

18-7335

No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ALONZO ALEXANDER McKAY,
Petitioner,

v.

HAROLD W. CLARKE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Alonzo Alexander McKay
#1448387/1448387
Baskerville Correctional Center
4150 Hayes Mill Road
Baskerville, VA. 23915
Pro Se Litigant

QUESTION(S) PRESENTED

1. Did the United States Court of Appeals for the Fourth Circuit Err by denying a Certificate of Appealability (COA), due to its exceeding the scope of the (COA) analysis?

2. Did the United States Court of Appeals for the Fourth Circuit Err by affirming both the District Court, and Circuit Court's erroneous Denial of his Habeas Petitions, due to an unreasonable application of the law, which was contrary to this Court's precedent set in Missouri v. Frye, 566 US 134, 132 S.Ct. 1399, 182 L.Ed. 2d 379 (2012) US LEXIS 2321?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A- United States Court of Appeals for the Fourth Circuit, October 2, 2018, Order denying Petition for Rehearing.

APPENDIX B- United States Court of Appeals for the Fourth Circuit, August 28, 2018, Judgment denying a Certificate of Appealability and Appeal.

APPENDIX C- United States Court of Appeals for the Fourth Circuit, September 13, 2018, Stay of Mandate under Fed. R. APP. P. 41(d)(1).

APPENDIX D- United States Court of Appeals for the Fourth Circuit, October 10, 2018, Mandate.

APPENDIX E- United States District Court for the Eastern District of Virginia, April 6, 2018, Order denying 2254 Habeas Corpus Petition.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Buck v. Davis, 508 U.S., 137 S.Ct., 197 L.Ed. 2d 1, (2017), LEXIS 1429.....	3,5
Grogans v. United States, 2014 U.S. Dist. LEXIS 55843.....	6
Grogans v. United States, 2014 U.S. Dist. LEXIS 70655.....	7
Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376(US. 2012)...	3,6
Laster v. Russell, 286 Va. 17, 21, 743 S.E. 2d 272, 274 (Va. 2013) LEXIS 1574.....	7
Missouri v. Frye, 566 U.S. 134, 132 S.Ct. 1399, 182 L.Ed. 2d 379 (2012), U.S. LEXIS 2321.....	Questions Presented, 3, 6

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 B 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 E 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 August 28, 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: October 2, 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 _____.

☐ 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

1. The United States Court of Appeals for the Fourth Circuit exceeded the scope of the Certificate of Appealability (COA) Analysis, which was contrary to this Court's decision and precedent set in *Buck v. Davis*, 508 U.S., 137 S.Ct., 197 L.Ed. 2d 1, (2017), LEXIS 1429.
2. Petitioner's trial counsel was ineffective when he failed to communicate the favorable terms and conditions of a plea offer, which was contrary to this Court's decision and precedent, set in both *Missouri v. Frye*, 566 U.S. 133, 132 S.Ct. 1399, 1408 (U.S. Mo. 2012); and *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376 (US. 2012).

STATEMENT OF THE CASE

The petitioner is incarcerated pursuant to the final judgment of the City of Suffolk Circuit Court, which was entered on, October 8, 2011. Petitioner had a trial by Jury, and was convicted of Statutory Burglary and Grand Larceny. The Trial Court sentenced petitioner in accordance with the jury's recommendation of 20 years of incarceration. Petitioner filed a Petition for Appeal to the Court of Appeals of Virginia, which was denied on May 9, 2012. A three judge panel of the same court affirmed the denial on August 14, 2012. Petitioner then appealed to the Supreme Court of Virginia, which was refused on January 25, 2013. Petitioner then filed a Writ of Habeas Corpus on February 19, 2014 in the City of Suffolk Circuit Court. Petitioner's state habeas corpus was denied on July 20, 2015. Petitioner then filed a 2254 Habeas Petition to the United States District Court, Eastern District of Virginia, which was denied on April 6, 2018. Petitioner then timely filed a petition for appeal and a petition for rehearing in the United States Court of Appeals for the Fourth Circuit, which were both denied and are enclosed as appendices A;B.

REASONS FOR GRANTING THE PETITION

1. The United States Court of Appeals for the Fourth Circuit erred by denying a Certificate of Appealability (COA), due to its exceeding the scope of (COA) analysis.

Petitioner submits he should have been granted a (COA) pursuant to *Buck v. Davis*, 508 U.S., 137 S.Ct., 197 L.Ed. 2d. 1, (2017), U.S. LEXIS 1429. Petitioner submits he meets the same three issues outlined in *Davis*(supra), which are; (1) Court of Appeals exceeded scope of COA analysis; (2) accused demonstrated ineffective assistance; (3) Federal District Court abused discretion by denying relief under 2254 Habeas Petition. Petitioner submits the following to prove he has the same 3 issues:

(1) Court of Appeals exceed scope of COA analysis: *Buck v. Davis*, at L.Ed Digest: Appeals § 1321, states, "To obtain a certificate of appealability, a petitioner is required to make a substantial showing of the denial of a Constitutional right. 28 U.S.C.S. § 2253." Petitioner submits he clearly established, for Sixth Amendment purposes that the Commonwealth's Attorney offered him a favorable plea by email to petitioner's trial counsel, and trial counsel failed to communicate the plea offer with the favorable conditions, which is reffered as (Attach 1.) throughout the record. Petitioner submits trial counsel states in a August 14, 2013, letter (Attach 2.), in which he states, "I did not have a copy of the email with me and did not show it to him at that time but did explain all the details in it except I'm not sure that I told him the exact numbers the Commonwealth's Attorney had calculated for his sentence guidelines." Petitioner submits he has

clearly made a substantial showing of the denial of a constitutional right, thus requiring a (COA); (2) Accused demonstrated ineffective assistance: Petitioner submits pursuant to (Attach 2.), his counsel is admitting that he is not sure if he told petitioner, the exact numbers the Commonwealth's Attorney had calculated for his sentence guidelines. Petitioner submits this is ineffective assistance per *Missouri v. Frye*, 566 U.S. 133, 132 S.Ct. 1399, 1408 (U.S. Mo. 2012); and *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376 (U.S. 2012).; (3) Federal District Court abused discretion by denying relief under 2254 Habeas Petition: Petitioner submits it is clear by the District Court's Report and Recommendation, that the Court arbitrarily and capriciously denied petitioner the appropriate relief based on a meritless assertion of the facts of evidence. Petitioner submits the District Court was required to grant relief pursuant to the precedent set in *Missouri v. Frye*, (supra).

2. Petitioner submits based on (Attach 2.), in which his trial counsel is admitting that he is not sure if he told petitioner the exact numbers the Commonwealth's Attorney had calculated for his sentence guidelines, the Court was required to hold an evidentiary hearing.


Petitioner submits pursuant to *Grogans v. United States*, 2014 U.S. Dist. LEXIS 55843, the Court states, "Though the claim is somewhat suspect, the Court cannot say without hesitation that counsel conveyed the favorable offer and will therefore conduct an evidentiary hearing to resolve the matter." Petitioner submits it is clear that counsel did not convey the favorable offer and therefore, requiring an evidentiary hearing to be held.

Petitioner submits Grogans v. United States, 2014 U.S. Dist. LEXIS 70655, is the model for relief that the District Court should have followed. Unlike counsel in Grogans, petitioner can prove by his trial counsel's own admission (Attach 2.), counsel did not the essential terms of the plea offer. Petitioner submits when he filed his state habeas petition asserting the issue, the state court should have held an evidentiary hearing pursuant to Laster v. Russell, 286 Va. 17, 21, 743 S.E. 2d 272, 274 (Va. 2013) LEXIS 1574, which states, "On October 20, 2011, Laster filed a petition for a writ of habeas corpus in the Circuit Court. Laster alleged he was denied the effective assistance of counsel because his first attorney, Lawrence did not communicate to him the plea offer from the Commonwealth. A hearing on the petition was held on March 8, 2012."

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,


Alexander A. McKay, Pro Se

Date: 12/13/18