

No. 18-7439

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

DEC 21 2018

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GREGORY M. WARD — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit U.S. Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

GREGORY M. WARD

(Your Name)

Federal Correctional Complex, C-4
PO Box 5000

(Address)

Yazoo City, Mississippi 39194

(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

Question Presented

Petitioner contends that his trial counsel, Eddie Jordan, was ineffective because he: erroneously advised Petitioner that, by pleading guilty without a plea agreement, his ability to appeal the denial of the Motion to Suppress the Evidence was preserved, thus rendering Mr. Ward's guilty plea unknowing and involuntary.

1. Does erroneous advice from trial counsel as stated herein constitute "Ineffective assistance of counsel"?
2. Did the District Court for the Eastern District of Louisiana and the Fifth Circuit Court of Appeals abuse its discretion by not granting Petitioner an evidenciary hearing for Petitioner's allegations that Petitioner received erroneous advice from trial counsel in the plea phase of **trial**?

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Petitioner GREGORY M. WARD respectfully petitions for a Writ of Certiorari to review the Judgment of the Eastern District of Louisiana and the United States Court of Appeals for the Fifth Circuit.

Judgment

The Fifth Circuit's opinion is unpublished, the Judgment was entered on May 21, 2018. Petitioner filed a Rehearing Motion which was denied on July 27, 2018. A copy is provided in the Appendix to this Petition.

Jurisdiction

The Fifth Circuit entered its Judgment on May 21, 2018. Petitioner filed a Motion for Rehearing which was also denied on July 27, 2018. Petitioner also filed a Motion for Extension of Time from the Supreme Court of the United States which extended the time to and including December 23, 2018. This Court has jurisdiction under 28 U.S.C. §1254(1).

Relevant Constitutional Provisions

The Sixth, Fifth, and Fourteenth Amendments to the Constitution provides: Sixth Amendment provides in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fifth and Fourteenth Amendments provide that no person shall be deprived of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The government brought a criminal complaint against GREGORY M. WARD on April 19, 2013, accusing WARD of possession with intent to distribute 1 kilogram or more of heroin (R. Doc.1).

Subsequently, on June 14, 2013, a federal Grand Jury handed down an Indictment charging GREGORY M. WARD with possession with intent to distribute 1 kilogram or more of heroin in violation of 21 U.S.C. §841(a)(1) and (B)(1)(A) count one and possession with intent to distribute 28 grams or more of cocaine base in violation of 21 U.S.C. §841(a)(1) and (B)(1)(B) count two (R.Doc 2). Mr. Ward, with retained counsel, made his initial appearance and was arraigned on July 10, 2013 (R.Docs 10 and 11). Mr. Ward pled not guilty and was remanded into custody pending trial or other disposition of the case (R.Docs. 11-12).

On September 24, 2013 Mr. Ward, through his counsel, filed a Motion to Suppress Evidence (R.Doc. 25). The District Court conducted an evidentiary hearing on Mr. Ward's Motion to Suppress the Evidence on October 17, 2013. At the hearing, witnesses testified and arguments were presented. Ruling from the bench, Judge Zainey denied Mr. Ward's Motion. The Court noted that the Motion to Suppress was a "close call". (See transcript of Motion to Suppress Hearing p.56).

On October 10, 2013 a Grand Jury returned a Superseding Indictment against Mr. Ward, charging him with possession with intent to distribute 100 grams or more of heroin in violation of 21 U.S.C. §841(a)(1) and (b)(1)(B) (R.Doc. 35). Mr. Ward was arraigned on October 18, 2013 and pled not guilty (R.Doc 46).

On January 30, 2014 the government filed an Information to establish a prior conviction pursuant to 18 U.S.C. §851 (R.Doc 55). On the same date, Mr. Ward with the advice of counsel entered a plea of guilty. Mr. Ward entered the plea with the advice of counsel that he would be preserving his right to appeal the adverse Motion to Suppress. Mr. Ward was rearraigned and pled guilty to possession with intent to distribute 100 grams or more of heroin (R.Doc. 52). The District Court accepted Mr. Ward's guilty plea and set the case for sentencing.

On May 20, 2014 the District Court sentenced GREGORY M. WARD to 236 months of imprisonment (R.Doc. 59). During the sentencing hearing, the District Court Judge explained to Mr. Ward that he had 10 days in which to appeal his conviction and sentence. In Mr. Ward's rearraignment hearing, Judge Zainey never explained to Mr. Ward that he would be giving up his right to appeal, it only states inside the plea colloquy that Mr. Ward would be losing his right to trial (See plea colloquy)

On the same date, the Court entered a Judgment and Commitment Order reflecting the conviction and sentence imposed (R.Doc. 62) on behalf of Mr. Ward. Defense counsel Eddie Jordan timely filed a Notice of Appeal on May 23, 2014 (R.Doc. 63). The Notice of Appeal specifically stated: [GREGORY M. WARD] appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment of Conviction and Sentence imposed in this case and announced in open Court on May 20, 2014 signed on May 20, 2014 by the Honorable Jay C. Zainey, United States District Judge and entered on May 20, 2014 together with all prior ORDERS and Rulings. Included in this Honorable Court's ruling is the defendant's Motion to Suppress, that produced the Judgment.

Counsel also filed a Motion to Withdraw as counsel of record for

Mr. Ward on May 23, 2014 (R.Doc. 64), which was granted on May 28, 2014 (R.Doc. 65). The Court appointed new counsel to represent Mr. Ward on appeal.

GREGORY M. WARD's appellate counsel reviewed the record thoroughly and researched applicable law, finding that there were no non-frivolous issues to present on appeal. Mr. Ward's appellate counsel filed a brief pursuant to *Anders v. California*, 368 U.S. 368 U.S. 738 (1967) and *United States v. Flores*, 632 F3d 229 (5th Cir. 2011) with the United States Fifth Circuit Court of Appeals. Appellate counsel also filed a Motion to Withdraw as counsel of record. Mr. Ward filed a pro-se response on March 11, 2014, the Fifth Circuit issued an opinion concurring with counsel's assessment of the case, dismissed Mr. Ward's appeal, and granted the Motion to Withdraw to counsel.

Mr. Ward did not ask the Fifth Circuit for a rehearing, nor did he file a Petition for a Writ of Certiorari with the United States Supreme Court, which would have been required 90 days after the Fifth Circuit's Judgment became final on June 9, 2015.

The Material Facts

The government brought a criminal complaint against GREGORY M WARD on April 19, 2013 accusing Mr. Ward of possession with intent to distribute 1 kilogram or more of heroin.

The government alleges that the Petitioner GREGORY M. WARD committed the offense of being in possession of 1 kilogram or more of heroin in violation of 21 U.S.C. §841(a)(1) and (B)(1)(a) in count one and possession with intent to distribute 28 grams or more of cocaine base in violation of 21 U.S.C. §841(a)(1) and (B)(1)(b) in count two.

The evidence relied upon by the government to purportedly prove this offense was obtained during a warrantless search of Mr. Ward's residence, by law enforcement officials.

On October 17, 2013 Mr. Ward had a suppression hearing before the U.S. District Court for the Eastern District of Louisiana pertaining to the warrantless search of Mr. Ward's residence. Judge Jay C. Zainey denied the Petitioner's Motion to Suppress stating that it was "a close call". Mr. Ward's counsel noted his Objection to the Court.

Petitioner Ward wished to appeal the lower Court's adverse ruling in the suppression hearing and was advised by his trial counsel that if he wanted to Appeal this Suppression hearing, Petitioner would have to plead guilty in open Court without a plea agreement, and in so doing, Petitioner would preserve all of his rights including the right to appeal the results of Petitioner's Suppression hearing. Based on Petitioner's trial counsel's legal advice, Petitioner pled guilty to the offense in an open plea.

Petitioner subsequently discovered that this legal advice by trial counsel was erroneous and in fact, his plea should have been made conditionally with the approval by the Court and government in a written plea agreement.

The District Court's Review

In Ward, 2255 Motion, Petitioner Ward contends that he was provided ineffective assistance of counsel. Mr. Ward was advised by his counsel that despite a guilty plea without a plea agreement, he would be able to appeal the District Court's ruling on his Motion to Suppress. Mr. Ward contends that under the circumstances of this case, his guilty plea was not knowing and voluntary.

The United States Fifth Circuit Court of Appeals has held that "it is the lawyer's duty to ascertain if the plea is entered voluntarily and knowingly". Cavitt, 550 F.3d at 440-441; Herring v. Estelle, 491 F2d 125, 128 (5th Cir. 1974). In Herring, the Court explained that the lawyer must actually and substantially assist his client in deciding whether to plead guilty. It is his job to provide the accused an understanding of the law in relation to the facts. The advice he gives need not be perfect, but it must be reasonably competent. His advice should permit the accused to make an informed and conscious choice. In other words, if the quality of counsel's service falls below a certain minimum level, the client's guilty plea cannot be knowing and voluntary because it will not represent an informed choice, and a lawyer who is not familiar with the facts and law relevant to his client's case cannot meet that required minimum level. Id. at 128

The Fifth Circuit, in United States v. McDonald, 416 Fed. Appx 433 (5th Cir. 2011)(per curiam), specifically addressed whether a defendant's guilty plea was knowing and voluntary when his counsel improperly advised him that his appeal rights to challenge the District Court's denial of his Motion to Suppress was preserved.

The United States District Court denied Petitioner's 2255 Motion to Vacate his conviction because the Court finds that Ward's Motion and record conclusively show that he is not entitled to relief.

The Fifth Circuit's Review

Petitioner filed for a Certificate of Appealability from the Fifth Circuit Court of Appeals for the District Court's denial of Petitioner's 2255 Motion to Vacate his sentence. In ruling on this issue, the District Court found that Petitioner's Motion did not have merit because it was based on "bald assertions" pertaining to his trial counsel's erroneous advice.

The Fifth Circuit denied Petitioner's COA Motion stating that Petitioner has not "made the substantial showing of the denial of a constitutional right"; *Miller El v. Cockrell*, 537 U.S. 322, 336 (2003); 28 U.S.C. §2253(C)(2). "A Petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the District Court's resolution of his constitutional claims or Court jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327.

The Fifth Circuit held that Petitioner Ward has not made the requisite showing.

Reasons For Granting The Petition

- I. Ineffective assistance of counsel during the plea phase of trial, causing Petitioner to lose substantial rights for counsel's erroneous advice pertaining to Petitioner's pre-trial Motion To Suppress

Under the standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984) to establish that counsel was ineffective, a defendant must show that: (1) his trial counsel's performance fell below an objective standard of reasonableness; and (2) he suffered prejudice as a result. *Id.* at 687-688 ("Judicial scrutiny of counsel's representation must be highly deferential...[with] every effort made to eliminate the distorting effects of hindsight"). *United States v. Cavitt*, 550 F.3d 430, 440 (5th Cir. 2008). Additionally, the Court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy". *Strickland*, 466 U.S. at 689 (citation and internal quotation marks omitted). If a tactical decision is "conscious and informed...[it] cannot be the basis for constitutionally ineffective assistance of counsel unless it is so ill chosen that it permeates the entire trial with obvious unfairness". *Crane v. Johnson* 178 F.3d 309, 314 (5th Cir. 1999). With respect to prejudice, a defendant must show a reasonable probability that, but for counsel's errors, "the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *United States v. Bishop*, No. 12-20084 (5th Cir. 2012)(Per Curiam) (unpublished).

The two part *Strickland* test also applies to challenges to guilty pleas

based on ineffective assistance of counsel in the guilty plea context. However, the standard for evaluating counsel's advice regarding a defendant's guilty plea is somewhat different. Cavitt, 550 F.3d at 440. In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that "[W]here...a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Id at 56. Additionally, the defendant must show that counsel's ineffective performance affected the outcome of the plea process. Id. at 59. In examining the voluntariness of a plea, the reviewing Court asks "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Id. at 56.

This case presents significant issues revolving around Petitioner's constitutionally guaranteed right to effective assistance of counsel in a federal criminal case. Petitioner moved to suppress evidence unlawfully obtained by law enforcement Officers. After an evidenciary hearing, Petitioner's Motion was denied from the bench. Mr. Eddie Jordan, trial counsel for Petitioner, subsequently advised Petitioner to enter a guilty plea, and assured him in no uncertain terms that he would be able to appeal the District Court's ruling denying the Motion to Suppress. Mr. Jordan advised Petitioner that by pleading guilty without a plea agreement (which plea agreements in the Eastern District of Louisiana normally contain a very broad appeal waiver), he would absolutely have the right and opportunity to appeal the denial of his Motion to Suppress. Based on his counsel's advice, Petitioner subsequently entered a guilty plea and was sentenced. At all times, Petitioner had every expectation that his

ability to appeal the denial of the Motion to Suppress was preserved. However, Petitioner subsequently learned that his ability to appeal the denial of his Motion to Suppress was not preserved because, unbeknownst to him, he entered an unconditional plea, rather than a conditional plea, and such plea waived all non-jurisdictional defenses. Consequently, Petitioner was deprived of his ability to appeal the District Court's denial of his Motion to Suppress.

Petitioner avers that trial counsel's performance fell below an objective standard of reasonableness, when trial counsel wasn't aware of certain pertinent and relevant facts pertaining to Petitioner's appeal rights. Petitioner has now been faced with overwhelming obstacles that could have been avoided if it wasn't for trial counsel's poor performance when dealing with Petitioner's plea process. Counsel's performance has failed the standard of reasonableness set out in *Strickland v. Washington*, 466 U.S. 668 (1984).

An accused's Sixth Amendment right to the assistance of counsel is one of the most fundamental components of our criminal justice system. Through legal representation, the defendant's other pre-trial and trial rights are secured. (See *U.S. v. Cronin*, 466 U.S. 648; also see, *Gideon v. Wainwright*, 372 U.S. 335).

Petitioner has further shown that the "but for" Mr. Jordan's erroneous advice, the result of the proceeding would have been different. Mr. Jordan erroneously and consistently advised Mr. WARD that his ability to preserve his ability to appeal the District Court's pre-trial ruling remained intact, however this did not come to fruition. Thus, but for Mr. Jordan's erroneous advice, the outcome of this matter would have certainly be different because Mr. Ward would have learned, earlier than

later, that his opportunity to appeal the pre-trial ruling had either been preserved or not. At that time, Petitioner would have had to explore his next viable options, under Hill v. Lockhart, 474 U.S. 52 (1985). Petitioner submits that, regardless of the government case against him, he would rather face trial, if necessary, in order to preserve his ability to appeal the District Court's pre-trial ruling.

II. Petitioner's trial counsel was ineffective when he failed to request and obtain from the government a conditional plea pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure?

An unconditional guilty plea has the effect of waiving all non-jurisdictional defects in the prior proceedings. McMann v. Richardson, 397 U.S. 759, 766 (1970)(finding that when a trial Court denies a Motion to Suppress Evidence and the defendant subsequently enters an unconditional plea of guilty, the defendant has waived the right to raise further objection to that evidence).

At the conclusion of hearing on Petitioner's Motion to Suppress the Evidence, and the District Court's ruling from the bench denying the Motion, Mr. Jordan contemporaneously objected to the Court's ruling. However, subsequently, without even requesting a conditional plea from the government or consulting Mr. Ward about conditional pleas, Mr. Jordan advised Petitioner and sister Danyell Ward that Petitioner's ability to appeal the denial of the Motion to Suppress was preserved.

The absence of a request for a conditional plea further supports Petitioner's contention that his guilty plea was not knowing and voluntarily made. Had Petitioner's trial counsel requested a conditional plea, and such request was granted by the government and approved by the District

Court (which is routinely granted), Mr. Ward's appeal rights on the suppression issues would have been preserved, and these issues would have already been litigated and resolved.

However, in the event the government declined a request for a conditional plea, then Mr. Jordan would have been duty-bound to advise Petitioner of this denial, and Petitioner would have known that he would have to explore any other viable alternatives, including going to trial, if nothing else but to preserve this appeal right. Thus, the failure of Mr. Jordan to even request a conditional plea from the government was deficient, and it further had a devastating effect on the voluntariness of Petitioner's guilty plea, thus causing Petitioner to be severely prejudiced. "(under Strickland, U.S. 688 standard").

III. Did the District Court and the Fifth Circuit Court of Appeals abuse its discretion by denying Petitioner's 2255 Motion?

In this case, Petitioner contends the Court misapprehended the relevant legal precedent, Reed, 719 F.3d at 374. In the 2255 proceedings in the District Court, most [] suspiciously, the government did not obtain the required affidavit from Petitioner's lawyer, Eddie Jordan Esq., contravening Petitioner's claims regarding the legal advice given to Petitioner and his sister that his counsel, Mr. Jordan, had in fact advised he and his sister that Petitioner, although entering an unconditional plea, did in fact maintain his right to appeal the District Court's ORDER denying his suppression Motion. Petitioner later received an (affadavit from Eddie Jordan) confirming his legal advice given to Petitioner.

The "records and files of the proceeding" in the 2255 District Court are indisputable on this issue. The District Court had before it both the

apparent from the "records and files" of the prior proceedings that Petitioner was not entitled to relief, the District Court nevertheless must conduct an evidentiary hearing. Id. at 19.

Applying the rationale and obvious logic of Sander, Id. to the facts of Petitioner's \$2255 proceedings' IAC, it is indisputable and not in reasonable debate by rational justice, the District Court and the COA Court both erred as a matter of law.

Petitioner's IAC claim concerned legal advice provided orally by his retained counsel, Mr. Eddie J. Jordan, Esq., (See Appendix affidavit of Eddie J. Jordan, Esq., confirming the legal advice conveyed to Petitioner) palpably the District Court would not be privy to or aware of private conversations between Petitioner and Mr. Jordan regarding legal advice given to Petitioner. Erfo, the "records and files" of the prior proceedings were completely devoid of any contrary or contradictory facts which "show cause" Petitioner was "entitled to no relief." Sanders, 373 U.S. at 19.

Accordingly, the District Court erred as a matter of law in denying Petitioner an evidentiary hearing to development of a record to enable Petitioner to prevail on his IAC claim. Moreover, the COA Court ~~also~~ ~~erred~~ ~~as a~~ ~~matter of law~~ in its May 21, 2018 ruling, (See Appendix, denied the COA where every reasonable jurist competent in the relevant law, Sanders, Id., and Reed, 719 F.3d at 374 (having in the District Court's record Petitioner and his sister's sworn affidavits, undisputed by the government's lawyers) could have and would have ruled in favor of Petitioner and granted the COA.

In the 2255 proceedings sub judice, like the facts from Reed, 719 F3d at 374, the government's lawyers failed to secure an affidavit from

Affadavits of Petitioner and his siter, (See Appendix) and also had before it Mr. Jordan's Notice of Appeal.

Thus, had the District Court or the COA Court correctly selected and applied the reasoning in the Fifth Circuit precedent in Reed Id. at 374, to the undisputed facts in the District Court's files and records, i.e., the Notice of Appeal of Mr. Jordan and the uncontraverted affadavits of Petitioner and his sister Danyell Ward (See Appendix) (cf., Jordan's affadavit with Petitioner Ward and his siter, all are consistent with Petitioner's claims). The outcome of the District Court's 2255 proceeding and the COA Court's May 21, 2018 (See Appendix) decision regarding the application for the COA would have been different.

Therefore, the "alleged" facts were not and cannot be disputed or impeached by the government, which is why, most likely the government chose not to contest Mr. Jordan's advice with proper affadavit evidence in the District Court, which as a matter of law was fatal to the government's argument and position.

The Supreme Court in Sanders v. United States, 373 U.S. 1, 19-23 (1963) in the context of whether a habeas corpus petitioner was entitled to an evidenciary hearing on his claims, noted, explained and fortified the legal rationale of express due process of law, concluded that a habeas corpus District Court was required to hold an evidenciary hearing on the contested facts unless the "records and files" of the "underlying criminal proceedings could not conclusively show that the claim alleged in the [petition] entitled the Petitioner to no relief." (emphasis added).

Put another way, the Court reasoned that unless the District Judge, even though he conducted the original criminal proceedings, unless it was

Petitioner's trial lawyer, Eddie J. Jordan, Esq., who was available to the government's lawyers during the proceedings; yet the government's lawyers did not seek to secure any statements from Mr. Jordan concerning advice provided to Petitioner, which is both problematic, and certainly suspicious. Given that without any contradictory facts in the record from Mr. Jordan regarding facts not in the record of the District Court, the District Court was bound as a matter of law to either (1) accept Petitioner and his sister's sworn factual contentions, or (2) conduct an evidenciary hearing where Mr. Jordan was called to give testimony of what advice he provided to Petitioner in regard to his (Petitioner's) appeal rights.

Absent the District Court availing itself of options #1 or 2, an egregious and execrable error of law, an abuse of discretion occurred which prejudiced Petitioner's substantial legal appeal rights.

Thus, it is indisputable and exceedingly clear that Petitioner met both prongs of the Strickland test: (1) regretablely Mr. Jordan did in fact provide deficient legal advice and (2) Petitioner was clearly and continues to be highly prejudiced as a result of the constitutional error which infested the 2255 and COA proceedings, and infested the trial court's erroneous decisions.

Petitioner has made a "substantial showing" of the denial of a constitutional right. The legal standard, 28 USC §2253(c), for the issuance of a COA has been interpreted by the Supreme Court first in Barefoot v. Estelle, 463 U.S. 880, 894 (1983) and affirmed in Slack v. McDaniel, 529 U.S. 473, 484 (2000). To prevail, the Petitioner "need not show that he should prevail on the merits; but must demonstrate that the issues are

debatable among reasonable jurists or reason; that a court would resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further."

At bottom the issue as to whether the COA should have been granted by the District Court and the COA permitting Petitioner to appeal the erroneous District Court's rulings turns on the proper and correct application of prior circuit precedent, Reed, Id.

Whether or not Petitioner would have been successful on appeal is not relevant to the assessment. Both the District Court and the COA court clearly misapprehended the relevant legal standards, clear legal errors committed in the orders sub judice by both courts denying Petitioner relief on his 2255 and COA proceedings, i.e., whether the District Court erred in denying Petitioner an evidenciary hearing on factual issues is not debatable among reasonable jurists. Binding Supreme Court precedent controls on that issue, see Sanders, 373 U.S. at 19-20.

Surely, "reasonable" jurists competent in the law, and acting without bias and prejudice, when faced with binding Supreme Court and prior circuit precedent in Reed, 719 F3d at 374 (reversed and remanded for further proceedings the District Court's order denying an evidenciary hearing where the Petitioner submitted uncontroverted affadavit on his claim) it is without rational non-frivolous debate that Petitioner would have been permitted to appeal the District Court's denial of an evidenciary hearing on the IAC claim.

Accordingly, consequently, both the District Court and the COA court erred as a matter of law and abused their discretion.

Conclusion

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding, and that the Judgment of the District Court of the Eastern District of Louisiana and the Fifth Circuit Court of Appeals should be reversed and the case remanded for further proceedings.

Respectfully Submitted,

Pro-Se Mr. Gregory M. Ward

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