IN THE

SUPREME COURT OF THE UNITED STATES

19-7231

ORIGINAL

Joshua Monroe -- Petitioner,

-vs-

Warden Lewis et al -- Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE
U.S. FOURTH CIRCUIT COURT OF APPEALS

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**PETITION FOR WRIT OF CERTIORARI**

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Joshua Monroe
SCDC# 344735
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Petitioner, pro-se

## QUESTION PRESENTED

DID THE FOURTH CIRCUIT COURT OF APPEALS ERR IN NOT ISSUING A CERTIFICATE OF APPEALABILITY WHERE PETITIONER DEMONSTRATED THAT JURIST OF REASON COULD FIND THE DISTRICT COURT'S STATUTE OF LIMITATIONS PROCEDURAL RULING DEBATABLE?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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## INDEX TO APPENDICIES



* **NOTE** Appendicies are hereto attached to the Petition.

## TABLE OF AUTHORITIES

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

This case is on review from a **federal court.**

The opinion of the United States Fourth Circuit Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court of South Carolina appears at Appendix B to the petition and is unpublished.

## JURISDICTION

This case is on review from a **federal court.**

The date on which the United States Fourth Circuit Court of Appeals decided my case was October 17, 2019.

A petition for rehearing to the United States Fourth Circuit Court of Appeals was untimely.

The jurisdiction of this Court is invoked under 28 USC §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to the Effective Assistance of Counsel. AMEND. VI.

The Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof... No person shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law. AMEND XIV.

## STATEMENT OF THE CASE

## THE FEDERAL COURT PROCEEDINGS

Joshua Andrew Monroe ("Petitioner") filed a pro-se petition for writ of habeas corpus, pursuant to 28 USC §2254 in the United States District Court of South Carolina on or about February 22, 2018. The petition raised two (2) grounds alleging (1) the courts erred in not entering into the official record the plea taken by Judge Nicholson; and (2) Judge Young erred in replacing Judge Nicholson and not familiarizing himself with the case and then making a sentence on a case that had no official judgment..

Respondent's filed a motion for summary judgment on May 22, 2018. On or about June 15, 2018 Petitioner lodged a timely response to Respondent's dispositive motion and on June 21, 2018, Respondents filed a reply. On January 7, 2019 the U.S. Magistrate Kevin F. McDonald issued a Report and Recommendation ("R&R") granting Respondent's motion for summary judgement and dismissing the case finding Petitioner's grounds fro relief as procedurally barred as untimely. The R&R appears at Appendix C to the petition. On or about February 14, 2019, Petitioner lodged timely objections to the R&R.

On March 15, 2019, U.S. District Judge R. Bryan Harwell adopted the Magistrate's R&R in full which appears at Appendix B to the petition. Petitioner filed a Notice of Appeal seeking a certificate of appealability ("COA") in the Fourth Circuit Court of Appeals ("Fourth Circuit"). The Fourth Circuit denied the COA and dismissed the appeal in case no.19-6442 on October 17, 2019. Petitioner was unable to file a timely petition for rehearing due to security issues and lock-downs at the prison where Petitioner is housed.

## UNDERLYING STATE COURT PROCEEDINGS

The Petitioner is was indicted by the Charleston County Grand Jury in October 2008 for three counts of kidnapping (2008-GS-10-8111; -8123; -8145), two counts of armed robbery (2008-GS-8120; -8149), attempted armed robbery (2008-GS-10-8109), and criminal sexual conduct ("CSC") first degree (2008-GS-10-8143).

Petitioner was represented by Milton Stratos. On November 18, 2010, Petitioner appeared before the Honorable J.C. Nicholson, Jr., and entered a plea of guilty to one of the armed robbery indictments, two of the kidnapping indictments, and the attempted armed robbery indictment. With the State's agreement, Petitioner entered a plea pursuant to Alford v. North Carolina, 400 U.S. 25 (1970) to the remaining kidnapping and armed robbery indictments and to the CSC indictment.

Petitioner in accepting the Alford plea believed a jury would likely convict him on the facts if he proceeded to trial, but did not admit his guilt.

Judge Nicholson found a factual basis for the mix[ed] guilty plea and accepted the plea to each count and sentencing was deferred upon request of both parties.

On February 3, 2011, Petitioner was taken before a different Judge. Judge Roger M. Young, Sr. along with two codefendants. At the conclusion of the hearing, Judge Young sentenced the Petitioner to 20-years for attempted armed robbery and 25 years on each remaining charge with sentences to run concurrent.

A timely notice of appeal was filed. However, the appeal was dismissed on September 18, 2012 for failure to serve opposing counsel.

On September 17, 2013 Petitioner filed a pro-se application for post-conviction relief (2013-CP-23-05445). An evidentiary was convened into the matter on September 10, 2015 before the Honorable Larry B. Hyman. After the testimony and evidence was considered, Judge Hyman issued a written order of dismissal on November 23, 2015 denying the application with prejudice.

On November 30, 2015, a timely PCR appeal was filed and Petitioner was represented by Tiffany Butler of the South Carolina Office of Indigent Defense. On July 5, 2016 Butler filed a petition for writ of certiorari on behalf of Petitioner pursuant to Anders v. California, 386 U.S. 738 (1967). On August 22, 2016, Petitioner filed a pro-se Anders brief. On November 23, 2016, the State made a Return to the petition for writ of certiorari and on January 17, 2018 the South Carolina Court of Appeals denied certiorari and the remittitur was handed down February 2, 2018.

The petition for writ of certirari is as follows:

## REASONS FOR GRANTING THE WRIT

The denial of this question for certificate of appealability by the Fourth Circuit is an important federal question that squarely conflicts with relevant decisions of this Court. These conflicts satisfy a "substantial showing of the denial of Constitutional Right[s]" under the Sixth and Fourteenth Amendments of the United States Constitution. This petition raises an important constitutional question of significant National importance to have this Court decide the question and legal principal involved, and thus promote the development of the law. See Dobbs v. Zant, 506 U.S. 357, 360 (1993).

The petition does not seek to decide a new question of law, but to simply correct the Fourth Circuit's demonstrably erroneous application of federal law to this Nationally recurring constitutional question.

Section 2253(c) provides that a certificate of appealability ("COA") may be issued "only if the applicant has made a substantial showing of the denial of a Constitutional Right." 28 USCA §2253(c)(2)(West 2001). This is succinctly applied in Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 1039-40 (2003)(AEDPA's section 2253(c) "codified our standard announced in Barefoot v. Estelle, 463 U.S. 880 (1993), for determining what constitutes a requisite showing [for obtaining leave to appeal district court's denial of habeas corpus relief]. Under the controlling standard a petitioner must "sho[w] 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], at 484 [(2000)](quoting Barefoot v. Estelle, supra at 893, n.4).

The development of the National Law here requires this Court to correct the Fourth Circuit and subsequent reviewing District Court's erroneous calculation of the AEDPA one-year statute of limitations that has barred Petitioner's habeas corpus petition from being heard on the merits under the controlling federal law.

The Fourth Circuit denied COA finding Petitioner had not made the requisite showing of the "substantial denial of a constitutional right" warranting issuance of certificate of appealability. Appendix A. The District Court in this mater adopted the Magistrate's Report and Recommendation finding same. Appendix B. The District Court adopted the Magistrate's erroneous calculation and ruled the habeas petition was filed one-day late and therefore the habeas petition was barred from review.

As applied, the AEDPA's one-year statute of limitations runs from the date on which the judgment became final by the conclusion of direct review or the expiration of time for seeking such review. 28 USC §2244(d)(1)(A). Properly filed applications for post conviction relief or other collateral review (PCR) toll the deadline as well. 28 USC §2244(d)(2).

Petitioner here was sentenced on February 3, 2011, and the notice of appeal was dismissed on September 18, 2012. The District Court concluded that Petitioner's time for seeking a petition for rehearing expired 15-days later, and therefore the conviction became final on October 3, 2012, finding it as the date the one-year AEDPA deadline commenced.

The District Court and Magistrate [both] failed to calculate the one-year as starting when the remmittur was filed by the Clerk of Court concluding the direct appeal process. The remittitur was handed down October 11, 2012, which should be calculated as the AEDPA's one-year commencement. Petitioner could not file his application for post conviction relief until after the remittitur was handed down and the Clerk of Court filed it. The same process applies for the final disposition of a PCR proceeding in South Carolina which occurs when the remittitur is filed in the State circuit court. Id.

On September 17, 2013, --341 days after the AEDPA deadline began to run with 24-days left, Petitioner timely filed for post conviction relief, stopping the AEDPA clock. The state PCR action concluded on February 5, 2018, when the Clerk of Court filed the remittitur from the PCR appeal denial. On February 29, 2018, the AEDPA deadline expired. Petitioner filed his habeas petition on or about February 22, 2018 which is roughly 7-days [before] the one-year AEDPA deadline expired.

The Fourth Circuit, and subsequent reviewing Magistrate and District Court erred in their calculation of the AEDPA's one-year statute of limitations. The habeas petition is timely and the Fourth Circuit should have concluded so also. The Fourth Circuit's Order Appendix A does not acknowledged whether or not Petitioner's habeas petition should be barred by the statute of limitations, but rather merely states: "Monore [Petitioner] has not made the requisite showing" while denying COA and dismissing the appeal."

## CONCLUSION

Based on the foregoing, certiorari should issue to resolve the Fourth Circuit's erroneous denial of COA or in the alternative, Petitioner would suggest this Court grant, vacate and remand to the Fourth Circuit with instructions in the interest of justice.

Respectfully

/s/ J. A. Monroe

Joshua A. Monroe

Petitioner, pro-se