

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Rodney L. Jones — PETITIONER  
(Your Name)

vs.

Wendy Kelley, ADC — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rodney L. Jones, # 148884  
(Your Name)

P.O. Box 6000  
(Address)

Grady, AR 71644  
(City, State, Zip Code)

N/A  
(Phone Number)

**QUESTION(S) PRESENTED**

DID THE EIGHTH CIRCUIT COURT OF APPEALS ABUSE  
ITS DISCRETION IN DENYING PETITIONER'S  
APPLICATION FOR CERTIFICATE OF APPEALABILITY?

## **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

### PAGE NUMBER

United States v. Mac Donald, 73 M.J. 426  
(C.A.A.F. 2004)

Williams v. Taylor, 529 U.S. 420 (2000).

### STATUTES AND RULES

Ark. Code Ann. § 5-2-207

### 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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ 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 is unpublished.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 27 April 2018 12 April 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: 13 June 2018, and a copy of the order denying rehearing appears at Appendix A.

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).

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.  
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A timely petition for rehearing was thereafter denied 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. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment ~~XIV~~

No state shall... deprive any person of life, liberty, or property, without due process of law.

## STATEMENT OF THE CASE

In 2010, Petitioner was convicted of capital murder and sentenced to life without parole. Petitioner's defense was involuntary intoxication. He sought post-conviction relief claiming ineffective assistance of counsel as to failure investigate, obtain information, and present a complete defense concerning the affect of Chantix, an anti-smoking drug. The state court denied relief without adequate hearing.

Between state post-conviction proceedings and federal habeas, United States v. Mac Donald was decided, in which, Chantix was the cause of involuntary intoxication and induced psychosis, and found trial counsel ineffective in failing to present and obtain instruction on the issue.

Petitioner immediately sought relief in light of the new information, but to no avail.

In federal habeas, the district first denied relief. The circuit reversed and noted MacDonald as controlling. Petitioner sought an evidentiary hearing on the issue, but to no avail, and the district court again denied relief. The circuit denied Petitioner's timely application of appealability and motion for rehearing. This petition is timely made.

## REASONS FOR GRANTING THE PETITION

DID THE EIGHTH CIRCUIT COURT OF APPEALS ABUSE ITS DISCRETION IN DENYING PETITIONER'S APPLICATION FOR CERTIFICATE OF APPEALABILITY?

On 2 February 2017, the Eighth Circuit granted Petitioner's prior application for certificate of appealability, and remanded the case to the District Court of Eastern Arkansas on the question of whether trial counsel rendered ineffective assistance of counsel by (1) failing to present, and (2) failing to request instruction on, an involuntary intoxication defense under Ark. Code Ann. § 5-2-207, referencing United States v. Mac Donald, 73 M.J. 426, 437-39 (C.A.A.F 2014).

In Williams v. Taylor, this Court held that evidentiary hearings in federal habeas proceedings are to be held after a Petitioner establishes that he was unable to develop the factual basis for his claim in state court despite diligent effort, 529 U.S. 420, 430 (2000). This is applicable whereas Petitioner was unable to develop his claim because the full weight of prescription-induced

intoxication and psychosis of the anti-smoking drug, Chantix, was unknown until well over three years after Petitioner's conviction in 2010. Those facts did not come to light until 2014, in U.S. v. MacDonald, supra, which subsequently addressed the related question of ineffective assistance of counsel for failing to present, and request instruction on, involuntary intoxication (nor explicitly addressing the toxicity) by the prescription drug Chantix. Moreover, prior to MacDonald, Petitioner was unable to develop the factual basis for Chantix-induced psychosis even though he alleged it for want of those facts revealed in MacDonald. As a result, the state court's, pre-MacDonald, opinion did not address the controlling factual issues with respect to the question of involuntary intoxication defense and subsequent ineffective assistance of counsel.

The state court's determination was, thus, inadequate, insufficiently specific nor comprehensive, on the question

before the District Court to relieve it of the necessity to hold an evidentiary hearing. An independent factual inquiry by the district court was warranted because the state determination did not address or resolve the factual issue raised— involuntary intoxication defense presentation and instruction—and because Petitioner would prevail if the federal court resolved, in his favor, factual questions not decided by the trial court, and because the trial court did not actually reach and determine issues of fact tendered by Petitioner.

The District Court erred by failing to hold a mandatory evidentiary hearing and addressing the question put before it by the Circuit. The Eighth Circuit, subsequently, erred by denying Petitioner's application of certificate of appealability and reverse and remand to the district court to conduct an evidentiary hearing on the question posed before it.

## CONCLUSION

For these reasons herein above, the petition for writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Rodney L. Jones, pro se

8-31-18

Date