

No. 18-9281

U.S. SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC 20543

Supreme Court, U.S.
FILED

MAY 07 2019

OFFICE OF THE CLERK

RANDY BURKE PRO-SE — PETITIONER
(Your Name)

vs.

DIANE PROSPER ET AL., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE VIRGIN ISLANDS, ST. CROIX DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RANDY BURKE #1473923
(Your Name)

WALLENS RIDGE STATE PRISON, P.O. BOX 759
(Address)

BIGSTONE GAP, VA 24219
(City, State, Zip Code)

276-523-3310
(Phone Number)

QUESTION(S) PRESENTED

INEFFECTIVE ASSISTANCE OF COUNSEL IS A 6TH AMENDMENT
RIGHT VIOLATION

1. WHY TRIAL COUNSEL CARL A. BECKSTEDT III did NOT CROSS EXAMINE THE MAIN WITNESS BEATRICE LAWRENCE WHEN TRIAL COUNSEL KNEW THAT HIS CLIENT RANDY BURKE HAVE THE RIGHT TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM?

Nicoloudakis v. Abraham, 296 Fed. Appx. 290, 2008 U.S. App. LEXIS 21845

Chambers v. Mississippi (410 U.S. 284 [1973]), and United States v. Bagley (473 U.S. 667 [1985])

SEE Maryland v. Craig, 497 U.S. 836, 845, 116 S. Ct. 3157, 111 L. Ed. 2d 666 (1990)

Taylor v. Metoyer 788 S.E.2d 376 (2016), and Higgins v. Renico, 470 F.3d 624, 632-634 (111) (6th Cir. 2006)

2. WHY TRIAL COUNSEL FAILED TO OBJECT TO JURY INSTRUCTIONS WHICH STATED TO VIEW DIRECT AND CIRCUMSTANTIAL EVIDENCE AS THE SAME BY TRIAL COURT WHO FURTHER STATED THAT THE LAW MAKES NO DISTINCTION BETWEEN THE TWO?

Reagan v. Norris, 365 F.3d 616, 622 (8th Cir. 2004)

3. WHY TRIAL COUNSEL FAILED TO CALL AND PRESENT FACTUAL WITNESS "THE MEDICAL EXAMINER" MICHELLE DUPRE WHOSE TESTIMONY IS PROFESSIONAL AND EXPERT TO REBUT THE PROSECUTION'S ALREADY WEAK CASE. Cavel v. Hotlins, 261 F.3d 210, 217-18 (2nd Cir. 2001)

4. WHY TRIAL COUNSEL FAILED TO BRING TO THE JURORS ATTENTION THAT THE DEFENDANT ON TRIAL WAS ACQUITTED OF THE CHARGE OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE. U.S. v. McKee, 506 F.3d 225, 231 (3rd Cir. 2007)

5. WHY TRIAL COUNSEL FAILED TO BRING TO THE JURORS ATTENTION THAT ACCORDING TO THE EYE WITNESS BEATRICE LAWRENCE'S STATEMENT OF SEEING RANDY BURKE SHOOT A GUN IN THE AIR, AND NOT AT VICTIM, WAS NOT AN INTENTIONAL ACT OF MURDER BUT RATHER 2ND DEGREE MURDER OR MANSLAUGHTER.

Richie v. Workman, 599 F.3d 1131, 1138-41 (10th Cir. 2010)

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:

RANDY BURKE PRO-SE
Petitioner

v.

DIANE PROSPER ET AL.,
Respondents

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A Decision of State Court of Appeals.

APPENDIX B Decision of State Trial Court.

APPENDIX C Decision of State Supreme Court Denying Review.

APPENDIX D N/A Due To The Fact That Petitioner didn't Request it.

APPENDIX E Petition For Writ of Habeas Corpus.

APPENDIX F Appeal Brief & Reply Brief of Petitioner Habeas Corpus Appeal.

TABLE OF AUTHORITIES CITED

APPEAL BRIEF OF PETITIONER HABEAS CORPUS APPEAL

CASES

PAGE NUMBER

HIGGINS V. RENICO, 470 F.3d 624, 632-33 (6th Cir. 2006) 2

REAGAN V. NORRIS, 365 F.3d 616, 622 (8th Cir. 2004) 4

CAVEL V. HOTLINS, 261 F.3d 210, 217-18 (2nd Cir. 2001) 5

U.S. V. MCKEE, 506 F.3d 225, 231 (3rd Cir. 2007) 6

RICHIE V. WORKMAN, 599 F.3d 1131, 1138-41 (10th Cir. 2010) 7

REPLY BRIEF FOR APPELLANT

CHAMBERS V. MISSISSIPPI, 410 U.S. 284 [1973] 2

UNITED STATES V. BAGLEY, 473 U.S. 667 [1985] 2

STATUTES AND RULES

FED. R. CRIM. PRO. 16(a)(1)(G) 5

OTHER TRAVERSE BY PETITIONER

Nicoloudakis V. Abraham, 296 Fed. APPX. 280, 2008 U.S. APP. LEXIS 21845 1

PERRY V. NEW HAMPSHIRE, 565 U.S. 228 (2012) 2

MARYLAND V. CRAIG, 497 U.S. 836, 845, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990) 2

TAYLOR V. METOYER, 788 S.E.2d 376 (2016) 3

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 _____ 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 _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[V] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[V] reported at BURKE V. PROSPER, et al., S.Ct.Civ.No.2018-0031; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Superior Court of the V.I. P.O. Box 929, 00821-929 court appears at Appendix E to the petition and is

[V] reported at BURKE V. Herbert, et al., Civ. No. SX-15-CV-518; 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 _____.

[] 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 _____ (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 Feb. 13, 2019. A copy of that decision appears at Appendix C.

[] 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

6th AMENDMENT VIOLATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

STATEMENT OF THE CASE

1. ON OCTOBER 21, 2006 THE PETITIONER RANDY BURKE WAS ACCUSED OF MURDER 1ST DEGREE OF THE VICTIM JULIUS CUPID. IN THIS CASE THERE WAS A MAIN WITNESS BEATRICE LAWRENCE WHO GAVE A STATEMENT TO THE POLICE ON THE INCIDENT STATING THAT SHE SAW MR. BURKE POINT A 9MM HANDGUN IN THE AIR, SHE CLOSE HERSELF INSIDE HER APARTMENT AND THEN HEARD A SHOT "WENT OFF". AT TRIAL ON 12-14-09 MS. LAWRENCE WAS ASKED ON THE STAND BY THE PROSECUTOR, "did you saw MR. BURKE shoot a gun in the air?" MS. LAWRENCE RESPONDED THAT SHE CAN'T REMEMBER. SEE TRAVERSE BY PETITIONER Pg. 4-7. TRIAL ATTY. CARL BECKSTEDT FAILED TO CROSS EXAMINE MS. LAWRENCE ABOUT THESE ISSUES WHICH MADE HIM INEFFECTIVE. SEE PERRY V. NEW HAMPSHIRE 565 U.S. 228 (2012) AND MARYLAND V. CRAIG, 497 U.S. 836, 845, 110 S. CT. 3157, 111 L. ED. 2d 666 (1990). IT WASN'T UNTIL THE WITNESS MS. LAWRENCE WAS INTIMIDATED, BADGERED AND TOLD TO CHANGE HER TESTIMONY BY TRIAL COURT DID HER TESTIMONY BEGIN. THIS TESTIMONY WAS VOID, UNLAWFUL AND IT ALSO VIOLATED THE PETITIONER'S RIGHT TO A LAWFUL DUE PROCESS.
2. WHEN TRIAL ATTY. BECKSTEDT FAILED TO OBJECT TO THE JURY INSTRUCTIONS TO VIEW DIRECT AND CIRCUMSTANTIAL EVIDENCE AS THE SAME BY TRIAL COURT WHO FURTHER STATED THAT THE LAW MAKES NO DISTINCTION BETWEEN THE TWO; THAT MADE TRIAL ATTY. BECKSTEDT INEFFECTIVE. TRIAL ATTY. ALSO FAILED TO MENTION THIS ERROR DURING CLOSING ARGUMENTS AT TRIAL, AND HE FAILED TO MENTION THIS AS AN ISSUE ON THE DIRECT APPEAL; AND THEREFORE TRIAL ATTY. WAS INEFFECTIVE. REAGAN V. NORRIS, 365 F.3d 616, 622 (8TH CIR. 2004). DIRECT EVIDENCE IS EVIDENCE IMMEDIATELY ESTABLISHED IN A FACTUAL MATTER WITHOUT A WITNESS TO BE PROVEN TRUE AND WITHOUT THE NEED FOR INFERENCES. CIRCUMSTANTIAL EVIDENCE IS MOSTLY HEARSAY SHOWING INDIRECTLY THE FACTS SOUGHT TO BE PROVEN.
3. TRIAL ATTY. BECKSTEDT FAILED TO CALL AND PRESENT MEDICAL EXAMINER MICHELLE DUPRE, (WHO PERFORMED THE AUTOPSY ON VICTIM JULIUS CUPID) TO THE STAND TO ANSWER QUESTIONS AND GIVE TESTIMONY ON WHAT WAS THE CAUSE OF VICTIM'S DEATH. CAVEL V. HOTLINS, 261 F.3d 210, 217-18 (2ND CIR. 2001). DR. KOBODCHAK WAS NEVER DISCLOSED AS AN EXPERT AND AT NO TIME WAS HER RESUME' PRESENTED AT TRIAL, WHICH WAS A CLEAR VIOLATION OF FED. R. CRIM. PRO. 1b (a)(1)(G).
4. TRIAL ATTY. BECKSTEDT FAILED TO BRING TO THE JURORS ATTENTION THAT MR. BURKE'S CHARGE OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE WAS DROPPED. TRIAL ATTY. NEVER MENTIONED THIS DURING TRIAL OR FOR THE CLOSING ARGUMENT AND SO WHEN JURORS WENT TO DELIBERATE, THEY STILL HAD POSSESSION OF A FIREARM CHARGE AS THE WEAPON USED TO COMMIT MURDER 1ST DEGREE. U.S. V. MCKEE, 506 F.3d 225, 231 (3RD CIR. 2007).
5. TRIAL ATTY. BECKSTEDT FAILED TO BRING THE JURY THAT MS. LAWRENCE'S STATEMENT OF SEEING MR. BURKE SHOOT A GUN IN THE AIR AND NOT AT VICTIM JULIUS CUPID COULD NOT BE GROUNDS FOR AN INTENTIONAL ACT OF MURDER 1ST DEGREE. TRIAL COUNSEL DUTY WAS TO PUSH FOR THE TRIAL COURT TO TRY THE CASE ON 2ND OR 3RD DEGREE MURDER OR MANSLAUGHTER. BASED ON ALL THESE ISSUES RAISED, IT SHOWS THAT TRIAL COUNSEL BECKSTEDT PERFORMANCE WAS DEFICIENT AND PREJUDICIAL WHICH MADE HIM INEFFECTIVE. FOR THESE REASONS STATED MR. BURKE THE PETITIONER DESERVES A NEW TRIAL, OR ALL CHARGES AGAINST HIM DISMISSED WITH PREJUDICE.

REASONS FOR GRANTING THE PETITION

PETITIONER RANDY BURKE PRAYS THAT THIS U.S. SUPREME COURT IN WASHINGTON D.C GRANT THE RELIEF OF THIS WRIT OF CERTIORARI BASED ON THE GROUNDS OF 6TH AMENDMENT VIOLATION OF THE U.S. CONSTITUTION TO AN EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL AND DIRECT APPEAL.

1. WHEN THE TRIAL ATTY. BECKSTEDT DIDN'T CROSS EXAMINE THE MAIN WITNESS BEATRICE LAWRENCE THAT WAS A DEFICIENCY IN HIS PERFORMANCE CAUSING HIM TO BE INEFFECTIVE, A VIOLATION OF MR. BURKE 6TH AMENDMENT RIGHT TO AN EFFECTIVE COUNSEL. TRIAL ATTY. ACT OF NOT CROSS EXAMINING THE MAIN WITNESS WAS NOT HARMLESS, IF TRIAL ATTY. HAD CROSS EXAMINED MS. LAWRENCE THE OUTCOME OF THE TRIAL MAY HAVE BEEN DIFFERENT. JURORS WOULD OF GOTTEN A CHANCE TO KNOW IF HER STORY WAS CREDIBLE FROM THE DEFENCE POINT OF VIEW. FAILURE TO CROSS EXAMINE MS. LAWRENCE CAUSED PREJUDICE ON THE DEFENDANT ESPECIALLY WHEN MS. LAWRENCE IS SAYING ON THE STAND AT TRIAL THAT, SHE CAN'T REMEMBER ANYTHING. SEE HIGGINS V. RENICO 470 F.3d 624, 632-633 (6TH CIR. 2006)
2. WHEN TRIAL ATTY. FAILED TO OBJECT TO JURY INSTRUCTIONS WHEN TRIAL COURT TOLD THE JURORS TO VIEW DIRECT AND CIRCUMSTANTIAL EVIDENCE AS THE SAME, THAT ERROR WAS NOT HARMLESS. DIRECT EVIDENCE IS PLAIN EVIDENCE THAT CAN BE PROVEN TRUE WITHOUT A DOUBT OR BELIEF. CIRCUMSTANTIAL EVIDENCE IS EVIDENCE THAT IS MOSTLY HEARSAY AND NOT BASED ON PERSONAL KNOWLEDGE. THEREFORE TRIAL ATTY. PERFORMANCE WAS DEFICIENT WHEN HE FAILED TO OBJECT TO THE JURY INSTRUCTION BY TRIAL COURT. THIS DEFICIENCY VIOLATED MR. BURKE 6TH AMENDMENT RIGHT TO AN EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL. THE ONLY WAY TO UNDO TRIAL ATTY. ERRORS IS TO GRANT PETITIONER MR. BURKE A NEW TRIAL, OR DISMISS ALL CHARGES AGAINST HIM WITH PREJUDICE. SEE REAGAN V. NORRIS 365 F.3d 616, 622 (8TH CIR. 2004)
3. WHEN TRIAL ATTY. FAILED TO CALL MEDICAL EXAMINER AT TRIAL WHO WAS AN IMPORTANT FACT WITNESS, THAT MADE HIM VERY INEFFECTIVE. DURING THE TRIAL THE MEDICAL EXAMINER MICHELLE DUPRE DID NOT TESTIFY TO THE CAUSE OF JULIUS CUPID'S DEATH AS A FOLLOW UP TO HER AUTOPSY REPORT. WHEN DR. KOLODCHAK TESTIFIED REGARDING JULIUS CUPID'S DEATH IT WAS A CLEAR VIOLATION OF FED. R. CRIM. PRO. 16(a)(1)(G) SIMPLY BECAUSE DR. KOLODCHAK WAS NEVER DISCLOSED AS AN EXPERT WITNESS TO THE DEFENCE OR EVEN QUALIFIED AS AN EXPERT TO BASED HER TESTIMONY ON SCIENTIFIC, TECHNICAL OR OTHER SPECIALIZED KNOWLEDGE. DR. KOLODCHAK WENT BEYOND HER SCOPE WHEN SHE INTERPRETED MEDICAL RECORDS AND SPECULATED AS TO THE CAUSE OF JULIUS CUPID'S DEATH AND THESE DISCUSSIONS ARE ALL BASED ON HER TECHNICAL AND SPECIALIZED UNDERSTANDING AS A DOCTOR AND SHOULD HAVE BEEN EXCLUDED ABSENT EXPERT QUALIFICATION. SEE CAVEL V. HOTLINS, 261 F.3d 210, 217-218 (2ND CIR. 2001)
4. WHEN TRIAL ATTY. FAILED TO BRING TO THE JURORS ATTENTION AT TRIAL, THE DEFENDANT WAS ACQUITTED OF THE CHARGE POSSESSION OF A FIREARM DURING A COMMISSION OF A CRIME OF VIOLENCE, THAT WAS NOT A HARMLESS ERROR, IN FACT THAT A DEFICIENCY IN HIS PERFORMANCE WHICH PREJUDICE THE DEFENCE. THIS WAS TRIAL ATTY. ERROR, BECAUSE JURY DELIBERATED WITHOUT CLEAR KNOWLEDGE THAT POSSESSION OF A FIREARM DURING A COMMISSION OF A CRIME OF VIOLENCE WAS DISMISSED. AGAIN IT WAS TRIAL ATTY. ERROR BECAUSE JURY INSTRUCTION ALLOWED JURY TO CONVICT FOR CHARGES ABSENT FROM INDICTMENT AND GOVERNMENT COULD NOT SHOW WITH CERTAINTY THAT JURY DID NOT CONVICT MR. BURKE ON THAT BASIS. IF TRIAL ATTY. HAD PRESENTED TO JURORS FOR CLOSING ARGUMENTS THAT POSSESSION OF A FIREARM DURING A COMMISSION OF A CRIME OF VIOLENCE CHARGE WAS DISMISSED, SOME OF THE JURORS MAY HAVE CAME BACK WITH A NOT GUILTY VERDICT RESULTING IN A HANG JURY. SEE U.S. V. MCKEE, 506 F.3d 225, 231 (3RD CIR. 2007)
5. WHEN TRIAL ATTY. FAILED TO ADDRESS TO THE COURT THAT MS. LAWRENCE'S STATEMENT OF SEEING MR. BURKE SHOT A GUN IN THE AIR AND NOT AT VICTIM WAS NOT AN INTENTIONAL ACT OF 1ST DEGREE MURDER. TRIAL ATTY. ERRED BY NOT ADDRESSING THE ISSUE OR FILING MOTIONS TO HAVE MR. BURKE TRIED FOR 2ND DEGREE MURDER, 3RD DEGREE MURDER, OR EVEN MANSLAUGHTER. FURTHERMORE, WHEN TRIAL ATTY. DIDN'T CROSS EXAMINE THE MAIN WITNESS MS. BEATRICE LAWRENCE ABOUT THIS ISSUE OF A SHOT OR SHOTS BEING FIRED IN THE AIR, THIS LEFT OUT SOME CRUCIAL TESTIMONIES THAT MS. LAWRENCE WOULD HAVE PRESENTED TO THE JURORS ON BEHALF OF MR. BURKE DEFENCE TO THE CREDIBILITY OF MS. LAWRENCE'S STATEMENT TO THE POLICE THE NIGHT OF THE INCIDENT COMPARED TO HER TESTIMONY OF NOT REMEMBERING AT TRIAL.

Trial Atty. CARLA BECKSTEDT Deficiencies And errors during Trial And Trial Appeal was not Harmless. It Cost Mr. RANDY BURKE A CONVICTION OF 1st degree MURDER AND LIFE without Parole. Mr. BURKE 6th Amendment Right To An EFFECTive Assistance Of Counsel Was Violated And The ONLY WAY To Undo Trial Atty. BECKSTEDT ERRORS is To GRANT THIS Writ Of CERTIORARI. MR. BURKE PRAYS And ASK This Honorable Supreme Court Of The United States WASHINGTON, DC To GRANT HIM RELIEF FOR A NEW TRIAL OR HAVE All charges AGAINST HIM dismissed With PREJUDICE AND HAVE MR. RANDY BURKE Released FROM The Custody OF The Bureau Of Corrections.

CONCLUSION

ACCORDINGLY,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Randy Burke

Date: MAY 1, 2019