

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DERRICK L. BOOTH-ProSe — PETITIONER
(Your Name)

United States District ^{VS.} Court For
The Eastern District Of Arkansas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

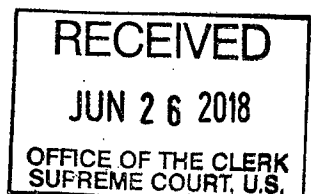
PETITION FOR WRIT OF CERTIORARI

DERRICK LAMONT BOOTH - ProSe
(Your Name)

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(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1) Whether the state court violated Mr. Booth's 6th Amendment Rights, when it clearly showed that due to his counsel's unprofessional errors and lack of trial strategy during Mr. Booth's trial, when the defense counsel openly admits that "he dropped the ball" on Mr. Booth's defense during the trial.

2) Whether the testimony of the expert for the defense was sufficient enough to render a reasonable conclusion on the facts of the fire, and the ability to determine an ignition source, other than what the Fire Marshal Baker testified on during the trial.

3) Whether trial counsel was ineffective when he failed to object to the testimony that the defendant started the fire. Was the counsel's performance unreliable, or the proceedings unfair.
(see *Lockhart v. Fretwell*, 506 U.S. 364 (1993))

4) Whether Fire Marshal deviated from the standard protocols of the fire investigation contained in the NFPA 921, when he testified as an expert witness during trial, and making his determination and conclusion that the fire was incendiary, absent the ability to determine an ignition source.

5) Whether as a comparison case, *Jackson V. McQuiggin*, 553 Fed. Appx. 575 (6th Cir. 2014), A petitioner convicted of arson argued that counsel was ineffective at trial because he opted to forgo

expert testimony to refute the states expert theory that the fire was intentionally set.

6) Whether the Courts assessment of the investigation leading to a strategic decision "was itself reasonable." Wiggins v. Smith, 539 U.S 510,523 (2003). And where the trial counsel articulated a resound trial strategy wherein he was deprived of a fair trial, and the defendant believes that there was a conceivable chance of a different result.

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[x] 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:

Derrick Lamont Booth
ADC #86777

Wendy Kelley, Director
Arkansas Dept. Of Corrections
Original Name Ryan Baker

Testimony from trial

- (a) Captain Naim Salaam
- (b) Captain Kevin Murphy
- (c) Fire Marshal Ryan Baker

Jacqueline Booth
Estranged Wife
3 Althea Cir.
Little Rock, Ar. 72209

Testimony from Evidentiary Hearing

- (a) Robert Paul Bieber
- (b) Marion Andrew Humphrey, Sr.

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2 Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure § 32.2 (6th ed. 2011)	18
Ken Strutin, Arson and the Science of Fire, LAW AND TECHNOLOGY RESOURCES FOR LEGAL PROFESSIONALS (Nov. 2012)	23

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Rights Under 28 U.S.C § 2253 (c)(1)(2)

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was FEBRUARY 21, 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: APRIL 12, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 N/A.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISDICTION

The Petitioner Derrick Booth conviction in the District Court had authority to entertain Booth's habeas petition challenging the state court judgment pursuant to 28 U.S.C § 2254. Booth appeals from the Federal District Court's final judgment, on January 20, 2017, denying his habeas petition and granting a certificate of appealability on the issue of whether Booth was deprived of his Constitutional Right to the effective assistance of counsel during his state court trial that resulted in a sentence of 12 years imprisonment. Booth's notice of appeal was timely filed on January 30, 2017. This court has appellate jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253.

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 A to the petition and is

☒ reported at 882 F.3d 759, 2018 U.S.Appx.Lex. 4066; 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 5:15-cv-00295-JLH; 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 N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

STATEMENT OF THE CASE

On October 5, 2012, Derrick Both was charged with arson in Pulaski County Circuit Court case No. 60CR12-3455 in Little Rock, Arkansas. He was accused of intentionally setting fire to the home he shared with his former wife, Jacqueline Clark Booth. Mr. Booth had recently been released from federal prison and was residing in a halfway house, but he had been to the home from time to time to work on the house and his relationship with his ex-wife. The two had a long, tumultuous relationship to say the least.

As support for the charge, the state relied on a report prepared by Assistant Fire Marshall Ryon Baker, who had been assigned to investigate the fire. Bakers report concluded that the fire was the result of a criminal arson and that Mr. Derrick Booth was to blame. The prosecution offered Baker as an expert in fire investigations, yet Baker had never testified as one before in a criminal case.

In Bakers own words, once he determines that a fire is incendiary, his role as a fire investigator ends, and his work as a police officer begins. He noted that the house was in disaray and a glass dining room table had been shattered. He also interviewed the homeowner, Mr. Booth's estranged wife, who shared information against Mr. Booth and a series of vulgar threatening text messages to her from Booth on the day of the fire. In the trial the state presented testimony from fire Marshal Ryan Baker as an expert

and he stated that the fire was caused by human involvement. And he also stated that he developed a suspect as a result of his investigation, and named the Defendant, Mr.Booth.

After reviewing all of the information collected during the course of the investigation, Baker determined that Mr.Booth used a match or lighter to set fire to a pile of clothes in the back bedroom. The fire smoldered for "several hours before" being reported. Baker eventually turned his file over to the state prosecutor as an arson case.

In this case Mr.Booth maintained his innocence and took his case to trial. With the help of former judge and family friend Mr.Marion Humphry, now Mr.Booth's trial attorney on this case. To prepare Mr.Booth for his trial, Mr.Humphry spent most of his time preparing an alibi defense, but a couple of nights before the jury trial started if not the night before, Mr.Humphry decided that the best strategy was to attack assistant Fire Marshal Baker's findings. Mr.Humphry contacted a friend whom is also a fire fighter to get some insight on this case, and to be able to challenge the expert testimony of the fire Marshal Mr.Bakers statements of a smoldering fire, and the testimony of an incendiary cause.

But Mr.Humphry failed Mr.Booth at trial when he "did not" consult any other witness with expertise in fire investigations. He also did not take the time to learn about fire investigations. And because he did not attempt to obtain Mr.Baker's curriculum vitae, he did not request any of Baker's credentials, with other

experts in the field. Humphrey did not submit a FOIA request to Baker's employer to learn about work history, nor did he attempt to interview Baker or his employer.

Humphrey again did not consult with an expert, so he had no one to help him develop questions for cross examination. And because Humphrey had no ammunition gathered to which Mr. Baker's credentials and findings, Mr. Humphrey was forced to use common sense principles to elicit answers from Baker on cross examination that would undermine his conclusions that the fire was intentionally set. Unfortunately for Mr. Booth, Humphrey's efforts were to no avail.

On June 9, 2013, the Honorable Wendell Griffer, convened a jury in Pulaski County Circuit Court, case No. 60CR2012-3455, without any objections from Humphrey. Under cross examination Baker conceded that he did not know Booth's particular motivation for setting the fire. But that he knew that Booth was in fact the one to set the fire. (This was no accident) Mr. Humphrey never challenged Mr. Baker's testimony. And at the close of all the evidence, trial counsel Humphrey asked for a "direct verdict", Humphrey emphasized to the trial judge that other people had access to the home, that Booth's alibi had not been refuted, and that Baker's testimony was unreliable. He stated that the fire and cause should be "undetermined". But also, Humphrey had no evidence or argument to explain why, but he argued it nonetheless. This action shows ineffectiveness and that counsel's conduct falls within the wide range of unreasonable professional assistance.

Mr.Humphrey later admitted during a deposition and at the evidentiary hearing before the district court. Humphrey candidly admitted that in hindsight, that "he could have used the help of an expert. He also stated that, he thinks it would have been helpful towards Mr.Booth's defense. Also Mr.Humphrey states that "On that I dropped the ball on that in terms of that. And that he had no problem saying that whatsoever, if the expert was gonna say the right thing.

Mr.Humphrey further admitted that by not doing any investigation into the forensic fire investigation, the strongest proof of prejudice in this case is found in Bieber's report. When the trial court's statements just before denying Booth's motion for a direct verdict, Beiber testified at the evidentiary hearing that the true cause of the fire should have been listed as "undetermined". This information would have supported trial Counsels suggestion to jury that the fire was not set intentionally. More importantly, this information would have given Mr.Humphrey the support he needed for a direct verdict, no evidence of this alternative, reasonable conclusion had been adduced or cross examination or offered by Booth's trial counsel, however the court allowed the case go to the jury. Last, and perhaps most importantly, had trial counsel challenged Baker's credibility and findings he would have been precluded from testifying that he developed Mr.Booth as a suspect.

REASONS FOR GRANTING THE PETITION

The Court's should grant, Mr. Booths Petition, based on the facts presented throughout this petition and his case. Mr. Booth has tried, and failed to reach the burdon of proving his case, due to the fact that he had ineffective counsel on his defense, in violation of the Sixth Amendment right to counsel.

The Petitioner Mr.Derrick Lamont Booth, pray that this court will grant him the relief that he is seeking based on facts, and evidence, and the prejudice shown throughout his case during trial. And mostly due to the fact of his ability to show his ineffictive assistance of counsel claim, that clearly show in his case, that Mr.Booth Sixth Amendment rights were violated, and that his defense counsel fell well below the reasonable ethics, at and during Mr.Booth's trial.

The testimony and the expert credibility should be challenged, based on the factual cause of the fire. And also to demonstrate that but for trial counsels failure to investigate Baker's qualifications and findings, Baker's testimony would not have been admitted and the jury would have been forced to acquit Mr.Booth on the arson charge

Mr. Booth prays that the court would recognize his Petition and said claims, that show important bearings on incompetent representation at trial, and that Mr.Booth should be granted his Petition on these merit's.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick Imbert Booth - Pro Se

Date: 5-26-18