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No. USCA7

18-2596

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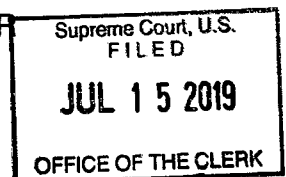
IN THE

SUPREME COURT OF THE UNITED STATES

Jeffrey Evers — PETITIONER
(Your Name)

vs.

Brian, Foster — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For the
Seventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

Jeffrey F. Evers
(Your Name)

New Lisbon Correctional Inst.
(Address)

P.O. Box 4000 New Lisbon, WI.
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does federal law under 2253(c), permit a circuit justice to refuse to grant a certificate of appealability (coa), on the same issues responding to a no-merit report that doesn't suffer a procedural default, but only be understood as a merit-based decision with respect of all claims raised by Evers'.
2. Does the Fifth Amendment allow the prosecution to use incriminating statements at trial against an accused as evidence when there was never a weapon produce.
3. Does the Sixth Amendment under the confrontation rights, allow a complainant to not be properly cross-examine.
4. Does a trial lawyer fail to investigate a witness statement be credible.

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:

(Jeffrey F. Evers, Petitioner - Appellant)

VS.

Christine A. Remington, Assistant Attorney General

(Respondent)

RELATED CASES

Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052 -

2063 - 64, 80 L. Ed. 2d. 674 (1984).

(Harris v. Thompson, 698 F.3d 609)

(Long v. Butler, 809 F.3d 299*, 2015)

Dix. v. Kemp, 804 F.2d 618, *; 1986 U.S. App. Lexis **

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APPENDIX A	<u>Copy of the Wisconsin Court of Appeals which affirmed the no-merit report pursuant to Wis. Stat. Rule 809.21</u>
APPENDIX B	<u>Copy of the Supreme Court of Wisconsin ordered that the petition for review is denied.</u>
APPENDIX C	<u>Decision and order of the Eastern District Court, Judge J.P. Stadmueller, denying petitioner's habeas corpus on June 22, 2018</u>
APPENDIX D	<u>The United States Court of Appeals for the 7th Circuit refused to grant a Certificate of appealability on April 15, 2019.</u>
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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Anders v. California, 386 U.S. 738, 87 S. 1396, 18 L. Ed. 2d. 493 (1967)

Anders, 386 U.S. at 744, 87 S. ct. at 1400

Moore v. Bryant, 295 F. 3d (771 7th Cir. 2002)

Harris, 489 U.S. at 263-65, 109 S. ct. 1038;

Coleman, 501 U.S. at 735, 111 S. ct. 2546.

STATUTES AND RULES

28 U.S.C. § 1254

28 U.S.C. § 2253

OTHER

State Statutes and others:

§ 974.02, Wis. Stats.

9 Wis. Prac, Criminal Practice &

Procedure § 20.42

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 the Seventh Circuit; 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 Eastern District; 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 Supreme Court of Wisconsin; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Wisconsin Court of Appeals court appears at Appendix D to the petition and is

☒ reported at Milwaukee, Wisconsin; 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 March 21, 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 May 15, 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

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that "Nor shall any state deprive any person of life, Liberty, or property, without due process of Law, nor deny to any person within jurisdiction the equal protection of the law".

Also the United States Court of Appeal for the Sixth Circuit, refusing to grant a certificate of appealability (COA), do to the Respondent asserted that Evers' procedurally defaulted on three grounds for relief.

STATEMENT OF THE CASE

The Petitioner was convicted following a jury trial of kidnapping and first-degree sexual assault with use or threat of use of a dangerous weapon. For the offenses, Evers' was sentenced to a total of 20 years of initial confinement followed by 10 years of extended supervision. The name, location, and Judge imposed sentence, Judge Daniel Konkol of Milwaukee, County, Criminal Division / Room 117, 821 West State Street, Milwaukee, Wisconsin, 53233. The Petitioner was sentenced on September 30, 2014.

REASONS FOR GRANTING THE PETITION

Evers, posits, that his ineffective assistance of trial counsel claims are not procedurally defaulted because they were raised in his response to his appointed appellate counsel no-merit report.

If the petitioner presented his federal claims fairly appears to rest primarily on the resolution of those claims, or to be interwoven with those claims, and does not clearly and expressly rely on the procedural default, it may conclude that there is no independent and adequate state ground and proceed to hear the federal claims.

Evers respectfully requests that this court grant this petition for a writ of certiorari to review the court of appeals order denying his request for a (COA) under the standards set forth in a 28 U.S.C. 2253 (c)(2).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffrey Evers

Date: 10-15-19