

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Joshua D. Blair — PETITIONER
(Your Name)

VS.

VIRGINIA DOC — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Blair
(Your Name)

Sussex 1, 24414 Musselwhite Dr.
(Address)

Waverly, VA 23891
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- Did the Fourth Circuit Court of Appeals error in Petitioner's writ, when Petitioner showed conflict in an important issue with the 9th Circuit Court's decision in the *Martinez v. Ryan*, in showing cause for procedural default?

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:

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TABLE OF AUTHORITIES CITED

CASES

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|--------------------|-----|
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OTHER

IN THE
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 F 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☒ is unpublished.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 D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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☒ is unpublished.

The opinion of the Supreme Court of Virginia 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☒ is unpublished.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 October 19, 2017.

☐ 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 07-07-2017 (date) on June 9, 2017 (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was March 20, 2015. A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: 11-20-2015, and a copy of the order denying rehearing appears at Appendix C.

☐ 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

• 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.

STATEMENT OF THE CASE

On March 18, 2013 in the Norfolk City Circuit Court by jury found Petitioner guilty of Home Burglary, Conspiracy to Abduction, Conspiracy to Robbery, (3) Armed Robbery, (4) Use of a Firearm in Commission of a Felony, (3) Abductions, and wearing a mask in public. The court had court-appointed trial counsel, for appeal. On September 24, 2013, Virginia Court of Appeals denied appeal. Petitioner then was denied by the Supreme Court of Virginia for appeal on March 24, 2014. Petitioner then proceeded pro se and filed a Writ of Habeas Corpus to the Supreme Court of Virginia, claiming Ineffective Assistance of Counsel being state law that this is the first stage you can raise the issue. which was denied on March 20, 2015. Then Petitioner files a petition for a § 2254 which was ruled to have been procedurally defaulted due to timeliness in the United States District Court for the Eastern District of Virginia on October 18, 2016. To which Petitioner later appeals to the U.S. Court of Appeals for the Fourth Circuit, which upheld District Courts ruling and did not hear merits on October 19, 2017.

REASONS FOR GRANTING THE PETITION

Petitioner's certiorari should be granted for many reasons, which the Fourth Circuit Court of Appeals errored in its ruling when affirming the District Court's decision to not hear the merits of Petitioner's claims due to procedural default. Even when Petitioner showed cause in presenting the ruling in the Martinez v. Ryan 132 S.Ct. 1309 (U.S. 2012) of the 9th Circuit. Which it ruled that ~~ate~~ inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim in two circumstances: the first is where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of Strickland. Which Petitioner showed when same trial counsel that Petitioner showed that was ineffective, was the same counsel that was court-appointed to him for direct appeal. Also by state law, ineffective assistance of counsel can not be raised until Habeas review which counsel is not required. In meeting the decision of the 9th Circuit and the Fourth Circuit finds to have conflict with the decision. And this issue being a national Constitutional issue of the right to effective counsel and when its being denied that federal review should be eligible. Which this certiorari should be granted.

When the Fourth Circuit Court of Appeal's decision was, "when the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the Petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. Where in the Martinez v. Ryan case, 'Arizona contends ... in this case for example, Martinez's "ground

for relief "is his ineffective-assistance-of-trial-counsel claim, a claim that AEDPA does not bar. Martinez relies on the ineffectiveness of his post-conviction attorney to excuse his failure to comply with Arizona's procedural rules, not as an independent basis for overturning his conviction. In short, while § 2254(i) precludes Martinez from relying on the ineffectiveness of his post-conviction attorney as a "ground for relief", it does not stop Martinez from using it to establish "cause". *Holland v. Florida*, 560 U.S. 130 S.Ct. 2549. Then Petitioner showed that he fulfils the ruling of the 9th Circuit where in *Martinez v. Ryan* addressed that; "where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel in that proceeding was ineffective." As Coleman recognized, an attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the state to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on his claims.

To leave this matter as is, would deprive one of their Constitutional rights to be violated and not to be rectified by federal review. The ineffectiveness of counsel during trial and post-conviction can hinder ones Constitutional right of his due process of fairness. When counsel is seen as the knowledgeable person of legal representation, and to help, find justice. But for counsel heving much errors and not fulfilling the Strickland standard and defencient then seeks federal review from higher

Courts. Then becomes procedural default from the cumulative effect of the ineffectiveness of counsel. And those errors will not be heard. When state law only allows one to raise the ineffective issue at a later time frame, as Virginia does. Federal Courts are there to review the Constitutional issues of the state prisoner's conviction and sentence. Which are to be guided by rules designed to ensure that state court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism.

"Right to effective assistance of counsel may be violated by even isolated error of counsel if that error is sufficient egregious and prejudicial. U.S.C.A. Const. Amend. 6., *Murray v. Carrier* 106 S. Ct. 2639, 477 U.S. 478 (U.S. Va. 1986). To leave a matter where a prisoner can be procedurally default, due a stage in his post-conviction to where no counsel is guaranteed. And to understand the reason why counsel is appointed from the start, because of defendants lack of knowledge. Now when counsel falls below levels of professional legal integrity. Then when Petitioner reaches the place to challenge the ineffectiveness of counsel, he is left without counsel, which would not have been sufficient to ensure that proper consideration was given to a substantial claim. As the decision of the Fourth Circuit the effectiveness of counsel was never addressed or investigated. This is not a matter to overturn conviction, but to allow claims to be heard.

As shown with the conflict between the two courts, shows that the 9th Circuit has shown a better judgment to show that counsel's errors show cause for the procedural default. Also how important this issue can effect our justice system and fairness. For this handlers Constitutional issues to even be heard. So I pursue this court to

to GRANT this certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,

Joshua Blair

DATE May 7th, 2018