

OFFICE OF THE CLERK SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C. 20543-0001

Stefan Rodgers
petitioner

No. 18-6020

v.

Darrell Miller, Warden
respondent

PETITION FOR REHEARING RULE 44 OF THE
SUPREME COURT OF THE UNITED STATES

1. Petitioner is petitioning this honorable Court for a Rehearing in accordance to rule 44 of this Court.
2. On October 15, 2018 petitioner was denied certiorari but he didn't receive notification of this decision until the October 19th.
3. Based on the governing and controlling standards of 2254(d)(1)(2) of 28 U.S.C.S. ... results in a decision which were contrary to, or involved an unreasonable application of, clearly established federal laws, as a determined by the supreme Court of the United States (2). The decision to deny certiorari was based on unreasonable determination of the facts in light of the evidence presented in the states court proceeding.
(e)(1). ... the applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence(See Petitioner's Medical Document showing he did have repeated surgeries). 2254(2)(B) the facts underlying the claim would be sufficient, to establish by clear and convincing evidence but that for constitutional errors, no reasonable factfinder would have found the applicant guilty of the offense.

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4. If this Honorable court will reconsider the deicision to deny certiorari and carefully consider the 28 U.S.C.S. 2254 (d), (1),(2), (e)(1) and (2)(B) all support the reaesons why this petition of petitioner filed in this Honorable Court should have been reviewed and ruled on the merits in favor of petitioner.

5. After all, according to 28 U.S.C.S. 2254 (d)(1) unreasonable application of, clearly established federal laws. Petitioner met both the "cause and prejudice" clause whichwill/should have granted this Honorable Court to review the petition and rule on the merits.

6. Because proper scrutiny by this Court of the petitioner's petition for certiorari shows petitioner concisely articulated the reasons why the state procedural rule doesn't have controlling effects of the federal court to make an independent evaluation of the " facts at trial which impeded petitioner from receiving a fair and proper trial." Such decision was a " fundamental miscarriage of justice" violating petitioner's 6th, 14th and 8th Amendment to the Constitution.

7. In Murray v. Carrier 477 U.S. 478,488 (1996) states, " cause is present ' if some objective factor external to the defense impeded counsel's effort to comply with the state's procedural rule."

Within the attached brief requesting certiorari petitioner clearly elaborated on the cause, due to Medical complications requiring immediate surgery to a chronic heart disease and his education of not knowing the law of the Court.

Where petitioner assumed Ineffective Assistance of Counsel meant the subject Heading represented the issues/claims he requested the federal court to evaluate.

8. the clear and convincing evidence petitioner presented should have been considered and since a judgment was rendered without proper review. this result in a " fundamental miscarriage of justice" and subjected petitioner to Constitutional violations.

9. After all, "contrary to" means state applied " a rule different from governing laws set forth in [Supreme Court] cases, or it decided cases differently than [Supreme Court] has done on a set of materially indistinguishable facts."

The facts were evident and obviously set before the Circuit Court concerning the right of petitioner to face his accuser(s). Inspite of the District Court refusal to disturb the state's " procedural rule" in conjunction to the collateral review of the petition.

The District court still had the responsibility to review the facts of petitioner's conviction. Facts which shows " contrary to" the "procedural rule" the District Court adhered to when making its decision to deny the IAC for failure to challenge the Confrontation Clause which were the governing laws during the conviction against petitioner.

10. "Unreasonable applications" means that a state court (1) identifies the correct legal rule but unreasonably applies it to the facts of the case or (2) unreasonably extends the legal principle to a new context to which it should not apply or unreasonably refuses to extend the principle to a new context.

11. Also " Clearly established" refer to the holding, as opposed to dicta, of the Supreme Court decision at the time of the state court decision. Then clearly established federal law to be used in analysis under 2254(d)(1) is the law at the time of the last court adjudication on the merits.

12. Therefore, based on 2254(e)(1) ... the applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. Petitioner's evidence was ignored and the guilt of his conviction rested on " contrary to", " unresonable applications" and " clearly established" federal laws.

13. Petitioner is asking this Honorable court to evaluate the facts

that the state procedural ground should have been removed based on the information shown in petitioner's exhibits. Even if these exhibits are ignored by the District Court/ United State Supreme Court must review this petition on the facts of 2254(d)(1) and consider petitioner's conviction is absurd and in violation of the " contrary to" on a set of facts materially indistinguishable from the " procedural rule" the states uses to bar the petition from further review. When in fact petitioner's Appeal to the Court of Appeal in detail expounded of the facts the Court decided in Crawford v. Washington 541 U.S. 36,124 S.Ct 1354,158 L.Ed 2d 177 and Luis Melendez-Diaz v. Massachusetts 557 U.S. 305, 129 S.Ct 2527, 174 L.Ed 2d 314 (2009). Stated petitioner has to face and confront his accuser(s).

The record presented to both the District Court and Court of Appeals shows with Crawford and Luis Melendez the Court set the governing laws which were prominent, to petitioner " fundamental fairness" to receiving a just verdict. So when the state court failed to review petitioner's habeas corpus based on " procedural grounds" .

The previous Court were obligated and their duty were to distinguish between the facts set forth in federal laws decisions at the time.

14. In order to determine whether petitioner incurred " a fundamental miscarriage of justice" when the District Court and Court of Appeals denied petitioner's habeas corpus. The issue overlooked were petitioner had a " right to face those who bear evidence against him."

Elsewise the conviction hasn't been proven beyond a reasonable doubt and such conviction is in violation to petitioner's constitutional right governed by the 6th, 14th and 8th Amendment.

15. " Unreasonable application" shows the decision to avoid review and deny on the merits. Denotes an Unreasonable application to a new context to which it should not apply or unreasonably refuses to extend the principle to a new context.

The new context isn't about petitioner's " procedural ground rule" the state is using instead the new context of " fundamental miscarriage of justice" were petitioner now become the subject of trial errors which had a both a " substantial and injurious effect or influence in determining the verdict" or " deliberate and especially egregious error" warrants habeas relief absent a substantial influence.

16. During petitioner's trial the laws were " clear established" as a result 2254(d)(1) was the governing federal law of both the " right to confront and cross-examine ones accuser." As a result, the holding recommended in this "right to confront and cross-examine" were the means during the time of petitioner's trial and the later Court of Crawford and Luis Melendez Diaz supported the right.

Considering the Circuit Court " unreasonable application" convicted petitioner on the standards of Ohio v. Roberts U.S. 448 56,65 L.Ed 2d 597, 100 S.Ct. 2531(1980) initially allowed the courts to convict on the accepted evidence " adequate' indicia of reliability''. Which offered a " particularized guaranteee of trustiness."

The Courts unreasonably extend the legal principle to a new context which it should not apply or unreasonably refuesd to extend the principle to a new context.

The context of both Crawford and Luis Melendez-Diaz were the controlling federal laws at the time and when these courts reviewed petitioner's complaint. It should have been clear the police officer's testimony doesn't prove " trustworthy" when he wasn't the[One who did the analysis on the white substance]. As a result, the conviction becomes the subject of trial error and the admission of the officer's opinion concerning what the Analyses lab perform were had both a " substantial and injurious effect or influence in determining the verdict" or " deliberate and especially egregious error" warrants habeas relief. Therefore according to 2254 (e)(1) petitioner had met the burden of refuting the conviction.

17. Since the whole of petitioner's argument centers around IAC failure to cross-examine those who actually performed the lab analysis. The "presumption of 28 U.S.C.S. 2254 (e)(1) petitioner has met and now The statute of 28 U.S.C.S. 2254(d)(1) which states, " contrary to", " unreasonable application", and " clearly established" ruling which leads to " a fundamental miscarriage of justice."

All derived from counselor's deficient performance.

18. Counsel has a duty to bring to trial evidence that can be subjected to adversarial testing, that's presented to an impartial tribunal designed to ascertain adequate resolution.

Adam v. United States ex rel McCann 317 U.S. 275,276 (1942).

19. Counsel had a duty to advocate and consult with petitioner concerning any decision he elected to make or course he planned to follow. Cuyler v. Sullivan 466 U.S. 335,336

Counsel's failure to impeach the Analysts who did the test on the " white substance" subjected petitioner to harm. Such harm was detrimental to him receiving a fair trial after all, a verdict was reached in contrasted to the requirements of 28 U.S.C.S. 2254(d)(1).

20. The deviation from federal laws leave the door open to " doubt" because the convict of petitioner now is based on " assumption," instead of the evidence.

21. In such a case it now becomes a violation of petitioner's right to counsel, avoidance of unlawful confinement and prevention of Due Process Violations. Which the federal laws opposes and demands state courts to adhere to " clearly established" holdings.

22. So it is imperative that the holding of the Confrontation Clause be followed and petitioner be afforded the right to face his accuser(s). Since this didn't occur and testimony was obtained about the " white substance". Which lead to a guilty verdict!

This wasn't a harmless error and to inject into the trial opinions of what the " substance" is was egregious and damaging to the outcome of the trial.

23. Especially without confirmation from the Analyses who actually performed the test on the "white substance" for impeachment and verify credibility.

24. Petitioner is asking that you vacate the sentence imposed and remand for further correction that the District eluded and that this Court will consider the special circumstance to excuse failure to address this matter at the initial collateral review.

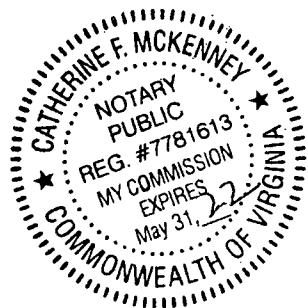
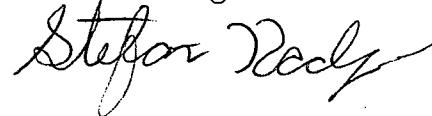
Petitioner thank you for your time and consideration.

CERTIFICATE OF SERVICE

I, Stefan Rodgers swear under the penalty of perjury that the information within this petition is true and that on Nov. 8 2018 a copy of this petition was sent to the Counsel for the defendants.

Respectfully submitted

Stefan Rodgers



County/City of Richmond; Commonwealth of Virginia
The foregoing instrument was subscribed and sworn before me this
day of November, 2018.
Stefan Rodgers
(Name of person seeking acknowledgement)

Catherine F. McKenney
My Commission expires: 5-31-22 Notary Public
Notary Reg. No. 7781613

OFFICE OF THE CLERK SUPREME COURT OF THE
UNITED STATES WASHINGTON D.C. 20543-0001

Stefaan Rodgers #1052381
petitioner

No. 18-6020

v.

Darrell Miller, Warden
respondent

PETITION FOR REHEARING RULE 44(2) OF THE
SUPREME COURT OF THE UNITED STATES

1. On December 11, 2018 I, petitioner received notice from this Honorable Court to explain/correct 44(2) of the attached petition.
2. In accordance to the request of this Court date November 19, 2018 which petitioner didn't receive until December 11, 2018. As a result petitioner is uncertain concerning this Court's request.
3. However within the requested corrected petition and the previous forwarded Petition for Rehearing. Petitioner within the body of paragraph number (7) elaborated on the Court's decision of Murray v. Carrier 477 U.S. 478,488 (1996) Which states, " cause is present ' if some objective factor external to defense impeded counsel's efforts to comply with the state's procedural rule.' "
4. Petitioner presented evidence to each tribunal that based on the requirements of 28 U.S.C.S. (d)(1). That he was prejudiced when all the reviewing Courts deviated from clearly established federal laws and applied an unreasonable application of case law.
5. Considering the factors of Murray which states, " as long as petitioner can show ' cause ' for the ' default ' and point out how he was ' prejudiced ' by the Court relunctancy to rule on the merits of the claim" (a)." cause is a legitimate excuse for the default" Had these previous Court reviewed the petition and heeded the words addressed by the petitioner. Than the record will note from the Exhibits attached petitioner suffered from [c]ardic heart conditions which during the initial stages of filing the state habeas corpus

Petitioner repeatedly was in/out of the institution(HCC), carried on emergency run to the hospital,undergoing different surgical procedures to repair/remove from the heart things affecting the petitioner.

Therefore, in response to the Court's question of [intervening circumstances] pertaining to substantial and controlling effects or other substantial ground not previous mentioned/presented.

See Tony Amadeo v. Walter Zant 486 U.S. 214,100 L.Ed 2d 249, 108 S.Ct.1771.Even though the issues differ but nonetheless show the state procedural rule can be rescinded and the federal court can make an independent review of the facts. Here petitioner counselor was impeded from doing what was rerequired to assure petitioner's 6th and 14th Amendement were not violated

In contrast Mr. Rodgers had a pro se litigant assist him during the commencement and initial stages of filing the state habeas corpus.As the petition was being constructed to address issues of petitioner's trial counselor's ineffectiveness to perform his duty. Petitioner suffered a heart attack and had to be rush to the hospital for intense medical evaluation and surgery.

While this Petition to the state court was being done petitioner had another heart attack and he was removed from the housing unit of the individual assisting him with the habeas corpus

not to mention the medication petitioner was taking left him heavily sedated and petitioner being a novice to the legal system and terminology,thought the factual interpretation of Ineffective Assistance of Counsel covered the entire spectrum of the argument later to be addressed if needed and that the Court will discern what he was saying and apply its wisdom and understand what he was trying to say.

6. Since the Court ignored the " cause" and accepted the state court's procedural rule.

(b). " prejudice is actual harm resulting from alleged constitutional violation.

After all, based on the decisions of Fay v. Noia 372 U.S. 391, 9 L. Ed 2d 837 Petitioner didn't deliberately bypass and negate the state from considering the claim. Which addresses his [r]ight to confront his accuser.

7. As result the Court describes the standards of decisions that were contrary to, or involved an unreasonable application of, clearly established federal law... .

(b). resulted in a decision based on an unreasonable determination of facts in light of the evidence. See Williams v. Taylor 529 U.S. 362, 14 L.Ed 389 (2000). If the evidence at trial must show " not merely that the error at trial created the possibility of prejudice, but that they worked to his actual and substantial disadvantage.

Murray 477 U.S. at 494

Currently, the evidence at trial against petitioner stemmed from an alleged transaction between him and an Informant where a " white substance" is used at trial to be the determining factor of Mr. Rodger's conviction.

However the trial record denote testimony from the Capt. about the procedures he conducted and after each transaction between the Informant and Mr. Rodger's he stored the " white substance" in his work locker. Then after several weeks he hand delivered the " white substance" to the Lab to determine what the " white substance" was.

The record even divulges this office reading the Lab Analysis insinuating what the "white substance" is. When in fact, this officer didn't perform the Lab Analysis and petitioner had a right to confront and face each Analyses who handled the " white substance" which was the determining factor in petitioner's guilt.

8. In response to the Court question for Rehearing in accordance to Rule 44(2). Petitioner in the attached brief recently mailed to this Court and sent back to him for Correction addresses how he suffered a " fundamental miscarriage of justice when the previous reviewing Court failed to adhere to federal laws. Coleman 501 U.S. at 751.

8. If the Courts acknowledge the implications of both Coleman and Murray then the record is clear petitioner's medical situation was ignored and as a result of failure to see it as " cause for the petitioner not complying with the state's procedural rule."

Along with the facts petitioner is/dum/ to legal jardon as an attorney would be and he should been held to less strigent measures.

Therefore in paragraph (10) of the attached petition this Court should be aware that each previous reviewing Court identifies the correct legal rule but unreasonably applied it to the facts of his case and refused to extend the legal principle to a new context to which it should not apply or unreasonably refused to extend the principle to the new context.

9. Initial the Courts/trial court were authorized by the Ohio v. Roberts Court to use the nexus of trustiworthiness or allow the courts to convict on the standard of this case. However both the Crawford v. Washington 541 U.S. 124, 158 L.Ed2d 177 and Luis Melendez-Diaz v. Massachusetts 557 U.S. 305, 129 S.Ct.2527, 174 L.Ed 2d 314 (2009) refuses the suggestion of the Ohio Court and states, " an accused has a right to personally face those who bear evidence or charges to determine a person guilt or innocence."

10. When the Courts failed to consider petitioner's argument and denied the petition. The Courts were in violations to 2254(d)(1) which isn't a harmless error but egregious to petitioner having a fair trial during Curcuit Court.

11. So the Curcuit Court conviction was unreasonable and its ruling affected the federal law, of which petitioner is entitled to.

12. Petiiton is asking this Court to correct the decision of the previous Courts.

13. Dismiss the indictment and charges against him.

14. Consider the " cause for failure to comply with the state's procedural ruling wasn't deliberate and that the Petition will be remanded back down for further consideration which this Court deems appropriate with the decisions of 2254(d)(1).

15. That this Court will provide an attorney that will help petitioner address the merits of his claim(s).

16. That this Court will take this Addendum and properly join it with the attached petition and read both together and this Court will fully understand its reason for Rehearing based on Rule 44(2).

CERTIFICATE OF SERVICE

I, petitioner, Stephan Rodgers #1052381 swear under the penalty of perjury that the information in this petition is true and that according to what is address petitioner has shown that in accordance to 44(2) this Court should rehear the petition and see the previous Court violated petitioner 6th, 8th and 14th Amendments to the Constitution when it failed to follow the mandate prescribed by the Court concerning 2254(d)(1). ON December 20, 2018 a copy ~~of~~ this petition was sent to this Court and to the Counsel for the Defendant.

Respectfully submitted,
Stefan Rodgers #1052381

