

In The
Supreme Court Of The United States

DARRELL WILLIAMS,

PETITIONER

18-8280

VS.

CECILIA REYNOLDS WILBORN,

RESPONDENT.

Rehearing Petition For Writ Of Certiorari
To Fourth Circuit Court Of Appeals

DARRELL WILLIAMS # 219930
LIEBER CORRECTION INST.
136 WILBORN DRIVE / AA31
RIDGEVILLE, S.C. 29472

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Table Of Contents

Page

Table Of Contents	1
Question Presented	2
Statement Of Counsel	3
Table Of Authorities	4
Statement Of Case	5
Argument	7

When this court decided *Wilson v. Sellers*, 138 S.Ct 1158 (2018) did it restrict *Harrington v. Richter*, 526 U.S. 86 (2011) Practice of hypothesizing bases to Richter's specific Procedural Posture to cases where there is no reasoned opinion by State collateral court, thereby limiting the heavy and unnecessary burden this Practice Places on a habeas Petitioner?

1) Is this court decision in *Michigan v. Long*, 463 U.S. 1032 (1983) intended to treat existence of ambiguity adversely to respondent, or should, Long "Plain Statement" rule apply to State Procedural bar rule ambiguously applied to Federal claim? 8

2) Is Congressional intent best served and results more accurate when Federal courts applying it has access to a reasoned State court decision? 11

Conclusion 15

Question(s) Presented

How did Congress intend for habeas courts to apply 28 U.S.C. sec. 2254(d)(1) "Contrary to" and "unreasonable application of" clauses as explained by *Williams v. Taylor*, 529 U.S. 362 (2000) when no state court has ruled on federal claim, or does, Section 2254(d)(1) of this courts Jurisprudence Permit federal courts to ignore an obviously defective state court order in favor of Post Hoc Justifications for silent state court opinions?

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Does this court decision in *Wilson v. Sellers*, 138 S. Ct 1188 (2018) "Look Through" approach apply to those instances where no state court has reached merits of federal claim, or did, the Wilson court leave unanswered the correct approach for "Silent State Court Opinions" which do not address federal claim in state court?

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Statement of Counsel

Petitioner Pro Se contends that this Petition is being filed in Good Faith, and that question is novel.

Unlike this court decision last term in *Wilson v. Sellers*, 138 S. Ct 1188 (2018), which addressed summary denials. The Petition seeks resolution of claim when state courts do not address issue in order, but state is allowed to use state Procedural bar rules in habeas court to deny review of constitutional question.

Table Of Authorities

	<u>Page</u>
Ashley v. State, 206 S.C. 436 (1973)	9
Bell v. Janus, 236 F.3d 149 (4th Cir. 2001)	13
Caldwell v. Mississippi, 472 U.S. 320 (1985)	9
Delaware v. Van Arsdall, 475 U.S. 673 (1986)	10
DiBenedetto v. Hall, 272 F.3d 1 (1st Cir. 2001)	11
Engle v. Issac, 456 U.S. 107 (1982)	9
Harrington v. Richter, 526 U.S. 86 (2011)	Supra
Henson v. Cooper, 109 F.3d 330 (7th Cir. 1997)	13
Michigan v. Long, 463 U.S. 1032 (1983)	8, 9, 10
Moore v. Parke, 148 F.3d 705 (7th Cir. 1998)	12
Nobles v. Johnson, 127 F.3d 409 (5th Cir. 1997)	12
Simmons v. State, 264 S.C. 417 (1974)	9
Smith v. Massey, 204 F.3d 964 (10th Cir. 2000)	12
Wainwright v. Sykes, 433 U.S. 72 (1977)	9
Weeks v. Angelone, 176 F.3d 244 (4th Cir. 1999)	12
Williams v. Taylor, 529 U.S. 362 (2000)	11, 12
Wilson v. Sellers, 138 S.Ct. 1158 (2018)	Supra
 <u>Statutory Provisions Involved</u>	
28 U.S.C. sec 2254 (Cum. Supp. 18)	7, 8, 11, 12, 13, 14

Statement Of Case

On November 22nd, 2013, Petitioner filed an application for Post conviction relief in the Court Of Common Pleas for Richland County, and for purposes of this Petition will address issue that is subject of controversy which is

(1) Prior conviction used to enhance sentence is unconstitutional

An evidentiary hearing was held on September 2nd, 2014, before the Honorable Robert E. Hood. At the hearing, Petitioner argued state recidivist statute South Carolina Code Ann. Sec. 17-25-45 (Cum. Supp. 08) is unconstitutional, because more African Americans receive life sentences than Caucasians. In support of claim Petitioner stated that:

The Richland County Solicitors Office has served notice on more blacks than whites. In this state blacks make 87% of inmate population and 67.3% are serving LWOP as opposed to 25% white and 3% latino. Such system is unconstitutional.

Appendix C PG 606 lines 1-18

During the hearing, Petitioner testified that at time of trial he didn't have information (Appendix C PG 608 lines 19-25). Subsequently thereafter, on December 1st, 2014 Judge Hood denied relief.

Judge Hood order failed to address constitutionality of recidivist provision in order, and instead addressed issues Petitioner raised at trial and direct appeal. Petitioner likewise filed a motion to alter or amend Judgment, which Judge Hood never addressed.

After exhausting state remedies, Petitioner filed a 2254 Petition in federal court addressing three issues: (1) Whether the State Proved Guilt beyond a reasonable doubt; (2) Application of *Old Chief*; (3) Constitutionality of S.C. Code Sec. 17-25-45. The district court found that issue challenging section 17-25-45 was defaulted, and disregarded Petitioner argument order failed to contain any mention of "Disparity of Sentence". Nonetheless, despite Judge Currie acknowledging in footnote of order, the respondent did same by admitting Judge Hood did not rule on statistics, but found issue defaulted because it was not raised at trial or direct appeal.

Petitioner raised on appeal in Fourth circuit, that under *Ylst* the district court could not refer to last state court order which addressed constitutional claim. When state court has not done so, furthermore, Petitioner asserted also that no state or federal precedents existed for this court in addressing instances when state court order does not rule on constitutional claim.

Argument:

When this court decided *Wilson v. Sellers*, 138 S. Ct. 1158 (2018) did it restrict *Harrington v. Richter*, 526 U.S. 86 (2011) Practice of hypothesizing bases to Richter's specific Procedural Posture to cases where there is no reasoned opinion by state collateral court, thereby limiting the heavy and unnecessary burden this Practice Places on a habeas Petitioner?

As an initial matter, two analysis of 28 U.S.C. sec. 2254 in this case will be applied to determine how this section applies when no state court opinion exist.

First, in deciding whether section 2254(d) applies when first state court deciding federal constitutional claim, fails to do so in order. Petitioner contends, that when state court fails to issue an opinion on claim under section 2254(d) the courts should apply "Intermediate Approach" when addressing silent state court opinions.

The facts of this case are novel, and none of this court's Jurisprudence address facts of Petitioner's case. In fact, this court last term in *Wilson* settled the question of summary denials and left open the question of "Silent" state court orders as in case at bar, moreover, there is nothing explicitly or implicitly in *Wilson* ruling that says case is applicable to Petitioner.

When the *Wilson* court answered the question in the affirmative, settling a circuit split. This court sided with *Wilson*, holding that federal court reviewing state Prisoner's habeas claims under section 2254 should "Look Through" to last reasoned state court decision and apply a rebuttable Presumption that the unexplained affirmance adopted the same reasoning.

Justice Gorsuch asserted in *Wilson* that court adopted a watered down Presumption that effectively allows courts to apply Richter's harsh Practice of imagining any possible basis for denying relief. But the *Wilson* majority explicitly and implicitly indicated that Federal courts should continue to apply a strong Presumption that the lower court's decision was adopted by State's highest court without explanation.

Wilson confirmed Richter holding, that the rebuttable Presumption required under Section 2254(d) is only effective when one state court has ruled on Federal constitutional claim. When as herein, State court did not take its constitutional duties seriously, it Placed an onerous on habeas Petitioner to overcome 2254's "High Deferential" standard and Federal courts to apply this standard.

In Richter, there was no lower court opinion to look too, and *Wilson* does not say Richter reasoning does not apply in the context of unexplained decisions on the merits. Indeed, Federal courts can not "Look Through" to state court decisions on the merits when none exist.

1) Is this court decision in *Michigan v. Long*, 463 U.S. 1032 (1983) intended to treat existence of ambiguity adversely to respondent, or should Long "Plain Statement" rule apply to State Procedural bar rule ambiguously applied to Federal claim not addressed?

According to the Long majority, two rules have emerged to guide Federal courts' consideration of Procedural default issues

First, when Petitioner Presents his claim to the State, the Long rule applies. A Federal habeas court, faced with an ambiguous state-court opinion may not consult state-law sources to determine whether the circumstances in which a default may be overlooked consistent with State

law as Presented herein, or if the State court is authorized to forgive Procedural default.

Under Long this opinion would have sufficed had the State Supreme Court never reached the merits of Federal claim. the State Supreme Court went on to reject the Federal claim on merits. As a result, reference to *Simmons v. State*, 264 S. C. 417 (1974); *Ashley v. State*, 206 S. C. 436 (1973) in Per court's opinion is insufficient to demonstrate clearly whether the court intended to invoke Procedural bar on alternative Ground. It is Precisely with regard to such ambiguous reference to state law that Long Permits Federal review of the Federal issue. Long, id at 1040-41.

Petitioner is not arguing the "Plain Statement" requirement entails a Presumption that state courts disobey their own Procedural bar rules. As doing so, would be inconsistent with this court decision in *Caldwell v. Mississippi*, 472 U.S. 320 (1985) which confirmed Long's applicability to Procedural default cases. In any event, in some cases state courts have discretion to forgive Procedural defaults. The "Plain Statement" rule simply relieves the Federal court from determining whether in a given case, consistent with state law, the state has chosen to forgive default.

Second, if Petitioner had never attempted to raise his claim in State court then *Enble v. Isaac*, 456 U.S. 109 (1982) applies. A habeas court faced with such a case, must look to state law to decide whether Petitioner is Procedurally barred and whether state courts will waive this Procedural default. Doing so, court must apply *Wainwright v. Sykes*, 433 U.S. 72 (1977) if habeas court concludes, on the basis of review that state court would refuse to entertain Petitioner claim.

There is Persuasive argument for applying Long to case at bar. In Long, this court considered its Jurisdiction to review a Judgment of the Supreme Court of Michigan that had ruled a

Search unlawful. The State court's opinion had relied almost exclusively on Federal decisions construing the Fourth Amendment, though twice it cited an analogous state constitutional Provision, Long, id at 1043. After the Long majority reviewed its Precedents, to determine whether various references to state law constitute adequate and independent state Grounds, Long adopted a Presumption in favor of Federal review. Long, id at 1040-41.

Thus, on direct review where the independence of state Procedural Ground is in doubt because the state rule is interwoven with Federal law. For instance, when state made an application of the Procedural bar dependent on an antecedent ruling of Federal law, that is, a determination of whether a Federal constitutional error has been committed

Accordingly, two Preliminary comments must be made concerning the unique virtue in applying Long to Petitioner case, despite Justice Stevens dissent.

First, Long adopted a Presumption favoring the assertion of Federal Jurisdiction in ambiguous cases, and ignored long-standing and venerated Presumption that Federal courts are without Jurisdiction "unless the contrary appears affirmatively from record". See, Delaware v. Van Arsdall, 475 U.S. 673 (1986) Stevens, J. Dissenting.

Second, the Presumption adopted by Long expanded this court's review of cases in which state courts had overprotected their respective citizens, hence, Federal courts and particularly this court have a Primary obligation to protect the rights of the individual that are embodied in the Federal constitution. Long, id. Van Arsdall, id at 695.

While cases involving overly expansive interpretations of Federally Protected rights merit Federal review, in Petitions for relief under section 2254, the Federal courts do not

review state-court decisions to determine if the state's have gone too far in protecting the rights of their citizenry, but rather perform the core function of vindicating federally protected rights.

2) Is Congressional intent for section 2254 best served and results more accurate when the federal court applying it has access to a reasoned state court decision?

This court in *Williams v. Taylor*, 529 U.S. 362 (2000) clearly outlined meanings of "contrary to" and "unreasonable application of" clauses of section 2254(d)(1), *id.* at 405. Williams ruled that a state court decision would be "contrary to" this court's clearly established precedent if it "applied a rule that contradicts the governing law set forth in this court's cases." *Williams*, *id.* at 406.

On this same vein, Williams outlined that the heart of section 2254 is the "Adjudication on the merits" clause of statute, and as a consequence, under *Williams*, *id.*, *DiBenedetto v. Hall*, 272 F.3d 1 (1st Cir. 2001). When a state court does not rule on issue, it does not constitute as an "adjudication on the merits" for purposes of 2254, and federal courts can not defer to that which does not exist.

Since AEDPA imposes a requirement of deference to state court decisions, *Williams*, *id.* at 402-06, two critical analysis must be addressed.

First, whether a silent opinion constitutes as an "Adjudication on the merits", the Williams majority interpreted section 2254(d)(1) applicable to Petitioner who received a complete review and a detailed opinion from the state court.

All Parties conceded, that Petitioner addressed sentence disparity claim at Post conviction hearing and appeal from denial of Post conviction relief, but the Court of Common Pleas failed to address issue in order. This contravenes Federal courts applying "contrary to" and "unreasonable application of" to the last reasoned state court decision and applying Presumption that State Supreme Court unexplained affirmance constitutes as an "Adjudication on the merits."

Williams, Wilson never addressed whether under AEDPA's strict standard, applies only to claims adjudicated on the merits in state court, or as herein, where the Federal claim was never addressed by the state court. All the cases that have touched on this Problem, assume that the statute applies only when the state court has decided the issue. See, *Smith v. Massey*, 204 F.3d 964, 976-77 (10th Cir. 2000); *Moore v. Parke*, 148 F.3d 705, 708 (7th Cir. 1998); *Nobles v. Johnson*, 127 F.3d 409, 416 (5th Cir. 1999); *Weeks v. Angelone*, 176 F.3d 244, 258-59 (4th Cir. 1999)

Williams also underscored that "an unreasonable application of Federal law is different from an incorrect application of Federal law" id at 410. Indeed, because Congress used the word "unreasonable" in section 2254(d)(1) and not words like "erroneous" or "incorrect" a Federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state court decision applied clearly established Federal law erroneously or incorrectly. Rather, that application must also be unreasonable. id at 411.

Second, "can Federal courts make an independent determination of the merits"

the seventh circuit in *Hennon v. Cooper*, 109 F.3d 330/7th Cir. 1997) appears to be adopted by *Bell v. Jarvis*, 236 F.3d 149/4th Cir. 2001) suggest that, all things being equal, a federal court has no option but to defer blindly to the state court decision or Grant habeas relief.

Under 2254(d)(1) and this court decision in *Williams*, it has another option, which is to make an independent determination of Petitioner's constitutional claim, when the state does not Provide reasoning in support of its decision. An independent determination of the merits of the claim is crucial and at a minimum, necessary to Provide a benchmark for evaluating the reasonableness of the state court decision at some Point in the Judicial Process. This is so, because in many cases a thorough review exposes clear and unreasonable constitutional errors in decisions which may appear reasonable upon cursory evaluation.

More importantly, from Perspective of habeas court whose duty is to determine the questions Presented to it in accordance with AEDPA and the Constitution. Thus, in the absence of a reasoned state court opinion, the federal court has no Point of reference to make the reasonableness determination. Similarly, *Williams* and section 2254 require Petitioner Get one full review of his Properly Presented claim, and since this review did not take Place, the habeas court must Provide it. Therefore, without a reasoned state court decision federal courts can have no assurance state court reviewed federal claim.

Therefore, because the exhaustion and silent court opinion address similar factual circumstances, it makes sense to borrow from exhaustion Jurisprudence when

construing silent state court decisions as adjudicated on the merits under section 2254.

In habeas litigation the phrase "adjudicated on the merits" arises regularly in Procedural default doctrine, which divides cases into two classes (1) adjudication on the merits; and (2) dismissals on Procedural Grounds. As such, Williams favors Presumption Congress intended to capture all decisions.

Certificate of Service

State of South Carolina)

) ss:

County of Ridgewick)

I, Darrell Williams, being duly sworn says that:

A copy of the within Petition for rehearing has been served on the following Party on this 10th day of June, 2019.

South Carolina Attorney General
Melody J. Brown, Assistant Attorney General
1000 Assembly Street
Columbia, South Carolina 29211

I declare under Penalties of Perjury

So sworn to and signed
s/ Darrell Williams

Darrell Williams / Pres Se