No. 17-30227

USDC No. 2:15-CV-5629

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN TAYLOR --- PETITIONER

Vs.

DARREL VANNOY, WARDEN --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

KEVIN TAYLOR # 117058
(Your Name)

P.O. BOX 788 / U-2-D-5

JACKSON, LA 70748-0788
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) Whether Mr. Taylor's Sixth Amendment right to confront and cross-examine his accusers was violated when he was denied Compulsory Process.

2.) Whether Mr. Taylor's Sixth Amendment right to effective assistance of counsel was violated due to; Trial counsel failed to interview or call as a witness, John Woods, who would have discredited evidence against Mr. Taylor.

3.) Whether the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

4.) Whether the continued incarceration of Mr. Taylor would be a violation of his Rights to Due Process of Law from the errors committed.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

District Attorney
Leon Cannizzaro, Jr.
619 S White Street
New Orleans, La. 70119-7348

Warden Jason Kent
Dixon Correctional Institute
P.O. Box 788
Jackson, La. 70748

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

The Petitioner, Kevin Taylor, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit Courts rendered in these proceedings in June 2018.

OPINIONS BELOW

Cases from federal courts:

APPENDIX A The Order of the United States Court of Appeals for the Fifth Circuit, which denied Mr. Taylor's Motion for a Rehearing.

APPENDIX B The opinion of the United States Court of Appeals for the Fifth Circuit denying Mr. Taylor's Appeal.

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APPENDIX H The original judgment of conviction of Mr. Taylor that was appealed to the Louisiana Fourth Circuit Court of Appeals.

JURISDICTIONAL STATEMENT

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered after a timely petition for rehearing was denied. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Judgments of the Louisiana Supreme Court were entered in 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the Sate and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

28 U.S.C. 2254

Louisiana Constitution Art. I, 16, 17.

PROCEDURAL HISTORY OF THE CASE

Mr. Taylor was charged with Simple Burglary, 1 count, in Orleans Criminal District Court, Parish of Orleans, in Louisiana, Case Number 491-715. On 11th day of January of 2011, Mr. Taylor proceeded to trial on the burglary charge. Mr. Taylor was found guilty as charged for the offense of Simple Burglar, violation of La. R.S. 14:62. Mr. Taylor was sentenced to serve 12 years at hard labor for this offense of Simple Burglary, to be served in the department of corrections, with credit for time served. The State filed a multiple bill of information charging Mr. Taylor as a habitual offender, and Mr. Taylor filed a Motion to Quash the multiple bill. Following a multiple bill hearing, the trial court denied the motion, finding Mr. Taylor to be multiple offender. Mr. Taylor filed a writ application, seeking review of the trial court's denial of the motion; this Court denied the writ as untimely. Following a sentencing hearing on the multiple bill, the trial court adjudicated Mr. Taylor a multiple offender, vacated his previous sentence and sentenced him to twenty-four years at hard labor with credit for time served, to run concurrently with any other sentence, pursuant to La. R.S. 15:529.1.

Mr. Taylor has exhausted all State and Federal remedies.

STATEMENT OF THE CASE

Procedurally this case was complex. Mr. Taylor twice informed Attorney Charles of his alibi, which was Mr. Taylor's job i.e., A.M.I. Staffing, 4401 Airline Dr. Ste. D, Metairie, La. 70001, Mr. Taylor informed Attorney Charles that he was working at the time that the crime took place. But Attorney Charles' inactions displayed a deliberate indifference and failed to either inquire or investigate whether Mr. Taylor's statement of defense had veracity to it or were there any exculpatory witnesses (namely John Woods)

who could testify in behalf of Attorney Charles' client i.e., Mr. Taylor. On 2/01/2010, Attorney Michelle Charles, again petitioned the Court for an additional continuance, wherefore trial court continued the matter until 3/04/2010, on this date the record is unclear why this matter was reset, but the trial court set the matter for 4/07/2010, wherefore five (5) months had elapsed from trial court's appointment of Attorney Michelle Charles, as counsel for the defense, yet Attorney Michelle Charles had filed neither motions nor had she contacted anyone of Mr. Taylor's job to substantiate Mr. Taylor's actual innocence. Counsel's performance fell below the standard of reasonableness when five months elapsed and she neither subpoenaed any exculpatory witnesses, whom could testify to the whereabouts of her client, or called to inquire for initial confirmation. The most basic or elementary duty of counsel is to investigate claims made by their clients, yet Attorney Charles had five months to prepare a basic defense, therefore her inactions or actions cannot be considered a form of strategy.

Now on 4/07/2010, Attorney Michelle Charles and Mr. Taylor appeared before the trial court for motions to show probable cause and motion to suppress the identification. By the State, the State asked to proceed with these motions. Mr. Taylor avers that at this point, Mr. Taylor again informed Attorney Charles of his alibi witnesses, who could testify to the whereabouts of her client. Yet Attorney Charles had five months to prepare a basic defense for these motions. Again Attorney Charles' inactions displayed a deliberate indifference and failing to either present Mr. Taylor's statement of his alibi which was a crucial piece of information and evidence to his defense. Therefore, her inactions or actions cannot be considered a form of strategy; Rule 12.1: Notice of Alibi, Rule 12.1 requires defendants, upon government's request, to

provide written notice of their intentions to offer an alibi defense. The government must then provide the defendant with the names, addresses and phone numbers of witnesses it intends to call at trial to establish the defendant at the scene of the offense or to rebut the testimony of the defendants alibi witnesses.

However, Attorney Charles failed to summon crucial witness that can testify, as to his personal knowledge, just where Mr. Taylor was on the day and time when the alleged crime was committed. Subsequently, a crucial piece of evidence i.e., Mr. Taylor workers time card to show that at the time of the offense, was not allowed into evidence because Attorney's unprofessional actions failed to summon the custodian of the time sheets, to testify to the authentification of that record prejudicially depriving her client of a meaningful defense. In addition, the time sheet that Attorney Charles was ill prepared for introduction, (1) Failed to disclose what company the time sheet belong too; (2) Neither did the time sheet have the year that it was to purport. The United States Supreme Court has held that the benchmark for judging a charge of ineffectiveness is whether the Attorney's conduct so undermined the proper functioning of the adversarial process that the trial cannot be considered to have produced a just result. **U.S. v. Cronic,** 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed.2d 657 (1984). The Sixth Amendment to the United States Constitution recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results.

In this instant matter for review; **State v. Kevin Taylor**, defense counsel, Michelle Charles, unprofessional delays to summon alibi witnesses, whom could rebut the testimony of State witnesses, as to her client's whereabouts at the time of the offense,

lead to the finding of the defendants verdict of guilt. As her client continued to urge her to establish his defense using his alibi numerous times to no avail, until her client sought (alibi evidence by himself); i.e., his work-time sheet, which Attorney Charles used this critical piece of evidence as little more than a bluff, prior to motions hearing, which adversely affected her client's use of that critical document as the prosecutor suppressed the time sheet as failing in authentication. Moreover, Attorney Charles' failure and delay to interview defense witnesses also undermined her client's ability to use alibi witnesses, as Attorney Charles summoned the manager of the Company and failed to bring forth the driver of the Company's truck, whom was alleged to be with her client at the time of the alleged offense. Instead, the driver's mother was offered by the defense to testify not to Attorney Charles "client's whereabouts at the time of the crime," but merely that her son; the defense key witness never received his summons to appear in Court as an alibi witness for the defense. The smoking gun of the ineffectiveness also occurred when prior to trial the court appointed new counsel, whom had to follow the path of ill functioning which then lies precisely in this twilight zone of function in which it occupied where conviction was inevitable. 466 U.S. 668, 687 (1984). "[T]he purpose of the effective assistance guarantee of the Sixth Amendment is.... to ensure that criminal defendants receive a fair trial." id. at 689.

REASONS FOR GRANTING THE WRIT

A.

I. THE DECISION OF THE FIFTH CIRCUIT IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER CIRCUITS. THE FIFTH CIRCUIT'S MISAPPLACATION WARRANTS THIS COURT'S ATTENTION.

COMPULSORY PROCESS VIOLATION

Mr. Taylor's Sixth Amendment right to confront and cross-examine his accusers was violated when he was denied Compulsory Process. The Sixth Amendment right provides that "in all criminal prosecutions, the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor." U.S. CONST. amend. VI.

Mr. Taylor twice informed Attorney Charles of his alibi, which was Mr. Taylor's job i.e., A.M.I. Staffing, 4401 Airline Dr. Ste. D, Metairie, La. 70001. Mr. Taylor informed Attorney Charles that he was working at the time that the crime took place. On 2/01/2010, Attorney Michelle Charles, petitioned the Court for an additional continuance, wherefore trial court continued the matter until 3/04/2010. On this date the record is unclear why this matter was reset, but the trial court set the matter for 4/07/2010. At this time five (5) months had elapsed from trial court's appointment of Attorney Michelle Charles, as counsel for the defense, yet Mr. Taylor's request to obtain his alibi witness at Mr. Taylor's job was not subpoenaed where could substantiate his actual innocence. At this point witnesses were not subpoenaed whom could testify to the whereabouts of Mr. Taylor, or called to inquire for initial confirmation. The most basic or elementary duty to subpoena a witness was not done even though defense had five months to prepare.

Now on 4/07/2010, Attorney Michelle Charles and Mr. Taylor appeared before the trial court for motions to show probable cause and motion to suppress the identification. By the State, the State asked to proceed with these motions. Mr. Taylor

avers that at this point, Mr. Taylor again informed Attorney Charles of his alibi witnesses, who could testify to his whereabouts.

Rule 12.1: Notice of Alibi, Rule 12.1 requires defendants, upon government's request, to provide written notice of their intentions to offer an alibi defense. The government must then provide the defendant with the names, addresses and phone numbers of witnesses it intends to call at trial to establish the defendant at the scene of the offense or to rebut the testimony of the defendants alibi witnesses. However, Attorney Charles failed to summon crucial witness that can testify, as to his personal knowledge, just where Mr. Taylor was on the day and time when the alleged crime was committed.

THE RIGHT TO COMPULSORY PROCESS

The right of an accused to have compulsory process for obtaining witnesses on his behalf is guaranteed by the Sixth Amendment and is considered "a fundamental element of due process of law." **Washington v. Texas,** 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). To establish a violation of the right to compulsory process, however, a defendant must establish that the witness was "physically and mentally capable of testifying to events that he had personally observed" and that the proposed testimony "would have been relevant and material to the defense."

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, ... or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, ... the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" **Crane v. Kentucky,** 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986) (quoting **California v. Trombetta**, 467 U.S. 479, 485, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)). "Just as an accused has the right to

confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." **Washington v. Texas**, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1968).

Here in Mr. Taylor's case, his alibi witness, Mr. John Woods, was in fact physically and mentally capable of testifying to events that he had personally observed due to Mr. Taylor being at work with Mr. Woods at the time of the incident. Mr. Woods has been a physically and mentally capable citizen throughout his entire life and was willing to testify as to Mr. Taylor's whereabouts on the day in question.

The testimony by Mr. Woods would have been relevant and material to the defense and would have cleared Mr. Taylor's name. The unprofessional delays to summon alibi witnesses, whom could rebut the testimony of State witnesses, as to Mr. Taylor's whereabouts at the time of the offense, lead to the finding of the Mr. Taylor's verdict of guilt.

Instead of Mr. Woods, his mother was offered by the defense to testify. Not to Mr. Taylor's whereabouts at the time of the crime, but merely to explain that Mr. Woods never received his summons to appear in Court to be an alibi witness for the defense.

Prejudice is shown because the State's case was based entirely on the statement of Ryan Haigler, a drug addict who had received consideration for his statement. Mr. Woods' testimony would have substantially weakened the State's attempt to corroborate the statement, resulting in a reasonable probability of a different outcome.

The district court disagreed with the Louisiana Court of Appeals that Mr. Taylor had not demonstrated that trial counsel's failure to call Mr. Woods was not reasonably

effective, the "performance prong" of the **Strickland v. Washington,** 466 U.S. 668, 687-88 (1984), test for ineffective assistance of counsel. In so holding the district court stated that Mr. Taylor did in fact make a showing that a substantial violation accrued dealing with the compulsory process. This can be seen when he was granted an *Order of Certificate of Appealability*

Apart from the repudiated statement of Ryan Haigler, and the un-impeached identification of Mr. Taylor, the evidence against Mr. Taylor was extremely thin. This was hardly "overwhelming evidence" of Mr. Taylor's guilt. During deliberations, the jury is said to of asked, "Can we find guilty of being present but not guilty of actual simple burglary?" These jurors clearly did not credit either the weak evidence or the testimony of Ryan Haigler. It was also told that one of the jurors contacted Mr. Taylor's family member and said he was confused and wished to change his mind.

Finally, the Louisiana courts failed to give sufficient weight as to what Mr. Woods would or would not have testified to at Mr. Taylor's post-conviction stage. Mr. Woods would have testified not only did Mr. Taylor not commit the burglary, but also that Mr. Taylor was with him at work at the time.

Mr. Taylor's right to compulsory process was violated when he was prohibited from calling Mr. John Woods as a witness in his defense. This violated the Compulsory Process Clause of the Sixth Amendment, which guarantees a defendant the right to present witnesses in his defense.

C.

III. THE FIFTH CIRCUIT'S MISAPPLICATION OF THE PREJUDICE STANDARD OF STRICKLAND WARRANTS THIS COURT'S ATTENTION.

The district court disagreed with the Louisiana Court of Appeals that Mr. Taylor had not demonstrated that trial counsel's failure to call Mr. Woods was not reasonably effective, the "performance prong" of the **Strickland v. Washington,** 466 U.S. 668, 687-88 (1984), test for ineffective assistance of counsel.. In so holding the district court commented that Mr. Taylor did in fact make a showing that a substantial violation accrued dealing with the compulsory process. See accompanying *Order of Certificate of Appealability*

The uncontroverted evidence at the post-conviction stage established that Mr. Taylor had informed trial counsel of Mr. Woods, how he could be contacted, and what he would say. The evidence also established that trial counsel never contacted Mr. Woods. Yet, the Louisiana courts found that Mr. Taylor could not establish that the failure to interview and call Mr. Woods was not "reasonable trial strategy" without presenting the testimony of trial counsel.

Of course, **Strickland v. Washington**, 466 U.S. 668, 687-88 (1984) does not so hold. That case merely cautions reviewing courts that they should not attempt to second-guess trial strategy decisions by trial attorneys. At the same time, numerous decisions hold that a decision not to call a particular witness should not generally be sanctioned as reasonable strategy unless trial counsel has adequately investigated the case. **Wiggins v. Smith**, 539 U.S. 510, 525 (2003); **Rompilla v. Beard**, 545 U.S. 374, 383 (2005).

As in **Anderson v. Johnson,** 338 F.3d 382, 393 (5th Cir. 2003), "There is no evidence that counsel's decision to forego investigation was reasoned at all....Counsel's failure to investigate was not "part of a calculated trial strategy" but is likely the result of either indolence or incompetence." As the court put it in **Bryant v. Scott**, 28 F.3d 1411, 1415 (5th Cir. 1994), "[A]n attorney must engage in a reasonable amount of pretrial investigation and "at a minimum....interview potential witnesses and .....make an independent investigation of the facts and circumstances in the case" (quoting **Nealy v. Cabana,** 764 F.2d 1173, 1177 (5th Cir. 1985). Here, there was no evidence that trial counsel made an adequate investigation before deciding not to interview or call Mr. Woods.

The state court's conclusion that Mr. Taylor had not shown ineffective assistance of counsel was an unreasonable application of **Strickland v. Washington,** 466 U.S. 668, 687-88 (1984) and its progeny because the court relied on state authority holding that post-conviction litigant could overcome the presumption of reasonableness *only* through the testimony of his trial counsel. The state court completely ignored the fact that Mr. Taylor presented evidence to his trial counsel to call on Mr. Woods, only to have his trial counsel ignore the service of process.

Apart from the repudiated statement of Ryan Haigler, and the un-impeached identification of Mr. Taylor, the evidence against Mr. Taylor is extremely thin. This was hardly "overwhelming evidence" of Mr. Taylor's guilt. During deliberations, the jury is said to of asked, "Can we find guilty of being present but not guilty of actual simple burglary?" These jurors clearly did not credit either the weak evidence or the testimony

of Ryan Haigler. It was also told that one of the jurors contacted Mr. Taylor's family member and said he was confused and wished to change his mind.

Finally, the Louisiana courts failed to give sufficient weight as to what Mr. Woods would or would not have testified to at Mr. Taylor's post-conviction stage. Mr. Woods would have testified not only did Mr. Taylor not commit the burglary, but also that Mr. Taylor was with him at work at the time.

Under these facts, the Louisiana court's holding that Mr. Taylor had not established **Strickland v. Washington**, 466 U.S. 668, 687-88 (1984), prejudice was an unreasonable application of that case. Under **Strickland v. Washington**, 466 U.S. 668, 687-88 (1984), a petitioner must only show a "reasonable probability" of a different outcome to obtain relief. **Williams (Terry) v. Taylor,** 529 U.S. 362 (2000). A "reasonable probability" of a different outcome does not mean a certainty that the verdict would have been different, but means that the confidence of the court in the outcome is undermined. To obtain relief under *Strickland*, the petitioner need not show that the omitted witness, by himself, would have established a defense.

The state's case against Mr. Taylor was sufficiently weak. The only witness that claimed he seen something was a drug addict and was very possibly intoxicated at the time of the alleged offense. Who's to say Ryan Haigler didn't commit this burglary himself? The evidence presents a significant possibility that he, rather than Mr. Taylor, actually committed the burglary. The failure to call Mr. Woods not only deprived Mr. Taylor of his refutation of an important part of the state's evidence, it deprived Mr. Taylor of his own testimony.

Under these circumstances, the finding of the state court that there was not prejudice is both an unreasonable application of **Strickland v. Washington**, 466 U.S. 668, 687-88 (1984) and an unreasonable interpretation of the facts. See **Miller-El v. Cockrell**, 537 U.S. 322 (2003) (Miller-El I); **Miller-El v. Dretke,** 525 U.S. 231 (2005) (Miller-El II). The writ must issue, and relief is required.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit Courts.

Respectfully Submitted,

Kevin Taylor #1717058

Date: July 6, 2018