

No. 18-A-776

IN THE
SUPREME COURT OF THE UNITED STATES

Early A. Atterberry — PETITIONER
(Your Name)

vs.

John E. Varga — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Early A. Atterberry

(Your Name)

2600 North Brinton Avenue

(Address)

Dixon, Illinois 61021

(City, State, Zip Code)

N / A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the Court erred in properly applying Rule 52(b) to the issue of Harmless Error raised by the petitioner during the numerous appeals pursued.
- 2) Whether the Court erred by allowing the petitioner's Constitutional Rights to a fair trial to be violated by the State Prosecutor's inflammatory and erroneous comments which infected the jury resulting in a conviction and denial of due process.
- 3) Whether the Court erred by allowing Circuit Court judge to be deliberately indifferent by the allowance of evidence of other-crimes in comparison to Leonard J. Weber in 2004.
- 4) Whether the Court erred by allowing evidence where no charge was pursued and proof was not introduced sufficient to support a finding that the fact did exist.
- 5) Whether the Court erred in its decision by allowing evidence of other-crimes for prejudice, confusion, or other reasons and agreeing with lower Court's decision of Harmless Error.
- 6) Whether the Court erred in its decision to allow Lower Court to deny Motion for New Trial when jury had not been told that the evidence was used in error thereby

raising the concern of a violation of Equal Protection of the Laws.

- 7) Whether the Court erred in its decision to allow a mother of victim's testimony to corroborate the victim's testimony when the victim said no one was home or around.

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:

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STATUTES AND RULES

725 ILCS 5/115 – 7.3 (Statute(s))

52(b) (Rules)
 Federal Rules of Evidence
 Rule 104, 105, 106
 Rule 403, 413A
 Supreme Court Rules 315(g), 341(e)(7)

OTHER

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 A. 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 B. 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 30, 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 March 24, 2019 (date) on January 28, 2019 (date) in Application No. 18 A 776.

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

The Sixth Amendment to the U.S. Constitution 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 where in 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.

The Eighth Amendment to the U.S. Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed; nor cruel and unusual punishment inflicted.

The Fourteenth Amendment to the U.S. Constitution provides:

All persons born or Naturalized in the United States, and subject to the jurisdiction therefore; are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without Due Process of Law; nor deny any person within it's jurisdiction the Equal Protection of the Law.

STATEMENT OF THE CASE

Appeal No. 18-1360 is an appeal from a dismissal order from the United States District Court for the Northern District of Illinois Eastern Division denying the Petitioner-Appellant seeking relief through a Writ of Habeas Corpus and the request for a Certificate of Appealability. Where the District Court ruled that the petitioner's petition is denied on the merits and decline to issue a certificate of appealability and where the United States Court of Appeals for the Seventh Circuit ruled that they find no substantial showing of the denial of a constitutional right.

STATEMENT OF FACTS

I, Early A. Atterberry, pro-se, petitioner has filed a petition for a Writ of Habeas Corpus seeking relief from the State Court's refusal to correct an error that substantially affected the outcome of the trial, whereby, petitioner was sentenced to consecutive terms totalling fifteen years. The petitioner has argued that the errors created by the judge, the prosecutor, and the public defender were all in his opinion, A grand slam of professional irresponsibility and judicial disregard. The petitioner further argues that the totality of errors severely affected the trial and deprived him of his constitutional rights to a fair trial, equal protections of the law, as well as due process of law. The District Court ruled dismissing the petitioner's petition on it's merits without actually investigating the allegations raised by the petitioner. The United States Court of Appeals for the Seventh Circuit then ruled that they find no substantial showing of the denial of a constitutional right which I also believe to be in error.

REASONS FOR GRANTING THE PETITION

Petitioner Early A. Atterberry, pro se litigant has made valid claims throughout the appeal process seeking relief from judgment and the overturning of the wrongful conviction. Every claim that the petitioner raised has either been denied on the merits, or denied for not being properly preserved, or that claims are procedurally defaulted.

The petitioner is not trained in law and have no idea as to how to prove innocence. The petitioner does however know the truth to what has occurred. Whether specifically stated or not, every claim raised has explained and shown the injustices that has occurred.

It is not so much about the legal technicalities that the respondents may or may not have used, but whether they erred by not addressing the question of what impact the erroneous use of evidence might have had on the jury and whether if each error contributed to the egregious violation of the petitioner's constitutional rights under the United States Constitution. These denials of the petitioner's filings were done on mere technicalities and without regard for the deliberate indifference of equal protection of the law.

Therefore, the petitioner believes that he has addressed the issues that are wrongfully restraining him to the best of his ability to the Illinois Federal Courts, the Illinois State Courts, and now respectfully request that this Honorable Court review these issues in their entirety for the merit contained within it's content.

Whether the petitioner's claim of Prosecutorial
Misconduct should be dismissed for failure to preserve.

The District Court argues that the Petitioner did not detail what evidence was wrongfully admitted. The District Court states, " In specific, petitioner does not alledge that, this is the same wrongfully admitted evidence addressed in the State's Direct Appeal, regarding the 2005 incident." They stated that the claim was procedurally defaulted because petitioner failed to raise it before the State Courts. Could not raise issue on Direct, due to lack of knowledge, but once the petitioner learned of this claim, it was raised in his Post Conviction and again on his Habeas Corpus Petition. The only evidence (Physical) the State Prosecutor had and used to his benefit was the 2005 police report. The State Prosecutor made up a story stemming from this evidence and presented it before the court and juors. This evidence did nothing but prejudice the petitioner. The petitioner argues that, no one informed the jurors that this evidence was used in error and all that they heard should be disregarded. Therefore, denying the petitioner his Constitutional Rights to a Fair Trial.

The Seventh Circuit Court of Appeals, the District Court, and every Lower Court that rendered a decision failed to adequately address this issue by allowing the States Attorney's inflammatory and erroneous statements which

were designed to arouse the passions of the jury to go unchecked, or be properly investigated.

The Lower Courts has allowed this overzealous State Prosecutor to carry on a conversation with the jury by creating a hypothetical scene of what he thought occurred rather than presenting an argument offering substantial evidence. In fact, his whole presentation was predicated from the use of this wrongfully admitted evidence, where no crime ever occurred, nor which any charges were ever brought before the petitioner, which corrupted the entire trial.

In Johnson v. Zenon, 88 F.3d 828 (1996) the State over objections introduced evidence regarding Johnson's prior rape conviction in order to prove his alleged intent to commit rape at the time he entered the victim's home. This evidence "Blackened" the defendant's character and infringed on his Right to Present a Defense and Receive a Fair Trial.

In Caliendo v. Warden of California's Men's Colony, 365 F.3d 691 (2004), It is said that a communication is possibly prejudicial, not deminimus, if it raises a risk of influencing the verdict. Prejudice is presumed under these circumstances, and the defendant's Motion for New Trial must be granted, unless the prosecution shows that, there is no reasonable possibility that the communication

will influence the verdict, see O'Brien, 972 F.2d at 14; U.S. v. Dutkel, 192 F.3d 893 (9th Circuit 1999), also Exh.1

The petitioner here stated in his claim of Prosecutorial Misconduct that the prosecutor during his opening and closing arguments to the Court could only be seen as a calculated and sustained attempt to say, I am a person who can not control his desires and must therefore be guilty of the accusations produced by J.A.

In Darden V. Wainwright, 477 U.S. 168 with respect to prosecutorial misconduct, the Court disapproved of the closing argument, but reasoned that the law required a New Trial "only in those cases in which it is reasonable evident that the remarks might have influenced the jury to reach a more severe verdict of guilt.....or in which the committee was unfair. People v. Wadle, 97 P.3d 932 (2004)." It is said that a New Trial should be required whenever there was the "slightest possibility" that a typical juror would have been affected we held that the relevant question should be whether there existed a "reasonable possibility" that the extraneous contact or influence affected the verdict to the detriment of the defendant. *Id* at 1145 and N.5.

In People v. Atterberry 08 CF 1312, the communication between the prosecutor and the jurors that the Appellate Court failed to remove in its totality from the trial and minds of the jurors when the Court said, "use of the 2005 police reports was harmless error." I ask, how is a sentence of fifteen years harmless?

Furthermore, I contend that those inflammatory and erroneous statements created a ramification of deprivations of the petitioner's Due Process Rights, for the inappropriate

statements would naturally rise to the Psychological / Curiosity of the jurors. Any deliberate attempts to cause suspicion through Hypothetical Reference or Analysis could and should be considered suggestive by the power of malfeasance officials, who would naturally be viewed as a True and Honest Representatives of Law.

Even if the conduct does not render a trial Fundamentally Unfair, the actions may nevertheless be misconduct under State Law. If in fact, there was "any" involvement of the use of "deceptive" or reprehensible methods to attempt to persuade either the Court or the jury. See People v. Prince (1991) 1 CAL. 4th 324, 447. Furthermore, any improper statements used isn't simply relieved of its deprivation because of an order by a judge to disregard for the fruit has already been psychologically digested. People v. Benson (1990) 52 CAL.3d 754, 793; People v. Vargas, (2001) 91 CAL. App 4th 506.

Whether the Petitioner's Claim of Ineffective Assistance of Counsel should be dismissed for failure to preserve.

The District Court argues that the Petitioner abandoned this claim by Failing to raise it in his Post Conviction Appeal. Therefore, the petitioner is thereby procedurally defaulted.

The petitioner argues that the 7th Circuit Court of Appeals erred in their decision to deny his claim due to failing to raise the issue in his Post Conviction Appeal. This denial has allowed the petitioner's right to a fair trial to be violated under the United States Constitution Amend. 6.

As mentioned in the petitioner's Post Conviction Petition, the trial attorney for the petitioner fell below a level of professionalism and competent assistance. The petitioner's attorney failed to argue that the petitioner did not have in his history any acts of sexual offenses, nor has he ever been arrested, charged, or convicted of such Under the Statute 725 ILCS 5/115-7-3.

In my opinion, the petitioner believes that any trier of facts can see the judicial injustices that have occurred here and thereby should have corrected it by sending it back to the Lower Court for correction. This trial Attorney also failed to properly investigate to establish a defense. Failed to object to continuing without jury instructions. Failed to call witnesses, and failed impeach the victim's

testimony for the many inconsistencies. The Attorney only visited the petitioner three to four times while he was being held at the Will County Jail. The one key witness for / on the petitioner's behalf was his girlfriend whom the Attorney refused to call.

In Holsclaw v. Smith, 822 F.2d 1041, Failure of defendant's Trial Counsel to raise question of Sufficiency of Evidence of theft at trial was not strategic decision, but rather, was outside wide range of professional and competent assistance, resulting in reasonable probability that, but for errors, result would have been different, and this was ineffective assistance, only evidence presented at trial was testimony of victim.

In Pavel v. Hollins, 261 F.3d 210 (2nd Circuit 2001). Pavel's attorney was flawed in three distinct ways. Because we conclude, that the cumulative weight of these flaws deprived Pavel of his Sixth Amendment Rights. It is said that, for Sixth Amendment purposes, Attorney errors must be considered "In The Aggregate." Pavel's Attorney also failed to prepare a defense, failed to call important fact witnesses, and failed to call a medical expert. In People v. Atterberry, 08CF 1312, the Nurse's testimony was just overlooked when it should have caused doubt.

In U.S. v. Gray, 878 F. 2d 702, it is said that, defendant need only show reasonable probability that, but for Counsel's unprofessional errors, result of proceedings

would have been different, "reasonable probability" is one sufficient to undermine confidence in the outcome.

In Blackburn v. Foltz, 828 F. 2d. 1177 (6th Circuit 1987). The Attorney failed to move for suppression of defendant's prior conviction, failed to locate and question potential alibi witness, and failed to obtain transcript of previous trial in order to impeach key witness in State Prosecution. The combination of errors of defense counsel was prejudicial to defendant in State prosecution based on reasonable probability that, absent the errors, jury would have had reasonable doubt regarding defendant's guilt and defendant was therefore deprived of effective assistance of counsel, where counsel failed to pursue lead concerning alibi witness, erroneously advised defendant as to admissibility of prior convictions and failed to obtain transcript in order to impeach sole eyewitness with her inconsistent prior statement.

With respect to Beasley v. United States, 491 F.2d 687 (1974). It is said that the assistance of counsel required under the Sixth Amendment is reasonably likely to render and rendering reasonably effective assistance. Defense Counsel must investigate all apparently substantial defenses available to the defendant and must assert them in a proper and timely manner. Reece v. Georgia, 350 U.S. 85; Wilson v. Phend, 417 F. 2d 1197 (7th Circuit 1969).

In Edwards v. Carpenter, 529 U.S. 446, 146 L.E.d.2d 518. It is said that, the petitioner contends that the **Sixth** Circuit erred in failing to recognize that a procedurally defaulted ineffective assistance of counsel claim can serve as cause to excuse the procedural default of another habeas claim only if the habeas petitioner can satisfy the "cause and prejudice" standard with respect to the ineffective assistance claim itself.

Whether the Court erred in dismissing Petitioner's Habeas Corpus Petition for failure to recognize or identify a valid argument.

In the petitioner's petition, a claim of Judicial Misconduct was raised. The State answered, assuming petitioner meant to say Judicial Bias and since petitioner did not say Judicial Bias, this claim is thereby forefeted by way of Res Judicata.

The petitioner argues that the Court failed to see that the Appellate Court did not adequately address the issue, but instead stated that it was improperly asserted for the first time on Appeal. However, judges in different Districts or Circuits may come to different conclusions about whether certain errors meet the "Substantial or Injurious Effect" Standard. But at least one standard applies to all judges: If the Federal Judge reviewing the case is in "Grave Doubt" about whether an error had a "Substantial and Injurious Effect," he/she must find that the error was not harmless or affected the outcome of the trial.

The trial judge absolutely did not allow me the right to a Fair Trial when he knowingly allowed the State to introduce evidence of other-crimes into my trial when he knew that the petitioner would be prejudiced by the jury. In a trial he was presiding over,

People v. Weber, 02 CF 1107; 02 CF 1231, in 2004,
the judge stated that the admission of that kind
of evidence would prejudice the defendant and refused
to allow it into trial. (See Exhibits 3 a-g).

Whether the Court erred by failing to recognize that a jurist of reason would find it debatable as to whether appellate Counsel was ineffective.

The petitioner raised this issue on his Post Conviction Petition in the Court of 3rd District against Attorney Bryan Kohut, in which he decided it was a conflict of interest and transferred the case to the 5th District under Robert Burke, who also failed to raise the issue of Ineffective Assistance of Counsel but only raised an issue he felt had merit.

Therefore, failing to preserve the issue for further review. Mr. Burke also failed to raise an issue of the Court issuing jury instructions. Murray v. Carrier, 106 S. Ct. 2639 (1986); People v. Delgado, 876 N.E. 2d. 189 (2007). It is never the duty of the petitioner to object in continuing without the instructions, it is the Attorney's responsibility to object.

In U.S. v. Marcus, 560 U.S. 258 (2010). The Court of Appeals employed improper plain error standard of review and District Court's error in failing to instruct jury. According to criminal law, an Appellate Court may in its discretion correct an error not raised at trial only where the Appellate demonstrates that: 1) there is an error; 2) the error is clear or obvious rather than subject to reasonable dispute; 3) the error affected the

Appellant's Substantial Rights, which in the ordinary case means it affected the outcome of the District Court proceedings; and 4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings (Fed. Rules Cr. Proc. rule 52 (b) 18 U.S.C.A.).

In pursuing relief through the Post Conviction Petition, the petitioner stated that the judge failed to recognize his argument involving one of the judge's earlier cases, People v. Weber, 02 CF 1107; 02 CF 1231. Mr. Burke argued claims but failed to amend the petition to include the documents or docket Numbers to support the claim. Rather, he allowed the petition to go before the Court just mentioning "At Weber's Trial." After the petition being dismissed Counsel Burke sent me what I , the petitioner needed. See Exhibit 3 a-g).

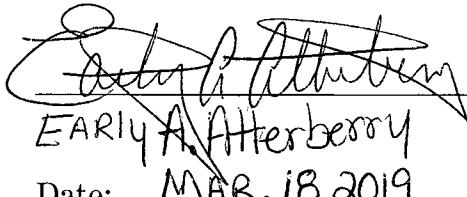
IN CONCLUSION,

As I come on the level of truth, I pray that this Honorable Court grant me the equitable relief which I am due, that of a vacature of my conviction and the dismissal of my charges.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


EARLY A. AFTERBERRY
Date: MAR. 18, 2019