

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Washington DC

ROBERT BUTLER-PETITIONER

VS.

HAROLD W CLARKE-RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS 4TH CIRCUIT

(name of court that last ruled on merits of your case)

ROBERT EDWARD BUTLER

(Your name)

RIVER, NORTH, CORRECTIONAL CENTER

(Address)

329 DEERBROOK LANE

(City, state, zip code)

INDEPENDENCE, VIRGINIA 24348

(Phone number)

QUESTION(S) PRESENTED

1. Whether Supreme Court's decisions in *Buck v. Davis* 137 S.Ct. 759, (U.S. 2017), *Martinez v. Ryan*, 566 U.S. 1 (2012), *Trevino v. Thaler*, 569 U.S. ---, 133 S.Ct. 1911 (2013), permitting federal habeas review of an ineffective assistance of trial counsel, Appellant Counsel, post conviction counsel claim that was defaulted, State procedural barred in a state postconviction proceeding if state habeas counsel was constitutionally ineffective in failing to raise it meaning ineffective Assistance of Appellate Counsel in his First 1993 State habeas where counsel failure to file Notice of Appeal lead to the dismissal of my Direct Appeal of Right, and the claim has "some merit," applied retroactively cases on collateral review was waived by State in Federal habeas proceeding where State's Argument was never - that the decisions did not Apply retroactively was not advanced by State in District Courts?
2. Whether the 4th Circuit Court of Appeals and District Court Error and abused its discretion when it denied his Appeal & Rule 60 B Motion, surrounding the New change in the Law Applied retroactive to Robert Butler case?
3. Finally whether the 4th Circuit Court of Appeals, District Court Judgments resulted in a decision that was contrary to, or involved, an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States mention in *Buck v. Davis* (2017), *Martinez v. Ryan* (2012) and *Trevino v. Thaler* (2013)?

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 judgement is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

2254(d)(1)

FRCP 60B

2244(d)(1) c3D

OTHER

Sixth and Fourteenth Amendment
of Federal Constitution of the United States.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix 1a 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 4a 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
October 26, 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 _____ on _____ in Application No. _____.

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
_____.

☐ No petition for rehearing was timely filed in my case.

☐ 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 _____ on _____ in Application No. _____.

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

IN THE SUPREME COURT THE UNITED STATES
WASHINGTON DC

ROBERT EDWARD BUTLER - Petitioner

VS

Harold W. Clarke - Respondent(s)

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

Robert Butler (hereinafter "petitioner") petition for a Writ of certiorari to review the judgment of the United States Court of Appeals For the Fourth Circuit, which the October 26, 2018 judgment affirmed the denial by the district Court of their/his Fed. R. Civil. P. 60(b) motion for reconsideration of the district court's order denying relief on his 28 U.S.C § 2254(2002) Butler v Young, No 3:02CV56 Memo Opinion Order entered on July 16, 2002).

Opinions Below

The opinions of the 4th Circuit Court of Appeals (Pet App. 1a Appendix 1a Exhibit) and the district Court (May 4, 2018) Judgment Civil Action No: 3:18CV102 Appendix 4a Exhibit.

Jurisdiction

The judgment of the court of Appeals was entered October 26, 2018 (Appendix 1a Exhibit) This Honorable Court have jurisdiction to hear this Writ on the Strength and Muscle of the Federal Constitution of the United States. The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 60B

28 U.S.C. § 2254(d)(1)

28 U.S.C. § 2244(d)(1) C3D

28 U.S.C. § 1254(1)

6th and 14th Amendment of the United States Federal Constitution.

STATEMENT OF THE CASE

On February 22, 2017, the Supreme Court of United States Rule and made a decision in Buck vs Davis 137 S.Ct. 759 (U.S. 2017), Martinez v Ryan (2012), Trevino v Thaler (2013), surrounding the Old Rule of Coleman vs Thompson, 501 U.S. 722 (1991), which modified the rule of Coleman vs Thompson (1991).

After such Ruling I, Robert Butler February 7, 2018, sought to reopen his First Federal Habeas Corpus (2002) under Federal Rule of Civil Procedure 60 b, surrounding the fact that his Appellate Counsel and Post Conviction counsel Junius P. Fulton failure to file a Notice of Appeal lead to the dismissal of my only direct Appeal of Right. So he Junius P. Fulton turn around and file a state Habeas Corpus in the Circuit Court City of Norfolk 9/9/93 Mr Fulton never raised the claim that he was ineffective assistance of counsel Because, Because he Junius P. Fulton never file your petitioner Notice of Appeal in the Circuit Court of the City of Norfolk, which lead to the dismissal of my direct Appeal of right July 30, 1993. For all these years the State Court had use at least three state procedural Rules and Coleman vs Thompson (1991) that kept me from ever being heard in court. So I Appeal in the 4th Circuit Court of Appeal the denial of the Rule 60B Motion asking the U.S. District Court to considered reopening up my 2002 First Federal Habeas Corpus, surrounding the new change in the Law mention in Buck v Davis (2017), Martinez v. Ryan (2012) and Trevino v Thaler (2013) to attempt to have my direct Appeal reinstated due to ineffective Assistance of Counsel when Junius P. Fulton fail to file his Notice of Appeal to Virginia Court of Appeal in 1993.

REASONS FOR GRANTING THE PETITION

1. Butler argue that - his ineffective assistance claim was always held procedurally defaulted and time barred and unreviewable by the State under Coleman v Thompson 501 U.S. 722 (1991). Now this Court's later decision(s) in Buck v Davis 137 S.Ct. 759, (February 22, 2017), Martinez v Ryan, 566 U.S. 1 (2012) Trevino v Thaler, 569 U.S. ---, 133 S.Ct. 1911 (2013) modified the rule of Coleman v Thompson 501 U.S. 722 (1991). Had they been decided before Butler filed his First 2254 (2002) petition in U.S. District Court.

Butler Argued that - his claim could have been heard on the merits provided he had demonstrated that (1) state post conviction counsel Junius P. Fulton had been constitutionally ineffective in failing to raise the claim and (2) the claim had merit.

Butler Argue that - he would have & could demonstrate the "extraordinary circumstances", required for relief. Had his Lawyer Junius P. Fulton confess in 1994 Instead in February 10, 2004 Evidences of his Attorney Fulton his ineffectiveness was not available in 2002 Writ of Habeas.

The district Court abused its discretion when it denied Butler Rule 60 B Motion, surrounding the New Change in the Law mention in Buck v Davis (2017), Martinez v Ryan (2012), and Trevino v Thaler (2013).

Butler Argued that - the 4th Circuit Court of Appeals, District Court Judgments resulted in a decision that was contrary to, or involved, an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States mention in Buck v Davis (2017), Martinez v Ryan (2012) and Trevino v Thaler (2013).

CONCLUSION

2244(d)(1)C states in part

(c) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court, ~~and~~ made retroactively applicable to cases on collateral review; or

Butler state for all the right reasons "Buck vs Davis" was recognized by the Supreme Court on February 22, 2017. Which recognized the New Change in the Law that modified Coleman v Thompson (1991). Which Butler inform the Court. That this Court's later decisions in Martinez vs Ryan (2012) and Trevino v Thaler (2013) modified Coleman. The State Court ignored these precedents and new changes in the Law denied me any type of post conviction relief that was available. For them reasons mention from page 12-10. I

Ask that

The petition for writ of Certiorari should be granted.

Respectfully submitted,

ROBERT BUTLER

Date: November 22, 2018