

IN THE

SUPREME COURT OF THE UNITED STATES

No. 17A1232

IN RE: TORREY BROWN
PETITIONER
VS.

ROBERT C. TANNER, WARDEN, B.B. RAYBURN CORRECTIONAL CENTER

RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

Torrey Brown

Rayburn Correctional Center
27268 Highway 21
Angie, Louisiana 70426-3030

QUESTIONS PRESENTED

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:

TABLE OF CONTENTS

MOTION FOR LEAVE TO PROCEED <i>IN FORMA PAUPERIS</i>	1
STATEMENT OF ACCOUNT	3
PETITION FOR WRIT OF CERTIORARI	4
QUESTIONS PRESENTED	5
LIST OF PARTIES	5
INDEX TO APPENDICES	7
TABLE OF AUTHORITIES CITED	8
PETITION FOR WRIT OF CERTIORARI	9
OPINIONS BELOW	9
JURISDICTION	10
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	11
STATEMENT OF THE CASE	11
REASON FOR GRANTING THIS WRIT	13
CONCLUSION	14
PROOF OF SERVICE	15

INDEX TO APPENDICES

APPENDIX "A - DECISION RENDERED BY UNITED STATES DISTRICT COURT

APPENDIX "B" - DECISION RENDERED BY UNITED STATES COURT OF APPEALS
FIFTH CIRUIT

TABLE OF AUTHORITIES CITED

Slack v. McDaniel, 529 U.S. 473 (2000)	13
Miller-El v. Cockrell, 537 U.S. 322 (2003)	13
State v. Brown, 10-KA-238 (La. App. 5 Cir. 6/29/11), 71 So. 3d 1069.....	13
State v. Brown, 11-KH-1656 (La. 2/10/12), 82 So. 3d 1232.....	13
State v. Brown, 10-KA-238 (La. App. 5 Cir. 7/31/12), 99 So. 3d 684.....	13

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States Court of Appeals, Fifth Circuit appears at Appendix "B" to this petition and is: 17-30626

[] reported at docket No. 17-30626 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[] is unpublished.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 "A" to this petition and is: EASTERN DISTRICT COURT OF LOUISIANA, 06/30/2017

[] reported at 2017 U.S. Dist. LEXIS 103044; 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[] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Fifth Circuit Court of Appeals decided my case was May 9, 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).

[] For cases from **state courts:**

The date on which the highest state court decided the 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

Conviction and Sentence in violation of the V Amendment of the United States Constitution

Conviction and Sentence in violation of the VI Amendment of the United States Constitution

Conviction and Sentence in violation of the XIV Amendment of the United States Constitution

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Applicant filed a 28 U.S.C. §2254 into the Eastern District Court, State of Louisiana from the state court level denying Applicant relief from his state trial court conviction and sentence. The Eastern District Court denied the Application June 30, 2017 ruling denying Applicant's habeas corpus petition meets the COA standards enunciated by *Slack v. McDaniel*, 529 U.S. 473 (2000), and *Miller-El v. Cockrell*, 537 U.S. 322 (2003), which posit that reasonable jurist would debate whether Applicant's habeas petition should have been resolved in a different manner.

Applicant's direct appeal filed into his State Court was initially ruled on by the Louisiana Court of Appeal, Fifth Circuit, on June 29, 2011, that court affirmed the convictions and sentences with the exception of the multiple offender sentence---which the Fifth Circuit vacated.¹

The State sought relief from this ruling with the Louisiana Supreme Court, and on February 10, 2012, the Louisiana Supreme Court granted relief to the State, reinstated the multiple offender sentence that was nullified by the Fifth Circuit, and remanded the matter back to the Fifth Circuit for consideration of the pretermitted issues.²

On July 31, 2012, the Louisiana Fifth Circuit affirmed the convictions and sentences.³

Applicant did not seek review of this ruling before the Louisiana Supreme Court because he considered his direct appeal to be exhausted to the highest state court (when the Louisiana Supreme Court issued its February 10, 2012 decision). On October 25, 2013, Applicant filed post-conviction relief in the state district court. There is no dispute concerning the date that the State PCR application was filed, the fact that the claims presented were timely filed and

¹ See, State v. Brown, 10-KA-238 (La. App. 5 Cir. 6/29/11), 71 So. 3d 1069.

² See, State v. Brown, 11-KH-1656 (La. 2/10/12), 82 So. 3d 1232.

³ See, State v. Brown, 10-KA-238 (La. App. 5 Cir. 7/31/12), 99 So. 3d 684.

thoroughly exhausted, and the date that the highest State Court (the Louisiana Supreme Court) denied certiorari review of the PCR issues in October 2, 2015.⁴ The point in contention in this case is at what point Applicant's direct appeal became finalized.

REASON FOR GRANTING THIS PETITION

Applicant timely filed his habeas corpus into the federal district court on December 21, 2015. This filing was timely, for AEDPA purposes; because Applicant's direct appeal became final 90 days after the Louisiana Fifth Circuit Court of Appeal affirmed Applicant's direct appeal on remand from the Louisiana Supreme Court. Applicant argued in the federal district court, as he argues here, that the Louisiana Supreme Court had already addressed his case on direct appeal (on 2/10/12), it would have been nonsensical and redundant to ask the Louisiana Supreme Court to re-address the same issue after the 7/31/12 Fifth Circuit ruling on remand. Thus, Applicant posits, the 90-day grace period for a U.S. Supreme Court Certiorari filing that applies to all direct appeal cases---when the defendant's case has been litigated to the highest State Court (*Roberts v. Cockrell*, 319 F. 3d 690 (5 Cir. 2003))---reasonably attaches to this case at bar. This is true because, technically, Applicant's case has been exhausted to the highest State Court on direct appeal. Thus, the one-year, AEDPA filing deadline began to run 90 days after the Louisiana Fifth Circuit Court of Appeal's 7/30/12 decision on remand. Within this context, reasonable jurist would debate the district court's June 30, 2017 ruling dismissing Applicant's habeas petition as untimely. In fact, reasonable jurists would conclude that Applicant's habeas filing was timely. The denial of the Certificate of Appealability by the United States Court of Appeal, Fifth Circuit should be reversed and this case remanded before the United States District Court to issue a ruling on the merits of the claim presented herein for review.

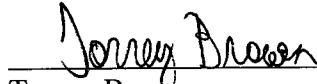
⁴ See, 6/30/17 District Court Judge Order and Reasons, pgs. 3-5 (Rec.)

CONCLUSION

WHEREFORE, the petition for writ of certiorari should be granted.

SIGNED ON THIS 26th DAY OF December 2018.

Respectfully Submitted,



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