

FOOTNOTE:

PETITIONER WILL REFER TO TRIAL TRANSCRIPTS AS "TRIAL TR."

PETITIONER WILL REFER TO POST-CONVICTION HEARING TRANSCRIPT AS "P.C.R. TR."

LEAVING TAYLOR WITH NO DEFENSE AT ALL - WITH COUNSEL STATING THIS WAS NOT STRATEGIC, TAYLOR WAS PREJUDICE AS A RESULT OF HIS ERRORS, COUNSEL'S ERRORS DOES NOT DESERVE STRATEGY PROTECTION, BECAUSE HE DID NOT ARRIVE AT THE TACTIC OF NOT TENDERING LESSER- INCLUDED OFFENSE INSTRUCTIONS AFTER INVESTIGATING THE LEGAL OPTIONS & ALTERNATIVES FAVORABLE TO TAYLOR.

COUNSEL'S ARGUMENT IS SIMILAR TO THE ARGUMENT IN BARNARD V. LANE, 819 F.2d 798 (7TH CIR. 1987) . WHERE BARNARD'S COUNSEL FAILED TO GIVE HIM A REASONABLE VERDICT OPTION CONSISTENT WITH HIS ARGUMENT, BARNARD ADMITTED TO THE ACT OF SHOOTING MAKING HIS ONLY VIABLE DEFENSE JUSTIFICATION & MANSLAUGHTER INSTRUCTIONS. THE 7TH CIRCUIT HELD :

THE SPECTRUM OF COUNSEL'S LEGITIMATE TACTICAL CHOICES DOES NOT INCLUDE ABANDONING A CLIENT'S ONLY DEFENSE IN THE HOPE THAT THE JURY'S SYMPATHY WILL CAUSE THEM TO MISAPPLY OR IGNORE THE LAW THEY HAVE SWORN TO FOLLOW. BY FAILING TO TENDER INSTRUCTIONS THAT WOULD ALLOW THE JURY TO CONSIDER BARNARD'S JUSTIFICATION & DENYING THEM THE OPTION OF FINDING HIM GUILTY OF A LESSER OFFENSE, TRIAL COUNSEL DEFAULTED IN HIS OBLIGATION TO BARNARD.

TAYLOR'S & BARNARD'S CASES ARE ALMOST IDENTICAL. THE ONLY DIFFERENCE IS THAT IT WAS A TACTICAL DECISION BY BARNARD'S COUNSEL TO NOT TENDER LESSER OFFENSE OPTIONS. TAYLOR'S COUNSEL DECISION TO WITHHOLD INSTRUCTIONS WAS NOT STRATEGIC AT ALL.

AT TAYLOR'S P.C.R. HEARING COUNSEL REPEATEDLY TESTIFIED THAT HE DID NOT INVESTIGATE & REJECT TENDERING LESSER - INCLUDED OFFENSE

OPTIONS. P.C.R. Tr. 8, 22-23, 24, 36, 45-46. IN ONE OF THE INSTANCES WHEN COUNSEL WAS BEING CROSS-EXAMINED HE MADE THIS ADMISSION:

THE TRUTHFUL ANSWER IS THAT I DID NOT CONSIDER A LESSER-INCLUDED. I DIDN'T CONSIDER OFFERING THOSE INSTRUCTIONS... I DON'T RECALL EVER GIVING MYSELF THE TALK OF HEY, YOU KNOW, I DON'T WANT TO TEMPT THEM WITH ANY LESSER - I DON'T THINK IT EVER ENTERED MY MIND TO BE VERY BLUNT ABOUT IT, P.C.R. Tr. pg. 23.

BECAUSE COUNSEL'S ERROR OF WITHHOLDING REASONABLE VERDICT OPTIONS WAS NOT THE PRODUCT OF STRATEGY, TAYLOR WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THE LOWER COURT'S RULINGS TO THE CONTRARY IS IN VIOLATION OF THE 5TH & 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

REASONS FOR GRANTING PETITION

TAYLOR ASSERTS THAT IT IS OF GREAT IMPORTANCE THAT THIS HONORABLE COURT EXERCISE ITS JUDICIAL DISCRETION & GRANT THIS PETITION, & SETTLE THE CONFLICTS & VIOLATIONS WITHIN HIS PETITION.

THE LOWER COURTS ARE IN CONFLICT AS TO WHETHER ATTEMPTED AGGRAVATED BATTERY & AGGRAVATED BATTERY ARE LESSER-INCLUDED OFFENSES OF ATTEMPT MURDER, APPENDIX F. THEY CITE TO CASES THAT IS NOT APPLICABLE TO TAYLOR'S CASE, AS THEY DISCUSS THE AGGRAVATED BATTERY OPTIONS IN RELATION TO MURDER CASES. TAYLOR ASSERTS THAT THE AGGRAVATED BATTERY OPTIONS ARE INHERENTLY LESSER-INCLUDED OFFENSES OF ATTEMPTED MURDER. TAYLOR CITES TO APPLICABLE CASE LAW, & YET THE LOWER COURTS ARE STILL IN CONFLICT.

THE LOWER COURTS ARE ALSO IN CONFLICT AS TO WHETHER A FAILURE TO TENDER LESSER-INCLUDED OFFENSE INSTRUCTIONS CAN SATISFY A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, THE INDIANA COURT OF APPEALS IN THEIR DECISION STATED "WE CANNOT SAY THAT THE OVERALL STRATEGY OF DEFENSE COUNSEL RENDERS HIS PERFORMANCE DEFICIENT... HOWEVER, EVEN ASSUMING THAT THE PERFORMANCE OF TAYLOR'S TRIAL COUNSEL WAS DEFICIENT, TAYLOR HAS FAILED TO SHOW THAT HE WAS PREJUDICE, "APPENDIX F pg 11.

THE LOWER COURT'S CLAIM THAT A FAILURE TO TENDER LESSER-INCLUDED OFFENSE INSTRUCTIONS DOES NOT SATISFY THE PREJUDICE PRONG OF STRICKLAND, IS IN CONFLICT WITH THE UNITED STATES COURT OF APPEALS FOR THE 8TH CIRCUIT RULING ON CHAMBERS V. ARMONTROUT, 907 F.2d 825. THAT STATES:

"THE SUPREME COURT EXPLICITLY RECOGNIZED THAT PREJUDICE CAN OCCUR IN SENTENCING ALONE. IN THEREFORE, IF THE POSSIBILITY OF A SHORTER SENTENCE CONSTITUTES PREJUDICE

"
," THEN THE POSSIBILITY OF A CONVICTION OF A LESSER
CHARGE RESULTING IN A SHORTER SENTENCE ALSO CON-
STITUTES PREJUDICE. "

TAYLOR AGAIN ASSERTS THAT SINCE HIS COUNSEL'S ERROR OF WITHHOLDING
LESSER-INCLUDED INSTRUCTIONS WAS NOT STRATEGIC, HE WAS PREJUDICED AS A
RESULT OF THAT ERROR. TAYLOR ARGUES THAT A FAILURE TO TENDER LESSER-INCLUDED
OFFENSE INSTRUCTIONS CAN SATISFY A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM,
UNDER STRICKLAND V. WASHINGTON 466 U.S. 668 (1984).

FINALLY THE LOWER COURTS RULINGS ARE IN VIOLATION OF THIS
HONORABLE COURT'S RULING ON STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). TAYLOR
HAS USED THIS COURT'S RULING ON STRICKLAND, TO PROPERLY ARGUE HIS CONSTITUTIONAL
VIOLATIONS. TAYLOR PROPERLY ARGUED BOTH PRONGS NEEDED TO SATISFY A INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM SET OUT IN STRICKLAND V. WASHINGTON. STILL THE
LOWER COURTS IGNORED HIS CONSTITUTIONAL VIOLATIONS, & MADE RULINGS IN VIOLATION
OF THIS COURT'S RULING ON STRICKLAND V. WASHINGTON, & IN VIOLATION OF THE
5TH & 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

CONCLUSION

THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

RESPECTFULLY SUBMITTED,

X John W. Taylor IV
PETITIONER, PRO SE

DATE: June 11, 2018