

ORIGINAL

No.

18-9326

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

OCT 10 2018

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

DAVID MARSHALL

PETITIONER(S)

STATE OF WISCONSIN

RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT &  
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

No. \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

DAVID MARSHALL PETITIONER(S)

VS.

STATE OF WISCONSIN RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(Name of court that last ruled on merits of your case)

PETITION FOR WRIT OF CERTIORARI

DAVID MARSHALL

(Your name)

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STANLEY, WISCONSIN 54768

QUESTION(S) PRESENTED

- 1) Whether the United States Court of Appeals for the Seventh Circuit Erred, when it failed to issue a Certificate of Appealability under title 28 U.S. §1291, 2253(c), and Fed. 22(b). When the petitioner's made a substantial showing of a Constitutional Right as indicting by BAREFOOT V. ESTELLE, 463 U.S. 880, 893 (1983).
- 2) A jurists of reason would find it debatable whether the habeas petition states a valid claim of the denial of a Constitutional Right.
- 3) A jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

LIST OF PARTIES

- [X] All parties 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 follow:

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IN THE  
SUPREME COURT OF THE UNITED STATES

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal court:

The opinion of the United States Court of Appeals appear at Appendix A to the petition and is

☒ reported at MARSHALL V. WISCONSIN JANUARY 12, 2018, or

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

The opinion of the United States District Court appear at Appendix B to the petition and is

☐ report \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is published.

☐ For cases from the state court:

The opinion of the highest state court to review the merits appear at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is published.

☐ The opinion of the \_\_\_\_\_ COURT

☐ reported at \_\_\_\_\_: OR,

☐ has been designated for publication but is not yet reported; or,

☐ is published.

JURISDICTION

[X] For cases from the federal courts:

The date on which the United States Court of Appeals decided my case was January 12, 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: \_\_\_\_\_, 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)

[X] For cases from state courts:

The date on which the highest state court decided my case was January 12, 2018 A copy of that decision appears at Appendix-B.

[ ] A timely petition for rehearing was there after 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~~<sup>1257(a)</sup>.



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The district court judge Nancy Joseph, denied the petitioner (Marshall) writ of habeas corpus petition on the grounds, he has not made a substantial showing of a Constitution right, on January 12, 2018. Also, the judge (Joseph) denied the petitioner's an Certificate of Appealability as well. The United States Court of Appeals for the Seventh Circuit, denied the petitioner's request for a Certificate of Appealability on September 4, 2018. The petitioner (Marshall) disagreed with the court assessment of the record. The district court judge (Joseph) states, "that the petitioner (Marshall) raised three constitutional issues in his writ of habeas petition. (1)the lawfulness of its issuance; (2)ineffective assistance of counsel; and (3)prosecutorial misconduct To determining whether a (COA) should be issue where the petition was dismissed on procedural grounds has two components, one directed at the district court's procedural holding. SLACK V MCDANIEL, 529 U.S. 473 (2000)

Here's the district court judge (Joseph) states, "that the petitioner's has failed to demonstrate that his trial counsel Raj K. Singh was ineffective for not raising the lawfulness of its issuance at the suppression hearing held on May 5, 2009 Also, Marshall's certainly has not demonstrate that had counsel (Singh) have raised the lawfulness of its issuance, "there is a reasonable probability that the outcome of the case would have been different." The judge (Joseph) finds Marshall's Sixth Amendment claim of ineffective assistance of counsel is without merits." STRICKLAND V WASHINGTON, 466 U.S. 668, 686 (1984) In the context of his habeas corpus the federal court must determine of the state s court determination was unreasonable." KNOWLES V. MIRZANCE, 556 U.S. 111, 123 (2009). This is a general standard and a state court has even more latitude to reasonably determine that a defendant has not satisfied the standard Id (citing YARBOROUGH V ALVARDO, 541 U.S. 652, 664 (2004)).

The petitioner (Marshall) argues, "he did in fact attempt to make a substantial showing of the denial of a constitutional right, and argued that the district court procedural ruling were wrong." To obtain a certificate of appealability under 28

U.S.C.S. §2253(c). a habeas prisoner must demonstrate that includes showing that reasonable jurist could debate whether or, for that matter, agree that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. Where a district court has rejected the constitutional claims on the merits the showing required to satisfy 28 U.S.C.S. §2253(c) is straightforward. The petitioner (Marshall) must demonstrate that reasonable jurist would find the district court assessment of the constitutional claims debatable or wrong. SLACK V. MCDANIEL, 529 U S 473 (2000).

#### STATEMENT OF THE CASE

The petitioner (Marshall) in the present case pleaded no contest to seven count of identity theft and one count of fraudulently used of a credit card in violation of Wis. Stat. §939.05 and §943.41(5)(a)(1a). The petitioner's was sentenced on November 16, 2009, to 32 years, 23 years confinement and 9 years extended supervision upon release from prison.

In the present case, Deputy Matthew Guth prepared an affidavit for a search warrant for Marshall's residence at 1803 Western Avenue, Apt #13, in Green Bay, WI.. The search warrant was reviewed by Brown County (ADA) Roger Shaha and Court Commissioner Christophia Paquet. On July 20, 2007 at 9:20am, deputy Guth along with the Appleton Police Department Sgt. Cary Meyer and Brian Leitzinger and Green Bay Police Department Officer Tony Bloom executed the search warrant to Marshall's residence. The apartment consisted of one bedroom. I, (Guth) observed the apartment was void of any televisions even though a TV stand was observed in the living room and another at the foot of the bed. Cables that would typically be hooked up to the TV's were observed lying on the floor in both locations consistent with someone removing the TV's. I, (Guth) observed the bed sheet and blankets were made and a jacket was lying on the bed, still the hanger inside consistent with someone removing the jacket from the closet and placing on the bed. I, (Guth) observed that the jacket lying on the bed, had the inside back lining cut open. The jacket appeared consistent

with a correctional institution type grab and the inside tag was stamped "OSCI" Inside the lining hidden within the jacket, I, (Guth) recovered numerous identifying information in reviewing the reports, I, (Guth) observed the incidents were consistent with the victims purse being taken from either a store or hospital. I, (Guth) completed a DePere Police Department seized item report. The items were submitted into evidence at the DePere Police Department.

#### REASONS FOR GRANTING THE PETITION

The petitioner (Marshall) states, "the reasons why this petition should be granted because the "affidavit" submitted by the affiant Deputy Matthew Guth is a violation of Marshall's Fourth Amendment right, against unreasonable searches and seizures." The petitioner (Marshall) states, "that no search warrant shall be issued upon probable cause supported by oath or affirmation." Wis. Const. art. I, and §11. The petitioner (Marshall) claim, "that the affiant (Guth) did not give any sworn testimonies that support the search warrant, because the "affidavit" does not have a secure (date) on the document, and this do not meet [the] standard require[d] by law (See: affidavit submitted by Deputy Guth-exhibit-1) The based on the Fourth Amendment to the Constitution, which protects individual, and prohibit a court from issuing a warrant except, "upon probable cause supported by oath or affirmation." U.S. Const. Amend. IV."

The petitioner (Marshall) argued, "the only question to the court is whether the judge or magistrate has the authority to issued a search warrant without placing an secure date on the application?" The affidavit open with "duty sworn is true and correct under penalty of perjury. The Court Commissioner (Paquet) did not complete the process by placing an secure date on the document, which is required by law, which violates Marshall's 4th, 5th and 14th Amendments rights. Here's [a] unsworn or undated declaration not made under penalty of perjury, nor stating the document is true is not an affidavit should be nullity. STATE V. BALTES, 183 Wis. 2d 545 (1974); and Wis. Stat. §968.12(2)(3)(a). The petitioner (Marshall) request this

Court to moves to strike the purported affidavit, simply because it fails with the Fourth Amendment right, and could not be consider constitutes evidence. and any evidence seized under an defective search warrant is fruits from the poisonous trees, and cannot be used in state or federal courts PEOPLES V. ALLEN, No.113135 Sup. Ct. 111. (See; affidavit-exhibit-1)

The petitioner (Marshall) asserts that he received ineffective assistance of trial counsel Raj K Singh, when counsel (Singh) argued the [w]rong issue at the suppressing hearing held on May 5, 2009. Marshall's claim, "this case should have been dismissed at the hearing, "due to the facts that the affidavit does not have a secure date on the application, which make the affidavit invalid. This claim is based on the Sixth Amendment to the Constitution, which guarantees a defendant in a criminal case the right to have assistance of counsel for his defense; to be meaningful and that assistance must be effective STRICKLAND V. WASHINGTON, 466 U S 668, 686 (1984) The deficient performance is judged on an objective standard of reasonableness which is the first prong in STRICKLAND. To establish prejudice a defendant must show a reasonable probability that, but for counsel's professional errors, the result of the proceeding would have been different. A reasonable probability is one that undermine the court s confidence in the outcome. STATE V. GAJEWSKI, 2008 WI App. 99; TERRY V. OHIO, 392 U S. 1 (1968); MAPP V. OHIO, 367 U S. 643 (1961); and KATZ V. UNITED STATES 389 U.S. 347 (1967).

The petitioner (Marshall) states, "in further support his argument, both legal and factual of the motion the petitioner's (Marshall) respectfully directs the Court attention to the previously submitted papers denominated, the defendant motion to suppress fruits of search of premises (in bold letters an undated and unsworn affidavit's) that would seem to relate to the aforementioned search warrant Trial counsel (Singh) made a serious errors at the suppressing hearing, when counsel (Singh) argued the [w]rong issues that the evidence was seized was outside the scope of the warrant. (See counsel Singh motion to suppress the evidence-exhibit-2)

The Court of Appeals made the following statement regard the evidence in the case no. 2010AP2641-CR:

"With regard to the search warrant. Marshall does not challenge the lawfulness of its issuance. Rather, he contends the evidence seized was outside the scope of the warrant." (See: Court of Appeals/decision-pg. 6-paragraph-14-exhibit-3).

The petitioner (Marshall) states, "certain guidelines have been enumerated which help assist courts in deciding an ineffectiveness claim." The reasonableness of a particular case, (must be) viewed as of the time of counsel's conduct. A convicted defendant's making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been result of reasonable professional judgment. The court must then determine whether, in light of all the circumstance, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination the court should keep in mind that counsel function as elaborated in prevailing professional norms, is to make the adversarial testing process work in that particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

The petitioner (Marshall) is required to show that trial counsel (Singh) performance was deficient, and that the deficient performance prejudiced the defendant or undermined confidence in the outcome of the trial. The prejudice standard is not outcome determinative; the defendant need not show that counsel (Singh) errors more likely than not altered the outcome. STATE V. LUDWIG, 124 Wis. 2d 600, 369 N.W. 2d 722-23 (1985) A single act or omission may deprive the defendant of effective counsel's if it was prejudicial to the defendant. See: STATE V. FELTON, 110 Wis. 2d 485, 329 N.W. 2d 161 (1983) For example: Trial Counsel Singh filed a motion to suppress the fruits of the search of the premises on April 13, 2009. In counsel's (Singh) own

motion, its states in bold letters, "accompanying this paper is a copy of an undated and apparently unsworn, "AFFIDAVIT IN SUPPORT OF SEARCH WARRANT." (See: counsel Singh motion-exhibit-2) Marshall's claim, "it appears from the document [affidavit] neither the affiant Deputy Guth, (ADA) Shaha, nor the (CC) Paquet, check the document [affidavit] before signing the application without an secure date to complete the process, which make the affidavit invalid." See: Wis. Stat. §968.12(2)(3)(a).

Here, "the district attorney (Mares) benefit from the defective seach warrant, and the circuit court judge (Atkinson) ruled that the evidence seized was not seized outside the scope of the warrant. Marshall's claims, without this illegal evidence introduce as evidence at the hearing the district attorney (Mares) case would have been dismissed." Counsel's (Singh) deficient performance fell below an objective standard of reasonableness, when counsel's (Singh) fails to argues that the affidavit's submitted to the court by the affiant (Guth) was invalid, and this does not meet [the] standard require[d] by law. Here, "the (CC) Paquet) did not place a secure date to make the affidavit's valid which make the process incomplete and a violation of Marshall's 4th, 5th, and 14th Amendmants rights. Counsel Singh deficient performance prejudicial the defense. LOCKHART V. FREWELL, 506 U.S. 364, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993); STATE V. FRITZ, 212 Wis 2d 284, 569 N.W 2d 48, 51 (1997); and citing STRICKLAND V. WASHINGTON, 104 S. Ct. at 2064.

The petitioner (Marshall) claims, "the lawfulness of its issuance or the evidence seized outside the scope of the warrant are the same issues, both deals with Marshall's Fourth Amendment claim, against unreasonable searches and seizures to the U.S. Constitution." Here, "the state nor the courts have addressed or offer no extrinsic evidence demonstrating the approximate date of signing of the affidavit's submitted to the court by the affiant (Guth). The exclusionary rules serves three principal purposes: (1)to deterring police misconduct; (2)preventing the government from benefiting from its own wrong by using illegally seized evidence to convicts; and (3)preventing the courts from becoming an "accomplice" in the violation of the

United States Constitution. UNITED STATES V. COOK, 657 F. 2d 734; STATE V. HUNTER, 235 Wis. 2d 188 (1940); and MAPP V. OHIO, 367 U.S. 643 (1961) The Supreme Court states in ELKINS V. UNITED STATES, 364 U.S. 206 (1960)

"Where it was held the judicial integrity would be compromised by introduction of illegal obtained evidence, i. e, the government should not profit from the violation of constitutional precepts. A constitutional right to be protected against outrageous government conduct was recognized by the United States Supreme Court " in UNITED STATES V. RUSSELL, 411 U.S. 423 (1973)

#### CONCLUSION

The petitioner (Marshall) argued, "A fundamental miscarriage of justice is something that is created by law enforcement authorities." A miscarriage of justice don't have anything to do with innocent or guilty, its about a person constitutional right to be protected from outrageous government. The petitioner (Marshall) states, "when law enforcement authorities enter into the residence to excute a search warrant, the search warrant must meet the standard required by law. If, "the judge or magistrate failed in his or her duty to place or put an secure date before adminster under oath or affirmation any sworn testimony before authorize the invasion of private property, then the search warrant should be void. It is well establish that the Fourteenth Amendment U.S. Const. Amend. XIV, protects a criminal defendant from any misconduct by law enforcement authorities, which would deprive the petitioner (Marshall) due process of law. UNITED STATES V. COOK, 657 F. 2d 734.

The petitioner (Marshall) claims, "when there is a clear violation of an constitutional issue, the court muist consider all the facts in the case." Neither the (CC) (Paquet), the district attorney (Shaha), nor Matthew Guth detected that the judge or magistrate failed to (date) the affidavit's submitted by the affiant (Guth) to the circuit court judge (Atkinson) on May 5, 2009 at the suppressing hearing. The search warrant was facially defective, because no actual [date] is on the application. The petitioner contends, "that the affiant (Guth) along with others law enforcement auth-

orities could have seized the evidence from Marshall's apartment first, then proceeded to establish there is probable cause to execute a search warrant." The affidavit's prove that the petitioner's do not know, when the (CC) Paquet) gave the affiant Guth and others law enforcement authorities permission to invasion private property, because there is no date on the document. Without an actual [date] on the application then this search warrant should be void. STATE V. BALTES, 183 Wis. 2d 545 (1924). Wis Stat. §968.12(2)(3)(a).

"Generally, will be presumed that the proceedings resulting in the issuance of a search warrant are regular and sustain the issuance of the warrant. But where it is challenged at the inception the proceeding, an inquiry as to its [validity] will be bad, and if it be made to appear that no actual date, or sworn testimony was adduced to support the warrant, the evidence secured by the use of illegal warrant will be suppressed. STATE V. TYE, 2001 WI. 124; and MYERS V. STATE, 60 Wis. 2d 248 (1973).

The petitioner (Marshall) states, "he should not be punish for his trial counsel (Singh) ineffectiveness for arguing the [w]rong issues at the suppressing hearing on May 5, 2009." According to the law, "the Sixth Amendment guarantees a defendant the right to effective assistance of counsel." STRICKLAND V. WASHINGTON, 466 U.S. 668, 686 (1984). This [affidavit] submitted to the circuit court by Matthew Guth is unsworn or undated, and could not be consider constitutes as evidence in this case at all. The petitioner (Marshall) claims, "the ddistrict attorney (Mares) profits from the illegal evidence under an defective warrant. A conviction obtained through uses of false evidence, known to be such by representatives of the state, must fall under U.S. Const. Amenkl. XIV. The same result obtaining when the state, although not soliciting false evidence, allow it to go uncorrected when it appears. NAPUE V. ILLINIOS 360 U.S. 264 (1959). All evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state court WOLF V. COLORADO, 338 U.S. 25 (1949)

The petitioner (Marshall) argued "the court must [strike] the purported affidavit's, because it fails with the Fourth Amendment right, against unreasonable searches and seizures. Any evidence seized under an defective search warrant is consider



fruits from the poisonous trees; and cannot be used in state or federal courts. The petitioner's claims, "there is a strong probability, but for counsel (Singh) unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. The petitioner (Marshall) have prove or shown that counsel's (Singh) deficient performance prejudiced the defense. STATE V. SANCHEZ, 201 Wis. 2d 219 (1996); STATE V. JEANNIE M. P., 2005 WI. App. 183; WIGGINS V. SMITH, 539 U.S. 510 (2003); and STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)

#### CONCLUSION

The petitioner (Marshall) is requesting this Court for the following ORDER: (1) that the search warrant be quashed; (2) that all testimonys and exhibits produced by the State derived from the search of the premises be stricken from the record; (3) that the entire case be dismissed with prejudiced; and (4) for the discharge of the petitioner (Marshall).

Dated at Stanley, Wisconsin this 31 day of OCTOBER, 2018.

Respectfully submitted,

x David Marshall Pro Se  
DAVID MARSHALL, PRO SE