

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019
DOCKET NO. _____

19-5132

KENNETH SILLS,

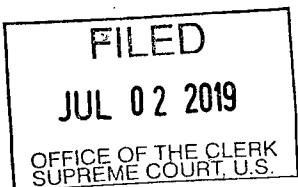
Petitioner,

v.

ANNE L. PRECYTHE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT



By:

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QUESTION PRESENTED

WHETHER CERTIORARI SHOULD BE GRANTED WHERE TRIAL COUNSEL WAS
INEFFECTIVE IN FAILING TO OBJECT TO THE PROSECUTION'S
PRETEXTUAL EXPLANATION FOR EXERCISING FIVE OF ITS SIX
PEREMPTORY CHALLENGES ON BLACK JURORS, IN LIGHT OF FLOWERS V.
MISSISSIPPI, ____ U.S. ____ (2019)?

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JURISDICTION

The Court has jurisdiction over this matter under 28 U.S.C. Section 1254(1).

OPINION BELOW

The Report and Recommendation of the United States Magistrate Judge is hereto attached. The Memorandum and Order of the District Court below denying the petitioner's petition for writ of habeas corpus under 28 U.S.C. Section 2254 and denying a certificate of appealability (hereinafter "COA") is hereto attached. The orders of the Court of Appeals below denying a COA, denying petition for rehearing en banc, and issuing mandate are hereto attached.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Sixth Amendment to United States Constitution;
28 U.S.C. Section 2253(c)(1); and,
28 U.S.C. Section 2254.

STATEMENT OF THE CASE

The petitioner filed an amended petition for writ of habeas corpus under 28 U.S.C. Section 2254 on July 7, 2015, in the District Court below, asserting that his trial counsel was ineffective for: (1) failing to assert petitioner's right to a public trial when the trial court ordered the courtroom closed to the public while addressing the jury in response to a jury note; (2) failing to request a mistrial based on the prosecutor's

improper comments; and (3) failing to object to the prosecutor's pretextual explanation for use of five of its six peremptory strikes on black jurors. On July 10, 2018, the United States Magistrate Judge issued a Report and Recommendation, recommending that the petition be denied. On August 22, 2018, the District Court denied the petition and sua sponte, denied a COA. On March 18, 2019, the Court of Appeals below denied a COA. On May 3, 2019, the Court of Appeals denied rehearing en banc.

The instant petition for writ of certiorari ensued.

REASONS FOR GRANTING THE WRIT

The District Court's finding that counsel was not ineffective for failing to object to the prosecutor's pretextual explanation for exercising five of its six peremptory strikes on black jurors is deserving of certiorari review in light of Flowers v. Mississippi, ___ U.S. ___ (2019).

Under Missouri law, a specific objection to a prosecutor's pretextual exercise of peremptory challenges on black jurors must be made in the trial court in order to preserve the issue for appellate review. The Missouri Court of Appeals found that the petitioner's pretextual based claim under Batson v. Kentucky, 474 U.S. 79 (1986), to be unpreserved for appeal because the petitioner's counsel failed to object on those grounds in the trial court. Based on clearly established Supreme Court law, the District Court's ruling that trial counsel was not ineffective for failing to object to the prosecutor's pretextual

explanation for exercising five of its six peremptory strikes on black jurors conflicts with its own prior ruling in Shaw v. Dwyer, 555 F.Supp2d 1000, 1010 (E.D. of MO 2008) (finding ineffectiveness under an identical fact pattern); conflicts with the prior ruling of the Court of Appeals below in Bell v. Lockhart, 795 F2d 655, 657 (8th Cir. 1986) (finding that a defendant has been denied effective assistance of counsel when counsel's error, mistake, or omission effectively deprives the defendant of a fair appellate review of his conviction); and, more importantly, conflicts with this Court's rulings on the pretextual use of peremptory challenges on black jurors. See Flowers v. Mississippi, *supra*, and Batson v. Kentucky, *supra*, respectively.

CONCLUSION

For the reasons stated above, certiorari should be granted on the authority of Flowers and Batson, *supra*, respectively.

Respectfully submitted,



KENNETH SILLS, Pro Se

Dated: June 24, 2019