

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

IN THE

SUPREME COURT OF THE UNITED STATES

DEXTER WATSON - PETITIONER

vs.

RAYMOND BYRD - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

DEXTER WATSON

MSP, UNIT 30-C

PARCHMAN, MS 38738

QUESTION(S) PRESENTED

1. Did the jury reasonably, logically, and legally infer from the evidence presented, that petitioner was guilty of violating the statute beyond a reasonable doubt?
2. Did petitioner's jury instructions on the law of principals relieved the State of its Fourteenth Amendment burden of proving petitioner's specific intent to kill?
3. Was petitioner afforded effective assistance of counsel in every proceeding of the trial? Had counsel only thirteen (13) days prior to trial.
4. Was appellate counsel effective for not raising petitioner's Fourth Amendment claim on direct appeal?

Did the courts below commit reversible error denying petitioner's 2254 motion without conducting an evidentiary hearing to resolve the factual disputes?

## LIST OF PARTIES

[X] 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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## STATUTES AND RULES

## ABBREVIATIONS USED IN THIS BRIEF

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

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 is unpublished.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 is unpublished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

The date on which the United States Courts of Appeals decided my case was August 7, 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

The Fourth Amendment of the United States Constitution provides:  
The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures.

The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation; . . . and to have the assistance of counsel for his defense."

The Fourteenth Amendment of the United States Constitution provides:

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

## STATEMENT OF THE CASE

On March 6, 2011, Dexter Watson was arrested and charged with Count I, Murder of Patricia Dotson. Following a jury trial, on January 19, 2012, Watson was convicted of Murder. On January 19, 2012, Watson was sentenced to life in prison for Murder. See Miss. Code Ann 97-3-19.

Petitioner Dexter Watson ("Watson") was initially arrested without a warrant on March 6, 2011, Appendix C, D, while being at his residence by the Port Gibson police dept. Watson was booked in at the Sheriff dept. for the possession of paraphernalia and also for murder on March 6, 2011. Over a period of twelve (12) or thirteen (13) days of being in custody, Watson was repeatedly questioned by investigators about the murder of Patricia Dotson ("Dotson"). On March 19, 2011, while he remained in custody, Watson had requested for appointment of counsel at an initial appearance, Appendix E.

An attorney was not appointed by the State until nine (9) months later on December 28, 2011, Appendix F, to represent Watson for the murder. Watson seen and appeared with his counsel for the first time at an arraignment on January 10, 2012, Appendix G. December 28, 2011, to January 10, 2012, Watson only had counsel for thirteen (13) days and trial was nine (9) days later on January 19, 2012.

At trial the State established through a crime lab analysis, and a presumptive test on Watson shoes, produced a partial DNA profile that matched Dotson's blood. Appendix H. The State only established Watson presence at the scene of the crime.

The jury was not instructed on the law of principals (elements) of first degree murder, which allowed the State to escape free of its burden of proving every element of the first degree murder.

The crux of Watson's argument is that the State did not present any evidence or facts to prove Watson committed first degree murder. And by the jury not being instructed on the elements of first degree murder allowed the State to convict Watson only on his presence at the scene of the crime without any facts or evidence proving Watson committed the crime of first degree murder.

## REASONS FOR GRANTING THE PETITION

1. The Fifth Circuit Panel Opinion erred affirming the district Court's denial of petitioner evidence being insufficient to convict him of first degree murder when indeed the jury could not reasonably, logically, and legally infer from the evidence presented that petitioner was guilty of violating the statue beyond a reasonable doubt, is in direct conflict with this Court's decision in Jackson, infra.
2. The Fifth Circuit Panel Opinion erred affirming the district court's denial of Petitioner's jury not being instructed on the elements of the charged crime relieving the state of its burden of proving every element of a criminal offense beyond a reasonable doubt, is in direct conflict with this Court's decision in Winship and Sandstrom, infra.
3. The Fifth Circuit Panel Opinion erred affirming the district court's denial of Petitioner's effective assistance of counsel claims because its decision is in direct conflict with this Court's decision in Strickland, Gideon, McMann, and Powell, infra.
4. The Fifth Circuit Panel Opinion erred affirming the district court's denial of Petitioner's effective assistance of appellate counsel claim because its decision is in direct conflict with this Court's decision in Strickland and Kimmelman, infra.
5. The Fifth Circuit Courts erred affirming the denial of Petitioner's § 2254 motion where the district court failed to conduct an

evidentiary hearing to resolve the factual disputes, which if true, warrants habeas relief and the record did not "conclusively show" that he could not establish facts warranting relief under § 2254, which entitled petitioner to a hearing.

Petitioner respectfully urges that all aspects of the Circuit Court decision are erroneous and at variance with this Court's decisions as explained in the argument below.

## ARGUMENTS AMPLIFYING REASONS FOR WRIT

2. The Fifth Circuit Panel Opinion erred affirming the district Court's denial of petitioner evidence being insufficient to convict him of first degree murder when, indeed the jury could not reasonably, logically, and legally infer from the evidence presented that petitioner was guilty of violating the statute beyond a reasonable doubt.

The state only presented evidence of petitioner presence at the scene of the crime. See Watson v. State, 127 So. 3d 270 (Miss. Ct. App. 2013); State answer at 20; and R&R page 10, lines 3-5. The government must prove that the defendant was guilty beyond a reasonable doubt, not merely that the defendant could have been guilty. United States v. Crain, 33 F. 3d 480, 486 (5<sup>th</sup> Cir. 1994). According to the record there is no sufficient evidence or testimonies that say Watson committed first degree murder. See Chief deputy Freddie Yarbrough testimony Tr. pages 25-33; Cecilia Kazery Miss. Bureau of Investigations testimony Tr. pages 50-59, which states, "There is no weapon, and the strongest thing that we have is that Dexter knew how Patricia was dressed when she was dead." Insufficiency of the evidence can support a claim for habeas relief

only if the evidence, when viewed in the light most favorable to the State, is such that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>99</sup> Santellan v. Cockrell, 271 F.3d 190, 193 (5<sup>th</sup> Cir. 2001). The only physical evidence the state presented was a pair of shoes. Appendix H

Watson asserts there is no way from the testimonies and physical evidence that no rational trier of fact could have found the essential elements of first degree murder, especially when the jury was never instructed on the elements of first degree murder.

Watson Due Process Clause guaranteed by the Fourteenth Amendment was violated when the state failed to proved beyond a reasonable doubt every essential element and fact necessary to constitute the crime of first degree murder. See In re Winship, 397 U.S. 358, 364 (1970); Jackson v. Virginia, 443 U.S. 307, 318-19.

Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime of which he was charged.<sup>100</sup> In re Winship, Supra, at 364; See also Garland v. Maggio, 717 F.2d 199, 203 (5<sup>th</sup> Cir. 1983).

Watson has established that the Magistrate Judge decision was based on an unreasonable determination of the facts in light of the evidence.

2. The Fifth Circuit Panel Opinion erred affirming the district court's denial of Petitioner's jury not being instructed on the elements of the charged crime relieving the State of its burden of proving every element of a criminal offense beyond a reasonable doubt, is in direct conflict with this Court's decision in Winship and Sandstrom, infra.

In the instance case Watson was barred pursuant to Miss. Code Ann. § 99-39-27(9) of the Mississippi Uniform Post-Conviction Collateral Relief Act, as a successive petition. Watson has shown that the

Mississippi State Courts have not strictly or regularly applied a procedural bar to the vast majority of similar or identical claims where unlike in Watson case, the jury was never instructed on the law of principals of first degree murder. Appendix I

Ballenger v. State, 761 So. 2d 214 (Miss. 2000); Shaffer v. State, 740 So. 2d 273, 282 (Miss. 1998); Hunter v. State, 684 So. 2d 625 (Miss. 1996); Harrell v. State, 134 So. 3d 266 (Miss. 2014) (When a person stood convicted without a jury having found him guilty of each element of the charged crime beyond a reasonable doubt because the jury did not receive instruction on each element, the error in failing to instruct was fundamental and required automatic reversal.); stands for the proposition that the State of Mississippi Courts have not strictly or regularly applied a procedural bar.

The core of this argument esteems from the elements of first degree murder not being in Watson's indictment which lead the jury to be not instructed on the elements of first degree murder. Appendix J

Federal Court made it clear in Robertson v. Cain, 324 F.3d 297 (5<sup>th</sup> Cir. 2003), which the fifth circuit ruled that State trial court's jury instructions on the law of principals relieved State of its Fourteenth Amendment burden of proving Petitioner's specific intent to kill. See also Flowers v. Blackburn, 779 F.2d 1115 (5<sup>th</sup> Cir. 1986).

The jury in the instance case was not instructed on the essential elements of first degree murder and for the same reason as in Robertson, *supra*, the instructions read as a whole relieved the State of its Fourteenth Amendment burden of proving Watson's specific intent to kill.

In Winship and Sandstrom, the Supreme Court clearly declared unconstitutional any jury instruction that relieved the State of its Fourteenth Amendment burden of proving every element of a criminal

offense beyond a reasonable doubt. See Sandstrom, 442 U.S. at 520-24, 99 S. Ct. 2450 (citing Winship, 397 U.S. at 364, 90 S.Ct. 1068).

Watson has asserted a fundamental Pre-Sentence claim that he was not tried, indicted, or convicted by the Grand Jury indictment, nor given notice of the Grand Jury's charges as were necessary to Watson's affirmative defense and limitations of Jeopardy. And where it's not for constitutional error no finder of fact would have not found Watson guilty of murder, because it was not found in the Grand Jury's indictment and its instructions. Appendix I, & J

3. The Fifth Circuit Panel Opinion erred affirming the district court's denial of Petitioner's effective assistance of counsel claims because its decision is in direct conflict with this Court's decision in Strickland, Gideon, McMann, and Powell, infra.

Watson had went without having the benefit of an attorney between March of 2011, until January of 2012, being responsible for interviewing potential witnesses and make independent investigation of the facts and circumstances of his case. Watson only had counsel for thirteen (13) days between December 28, 2011, to January 10, 2012. January 10, 2012, was first time Watson saw his counsel at the arraignment and trial was nine (9) days later on January 19, 2012. Appendix G

Watson had requested for appointment of counsel at an initial appearance on March 19, 2011. Appendix E

Federal Courts have ruled, the Six Amendment to the United States Constitution provides: In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense. Gideon v. Wainwright, 372 U.S. 335 (1963); McMann v. Richardson, 397 U.S. 759 (1970).

Watson asserts such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. Powell v. Alabama, 287 U.S. 45, at 53 (1932).

Watson suffered a complete denial of counsel from the surrounding circumstances by the State which renders his conviction to be fundamentally unfair. Indeed, the U.S. Supreme Court has made it clear that the "complete denial of counsel" falls in the very limited class of cases of "structural error" which requires reversal. Nader v. United States, 527 U.S. 1, 8-9, 119 S.Ct 1827, 144 L.Ed. 2d 35 (1999) (quoting Gibson, Supra, (complete denial of counsel)).

The surrounding circumstances made it so unlikely, that any lawyer could provide effective assistance, that ineffectiveness was properly presumed without inquiry into actual performance at trial. Watson counsel did not file No pre-trial motions at all. None...

Did Watson suffered a complete denial of his Sixth Amendment fundamental constitutional right to effective assistance of counsel?

4. The Fifth Circuit Panel Opinion erred affirming the district Court's denial of Petitioner's effective assistance of appellate counsel claim because its decision is in direct conflict with this Court's decision in Strickland and Kimmelman, *infra*.

Watson was arrested without a warrant on March 6, 2011, Appendix C, D. Forty eight (48) hours of Watson's detention in jail between March 6, 2011, and March 9, 2011, the law enforcement officers did not promptly take him before a judicial officer to determine whether there was probable cause for his arrest. Watson was never promptly taken before a judge even after the completion of the administrative steps incident to arrest, Appendix C, D, & E County of Riverside v. McLaugh-

Lin, 500 U.S. 44, 56 (1991); Gerstein v. Pugh, 420 U.S. 103 (1975).

Appellate counsel's performance fell below an objective standard of reasonableness because he failed to raise Watson's Fourth Amendment illegal search and seizure and file a motion to suppress the illegally seized evidence. See Huynh v. King, 95 F.3d 1052, 1056 (11<sup>th</sup> Cir. 1996); Kimmelman v. Morrison, 477 U.S. 365 (1986).

The Port Gibson Police Department busted into Watson's residence and searched, seized, and arrested Watson without a warrant. This action by law enforcement violated Watson's Fourth Amendment right.

See Katz v. United States, 389 U.S. 347, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967). Searches conducted without warrants have been held unlawful "notwithstanding facts unquestionably showing probable cause."<sup>99</sup> Agnello v. United States, 269 U.S. 20, 33, 70 L.Ed. 145, 149, 46 S.Ct. 47, 51 ALR 409, for the Constitution requires "that the deliberate, impartial judgment of a judicial officer... be interposed between the citizen and the police...".<sup>100</sup> Wong Sun v. United States, 371 U.S. 471, 481-82, 9 L.Ed.2d 441, 451, 83 S.Ct. 1076. "Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes."<sup>101</sup> United States v. Jeffers, 342 U.S. 48, 51, 96 L.Ed. 59, 64, 72 S.Ct. 93 and that Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. See Katz, 389 U.S. at 357.

Had appellate counsel raised Watson Fourth Amendment issue the illegal search, seizure, and warrantless arrest, and filed a motion to suppress; there exists more than a reasonable probability that the result of the proceeding of a retrial would have been different and the evidence would have

been suppressed. See Kimmelman, 477 U.S. at 383,.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

October 16 Dexter Watson

Date: October 16, 2018