

No. 19-5069

ORIGINAL

Supreme Court, U.S.
FILED

JUN 29 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

CHAPEL THOMPSON _____ — PETITIONER
(Your Name)

vs.

SUPERINTENDENT ROCKVIEW, SCI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE THIRD CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Chapel Thompson KZ-3806

(Your Name)

P.O. Box 945

(Address)

Marienville, PA 16239

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS FOLLOWED THE DICTATES OF THIS COURT'S DECISION IN **BUCK V. DAVIS**, EXPLAINING THAT THE COA STAGE IS NOT COEXTENSIVE WITH A MERITS ANALYSIS?

WHETHER THE COURT OF APPEALS WENT BEYOND WHAT THE COA STAGE DICTATES WHEN IT DETERMINED THAT PETITIONER'S CLAIM RELATED TO AN INCRIMINATING LETTER PRESENTED AT TRIAL AGAINST THE ALLEGED CO-DEFENDANT WITHOUT INSTRUCTING THE JURY IT COULD NOT BE USED AGAINST PETITIONER, WAS UNTIMELY?

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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STATUTES AND RULES

28 U.S.C § 2244(d)(1)-(2)

Pa. R.A.P. 2572

Pa. R.A.P. 2573

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☒ is unpublished.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 B 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☐ is unpublished.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☐ is unpublished.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 April 2, 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

Sixth Amendment

Fourteenth Amendment

STATEMENT OF THE CASE

In January 2013, Petitioner appeared for trial and the Commonwealth presented the alleged victim, Leroy Freeman, who testified that Petitioner and his alleged co-defendants sought him out because he had owed someone money and they wanted to retrieve it. He testified that the Petitioner and the alleged co-defendants came inside a barbershop where he was working and demanded money. However, allegedly when he did not have the amount requested Petitioner and the alleged co-defendants forced him to go to an ATM machine. Mr. Freeman testified that this happened on two occasions and he later decided to notify authorities.

The Commonwealth also presented Mr. Preston an alleged co-defendant, who testified that he was not looking for any deal but he was testifying because it was the right thing to do. Mr. Preston testified that these events did happen and that he received a letter from another alleged co-defendant (Mr. Robinson), which the Commonwealth used as consciousness of guilt. Thereafter, Petitioner was found guilty on all charges.

Petitioner filed post sentence motions which were denied and Pennsylvania Superior Court affirmed judgment of sentence on May 7, 2014. **Commonwealth v. Thompson**, 104 A.3d 40 (Pa. Super. filed May 7, 2014). Appellant's allowance of Appeal to the Pennsylvania Supreme Court was denied on October 15, 2014. **Commonwealth v. Thompson**, ___ A.3d ___, 391 MAL 2014 (Pa. 2014).

On January 11, 2016, Petitioner filed a timely PCRA petition raising claims of ineffective assistance of appellate counsel and trial counsel.

On August 22, 2016, the PCRA court denied the petition, after conducting a hearing as to whether trial counsel was ineffective for failure to inform Petitioner of his right to testify.

On July 18, 2017, the Pennsylvania Superior court affirmed the PCRA court's findings, which became final on August 30, 2017 the date the record was sent back to lower court.

Commonwealth v. Thompson, No. 1531 MDA 2016 (filed July 18, 2017)

On July 31, 2017, Petitioner filed a timely habeas petition in the Eastern District of Pennsylvania docketed at 17-3860 and after various filings the district court denied relief adopting the magistrate's R&R concluding the claims were untimely and procedurally defaulted.

Petitioner filed a request for COA in the Court of Appeals for the Third Circuit and on April 2, 2019 denied granting a COA, as to whether Petitioner's claims were timely because the filing of a PCRA petition including the appellate process from such filing tolls the habeas statute of limitation.

The instant request for Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

This Court has explained that the COA stage is not coextensive with merits analysis. **Buck V. Davis, S.Ct. 759, 773 (2017)**. Instead, the Court of Appeals is limited to determining whether the petitioner has shown that reasonable jurists of reason could disagree with the district court's resolution of petitioner's constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. In other words, the Court of Appeals must not determine the merits at this stage.

In the instant matter, the Court Appeals made a determination that Petitioner's circumstantial evidence instructions had no merit and declined to issue a COA. This is in direct conflict of this Court's ruling in **Buck v. Davis**.

This Court should issue Certiorari because remand is necessary for the Court of Appeals to follow dictates of this Court's reasoning in **Buck v. Davis**.

Under 2244(d)(1)-(2) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The Limitation period shall run from the latest of

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending **shall not be counted toward any period of limitation under this subsection.**

Under Pennsylvania Rules of Appellate Procedure 2572 and 2573 no judgment is final

until the record is remanded to the lower court. See **Commonwealth v. Biship, 2003 PA Super 226 (Pa. Super. 2003)**(new trial order was not final until the appeals were exhausted and the record was remanded to the trial court regardless if the 30days have expired.

Petitioner's judgment of sentence became final on February 5, 2015, the date the record was remanded to the lower court. (CP-36-CR-0001547-2012, Dkt. at 13). Therefore, Petitioner had one year from this date or until February 5, 2016, to file a timely PCRA petition. Petitioner' PCRA petition was filed on January 11, 2016, leaving Petitioner with 26 days remaining after the conclusion of the state collateral process to file a timely habeas petition.

This Court must also consider that the same Pennsylvania Appellate Rules would also apply to the pending PCRA process, which the record was remanded on August 30, 2017, (CP-36-CR-0001547-2012, DKT. at 15).

Thus, from August 30, 2017, Petitioner had until September 25, 2017, to file a timely habeas petition.

This Court must also consider that Petitioner first filed his habeas petition an order was entered by mistake to close the matter and it was not reopened until October 10, 2017, which made the matter ripe for Petitioner to continue his filings and amendments.

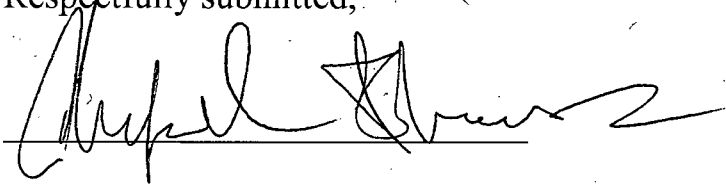
Petitioner submits that based on the above Certiorari should be granted to the extent of deciding whether the Pennsylvania finality in judgment is 30 days after the decision or the date when the record is remanded.

In any event, Petitioner was guided by the Pennsylvania Appellate rules and case law that dictate the latter and Petitioner cannot be penalized for that.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6-27-19