

No. 19-6419

ORIGINAL

Supreme Court, U.S.
FILED

OCT 16 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SCOTT WILSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SCOTT D. WILSON REG#. 43872-037

(Your Name)

F.C.C BUTNER LOW

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(Address)

BUTNER, NORTH CAROLINA 25709-0999

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

**DENYING CERTIFICATE OF APPEALABILITY AS TO WHETHER THE
DISTRICT COURT;**

**(1) ERRS DENYING WILSON'S HABEAS CLAIM(S) ALLEGING COUNSEL'S
UNREASONABLE FAILURE TO INVESTIGATE LAW & MISADVICE
THEREBY RENDERING HIS PLEA UNKNOWINGLY AND
UNINTELLIGENTLY ENTERED, & FURTHER;**

**(2) ABUSES ITS' DISCRETION DENYING AN EVIDENTIARY HEARING
DESPITE NUMEROUS AFFIDAVITS PRESENTED ALLEGING FACTS
OUTSIDE THE RECORD REGARDING THE PRECEDING CLAIM...**

**DOES THE FOURTH CIRCUIT'S DECISION CONTRAVENE SUPREME COURT
PRECEDENT GOVERNING CERTIFICATE OF APPEALABILITY AS WELL AS
AUTHORITY ENFORCING CONSTITUTIONAL RESTRAINTS ON THE COMMERCE
CLAUSE'S REACH?**

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:

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N/A

APPENDIX F

N/A

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

[x] 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 N/A; 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 is unpublished.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

WILSON v. UNITED STATES, 2015 U.S. DIST. LEXIS 36859 (4th Cir. Md. Mar 23, 2015); 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 is unpublished.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 JULY 19, 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: AUGUST 27, 2019, and a copy of the order denying rehearing appears at Appendix C.

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

United States Constitution - Article I, Section 8, Clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

18 U.S.C. § 844(i)

Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years...

28 U.S.C. § 2253(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 --

STATEMENT OF THE CASE

It was the year 1999, thereabouts, when Petitioner Wilson and his wife Sarah founded their business from scratch; him as the brawn, dismantling decommissioned electronic equipment recycling the component parts - her as the brains, minding the administrative side of operations.

While disassembly and recycling operations took place off-site, like many up-and-coming small business owners, Subtractions LLC's headquarters was based out their home, which is to say; a walk-in closet sized space therein at 7202 Mink Hollow Road; City of Highland, Maryland until, that is, demand required transfer to a substantially larger facility also complete with in house office space.

Nevertheless, it was 2005 when even greater demand necessitated expansion the administrative end whereupon Petitioner's home office was shutdown and stripped of all business office paraphernalia to include disconnection of broadband and telephone services thus from that point on - ceasing to serve any Subtractions LLC related purpose.

And so it was; consequent the October 31, 2008 fire completely destroying Petitioner's residence to follow Sarah's death under the very roof - Wilson plea's guilty via written plea agreement to Count One of a superseding indictment charging Arson in violation of 18 U.S.C. § 844(i); said agreement entered, however, per advice wholly erroneous to the extent of unequivocally demonstrating an unconstitutional failure on

counsel's part researching applicable and well-established law regarding § 844(i)'s requisite interstate commerce element.

Counsel, more particularly; informs Wilson that the interstate commerce element of the statute is sufficiently established through the; (1) former (three year removed) presence of Subtractions LLC's business office at the residence and; (2) outdated records with various agencies listing 7202 Mink Hollow Road as the address of Subtractions LLC's business office - the antithesis of Supreme Court precedent clarifying; PASSIVE, PASSING, and/or PAST CONNECTION disqualifying an interstate commerce nexus in the home business office context.

Wilson subsequently, under 28 U.S.C. § 2255, files a motion to Vacate, Set Aside, or Correct the 240 month sentence imposed on January 28, 2013 alleging ineffective assistance to the effect hence mentioned - submitting in support thereof an affidavit of his own (Appendix D) attesting to the impugning advice given in addition to several others also provided by former employee's with firsthand knowledge of their bosses' residence not serving as the work place going to show counsel's failure fulfilling his constitutional duty to investigate Mink Hollow's actual use - further substantiating the erroneous understanding of law regarding 844(i)'s interstate commerce element.

The district court, nonetheless, denies Wilson's motion and certificate of appealability on March 23, 2015 and after a near half-decade delay in ruling on Petitioner's motion to Alter or Amend Judgment a timely Notice of Appeal was filed on March 11, 2019 as to the final judgment; proceeding from there

to file an Opening Brief in the United States Court of Appeals
For the Fourth Circuit in lieu of informal brief seeking
certification of the respective issues material this petition.

On July 19, 2019, however, the Fourth Circuit affirms the
district court's decision (Appendix A) and denies Petitioner's
timely Petition for Panel Rehearing on August 27, 2019 (Appendix
C).

REASONS FOR GRANTING THE PETITION

The Congressional power derived from the Constitution to "regulate commerce" Art.I §8, Cl.3 is unquestionably far reaching. That is, authorizing regulation of "the channels of interstate commerce, and those activities that substantially affect interstate commerce." *United States v. Morrison*, 529 U.S. 598, 609, 120 S.Ct. 1740, 146 L.Ed. 2d 658 (2000).

The power, for instance, wielded over activities 'substantially affecting interstate commerce' is expansive in and of itself to the extent even, of regulating a farmer's decision to grow wheat for himself and his livestock and further; a loan shark's extortionate collections from a neighborhood butcher shop - both seemingly local matters held subject to federal regulation. See i.e., *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942); *Perez v. United States*, 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed. 2d 686 (1971).

However and notwithstanding the easily mistaken perception of virtually unlimited power's enjoyed by congress over what we do - how, when, and where we do so - such is not the case; "[O]ur cases have 'always recognized that the power to regulate commerce, though broad indeed has limits.'") *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 554, 132 S.Ct. 2566, 183 L.Ed. 2d 450 (2012)(quoting *Maryland v. Wirtz*, 392 U.S. 183, 196, 88 S.Ct. 2017, 20 L.Ed. 2d 1020 (1968)); see also *id.* at 536 (Congress's power over commerce "must be read carefully to avoid creating a general federal authority akin to the police

power.") and remain so as to "secure[] to citizens the liberties that derive from the diffusion of sovereign power." New York v. United States, 505 U.S. 144, 181, 1112 S.Ct. 2408, 120 L.Ed. 2d 120 (1992)(internal quotation marks omitted).

In light, therefore, of the legitimate and "well founded concern... that congress might use the commerce clause to completely obliterate the constitution's distinction between national and local authority" Morrison, 529 U.S. at 617 given the particular facts presented herein implicating such intrusion - granting of Certiorari beyond Petitioner's personal interests would likewise serve that of the nation and service of this Court's duty, not to mention, per what is "no question" of what is "the responsibility of [the Supreme Court] to enforce the limits on federal power" Sebelius, 183 L.Ed. at 467 through its' "supervisory functions in relation to proceeds in the federal courts" See McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 8 L.Ed. 819 (1943) by remanding erroneous appellate court decision's that of which permit "transgress[ion] [of] those limits." id., at 467.

* * *

As a preliminary matter, a petitioner seeking to appeal denied habeas relief in the district court must first seek and obtain Certificate of Appealability ("COA") from a circuit justice or judge See 28 U.S.C. § 2253(c)(1) issuing only upon a "substantial showing of the denial of a constitutional right" otherwise entailing further showing "that reasonable jurists could debate whether (or, for that matter, agree that) the

petition should have been resolved in a different manner" or "that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484, 146 L.Ed. 2d 542, 120 S.Ct. 1595 (2000)(quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4, L.Ed. 2d 1090, 103 S.Ct. 3383 (1983)).

It bears special emphasis that the threshold question of the debatability of an issue is one decided, moreover, without "full consideration of the factual or legal bases adduced in support of the claims." Which as it so happens, statute expressly "forbids." Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed. 2d 931 (2003).

In short, evaluating whether a COA issues (upon which Appellate court jurisdiction contingent) see *Id.*, at 336-337 requires but a "preliminary, though not definitive, consideration of the [legal] framework" *id.*, at 338 applicable the respective claim. And although unclear through the Fourth Circuit opinion denying both Petitioner's COA and Petition for Panel Rehearing of its' application of the foregoing analysis, Petitioner, *arrguendo*, illustrates his claim(s) as fitting this framework.

Determination of counsel's alleged ineffectiveness falls under purview of the two-part analysis announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 8 L.Ed. 2d 674 (1984)) consisting of identification of; (1) deficient performance falling outside an objective standard of reasonableness resulting, thereby in; (2) prejudice to the

defense. Otherwise, a reasonable probability; absent counsels deficient performance, the outcome of the proceeding would have been different.

On that same token, 28 U.S.C. § 2255(b) requires that "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall... grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto."

Moreover and pertinently, this court has reiterated that the preceding provision of a hearing can be crucial to the function of § 2255 and for that reason, where the factual allegations "relate[] primarily to purported occurrences outside the court room and upon which the record could, therefore, cast no real light" Machibroda v. United States, 368 U.S. 487, 494, 82 S.Ct. 510, 7 L.Ed. 2d 473 (1962) a hearing must be granted.

Turning now to Petitioner's Sixth Amendment claim; for purposes of showing deficient performance under Strickland, an objective standard of reasonableness concerning an attorney's purportedly deficient conduct in the context of guilty plea challenges, such at issue here, premises itself upon "whether counsel's advice was within the range of competence demanded of attorney's in criminal cases" Hill v. Lockhart, 474 U.S. 52, 52, 56, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985) otherwise requiring a defendant's complete "understanding of the law in relation to the facts" McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed. 2d 418 (1969) only possible through

counsel's own understanding garnered by reasonable effort or research and investigation to begin with; ("Prior to trial an accused is entitled to rely upon his counsel to make an adequate examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion...") *Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S.Ct. 316, 322 (1948).

Wilson's claim, to that end, fits well within the above framework where; alleging defense counsel as erroneously informing him that even despite the long-abandoned use of the room in his home as Subtractions LLC's business office - the interstate commerce element thus established, nonetheless; said advice indeed reflects an unreasonable failure on counsel's part apprising himself of the law given precedent on § 844(i)'s interstate commerce element "reflect[ing] the natural understanding that the power to regulate [commerce] assumes there is already something to be regulated" *Sebelius*, 183 L.Ed. at 474; see also *Jones v. United States*, 529 U.S. 848, 146 L.Ed. 2d 902, 102 S.Ct. 1904 (2000) and is debatable as unreasonably deficient performance under Strickland. See *Woodard v. Collins*, 898 F.2d 1027, 1029 (5th Cir.1990) ("When a lawyer advise[s] his client to plea bargain to an offense which the attorney has not investigated, [s]uch conduct is always unreasonable; see also *Hinton v. Alabama*, 571 U.S. 263, 134 S.Ct. 1081, 1089, 188 L.Ed. 2d 1 (2014)(per curiam)(Counsel's total "ignorance of a point of law that is fundamental to his [client's] case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance.").

Prejudice: With respect to ineffective assistance claims at the plea process, Strickland's prejudice turns on "whether 'the result of the proceeding would have been different'" Missouri v. Frye, 566 U.S. 134, 148, 132 S.Ct. 1399, 182 L.Ed. 2d 379 (2012)(quoting Strickland, 466 U.S. at 694) which is to say, Wilson must otherwise show "a reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial." Hill, 44 U.S. at 162-63.

Suffice it to say, were counsel sufficiently informed on the law as pertinent § 844(i)'s interstate commerce element and the particular facts indicating absence of any substantial commercial activity affecting interstate commerce at 7202 Mink Hollow, not to mention - Wilson's case could very well have been dismissed altogether, no trial or guilty plea necessary.

For the sake of argument, however, were Petitioner's case brought to trial, it is more than safe to conclude; arguing the home offices' closure years prior to the fire and substantiation to the effect by numerous current (at the time) and former employee's testimony to the effect, there certainly exists a reasonable probability Wilson's defense would "have succeeded at trial" United States v. Mooney, 497, F.3d 397, 401 (4th Cir.2007)(quoting Becton v. Barnett, 920 F.3d 1190, 1192 (4th Cir.1990)) and in light of this showing alone, counsel's deficient performance resulting in prejudice is also open to debate among jurists of reason.

As far as the debatability of the district court's abuse-of-discretion denying an evidentiary hearing, this court in Machibroda aptly notes the "language of [§2255] does not strip the district court of all discretion to exercise their common sense." *Id.*, at 495 hence, where the "focus of federal habeas is the nature of the advice" in relation to the "voluntariness of the plea" *Tollett v. Henderson*, 411 U.S. 258, 266, 93 S.Ct. 1602, 36 L.Ed. 2d 23 (1973) with evidence to the effect logically coming from "occurrences outside the courtroom and upon which the record could... cast no real light" *Machibroda*, 368 U.S. at 494-95; proper adjudication of Wilson's claim will require a credibility determination of the factual account that deciding on the basis of his affidavit alone would be insufficient. See *Fortner Enterprises, Inc. v. U.S. Steel Corp.*, 394 U.S. 495, 500, 89 S.Ct. 1252, 125, 22 L.Ed. 2d 495 (1969)(Discussing how affidavits cannot be probed, nor fill in details that might alter or refute the account).

Given the above, the district court's denial of evidentiary hearing is also debatable amongst jurists of reason as an abuse-of-discretion.

* * *

In conclusion, the Fourth Circuit's denial of Petitioner's COA surrounding the questions presented herein does contravene Supreme Court authority by which it remains bound and for the reasons as set forth with special emphasis on the misguided interpretation of commerce clauses scope (and limitations

thereby), Petitioner hereby and respectfully seeks this court's Granting of Certiorari, Vacating of Appellate Court mandate, and Remanding thereto for further proceedings consistent with due process of law. See *Hutto v. Davis*, 454 U.S. 370, 375, 70 L.Ed. 2d. 556, 102 S.Ct. 702 (1982)("[P]recedent[s] of [the Supreme] court must be followed by the lower federal court no matter how misguided the judges of those courts may think it to be."); see also *Hicks v. Miranda*, 422 U.S. 332, 344, 95 S.Ct. 2281, 45 L.Ed. 2d 223 (1975).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Steve D. Wilson

Date: October 15, 2019