

No. 18-8727

ORIGINAL

Supreme Court, U.S.
FILED

MAR 20 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

COREY WIGGINS — PETITIONER
(Your Name)

VS.

STAN PAYNE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT OF MISSOURI

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

PETITION FOR WRIT OF CERTIORARI

Corey Wiggins #1263615

(Your Name)

Eastern Reception and Diagnostic Center
2727 Hwy K

(Address)

Bonne Terre, MO 63628

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED
WHETHER THE BELOW COURT, EIGHTH CIRCUIT COURT OF APPEALS ERRED IN

WHETHER THE BELOW COURT, EIGHTH CIRCUIT COURT OF APPEALS,
ERRED IN REFUSING TO GRANT A CERTIFICATE OF APPEALABILITY ON
BOTH OF PETITIONER'S CLAIMS. A CERTIFICATE OF APPEALABILITY
SHOULD HAVE BEEN ISSUED ON HABEAS CLAIM WHERE PETITIONER SHOWED
HIS ATTORNEY WAS INEFFECTIVE UNDER THE SIXTH AMENDMENT OF THE
UNITED STATES CONSTITUTION, FOR FAILURE TO INVESTIGATE, AND
FAILING TO DISCUSS WITH THE POSSIBILITY OF A VOLUNTARY MANSLAUGHTER
INSTRUCTION VERSUS COERCING PETITIONER TO PLEAD TO SECOND DEGREE
MURDER.

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:

Petitioner Corey Wiggins is a party to this action, as is the Warden (Stan Payne) whom is the respondent in this case, and whom has custody over petitioner.

Warden Stan Payne is represented by the Missouri Attorney General (Assistant Attorney General Stephen D. Hawke) whom address is: P.O. Box 899 Jefferson City, MO 65102

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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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 F to the petition and is Wiggins v. Payne,
[X] reported at 2018 U.S. Dist. LEXIS 109687 (8th Cir. 2018); 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[] is unpublished.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 E to the petition and is Wiggins v. Payne, 2018 U.S. Dist. LEXIS 109687
[X] reported at 8th Cir. November, 2018; 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 A to the petition and is
[X] reported at Wiggins v. State, 480 Sw3d 379 (Mo App 2015); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Missouri Court of Appeals court appears at Appendix C to the petition and is
[X] reported at Wiggins v. State, 512 Sw3d 106 (Mo App 2017); 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 January 31, 2019.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January, 2019, and a copy of the order denying rehearing appears at Appendix F.

[] 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 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 United States Constitution provides, that to prevail on a claim of ineffective assistance of counsel, petitioner must show that his attorney's performance was deficient in that he failed to exercise the customary skill and diligence that a reasonably competent attorney would perform under similar circumstances; and that the deficient performance prejudiced the defense, *Strickland v. Washington*, 104 S.Ct. 2052 (1884).

The Missouri Court of Appeals in this case held that, defense counsel was not ineffective when he failed to discuss with petitioner the possibility of proceeding to trial and requesting a voluntary manslaughter Instruction, or for failing to investigate this defense.

The United States District Court for the Eastern District of Missouri, upheld the State appellate court's decision, and the Eighth Circuit Court of Appeals refused to grant a certificate of appealability on the two issues.

STATEMENT OF THE CASE

Petitioner points out that this case is unique, one that this court should hear, because it involves a trusted friend of petitioner's family (an adult) whom had been taking sexual liberties with petitioner from his pre-teens to his adulthood, to the point where petitioner decided he had had enough, and was tired of this adult victim constantly threatening and harrassing him for sex.

As a result of petitioner's counsel's failure to investigate, or raise any type of defense, except that of a plea bargaining, petitioner was forced to plead guilty, only later to find out that his attorney could have proceeded to trial and request a voluntary manslaughter Instruction, because there was evidence where a jury could infer that petitioner's actions constituted voluntary manslaughter. Under, *Lafler v. Cooper*, 566 US 156 prejudice can be shown if there was a likelihood of a different outcome.

And, under *Henderson v. Morgan*, 426 US 637 (1976) his 2nd Degree Murder conviction was set aside because he did not receive adequate notice of defense to which he plead.

Petitioner even points out to this court, that the Missouri Court of Appeals reversed petitioner's case, *Wiggins v. State*, 480 SW3d 379 because there was evidence that the Instruction could have been given, but only reversed so that an evidentiary hearing could be had; the trial court (or Hearing Court) then set an evidentiary hearing to be had which deprived petitioner from putting on any evidence involving his attorney being ineffective, then when the case went back on appeal, the respondent argued that petitioner received a fair hearing, which he didn't-- even more reason this Court's writ should issue.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because the Court of Appeals for the Eighth Circuit should have inquired into the merits of petitioner's claims, because petitioner satisfied the requirements of 28 USC 2253(c) which would require an overview of the claim and assessment of the merits, which is the first component.

This court will consider the second component, under Slack v. McDaniel, 529 US 473 as to whether jurists of reason could conclude that the district court's dismissal was incorrect, which in this case it was.

The Eight Circuit Court of Appeals failed to even consider or determine whether petitioner was entitled to a Certificate of Appealability; and failed to even identify a debatable issue in this case

Petitioner prays that this Court issue it's writ of certiorari; that this case be reversed back to the below directing such court to issue it's certificater of appealability on both of petitioner's claims, grant this and any further relief this court deem fit and proper.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

* Corey wiggins

Date: March 25, 2019

