

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DESMOND JUSTIN MURRAY,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL,
STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a petitioner seeking the issuance of a certificate of appealability under 28 U.S.C. § 2253 is required to demonstrate that jurists of reason would find the merits of his claims debatable, or, instead, to demonstrate only that jurists of reason would find the basis for denying relief itself debatable?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Desmond Murray (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), and Ashley Moody (Attorney General, State of Florida).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals *infra*, was not selected for publication. The decision is attached as Appendix A.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on May 16, 2019. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253.

STATEMENT OF FACTS

On May 22, 2015, Mr. Murray filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in the Middle District of Florida, Tampa Division, arguing he was entitled to federal relief from the Judgment and Sentence entered against him in the matter of *State of Florida v. Desmond Murray*, Case No. 07-CF-02700, in the 10th Judicial Circuit in and for Polk County, State of Florida. Mr. Murray raised three grounds for relief in his Petition, however, the district court denied the Petition in its entirety and declined to issue a certificate of appealability. Mr. Murray then filed a Notice of Appeal and filed a Motion for Certificate of Appealability in the 11th Circuit Court of Appeal, Atlanta, Georgia. On May 16, 2019, a single United States Circuit Court Judge denied the motion, finding:

Desmond Murray moves for a certificate of appealability ("COA"), in order to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a COA, Murray must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Murray's motion for a COA is DENIED because he failed to make the requisite showing.

(Order Denying COA, Appendix A).

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT A CIRCUIT COURT RULING ON A MOTION FOR CERTIFICATE OF APPEALABILITY MUST LIMIT ITS REVIEW TO WHETHER REASONABLE JURISTS WOULD FIND THE DISTRICT COURT'S ORDER DENYING HABEAS RELIEF DEBATALE OR WRONG.

At issue in this Petition is the appropriate scope of an appellate court's review while ruling on a motion for certificate of appealability under 28 U.S.C. § 2253. This Court should accept jurisdiction to establish that the reviewing court must limit its review to whether reasonable jurists would find the district court's order denying habeas relief debatable or wrong – not whether the issues raised by the petitioner debatably entitled him to relief.

A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not have an absolute right to appeal and, instead, must first obtain a certificate of appealability ("COA") from a circuit court judge. 28 U.S.C. § 2253(c)(1). This Court has, on multiple occasions, stated that "[a] 'court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,' and ask 'only if the District Court's decision was debatable.'" *Buck v. Davis*, 137 S. Ct. 759, 774, 197 L. Ed. 2d 1 (2017) (quoting, *Miller-El v. Cockrell*, 537 U.S. 322, 327, 348, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003)). Read naturally, it is clear that the only question for a reviewing court considering a motion for a certificate of appealability is whether "the District Court's decision was debatable." *See, Id.; see also, Miller-El*, 537 U.S. at 336, 123 S. Ct. at 1039 ("We look to the District Court's application of AEDPA to petitioner's constitutional claims and ask whether that resolution was

debatable amongst jurists of reason.") The circuit courts, including the court in Mr. Murray's case, have taken the foregoing phrase and read it to mean that, as a threshold matter, the court should examine whether the claims themselves have merit, then, only if they do, consider whether the district court's denial of relief was debatable. For instance, in Mr. Murray's case, the appellate court denied Mr. Murray a certificate of appealability because he had not demonstrated his claims had merit, and made no finding with respect to whether the district court's basis for denying relief was debatable. The problem with determining whether a certificate of appealability should issue by examining the merits of the underlying claim first is twofold. First, as this Court explained in *Buck*, when the reviewing court "first decid[es] the merits of an appeal, ... then justif[ies] its denial of a COA based on its adjudication of the actual merits," it has placed too heavy a burden on the prisoner *at the COA stage*, and has "in essence decid[ed] an appeal without jurisdiction." *Buck*, 137 S. Ct. at 773, 774 (quoting, *Miller-El*, 537 U.S., at 336–337, 123 S.Ct. 1029) (emphasis in original). Second, it creates the possibility that a single circuit judge could find the petitioner's claims lack merit and that denial of relief is appropriate for entirely different reasons than those of the district court and, in effect, foreclose the petitioner from even the modest review provided for under 28 U.S.C. § 2253.

More specifically, by examining the merits of the claims themselves, a circuit court judge could find that the reasons stated in a district court's order denying relief were debatably wrong, but nonetheless deny relief because in the opinion of the circuit court judge, for reasons other than those stated in the district court's order, the

petitioner's claims lacked merit. In such a situation a petitioner has effectively been denied relief by a circuit court judge sitting as a district court judge, and is foreclosed from the review process provided for under 28 U.S.C. § 2253 concerning the new basis for denying his petition.

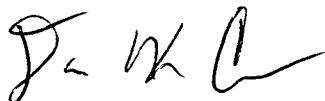
Accordingly, to insure that to heavy of a burden is not placed on a prisoner at the COA stage, that circuit court judges are not deciding appeals without jurisdiction, and to prevent circuit court judges from foreclosing habeas petitioners from review of the ultimate basis upon which their habeas petitions are decided, this Court should accept jurisdiction and further refine what it has already stated, and make clear that the only consideration for a circuit court judge ruling on a certificate of appealability is whether the District Court's decision was debatable. *See, Buck*, 137 S. Ct. at 774; *Miller-El*, 537 U.S. at 327, 348, 123 S.Ct. 1029.

Consequently, this Court should accept jurisdiction and ultimately reverse the order denying Mr. Murray a certificate of appealability, and remand his case to the circuit court with instructions that it conduct a new review of Mr. Murray's motion for a certificate of appealability under the appropriate standard. *See, Id.*

CONCLUSION

For the reasons stated above, this Court should grant Mr. Murray's Petition for Writ of Certiorari, and establish that the only consideration for a circuit court judge ruling on a certificate of appealability under 28 U.S.C. § 2253 is whether the District Court's decision was debatable.

Respectfully Submitted,



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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14521-E

DESMOND JUSTIN MURRAY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Desmond Murray moves for a certificate of appealability ("COA"), in order to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a COA, Murray must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Murray's motion for a COA is DENIED because he failed to make the requisite showing.

/s/ Gerald B. Tjoflat
UNITED STATES CIRCUIT JUDGE