

1 *Keith Jerome Wright*
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4 PO Box 5244
5 Corcoran, CA 93212-5244
6 In Propria Persona
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8 SUPREME COURT OF THE UNITED STATES

9 *Keith Jerome Wright*
10 Petitioner/Appellant,
11 v.
12 M.ELIOT. Spearman, Warden,
13 Respondent/Appellee,
14

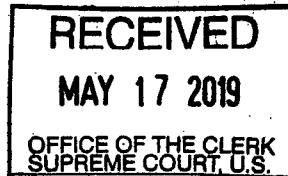
15) No. 18-16363
16) Court of Appeals for the Ninth Circuit
17) No.: 2:16-cv-01806-JAM-EFB
18) Eastern District of California, Sacramento
19)
20) PETITIONER'S APPLICATION FOR
21) CERTIFICATE OF APPEALABILITY
22) FROM THE COURT OF APPEALS FOR
23) THE NINTH CIRCUIT; AND
24) STATEMENT OF REASONS IN
25) SUPPORT
26)
27)
28)

19 INTRODUCTION

20 Petitioner hereby requests that the U.S. Supreme Court issue a Certificate of
21 Appealability (hereafter "COA"), permitting Petitioner to appeal from the Denial Order entered
22 by the Circuit Judges O'Scannlain and Gould, entered said Order on April 25, 2019, denying and
23 dismissing any pending motions as moot in the above-entitled matter.

24 **ISSUES ON WHICH CERTIFICATE OF APPEALABILITY IS SOUGHT**

25 Whether the Court of Appeal erred in failing to provide petitioner due process by failing
26 to consider either explicitly or implicitly his rights in failing to grant an Evidentiary Hearing,
27 whether counsel was ineffective assistance in properly investigating the Petitioner's unlawful
28 arrest and seizure of D.N.A, and prosecutors misconduct, which is a Due Process violation of
Petitioner Constitutional Rights.



LEGAL STANDARD FOR ISSUANCE OF COA

In the U.S. Supreme Court decision in *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003), the Court clarified the standards for issuance of a COA:

...A prisoner seeking a COA need only demonstrate a "substantial showing of the denial of a constitutional right. A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the Court of Appeals for the Ninth Circuit's resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further.

Id., 123 S.Ct at 1034, citing Slack v. McDaniel, 529 U.S. 473, 484 (2000). Reduced to its essentials, the test is met where the petitioner makes a showing that "the petition should have been resolved in a different matter or that the issues presented were 'adequate to deserve encouragement to proceed further'." Id., at 1039, citing Barefoot v. Estelle, 463 U.S. 880 (1983). This means that the petitioner does not have to prove that the Court of Appeals for the Ninth Circuit was necessarily "wrong" – just that its resolution of the constitutional claim is "debatable":

We do not require petitioner to prove, before the issuance of a COA that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree after the COA has been granted and the case has received full consideration that petitioner will not prevail. As we stated in *Slack*, where a Court of Appeals for the Ninth Circuit has rejected the constitutional claims on the merits, the showing required to satisfy §2253 (c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the Court of Appeals for the Ninth Circuit's assessment of the constitutional claims debatable or wrong.

For the reasons stated below, the issues on which Petitioner seeks a COA are at least debatable among jurist of reason. Hence, and even though this court's decision might ultimately be affirmed on appeal, Petitioner is entitled to a COA on the issues set forth above.

STATEMENT OF REASONS FOR ISSUANCE OF COA

The Court of Appeals for the Ninth Circuit erred in failing to provide petitioner due process by failing to consider either explicitly or implicitly his rights in failing to grant an Evidentiary Hearing, whether counsel was ineffective assistance in properly investigating the Petitioner's unlawful arrest and seizure of D.N.A, and prosecutors misconduct, which is a Due Process violation of Petitioner Constitutional Rights..

Nature of Due Process Claim

2 The District Court – erred in failing to grant an Evidentiary Hearing on Petitioners Fourth
3 through Fourteenth amendment, Due Process and Unreasonable Search and Seizure. Counsel
4 was ineffective assistance in properly investigating the Petitioner's unlawful arrest and seizure of
5 D.N.A, which lead to the violation of his Due Process rights and probable cause to be arrested
6 for present case. The Prosecutors misconduct by arguing that uncalled witness could have been
7 called to rebut Appellant's testimony and if the District Court looked upon this Bill of Right's
8 violation cumulatively with the Prosecutors misconduct in issue with facts not in evidence were
9 argued and viewing this misconduct with the cumulative affect of issues of said. Counsel was
10 ineffective for not objecting to prosecutors' misconduct during summation or asking for
11 Admonition, when Prosecutor stated, "she could've called other witnesses to rebut Appellant
12 testimony."

CONCLUSION

14 The issues discussed above are, at the very least, debatable among jurist of reason.
15 Hence, it is respectfully requested that this court grant a Certificate of Appealability on the issues
16 identified at the outset of this application.

17 | Dated: May 6, 2019

18 | Respectfully submitted,

19

20
21 Kath Wynn
22

PROOF OF SERVICE BY MAIL

I the undersigned, hereby declare:

1. I am a citizen of the United States; 2. I am over the age of 18 years and is a party to this case; 3. I am a resident of Kings County, in California. My mailing address is:

SATF/SP
PO Box 5244
Corcoran, CA 93212

On May 6, 2019, I served a true copy or original copy of the following: PETITIONER'S APPLICATION FOR CERTIFICATE OF APPEALABILITY FROM THE COURT OF APPEALS FOR THE NINTH CIRCUIT; AND STATEMENT OF REASONS IN SUPPORT, by placing said document(s) in a sealed postage paid envelope into the SATF/SP at Corcoran, mailbox for delivery to the United States Post Office at Corcoran, California, addressed as followed:

Supreme Court of the United States
1 First Northeast
Washington, DC 20543

And that this declaration was executed under the penalty of perjury of the laws in California and the United States of America at Corcoran, California 93212-5244, on May 6, 2019.

EDWARD B. SPENCER
PRINT NAME (DECLARANT)

SIGNATURE (DECLARANT)

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12 **EXHIBIT**
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 25 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEITH JEROME WRIGHT,

No. 18-16363

Petitioner-Appellant,

D.C. No. 2:16-cv-01806-JAM-EFB
Eastern District of California,
Sacramento

v.

M. ELIOT SPEARMAN, Warden,

ORDER

Respondent-Appellee.

Before: O'SCANLAIN and GOULD, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.