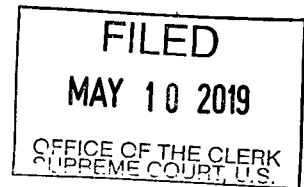


No. 18-9294

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Andre Derrell Lee — PETITIONER
(Your Name)

vs.

Jerry Goodwin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS 5th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andre Derrell Lee #325813
(Your Name)

670 Bell Hill Rd.
(Address)

Homer, La. 71040
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the Circuit Court err in not granting a C.O.A.?
2. Did the District Court err in dismissing the petition for failure to exhaust without having the state court record?
3. Did the petitioners 6th amendment right to counsel get violated in the state court?

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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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☒ is unpublished.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 C 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 Feb. 12, 2019.

☒ 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 _____.
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

U.S. CONST., AMEND VI

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 wherein 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 defence.

U.S. CONST., AMEND. XIV, Section 1.

All person born or naturalized in the United States, and subject to the jurisdiction thereof 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 to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 8454 see Appendix E

STATEMENT OF THE CASE

The petitioner was convicted for possession of marijuana with intent to distribute in Caddo Parish District Court, State of Louisiana on July 7, 2015. The petitioner was sentenced to 40 years hard labor as a multiple offender on August 31, 2015.

After exhausting state remedies by presenting all of his claims to the Louisiana Supreme Court, the petitioner filed a petition for writ of habeas corpus in the United States District Court for the Western District of Louisiana, claiming, among other things, a denial of counsel at the preliminary examination and sentencing hearing.

The U.S.D.C. summarily denied the petition for failure to exhaust remedies, without examining the state court record or ordering the state to respond and set out a failure to exhaust defense. The petitioner appealed to the U.S. C.A. for the 5th Circuit and was denied a C.O.A. Now the petitioner petitions this Court to grant certiorari.

REASONS FOR GRANTING THE PETITION

1. The Circuit Court erred in not granting a C.O.A.

In *Granberry v. Greer*, 481 U.S. 129, 107 S.Ct. 1671, 95 L.Ed. 2d 119 this court stated ("We have already decided that the failure to exhaust state remedies does not deprive an appellate court of jurisdiction to consider the merits of a habeas corpus application. ... [T]here are some cases in which it is appropriate for an appellate court to address the merits of a habeas corpus application notwithstanding the lack of complete exhaustion. Although there is a strong presumption in favor of requiring the prisoner to pursue his available state remedies, his failure to do so is not an absolute bar to appellate consideration of his claims.") citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 674

To obtain a C.O.A., a prisoner must make a substantial showing of the denial of a constitutional right. *Miller-El v. Cockrell*, 537 U.S. 322 (2003) where, as here, the district court denies relief on procedural grounds, "a C.O.A. should issue when the prisoner shows, at least, that jurist of reason would find it debatable whether the petition

states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v McDaniel* 529 U.S. 473 (2000)

The petitioner clearly made the requisite showing in his express motion for issuance of C.O.A.
See (App. B)

There is no doubt that complete denial of the right to counsel is a valid claim of the denial of a constitutional right.

Deprivation of counsel is a structural defect requiring automatic reversal. *Bland v California Dept of Corr.* 20 F.3d 1469 (9th Cir 1994)

Any jurist of reason would find it debatable whether the district court was correct in its procedural ruling to dismiss the petition for failure to exhaust remedies.

The petitioner presented all of his claims to the Louisiana Supreme Court before filing his petition in the district court and this is all that is required.

To exhaust his or her remedies, a petitioner for federal habeas corpus relief is only required to raise his claims before the state's highest court; the fact that the state court does not address the merits of the claim does not preclude a finding of exhaustion. *Carpenter v Mohr*, 163 F.3d 938 C.A.6 Ohio 1998

2. The district court erred by dismissing the petition for failure to exhaust remedies without having before it the state court records or ordering the state to respond and set out a failure to exhaust defense.

Federal Habeas court must review state court records to determine, if exhaustion requirement is satisfied.
Clark v Com. of Pa. 892 F.2d 1142 cert. denied
Castille v Clark, 110 S.Ct. 3229, 496 U.S. 942, 110 L.Ed.2d 675

Where convicted defendant's petition for habeas corpus set forth a denial of due process, federal court should not have dismissed petition summarily. *Chessman v. Teets*, 76 S.Ct. 34, 350 U.S. 3, 100 L.Ed. 4.

State prisoner's habeas petition, was improperly dismissed for failure of inmate to exhaust state remedies where state official named as respondent failed to raise exhaustion as defense; exhaustion was not jurisdictional and could be waived by

state and thus, petition could not be dismissed solely on ground of failure to exhaust. *Prather v. Norman* 901 F.2d 915 C.A.11 Ga. 1990

The district court judge never examined the facts of the case because he never had the state court records before him.

In *Moore v. Dempsey*, 261 U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543 this court stated "we shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void.... [I]t appears to us unavoidable that the District Judge should find whether the facts alleged are true and whether they can be explained so far as to leave the state proceedings undisturbed."

3. The petitioner's sixth amendment right to counsel was violated in the state court making the entire process absolutely void.

The petitioner was unrepresented at the preliminary exam, trial, multiple offender hearing and sentencing

The petitioner was not advise of his right to counsel. The petitioner never expressed the desire to represent himself. The petitioner never understood the nature of the charges or was aware of the range of allowable punishments.

The court has a duty to protect the right of the accused to counsel. *Glasser v. U.S.*, 62 S.Ct 457, 315 U.S. 60, 86 L.Ed 680.

Actual or constructive denial of counsel altogether is presumed to result in prejudice, so as to justify setting aside a conviction. *Strickland v Washington*, 104 S.Ct. 2052, 466 U.S. 668, 80 L.Ed. 674

The failure to appoint counsel is a unique constitutional defect, rising to the level of a jurisdictional defect, which therefore warrants special treatment among constitutional violations. There is a strong presumption against waiver of right to counsel. *Patterson v Illinois*, 487 U.S. 285, 108 S.Ct. 2389, 101 L.Ed. 2d 261

When the trial court failed to appoint counsel or obtain a valid waiver it loss jurisdiction and the conviction and sentence is completely void. *Johnson v. Zerbst*, 58 S.Ct 1019, 304 U.S. 458, 82 L.Ed 1461.

It is well settled that a void judgment can be challenged at any time and in any court, Therefore this court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ALL RIGHTS RESERVED

Andre He

Date: May 9, 2019