

No; 18-5366

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD DAVID MARTIN - Petitioner

Vs

PAT WARREN, Warden, and

BILL SUHUTTE, Michigan Attorney General - Respondents.

PETITION FOR REHEARING

Ronald D. Martin, acting in pro se, petition this Honorable Court for a Rehearing pursuant to rule 44. On October 1, 2018, this Court denied petitioner's Writ of Certiorari. Petitioner believe that his Constitutional Rights to receive effective assistance of counsel, to Confront his witnesses, and to present a defense was violated by the lower courts ruling. Petitioner state the following ;

1. On July 18,2018, Petitioner submitted his Petition for Writ of Certiorari, and Motion for Leave to proceed in forma pauperis with this Court docket #18-5366.

2. The Petitioner requested for this Court to review the judgment of the U.S. Sixth Circuit Court ruling case #17-2086, rendered on 4-24-2018. And the ruling of Judge Victoria Roberts, U.S. District Court case #11-15034, rendered on 8-14-2017.

3. The Petitioner claimed within his Writ of Certiorari, under Statement of Material Facts and Proceedings (page-1), that he filed a timely petition in the United States District Court under 28 U.S.C. § 2254, raising the following claims ;

(a) Petitioner was denied the effective assistance of counsel at trial (b) The trial court deprived petitioner of his confrontation clause right and his right to present a defense.

The original petition was assigned to the Honorable Gerald Rosen. The petitioner also moved to amend his petition to add reformulated trial and appellate ineffective assistance of counsel claims. Judge Rosen, granted petitioner's Motion, and the petition was held in abeyance.

4. In Judge Rosen's ruling of 6-24-2013, he found that this was a "troubling" case, and that petitioner "was FAILED by both his trial and appellate counsel", for failing to argue that the trial judge failed to revisit, trial counsels Motion to allow (Stephen's) testimony when the trial judge stated she would **issue an order on the Motion**. And that the loss of exculpatory evidence (at issue on appeal) was a "potentially meritorious" claim which may have deprived Martin of his constitutional right to present a defense. (See Rosen's Order 6-24-2013).

5. On 8-9-2013, the Attorney General responded to the petitioners Motion to Amend, arguing, that Judge Rosen had overstepped his authority by identifying a claim, and advising Martin on how to proceed, and that the unexhausted claim lacked merit. **However**, the Attorney General concluded by stating that "If Judge Rosen declines to dismiss the unexhausted claim as lacking merit, then the appropriate remedy would be to stay, and hold Martin's case in abeyance to allow Martin to return to the State Court." (ID at pg-13, Attorney General Response).

6. Judge Rosen allowed the petitioner to go back down to the trial court with a Motion for Relief from Judgment MCR 6.500 to add reformulated trial and appellate counsel claims as stated above. However the Trial Court, and the Michigan Court of Appeals all concluded that petitioner has already raised the claims of ineffective assistance of counsel and denied relief. Therefore the issue was fully exhausted in the state courts.

7. On 1-5-2016, after pursuing relief in the State Court's the petitioner Motioned the U.S. District Court to reopen his case, and requested for the court to decide his supplemental issues on the grounds that they were fully exhausted in the State Courts, and in violation of his Constitutional Rights. On 2-4-2016, the court granted the Motion to reopen.

8. On 4-5-2016, the Attorney General submitted his response to the petitioners supplemental issue's, and he made the following arguments ;

- I. Martin's new claim was first presented to this court more than eight months after AEDPA's period of limitations had expired. The claim should be dismissed as time-barred.
- II. This court should afford deference to the decisions of the State Court's, including the decision by the State Judge who presided over the trial, and deny the petition.

9. After the parties filed supplemental and reply briefs Judge Victoria Roberts subsequently replaced Judge Rosen, who retired on December 17, 2016. On August 14, 2017, Judge Roberts issued her opinion and order, denying the petitioner's amended petition, and granted a certificate of appealability as to the petitioner's claims of ineffective assistance of trial and appeal counsel, that related to the "Stephen Jail Threat" issue, and as to petitioner's related claim that he was denied his Confrontation Clause rights to present a defense. In her opinion, Judge Roberts appeared to ignore completely Judge Rosen's earlier analysis and opinion that trial and appellate counsel was ineffective for failing to properly raise the "Stephen Jail Threats" issue. Rosens opinion was the **law of the case**. Judge Roberts instead found that there was other record evidence in the case that would rendered the claimed error harmless.

10. Petitioner filed his timely notice of appeal in the United States Sixth Circuit Court of Appeal. The Attorney General argued that (Martin attack's on the successor Judge Roberts, for promptly proceeding to ignore Judge Rosens thoughtful analysis) contained no authority for the proposition that a successor Judge ought to defer to the reasoning in the prior Judge's ruling (See A.G's Response p-34).

UNRESOLVED ISSUE

11. Petitioner submitted a Reply Argument, arguing that, during his litigation in the U.S. District Court, Judge Rosen was replaced by Judge Roberts, and this fact is significant as to both issue's raised on this appeal, because Judge Rosen found the loss of the "Stephen Jail Threat" evidence to be prejudicial error, while Judge Roberts did not. The petitioner argued that, under the "law of the case" doctrine, "a U.S. District Judge should carefully consider the propriety of reexamining the prior ruling of another district judge in the same case." Citing, *Peterson v Lindner*, 765 F.2d 698, 704 (7th Cir. 1985) See also *Gillig v Advanced Cardiovascular Seystems, Inc.*, 67 F.3d 586, 589-590 (6th Cir. 1995). The exception to that doctrine do not apply here because the factual basis for Judge Roberts actions, in effectively reversing Judge Rosen's findings, was erroneous under the law of the case doctrine. Judge Roberts Sua Sponte reconsideration was improper. The proper procedure would have been for the Attorney General to have appealed Rosen's findings of prejudice to the 6th Circuit Court, but he failed to do so.

12. The petitioner further argues that Judge Roberts ruling should be reversed because Judge Roberts violated the law of the case, by reversing Judge Rosen's finding that petitioner was prejudice by trial and appellate counsel ineffective assistance of counsel, which deprived the petitioner of his constitutional rights

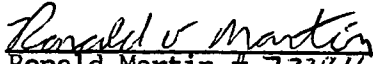
13. The petitioner point-out that Judge Roberts ruling should have been reversed by the 6th Circuit Court, under the law of the case doctrine because on 7-3-2018, U.S. District Court Judge Victoria Roberts presided over the case in, **George E. Noah Nagy** Civil No 16-CV-11959 and she made the following ruling in that case, she stated ; Respondent argues that petitioner's successive habeas petition should be dismissed pursuant to 28 U.S.C. § 2254(b)(4), because his Brady claim fails to satisfy the requirements for filing a second or successive habeas petition Judge Roberts disagreed, and stated ; Respondent initially argue that the Sixth Circuit overstepped its bound in granting petitioner permission to file a successive habeas petition to raise a Brady claim when petitioner did not specifically seek to raise a Brady claim in his second habeas petition. Respondent appears to raise this argument primarily to preserve the issue in case there is an appeal. Judge Roberts also stated ; Under the law of the case doctrine, a court is **ordinarily precluded** from reexamining an issue previously **decided by the same court**, or by a higher court in the same case, she cited, **Consolidation Coal Co. vs McMahon** 77 F.3d 898, 905 (6th Cir. 1996). Judge Roberts further stated ; Under the doctrine of law of the case, findings made at one point of the litigation become the law of the case for **subsequent stages** of the same litigation. **United States vs Moored** 38 F.3d 1419, 1421 (6th Cir. 1994). The law of the case doctrine has been applied to habeas cases see **Crick vs Smith** 729 F.2d 1038 (6th Cir. 1984). However, and unfortunately for petitioner Martin, Judge Roberts failed to follow the law of the case doctrine in Martins case, and the Sixth Circuit Court of Appeals failed to reverse Martins case (Please see the attached copy of **George E. Noah Nagy**, case where Judge Roberts presided over, and she followed the law in that case).

14. Petitioner Martin is requesting for this Honorable Court to rehear his case because he received a favorable ruling from U.S. District Judge Rosen, under **Strickland v Washington**, 466 US. 668 (1984). Judge Rosen, also found that Martin was prejudice by trial and appellate counsel's failure to properly raise the Stephen Jail Threat issue, which deprived Mr. Martin of his fundamental rights to confront his witnesses under the Confrontation Clause, and the right to Due Process to present a defense, **Washington v Texas** 388 US 14, 19 (1967). Few rights are more fundamental than that of the accused to present witnesses in his own defense, see **Chambers v Mississippi**, 410 US at 302. A defendant has the constitutional right to present evidence in support of his version of the facts. The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense. In Martin's case Judge Roberts ignored Judge Rosen's analysis and opinion, and in doing so, under the law of the case doctrine, Judge Roberts was forbidden to overrule Judge Rosen's ruling.

RELIEF REQUESTED

WHEREFORE, Petitioner Martin, request for this Honorable Court to rehear his case under the argument as to whether or not Judge Roberts can overrule Judge Rosens ruling, and whether or not Martins constitutional rights were violated by Judge Roberts ruling. Should this Court agree with petitioner, the petitioner request for this Court to grant him the relief stated within his Writ of Certiorari.

Dated; 10-12-18,


Ronald Martin # 733816
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New Haven, MI 48048

CC, Filed

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RONALD DAVID MARTIN - Petitioner,

vs

PAT WARREN, Warden, and
BILL SCHUTTE, Attorney General - Respondents.

PETITIONERS CERTIFIED CERTIFICATE

I, Ronald D. Martin, hereby certify that the petition for rehearing is presented in good faith, and not for delay.

Sincerely,

Dated; 11-13-18, 2018.

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CC/FILED

**Additional material
from this filing is
available in the
Clerk's Office.**