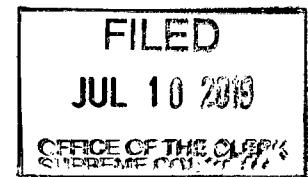


No. 19-5291

ORIGINAL

IN THE



SUPREME COURT OF THE UNITED STATES

Tyrone Jordan — PETITIONER  
(Your Name)

vs.

Charles Ryan, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tyrone Jordan  
(Your Name)

P.O. Box 6639 ASPC Huachuca  
(Address)

Kingman, Arizona 86402  
(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

1. What is the District Court's duty and what standard is the Court to apply to a habeas proceeding presenting a substantial and meritorious IAC claim of trial counsel which relies on post-conviction counsel as the basis for excusing the procedural default?
2. Does the burden shift to the state to argue the underlying IAC at trial claim does not have some merit, before a district court can dismiss a habeas petition, after the initial showing is made a claim is relying on *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) and post-conviction counsel to excuse a procedural default?

## 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:

The Arizona Attorney General  
2005 N. Central Ave.  
Phoenix, Arizona 85004

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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 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 26, 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**

1. Sixth Amendment
2. Fourteenth Amendment

## STATEMENT OF THE CASE

Petitioner Jordan is simply seeking his day in court with effective assistance of counsel. Mr. Jordan is seeking review of the denial of a COA from the Ninth Circuit Court of Appeals on his 28 U.S.C. § 2254 petition for writ of habeas corpus. The request for a COA was made after the magistrate judge recommended denial to the district court of the writ of habeas corpus. The denial of the writ and the recommendation to deny are both premised on a state court procedural default of his IAC at trial claim.

The magistrate (by way of the petition) and the district court (by way of the objection) was alerted to Mr. Jordan's reliance on *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) and post-conviction Rule 32 counsel's failure to present the IAC at trial claim during the post-conviction review process. Neither the magistrate nor the district court judge engaged in any discussion regarding the facts of the IAC at trial claim. Similarly, neither the magistrate nor the district court discussed Mr. Jordan's reliance on Rule 32 counsel as the basis to excuse the procedural default under *Martinez v. Ryan*. In short, the IAC at trial counsel claim has gone unreviewed and it has never been determined if the claim is substantial or has some merit, which would warrant the holding of an evidentiary hearing.

In arguing against the petition, the State simply argued the IAC at trial claim was never presented to the state court and was therefore procedurally defaulted. The State ignored the fact that the case was brought under *Martinez v. Ryan* and Rule 32 counsel's failure to present the claim lacked merit or was reasonable. The magistrate and the district court adopted the State's position without placing any burden on the State to disprove Mr. Jordan was not entitled to relief under any of the legal theories he presented.

## The claim (synopsis)

The district court was presented with a single claim of IAC at trial. Mr. Jordan stood trial on evidence illegally gathered by Phoenix police after conducting a warrantless search of his residence. None of the illegal evidence found by police was located in his bedroom. The majority of the evidence was gathered from his uncle's bedroom or in a dryer located in the back yard. The evidence found in the backyard contained a single 9mm bullet. A 9mm handgun was recovered from the uncle's room.

Trial counsel discussed several times the filing of a motion to suppress the evidence on the basis that it was seized illegally in violation of the Fourth Amendment. Unfortunately, that motion never made it to the Court's docket. It is not known why the motion was never presented. Counsel's failure to file the suppression motion is the basis of the claim, counsel actually stipulated the search was legal.

Jordan stood trial on the evidence seized illegally. His uncle admitted guilt by way of a plea. During the trial, the prosecutor brought up a 1-Phone box that was used to tie Jordan to the drugs in the backyard. The jury was never shown an 1-Phone box nor do evidence logs report an 1-Phone box. Jordan's prints were never recovered on any illegal items found in any location. No objections were raised by counsel on the introduction of the 1-Phone box.

This is just a brief overview of the IAC at trial claim. If certiorari is granted, Jordan prays the Court orders briefing to fully set forth the facts of his claim.

## REASONS FOR GRANTING THE PETITION

There is not a clear instruction from this Court on what is supposed to occur in the district court in a Martinez v. Ryan case relying on post-conviction counsel as the basis to excuse a default. Does the State bear the burden in arguing against the merits of the underlying IAC at trial claim once the petition makes a showing the claim establishes a basis to be excused?

If this process is not clarified, many cases will continue to have the IAC at trial claim un-reviewed. Jordan's IAC at trial claim is very meritorious, yet because there is no clear guidance as to what and who bears the burden on key issues, his claim has never had the merits reviewed by state courts nor federal courts.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Yvonne Jordan

Date: July 10 2019