

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FARRELL ROCHELLE
Petitioner

VS.

DARREL VANNOY, Warden
Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS (5TH CIRCUIT)

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted;



Farrell Rochelle #596275
17544 Tunica Trace,
Louisiana State Penitentiary
Angola, Louisiana 70712

QUESTION PRESENTED

- I.** Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to trial counsel being ineffective for failing to file a motion for continuance to prepare for a proper defense in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?
- II.** Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to Petitioner's due process right to a fair trial by an impartial jury being violated in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ 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:
1. Darrel Vannoy (Warden)
 2. Gary Evans (District Attorney)
 3. Farrell Rochelle (Petitioner)

TABLE OF CONTENTS

| | |
|---|---------|
| <i>Contents:</i> | Page(s) |
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 1 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... | 2 |
| <i>Amendment VI:</i> | 2 |
| <p>In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State 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.....</p> | |
| 2 | |
| <i>Amendment XIV:</i> | 2 |
| <p>Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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 the law; nor deny to any person within its Jurisdiction the equal protection of the laws.....</p> | |
| 2 | |
| STATEMENT OF THE CASE..... | 2 |
| <i>Timeliness of Application:</i> | 3 |
| REASONS FOR GRANTING THE PETITION..... | 4 |
| <p><i>Ineffective Assistance of Counsel:</i></p> <p>1. Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to trial counsel being ineffective for failing to file a motion for Continuance to prepare for a proper defense in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?.....</p> | |
| 4 | |
| <p><i>Due Process Right to a Fair Trial by an Impartial Jury.</i></p> <p>2. Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to Petitioner's due process right to a fair trial by an impartial jury being violated in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?.....</p> | |
| 5 | |
| CONCLUSION..... | 7 |
| PROOF OF SERVICE..... | a |

INDEX TO APPENDICES

| | | |
|------------|---|-----|
| APPENDIX A | Denial from the United States Court of Appeals (5 th Circuit)..... | (A) |
| APPENDIX B | Denial from the United States District Court (Western District)..... | (B) |
| APPENDIX C | Magistrate Judge Report and Recommendations..... | (C) |
| APPENDIX D | Trial Transcript pg. 65..... | (D) |
| APPENDIX E | Letter from Steven R. Thomas..... | (E) |
| APPENDIX F | Letter from Steve Shipp..... | (F) |

TABLE OF AUTHORITIES

| | |
|--|---------|
| <u>Cases:</u> | Page(s) |
| Lockhart v. Fretwell, 506 U.S. 364, 369, 113 S.Ct., 838, 122 L.Ed.2d 180 (1993)..... | 4 |
| Roberts v. Crockrell, 319 F.3d 690 (5th Cir. 2003)..... | 3 |
| Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)..... | 4 |
| Turner v. Louisiana, 379 U.S. 466, 85 S.Ct. 546, 13 L.Ed.2d 424 (1965)..... | 6 |
| <u>Constitutional Provisions, Statutes and Rules:</u> | Page(s) |
| 6th Amendment..... | 4, 6 |
| 14th Amendment..... | 4, 5, 6 |
| 28 U.S.C. § 2244..... | 3 |
| 28 U.S.C. § 2253(c)(2)..... | 5, 6 |
| LSA-R.S. 14:24..... | 2, 5 |
| LSA-R.S. 14:30..... | 2 |
| LSA-R.S. 14:30.1..... | 2, 3, 5 |

**IN THE HONORABLE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ **For cases from Federal Courts:**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is:

☐ reported at or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is:

☐ reported at or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☐ **For cases from Federal Courts:**

The date on which the United States court of Appeals decided my case was May 23, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments VI, and XIV to the United States Constitution, which provides:

The Sixth Amendment to the United States Constitution provides in pertinent part:

Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State 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.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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 the law; nor deny to any person within its Jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On March 25, 2010, Farrell Rochelle was charged by Bill of Indictment with First degree murder during the attempted perpetration of an armed robbery, in violation of LSA-R.S. 14:30. On August 18, 2010, the true Bill of Indictment was amended and Petitioner was re-arraigned on a charge of Second degree murder during the attempted perpetration of an armed robbery, in violation of LSA-R.S. 14:30.1. On January 5, 2012, the indictment was once again amended and Petitioner was re-arraigned on a charge of principal to Second degree murder in violation of LSA-R.S. 14:30.1 and LSA-R.S. 14:24. On March 19, 2012, Petitioner was re-arraigned on a charge of Second degree murder during the attempted perpetration of an armed robbery, in violation of LSA-R.S. 14:30.1. On March 20, 2012, Petitioner's trial began for the charge of Second degree murder. Following the trial, on March 22, 2012, Petitioner was convicted and found guilty as charged. Also on March 22, 2012, after Petitioner was convicted of Second

degree murder, Petitioner's charge was once again lowered back to principal to Second degree murder in violation of LSA-R.S. 14:30.1 and LSA-R.S. 14.24.

On June 26, 2012, Petitioner was sentenced to life imprisonment at hard labor without the benefit of probation, parole or suspension of sentence, with credit for time served.

Timeliness of Application:

This application is properly before this Court as Petitioner was convicted in the 42nd Judicial District Court, Parish of Desoto, State of Louisiana on March 22, 2012.

On July 3, 2013, the Louisiana 2nd Circuit Court of Appeal affirmed Petitioner's conviction and sentence on direct appeal Docket No. 47,984. The Louisiana Supreme Court denied relief on February 21, 2014, (Docket No. 2013-K-1887). Petitioner's conviction became final for the purpose of the Anti-Terrorism and Effective Death Penalty Act on May 21, 2014. After the 90 day period for seeking relief in the U.S. Supreme Court expired. Roberts v. Crockett, 319 F.3d 690 (5th Cir. 2003).

Petitioner timely filed his application for post-conviction into the trial court 336 days later on April 22, 2015, within the one year of the affirmation of his conviction and sentence, preserving both his State post-conviction rights and the federal habeas deadlines established by the Anti-Terrorism and Effective Death Penalty Act, 28 U.S.C. § 2244. The trial court denied relief on June 17, 2015. Petitioner was served a copy of that denial on June 29, 2015.

Petitioner timely sought writs in the Louisiana 2nd Circuit Court of Appeal on July 27, 2015. The Louisiana 2nd Circuit Court of Appeal, denied Petitioner relief on August 27, 2015, (Docket No. KH 15-50450).

Petitioner timely sought writs in the Louisiana Supreme Court on September 16, 2015, (Docket No. 2015-KH-1728).

On November 30, 2015, Petitioner filed a Motion to Stay in Abeyance to the Louisiana Supreme Court about Newly Discovered facts which was received and accepted December 4, 2015. On January

20, 2016, Petitioner filed his second application for post-conviction relief under Newly Discovered facts, which was denied May 12, 2016. On June 7, 2016, Petitioner timely pursued the denial to the Second Circuit Court of Appeal (Docket No. KH 16-51118), which was denied July 14, 2016. On August 1, 2016, Petitioner timely pursued the denial to the Louisiana Supreme Court (Docket No. 2016-KH-1572) which was denied October 28, 2016.

On November 15, 2016, Petitioner timely filed a petition for Writ of Habeas Corpus to the Western District of Louisiana (Shreveport Division) (Case No. 5:16-CV-1594), which was denied September 25, 2017.

On November 9, 2017, Petitioner timely filed a Certificate of Appealability to the United States, Court of Appeals (Fifth Circuit) (Case No. 17-30818), which was denied May 23, 2018.

REASONS FOR GRANTING THE PETITION

1. Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to trial counsel being ineffective for failing to file a motion for Continuance to prepare for a proper defense in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?

Ineffective Assistance of Counsel

When issues are raised on claims of ineffective assistance of counsel, courts apply the dual pronged test of the U.S. Supreme Court case Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

The complaint must show that:

- 1). Counsel performance was deficient and
- 2). That the deficiency prejudiced the defendant.

To show Strickland prejudice, a Petitioner must demonstrate that counsels errors were so serious as to "render the results of the trial unreliable or the proceeding fundamentally unfair. Lockhart v. Fretwell, 506 U.S. 364, 369, 113 S.Ct., 838, 122 L.Ed.2d 180 (1993).

Retained trial attorney Brenda F. Ford, Bar Roll # 5685, was ineffective for failing to file a Motion for Continuance on fair notice of specific criminal charges to prepare for a proper defense right before panel 1 jury picking was to begin for Petitioner's trial.

On (Tr. pg. 65) Prosecutor states:

"Mr. Stamps: Your Honor, on or about I believe January 6th, the State filed an Amended Bill of Indictment or a technical Amendment to add principal. The State would call the matter for arraignment for Second degree murder."

Following along on (Tr pg. 65) Trial Attorney states:

"Ms. Ford: On behalf of Farrell Rochelle, your honor, we enter a plea of not guilty and waive formal reading of indictment.:

The 5th Circuit Court of Appeals erred in denying C.O.A. stating that Petitioner failed to make a substantial showing of the denial of a constitutional right, § 2253(c)(2). Under the two-part Strickland, supra, test first Petitioner shows trial counsel's performance was deficient for failing to file a Motion for Continuance on fair notice of specific criminal charges to prepare for a proper defense. Second, Petitioner shows prejudice being that a (14.24) principal is any person aid and abet in the commission of a crime, simply a participant, which is a completely different theory than (14.30.1) Second degree murder which is being the actual shooter, which was clearly the prosecutor's strategy during trial, and what the States key witness testimony was based upon, that Mr. Rochelle was the actual shooter, which made the proceedings of the trial totally unfair and Petitioner's due process rights under the 14th Amendment violated on notice of specific criminal charges, and had trial counsel filed a Motion for Continuance, it would have given trial counsel enough time to prepare for a proper defense against new charges.

2. Whether the 5th Circuit Court of Appeals erred in denying C.O.A. to Petitioner's due process right to a fair trial by an impartial jury being violated in violation of Petitioner's 6th and 14th Amendment to the United States Constitution?

Due Process Right to a Fair Trial by an Impartial Jury.

A defendant's constitutional due process right of a fair trial by an impartial jury may be violated if the trial jurors are subjected to influences which cause their verdict to be influenced by circumstances other than evidence adduced at trial. Turner v. Louisiana 379 U.S. 466, 85 S.Ct. 546, 13 L.Ed.2d 424 (1965).

The 5th Circuit Court of Appeals erred in denying C.O.A. stating that Petitioner failed to make a substantial showing of the denial of a constitutional right, § 2253(c)(2). On August 22, 2015, Petitioner received a letter from the jury foreman of his trial Mr. Shipp about complications that occurred in the jury room during jury deliberation. Mr. Shipp stated that two jurors began talking amongst themselves questioning the case, Mr. Shipp then stated he asked the two jurors to hold off until everyone was able to get their chance to speak. After everyone had spoken, and came to an agreement, Mr. Shipp stated he had forgotten to get back to the two jurors for their opinions. Petitioner's constitutional due process right to a fair trial by an impartial jury was violated in violation of the 6th and 14th Amendment to the United States Constitution, being that the two jurors could have been subjected to influences which caused their verdict to be influenced by circumstances other than evidence adduced at trial, from their fellow jurors, and never got a chance to voice their true opinions about their verdict selection, being that Mr. Shipp had forgotten to come back to the two jurors about the situation, which the foreman Mr. Shipp himself said in the letter that - Appendix "F" - (May have opened further discussions that may have lead to a different outcome).

CONCLUSION

The 5th Circuit Court of Appeals did not give full consideration to the claims Petitioner put forth in his certificate of Appealability, and Petitioner prays that this Court grant his Writ of Certiorari.

Respectfully submitted,

Garrett Bebel

Date: July 17, 2018