

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMEEL SIMPSON — PETITIONER
(Your Name)

vs.

JAMES ERKERD, ET AL
SUPERINTENDENT SCI HUNTINGDON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMEEL SIMPSON GP-9750

(Your Name)

1100 PIKE STREET

(Address)

HUNTINGDON, PA. 16654-1112

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. PETITIONER JAMEEL SIMPSON WAS DENIED HIS RIGHTS UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO EFFECTIVE ASSISTANCE OF COUNSEL IN THAT TRIAL COUNSEL HAD A CONFLICT OF INTEREST WHICH SHOULD HAVE PRECLUDED HIM FROM REPRESENTING THE PETITIONER AND WHICH PREJUDICIALLY IMPACTED PETITIONER'S ABILITY TO PRESENT A DEFENSE.
2. PETITIONER WAS DENIED HIS RIGHTS UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, TO EFFECTIVE ASSISTANCE OF COUNSEL FOR NUMEROUS FAILURES BY COUNSEL THUS DENYING PETITIONER THIS VALUED CONSTITUTIONAL RIGHT.
3. PETITIONER IS ACTUALLY INNOCENT AND WAS WRONGFULLY CONVICTED.

LIST OF PARTIES

[] 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:

1. JAMES ECKERD, SUPERINTENDENT OF SCI HUNTINGDON
SCI HUNTINGDON
1100 PIKE STREET
HUNTINGDON, PA. 16654-1112

2. DISTRICT ATTORNEY OF PHILADELPHIA
THREE SOUTH PENN SQ.
PHILADELPHIA, PA. 19107-3499

**IS COUNSEL REPRESENTING ALL RESPONDENTS

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|-------------|
| Baldwin v. Reese, 541 U.S. 27 (2004) | 6 |
| Bell v. Cone, 535 U.S. 685 (2002) | 6 |
| Bousely v. U.S., 523 U.S. 614 (1998) | 6 |
| Clinkscale v. Carter, 375 F.3d 430 (6th Cir. 2004) | 10 |
| Cuyler v. Sullivan, 446 U.S. 335 (1980) | 8 |
| Glasser v. U.S., 315 U.S. 60 (1942) | 8 |
| Holloway v. Arkansas, 435 U.S. 475 (1978) | 8 |
| Roe v. Flores-Ortega, 528 U.S. 470 (2000) | 10 |
| O'Sullivan v. Boerckel, 526 U.S. 838 (1999) | 6 |
| Schlup v. Delo, 513 U.S. 298 (1995) | 6 |
| Strickland v. Washington, 466 U.S. 668 (1984) | 6,11 |
| U.S. v. Laura, 667 F.2d 365 (3d Cir.1984) | 8 |
| U.S. v. Gambino. 864 F.2d 1064 (3d Cir. 1988) | 8 |
| Werts v. Vaughn, 228 F.3d 178 (3d Cir. 2000) | 6 |

OTHER

TABLE OF CONTENTS

| | |
|--|----|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 6 |
| CONCLUSION..... | 11 |

INDEX TO APPENDICES

| | |
|------------|---|
| APPENDIX A | THIRD CIRCUIT COURT OF APPEALS [ORDER] THIRD CIRCUIT COURT OF APPEALS [REARGUMENT ORDER] |
| APPENDIX B | DISTRICT COURT ORDER ACCEPTING/ADOPTING MAGISTRATES REPORT AND RECOMMENDATION WITH MAGISTRATE REPORT AND RECOMMENDATION ATTACHED TO DISTRICT COURT ORDER. |
| APPENDIX C | |
| APPENDIX D | |
| APPENDIX E | |
| APPENDIX F | |

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 _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. DATE COURT ISSUED ORDER ON 8-1-2018.

Please note; The 3rd Circuit denied the rehearing on 9-4-18.

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. Please note; The Court denied § 2254 on 8-14-17.

☐ 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 8-1-2018.

☐ 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: 9-4-18, 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 _____.

☐ 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

The United States Constitutional Amendments involved here are as follows;

The 6th Amendment

The 14th Amendment

The Statutory Provisions involved here are the AEDPA HABEAS RULES

and 28 U.S.C. § 2254.

STATEMENT OF THE CASE

The incident took place at THE WHEELS OF SOULS.

Sometime during the evening of February 4, 2003 Petitioner Jameel Simpson was ejected from the club along with Ralph Burnett, Tyriek Newell, and Nate Hunter because of a scuffle. All four men proceeded to get into a vehicle and they left the area.

The Petitioner asserts that he never returned to the club after being ejected and that he is actually innocent of the murder of Jerome Robinson a club member who came to aid Charlie Wilson, **prior to the shooting**, when the Petitioner and Burnett, Newell and Hunter were ejected from the club.

The Petitioner had a strong iron clad alibi defense but trial counsel failed to give the proper notice of a potential alibi defense in a timely manner.

Trial counsel knew that Saffiyah Warren and Tyriek Newell were two witnesses that existed and could give potential alibi testimony-Petitioner informed trial counsel-that he was nowhere near the Wheels of Soul Club, when the incident did take place. Trial counsel failed to interview any of the alibi witnesses, or to raise a timely alibi defense by serving notice that an alibi defense may be presented at trial.

Petitioner was denied the effective assistance of counsel in that trial counsel had a conflict of interest which should have precluded him from representing the Petitioner and which prejudicially impacted Petitioner's ability to present a defense.

Because of this conflict, the Petitioner suffered enormous prejudice, and a Sixth Amendment violation of his U.S. Constitutional rights.

On April 19, 2006, a jury convicted Petitioner of first degree murder and

AGGRAVATED ASSAULT, and carrying a firearm without a license. The Petitioner was sentenced to LIFE in prison without parole.

Petitioner has been diligent in his attempts to overturn the conviction. The Petitioner specifically asserts that he was not there at the club or near the club when the shooting took place and the decedent was killed.

The Petitioner's alibi clearly demonstrates that the Petitioner was not the individual who shot and killed the decedent.

Had it not been for trial counsel's ineffectiveness, the Petitioner would not have been convicted.

REASONS FOR GRANTING THE PETITION

The Petitioner is aware that the U.S. Supreme Court only grants Writs of Certiorari in only the rarest/special cases that have an impact of serious consequences upon issues that may affect other lower courts throughout the nation.

Petitioner Simpson feels that this is such a case.

The habeas corpus 28 U.S.C. § 2254 that was decided by the lower courts is a petition that is governed by the provisions of the AEDPA of 1996, effective on April 24, 1996. The AEDPA modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas court's retrials' via the habeas petition. Bell v. Cone, 535 U.S. 685, 693 (2002).

Here, the Petitioner did exhaust all remedies in the state courts before, proceeding into Federal Court via § 2254 habeas corpus. See Baldwin v. Reese, 541 U.S. 27, 29 (2004); and O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

The issue for consideration by this Court is this: The Petitioner is actually innocent of the murder for which he was convicted and for which he is serving a LIFE sentence. Schlup v. Delo, 513 U.S. 298, 324 (1995); Bousely v. United States, 523 U.S. 614, 623 (1998).

Petitioner suffered the ineffective assistance of counsel as is described in Strickland v. Washington, 466 U.S. 668 (1984). This same standard is used by Pennsylvania courts in assessing ineffective assistance of counsel under the Pa. Constitution. Werts v. Vaughn,

228 F.3d 178, 203 (3d Cir. 2000). The most important prong that must be shown, by the Petitioner, is the prejudice prong. To prove prejudice the Petitioner, here, must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the said proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. The Petitioner is aware that this requires a substantial, not just a conceivable, likelihood of a different result. Here, the Petitioner has met that level of review and the lower courts should have granted the habeas corpus § 2254 and the Third Circuit should have granted Petitioner the COA application.

WHY WAS COUNSEL INEFFECTIVE

Petitioner avers that trial counsel had a conflict of interest that should have precluded him from representing the Petitioner at both the first trial that ended in a mistrial and the second trial which resulted in Petitioner's conviction. Petitioner asserts that the state court decision denying relief was contrary to, or involved an unreasonable application of federal law clearly established by This Court.

The District Court erred in denying the habeas corpus petition and the Third Circuit Court erred in not issuing a Certificate of Appealability.

In short, trial counsel was asked by Petitioner after the second

trial why he had not called Nate Hunter and Kenneth Newell to testify. It was at that time that trial counsel disclosed that he could not call these witnesses because he was representing Nate Hunter in another case and that his son and partner, who represented Petitioner at the hearing (preliminary hearing) had also represented Kenneth Newell on numerous occasions. Trial counsel and his partner/son knew that Kenneth Newell was the person who actually shot Jerome Robinson in that the Petitioner avers that he had specifically told them so, and the police initially considered Kenneth Newell to be the primary suspect based upon the statement given by Kniesha Houston and their questioning of Kenneth's sister Inisha Newell. Trial counsel had possession of both these (2) statements.

Here, Petitioner has demonstrated that trial counsel actively did represent conflicting interests and that this actual conflict did adversely affect trial lawyer's performance. Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); Holloway v. Arkansas, 435 U.S. 475, 487 (1978) and also see Glasser v. United States, 315 U.S. 60, 75-76 (1942).

The United States District Court (ED of Pa.) should have granted the petition for the writ of habeas corpus on this issue/claim, and the Third Circuit Court of Appeals should have granted the Certificate of Appealability application filed. See United States v. Gambino, 864 F.2d 1064, 1070 (3d Cir. 1988); United States v. Laura, 667 F.2d 365 (3rd Cir. 1988).

The conflict of interest adversely and severely affected the said adequacy of the trial lawyer's representation of the Petitioner.

Because of the trial lawyer's divided loyalties, Mr. Newell, would clearly object to any attempt to giving testimony that would vindicate the Petitioner but inculpatate Mr. Newell. He would then certainly not continue to retain the trial counsel or his son/partner on any future criminal charges. The Petitioner wanted to have Mr. Newell testify for numerous reasons. He wanted to present him to the jury as a prime alternative suspect. Petitioner also wanted counsel to examine Mr. Newell about his whereabouts that evening and present witnesses to refute his anticipated claim that he had not gone to the club at all that evening and was not the shooter. Had he testified, Petitioner would have been able to impeach him with inconsistencies between his testimony, his sister's testimony and Ms. Houston's testimony. Had trial counsel call Mr. Newell to testify, the jury in all likelihood would have made a negative credibility determination of his testimony which would have resulted in their ultimately finding reasonable doubt that the Petitioner was the shooter. Petitioner also wanted Nate Hunter as a witness in Petitioner's case. Nate Hunter, if called to testify, would have corroborated other witnesses' testimony that it was Tyriek Newell, and not Petitioner who was involved in the initial altercation with the bouncer at the club. This would have also directly contradicted Mr. Cannady's trial testimony. All of this exculpatory testimony was

lost because of trial counsel's conflict of interest.

It cannot be said that trial counsel's failure to give a timely notice of Petitioner's alibi defense was reasonable. Here, in this instant case, the prosecution's case rests exclusively on purported eyewitnesses identification of the Petitioner as the shooter, the case essentially boiled down to a credibility contest between the prosecutor's witnesses version of events and the Petitioner's. Under these circumstances the Petitioner's inability to provide any supporting evidence for his strongest defense must be considered especially damaging and prejudicial. Clinkscale v. Carter, 375 F.3d 430, 443 (6th Cir. 2004).

Here, the alibi was a critical aspect of the Petitioner's defense. There is nothing reasonable about failing to speak to potential alibi witnesses and to fail to file an alibi notice when such failure risks the exclusion of the alibi defense at trial. Roe v. Flores-Ortega, 528 U.S. 470, 481 (2000).

Petitioner was clearly prejudiced because of trial counsel's failure to investigate, and file the notice of an alibi defense. Had an alibi defense been presented the jury would have had to have been instructed of the alibi defense. This could have caused the jury to have reasonable doubt. The jury would not have given any weight at all, to the eyewitnesses' identification

THESE WOULD BE NO REASON NOT TO PRESENT THE ALIBI DEFENSE.

Petitioner avers that trial counsel was constitutionally ineffective because of the reasons set forth in this petition for certiorari.

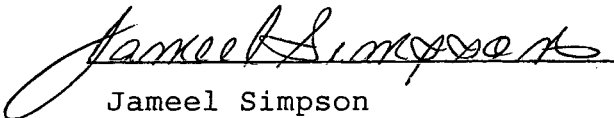
The Sixth Amendment recognizes the right of every criminal defendant to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984).

Here the Petitioner was wrongfully convicted when he is actually innocent and had the trial lawyer been effective the outcome would be different.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Jameel Simpson

Date: November 22 - 2018