

18-9074
No. _____

Supreme Court, U.S.
FILED

MAR 11 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

vs.

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

(Your Name)

(Address)

(City, State, Zip Code)

(Phone Number)

ORIGINAL

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— IN THE UNITED STATES SUPREME COURT —

Aaron Francois
Petitioner
VS.

Darrel Vanhooy
Warden, Louisiana State Prison
Respondent

US. DISTRICT COURT NO. 16-0348
US. Fifth Circuit Court NO. 18-30956
FILED: _____

CLERK OF COURT

PETITION FOR A WRIT OF CERTIORARI

Now comes the Petitioner, Aaron Francois, pro se, who respectfully submits this petition of Certiorari and hereby alleged that he is in the custody of Respondant pursuant to a state court judgement of conviction that was obtained in violation of the Constitution of the United States. Petitioner represents as follows:

JURISDICTIONAL STATEMENT

This case was brought before the United States District Court, Western District of Louisiana by Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, see Appendix "A". A ruling was entered by the U.S. District Court denying of the writ on July 20, 2018. See Appendix "B". The U.S. District Court thereafter on October 30, 2018 denied the issuance of a Certificate of appealability, see Appendix "C".

On August 16, 2018 Petitioner filed a Notice of Appeal. See Appendix "D". Thereafter, the United States Fifth Circuit Court of appeal denied a COA on December 18, 2018 for Petitioner's failure to timely comply with Certificate of appealability requirements, see Appendix "E". The Petitioner now seeks timely review with this Honorable Court and respectfully request that the instant writ of Certiorari be grant-

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ed for the following reasons:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution and the Due Process Clause, applicable to the States through the Fourteenth Amendment, United States Code, Title 28 U.S.C. § 2254 (d)(1).

STATEMENT OF THE CASE

On February 23, 2009, a grand jury indicted the petitioner for the first degree murder and armed robbery of Walter Badaux, violations of La. R.S. 14:30 and 14:64. Trial was severed from Co-defendant on November 9, 2009. On State's motion, the trial court amended the indictment on January 20, 2011, to second degree murder, a violation of La. R.S. 14:30.1 (a)(2), and robbery while armed with a dangerous weapon, a violation of La. R.S. 14:64.

The Petitioner's Counsel admitted the armed robbery to the jury in his opening statement at trial, after stating the Petitioner's agreement to that admission on the record. On August 15, 2012, the jury found the Petitioner guilty of second degree felony murder and armed robbery. The trial court sentenced the Petitioner on the murder conviction to mandatory life imprisonment without benefit of parole, probation, or suspension of sentence on September 13, 2012. The Petitioner filed appeals to both the Third Circuit Court of Appeal, which was denied on June 5, 2013, and the Louisiana Supreme Court who denied relief on January 27, 2014.

Thereafter, the Petitioner filed an Application for postconviction Relief into the district court which denied the petition. Thereafter, the Petitioner timely sought writs in both the intermediate state court and Louisiana Supreme Court which writs were denied. Petitioner thereafter files writ of Habeas Corpus 28 U.S.C. section 2254 into the United States District Court, Western District of Louisiana where he had raised four (4) claims.

CLAIM ONE

The evidence failed to establish that the murder and underlying felony of armed robbery formed part of a continuous transaction without a significant break in the chain of events.

CLAIM TWO

Petitioner's Fifth, Sixth and Fourteenth Amendment Rights were violated when he was denied his Right to testify.

CLAIM THREE

Ineffective Assistance of Trial Counsel; A violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; and Article I section 13, of the Louisiana Constitution.

(See, *Strickland v. Washington*, 466 U.S. 668 (1984); *Chronic*, 466 U.S. 648 (1984). Counsel denied petitioner the Constitutional right to testify in his own behalf).

CLAIM FOUR

Indigent Petitioner has been denied his Constitutional Rights to Appellate Review and to any free copy(s) of the records to have an adequate opportunity to fairly present his Constitutional Claims on Post Conviction Relief.

On July 20, 2018, the United States District Court denied the Petitioner's Writ of Habeas Corpus. A Certificate of Appealability (COA) to the United States Fifth Circuit Court of Appeals was also denied by the United States District Court on October 30, 2018.

On August 16, 2018, Petitioner filed a notice of appeal to seek review with the United States Fifth Circuit Court of appeals. The United States Fifth Circuit Court of appeals denied Petitioner a COA, thus issuing its Mandate on December 18, 2018.

The Petitioner now seeks timely review with this Honorable Court and

respectfully request that the instant writ of certiorari be granted for the following reasons:

QUESTIONS PRESENTED

1.

Did the United States District Court Commit Manifest error in adopting the United States Magistrate Judge's Report and Recommendation which Recommended Denial of Petitioner's Claims even though Said Report and Recommendation failed to mention the denial of the claims by the State Courts were Not Contrary to or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court?

2.

Does the United State District Court's Judgement reflect that it considered all of the Petitioner's claims when it denied and dismissed with prejudice Petitioner's petition for writ of habeas Corpus?

ARGUMENT NO. 1.

PETITIONER CONTENTS THAT THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA COMMITTED MANIFEST ERROR WHEN IT ADOPTED THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION DENYING AND DISMISSING WITH PREJUDICE PETITIONER'S CLAIMS EVEN THOUGH SUCH REPORT AND RECOMMENDATION DOES NOT ADHERE TO THE PROCEDURES OUTLINED IN U.S.C. § 2254(d)(1)(2).

IT is the Petitioner's position in his petition for writ of certiorari to this Honorable Court that the writ should be granted because the petitioner presented several claims to the U.S. District Court within

his writ of habeas corpus and not one of those claims were reviewed under the proper standard of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254, governs habeas Corpus Relief.

1. Standard of Review-28 U.S.C. § 2254

Petitioner contends that the Antiterrorism and Effective Death Penalty Act ("AEDPA") of 1996, 28 U.S.C. § 2254, governs habeas relief. Specifically, the AEDPA limits how a federal court may consider habeas claims. After the state courts have "adjudicated the merits" of an inmate's complaints, federal review "is limited to the record that was before the state court." See *Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (2011). Petitioner contends that in order to get habeas corpus relief in a federal court he must show that the adjudication of the claim in state court: (1) 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; or (2) Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding (see U.S.C. § 2254(d)(1)-(2)).

Petitioner contends that a decision is "contrary to" clearly established federal law "if the state court arrived at a conclusion opposite to that reached by... the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts." See *Dowthitt v. Johnson*, 230 F.3d 733, 740-41 (5th Cir. 2000) (quoting *Williams v. Taylor*, 529 U.S. 362 (2000)). "The 'contrary to' requirement refers to holdings, as opposed to the dicta, of... The Supreme Court's decisions as of the time of the relevant state court decision." *Id.* at 740. Under the "unreasonable application" clause, a federal habeas court may grant the writ only if the state court "identifies the correct governing

legal principle from... the supreme court's decisions but unreasonably applies the principle to the facts of the prisoner's case." *Id.* at 741.

Moreover, section 2254(d)(2) speaks to factual determinations made by the state courts. Federal courts presume such determinations to be correct; however, a petitioner can rebut this presumption by clear and convincing evidence, see 28 U.S.C. § 2254 (e)(1).

The petitioner submitted the following claims to the federal district courts after said claims were adjudicated on the merits by the state courts:

2. Petitioner's claims

- A. The evidence failed to establish that the murder and the underlying felony of armed robbery formed part of a continuous transaction without a significant break in the chain of events;
- B. Petitioner was denied his constitutional right to testify on his own behalf;
- C. Trial counsel rendered ineffective assistance of counsel by not allowing petitioner to testify on his own behalf; and
- D. Indigent petitioner was denied his constitutional right to appellate review and to any free copies of the records to have an adequate opportunity to fairly present his constitutional claim on post conviction relief.

As evidenced by the writ of habeas corpus filed by the petitioner in the U.S. District Court (Appendix "A"), the above claims, which if established, would entitle the petitioner to relief pursuant to 28 U.S.C. § 2254, and the errors assigned are specific grounds allowed and in conformity with the provisions outlined in the petition for writ of habeas corpus application itself.

Argument NO. 1

Petitioner contends that the U.S. District Court committed manifest error in denying relief on the above claims without first adhering

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to the procedures outlined in U.S.C. § 2254(d)(1)(2). Again, specifically, the AEDPA limits how a federal court may consider habeas claims filed by a state prisoner, that is, after the state courts have adjudicated the merits of a state prisoner's claims, federal review is limited to the record that was before the state court. See *Cullen v. Pinholster*, *Supra*. Thus section 2254(d) permits habeas relief based on claims adjudicated on the merits in state court only when the state court's decision was (1) "contrary to or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court" or (2) "based on an unreasonable determination of facts." see *Carey v. Musladin*, 549 U.S. 70, 76-77 (2006); *Waddington v. Sarau*, 129 S.Ct. 823, 833 (2009) as well as *Rice v. Collins*, 546 U.S. 333, 338-39 (2006).

In the instant case, petitioner submits that it becomes quite clear when reviewing the Magistrate Judge's Report and Recommendation (Appendix "B"), his claims were adjudicated on the merits by the state court, however, when those claims were reviewed by the federal court, the Magistrate Judge failed to mention in its denial of them whether or not it found that the state court's adjudication of the claims were NOT contrary to or did NOT involve an unreasonable application of clearly established federal law, as determined by the Supreme Court or that the denial of the claims were not based on an unreasonable determination of the facts. Petitioner contends that the Magistrate's Report and Recommendation fails to state at the conclusion of each of the denial of his constitutional claims, whether or not the state court's denial of the constitutional claims was not contrary or involved an unreasonable application of federal law as determined by the Supreme Court, or that the denial of the claims were not based on an unreasonable determination of the facts. The Magistrate's Report and Recommendation must state this for each claim. see 28 U.S.C. section 2254(d)(1). "contrary to" means the state applied "a rule different from the governing law set forth in

(Supreme Court) cases, or if it decides a case differently than (the Supreme Court) has done on a set of materially indistinguishable facts." *Bell v. Cone*, 535 U.S. 685, 694 (2002) (state court's narrow interpretation of aggravating circumstance in death sentence appeal not contrary to federal law because such construction ensured defendant not sentenced to death in arbitrary or capricious manner); see also *Bobby v. Mitchell*, 131 S.Ct. 1762, 1764-65 (2011) (per curiam) (jury instructions requiring jury to consider imposing death penalty before lesser penalties not contrary to clearly established federal law because consistent with Supreme Court precedent). "Unreasonable application" means that a state court (1) identifies the correct legal rule but unreasonably applies it to the facts of the case, or (2) unreasonably extends the legal principle to a new context to which it should not apply or unreasonably refuses to extend the principle to a new context. see *Williams v. Taylor*, 529 U.S. at 405. The application must be objectively unreasonable, not merely incorrect. see *Bell v. Cone*, 535 U.S. 685, 694 (2002); see also *Parker v. Matthews*, 132 S.Ct. 2148, 2153 (2012) (per curiam) (state court not unreasonable when it concluded that question of extreme emotional disturbance was properly committed to jury). see: 28 U.S.C. section 2254 (d)(2); *Rice v. Collins*, supra (state court acceptance of prosecution's race-neutral explanation for striking African-American juror not unreasonable determination of facts); see, e.g., *Messiah v. Duncan*, 435 F.3d 186, 200-02 (2nd Cir. 2006) (same); *Moody v. Quarterman*, 476 F.3d 260, 270-71 (5th Cir. 2007) (state court determination that defense counsel waived objection to juror not unreasonable determination of facts because counsel failed to object); *Lamon v. Boatwright*, 467 F.3d 1097, 1102 (7th Cir. 2006) (state court acceptance of prosecutor's non-discriminatory explanation for striking African-American juror not unreasonable determination of facts).

As the above cases show, the Magistrate Judge's Report and Recommendation (Appendix "B") fails to mention whether or not the state court's denial of petitioner's Constitutional Claims were not contrary to or involved an unreasonable application of federal law as determined by this

Honorable Court, or that the denial of the claims were not based on an unreasonable determination of the facts.

ARGUMENT NO. 2

Does the United State District Court's Judgement reflect that it considered all of the petitioner's claims when it denied and dismissed with prejudice petitioner's petition for writ of habeas Corpus?

Petitioner contends that the burden is on him to prove that a federal habeas claim has been exhausted. See 28 U.S.C. Section 2254 (b). He further contends that habeas relief generally is not available to him unless he has exhausted the remedies available in state courts, which means utilizing all procedures available under state law to raise the claim and properly pursuing the claim through the entire appellate process of the state. See 28 U.S.C. Section 2254(c); see *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294, 302-03 (1984). In fact, the Exhaustion doctrine requires that he present the substance of his claim to the state courts to give those courts a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. See *Picard v. Connor*, 404 U.S. 270, 272 (1971). to meet the exhaustion requirement, he must have cited a specific federal constitutional or statutory provision in filings submitted to the highest state court. See *Baldwin v. Reese*, 541 U.S. 27, 32 (2004).

In the instant case the record reflects that every claim that the petitioner exhausted in the state courts, he presented the same in his federal writ of habeas Corpus. However, when the United States District Court, specifically Chief Judge S. Maurice Hicks, JR., wrote his "Judgment" (Appendix "B") denying the writ he only considered one of petitioner's claims - which one, the Judgment does not say - although petitioner raised several claims within his habeas corpus writ. The Judgment states in relevant part:

"... specifically that the state courts adjudication of the claim...."

(see Judgment-Appendix "B ")

Petitioner contends that it is obvious that he exhausted several claims in the state courts—not one—and that those several claims that he exhausted within the state courts he presented within his petition for writ of habeas corpus (Appendix "A ") to the United States District Court. However, again, the Judgment (Appendix "B ") reflects that only one of the claim was considered by U.S. District Judge Hicks. Petitioner contends that he has a constitutional right to have judicial review of all his claims that he properly exhausted in state courts and thereafter presented to the United States District Court via writ of habeas corpus. The Judgment (Appendix "B ") does not reflect that all of petitioner's claims were considered by U.S. District Judge Hicks when he ordered, adjudged and decreed that petitioner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. section 2254 be denied and dismissed with prejudice. Petitioner contends this was error since the Judgment fails to reflect that all of his claims were considered.

Conclusion

For the foregoing reasons, petitioner Aaron Francois prays that this Honorable Court grant him the writ of certiorari.

Respectfully Submitted,
SL Aaron Francois #603619
 Aaron Francois #603619

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Writ of Certiorari, has been sent to the District Attorney's office of the Fifteenth (15th) Judicial District, Lafayette Parish, P.O. Box 3306, Lafayette, La. 70502, on this 8 day of March, 2019,

SL Aaron Francois #603619
 Aaron Francois #603619
 Camp-C Wolf-3
 Louisiana State Prison
 Angola, LA, 70712

THE REASON WRIT SHOULD BE GRANTED

This petition is submitted because the lower federal courts have departed from the proper standard of the AEDPA. The petitioner respectfully informs this Honorable Court that the United States Magistrate Judge for the United States District Court, Western District of Louisiana, denied Petitioner's Constitutional claims without mentioning it did so only after finding that the state courts denial of the claims were NOT Contrary to, or involved an unreasonable application of clearly established Federal Law, as determined by this court.

Moreover, the United States District Judge for the United States District Court, Western District of Louisiana, Judgment does not reflect that it independently considered all of petitioner's claims when it denied his petition for writ of habeas corpus with prejudice.