

19-5104

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 28 2019

OFFICE OF THE CLERK

MAURICE SAMUEL ARRINGTON — PETITIONER
(Your Name)

VS.

LORIE DAVIS, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FEDERAL WESTERN DISTRICT OF TEXAS, WACO DIVISION

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

PETITION FOR WRIT OF CERTIORARI

Maurice Samuel Arrington
(Your Name)

1098 South Highway 2037
(Address)

Fort Stockton Texas 79735
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does the Court of Appeals deny prisoners Due Process by ignoring vital facts necessary to determining rather the COA should issue and merely quoting *Slack v. McDaniel* and *Miller-El*?
2. Does state trial records, devoid of factual findings mandated by Supreme Court ~~and~~ precedent and federal and state statutes spark debatability when assessing how an independent and educated conclusion was reached by federal courts on an issue?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Illinois v. Gates , 462 US 213	. . . 2
Jackson v. Denno , 378 US 368	. . . 3
Miller-EL v. Cockrell , 573 US 322	. . . 1
Slack v. McDaniel , 529 US 473	. . . 1,3
Strickland v. Washington , 466 US 668	. . . 3
U.S. v. Fields , 182 F. Supp. 2d 575	. . . 2

STATUTES AND RULES

28 U.S.C. § 2253 (c)(2)	. . . 1
Fed R. Evid. 104	. . . 3
Tex R. Evid 104	. . . 3

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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☐ is unpublished.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☐ is unpublished.

☒ 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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the THIRD DISTRICT APPEALS, TEXAS 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 2/25/2019.

☒ 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 5/17/2017.
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

U.S. Fifth Amendment

U.S. Fourteenth Amendment

28 USC § 2254

28 USC § 2253

28 USC § 1254 (1)

28 USC § 1257 (a)

STATEMENT OF THE CASE

Petitioner filed his writ of Habeas Corpus Pursuant to 28 U.S.C. 2254 to the Western District of Texas, Waco Division Contending Several issues of ineffective assistance and trial error in the State Court. The District Court denied the Appeal and COA.

Pursuant 28 U.S.C. 2253, Petitioner filed for his COA. The Petition was categorically denied under Slack v. McDaniel and Miller-El v. Cockrell.

REASONS FOR GRANTING THE PETITION

The standard of review at the COA stage limits the Federal Court to a threshold inquiry into the underlying merit of the claims to ask only if the District Courts decision was debatable 28 U.S.C. § 2253(c)(2).

To obtain a COA, Petitioner is only required to make a "Substantial" showing of denial of a Constitutional right.

28 U.S.C. § 2253(c)(2).

"SUBSTANTIAL" meaning: Real and not imaginary; having actual not fictitious, existence. Black's Law Dictionary.

The Court of Appeals denial of Petitioners COA based on Slack v. McDaniel, 529 US 473 and Hiller-El v. Cockrell, 537 US 322 is in conflict with the very same precedent it uses to support the denial. Furthermore, the Court abused its discretion in abandoning the proper standard of review by ignoring vital facts and precedent in support of Petitioners claims. In support, Petitioner will show the following:

RELEVANT FACTS

CLAIM ONE (a): (Appendix "B" page(s) 8-9). Failure to File Motion to suppress; The District Court held Petitioners Complaint the Search warrant affidavit insufficient "Conclusory" and that the state Court "impliedly" found the warrant sufficient under state law.

The District Courts use of the term "Conclusory" would mean petitioner failed to allege facts to support his contention. Reasonable Jurists would find, Petitioner supported his allegation by showing the affidavit failed to meet the four corners as presented in Illinois v. Gates, 462 US 213 and US v. Feilds, 182 F. Supp. 2d 575 in determining probable cause.

Furthermore, Reasonable Jurists would find that, the State Courts never addressed the issue exclusively nor "impliedly" as, the state in an apparent clerical error wrongly addressed the issue in its Designation of Issues and Order Expanding the Record (Appendix "^F~~E~~" page 1-2), therefore trial Counsel never addressed the issue in his affidavit (APPENDIX "^E~~B~~") and the State trial Court never addressed the issue in its Findings of Fact and Conclusions of law (APPENDIX "D") and the highest Court of the state could not have addressed the issue because its Findings were based "on the findings of the trial Court" without a hearing, which, failed to address the issue. Hence, debatable on the facts and, debatable as to whether the District Court^{precluded} was by the states ruling on the "merits".

CLAIM ONE (e): Failure to Motion to suppress or object to video interrogation / confession. The District Court held Counsels decision "Strategic" after investigation of the issue, and that the video was found admissible pursuant to state law, (Appendix "B" page(s) 12-13).

Reasonable Jurists would find this issue debatable as, the record

is void of any hearings on the admissibility of the confession in conflict with Federal and Texas Rules of Evidence 104 and Jackson v. Denno, 378 US 368, 391 holding, Due Process requires for the determination of the voluntariness of a confession must be fully adequate to ensure a reliable and clear-cut determination, including the resolution of disputed facts upon which the voluntariness issue may depend. Reasonable Jurists could find the claim debatable as the record supports the fact that the District Court erred in determining the State found the confession admissible because no said record exists. Furthermore Reasonable Jurists could find, without such findings the District Courts ruling was not based upon facts adequate to induce an independent determination of the issue and, expansion of the record was necessary to determine if trial counsels "strategy" was actually strategic in an effective sense.

CONCLUSION

The Court of Appeals has entered a decision in Conflict with the very same Precedent it uses to support the decision and has so far departed from the accepted and usual Course of Judicial proceedings as to call for an exercise of this Courts Supervisory powers. The Fifth Circuit denies Due Process of the 5th and 14th U.S. Constitutional Amendments by abandoning the proper Standard of review when issuing the COA, by ignoring vital and available facts, records and Precedent necessary to determining debatability of the issues.

The petition for a writ of Certiorari should be granted.

Respectfully Submitted

Maurice S. Knize

Date: