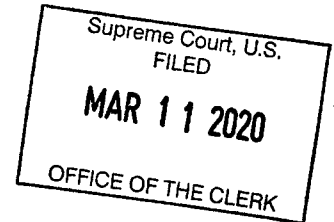


19-8109

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



ANTONIO M. BOGAN — PETITIONER
(Your Name)

vs.

DEANNA M. BROOKHART — 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

Antonio M. Bogan, pro se
(Your Name)

10930 Lawrence Road
(Address)

Sumner, Illinois 62466
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether a certificate of appealability (COA) can be denied without an overview of the habeas claims (and issues in the request) and a general assessment of their merits by asserting an unfounded procedural ruling as to the disposition of the petition.

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:

RELATED CASES

- People v. Bogan, No. 3-15-0156, Third District Appellate Court of Illinois. Judgment entered April 3, 2017.
- People v. Bogan, No. 122365, Supreme Court of Illinois. Judgment entered September 27, 2017.
- Bogan v. Lashbrook, No. 17-C-7294, U.S. District Court for the Northern District of Illinois. Judgment entered January 14, 2019.
- In re Antonio M. Bogan, No. 18-3680, U.S. Court of Appeals for the Seventh Circuit. Judgment entered January 23, 2019.
- In re Antonio M. Bogan, No. 19-1566, U.S. Court of Appeals for the Seventh Circuit. Judgment entered April 16, 2019.
- Bogan v. Brookhart, No. 19-1690, U.S. Court of Appeals for the Seventh Circuit. Judgment entered December 26, 2019.

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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 2019 U.S. Dist. LEXIS 5883; 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☐ is unpublished.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 _____; 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 December 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: January 15, 2020, 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

28 U.S.C. § 2253

(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. § 2254(d)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

resulted in a decision that was contrary to, or involved an un-

reasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

Amendment V, United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1, United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

After the United States District Court for the Northern District of Illinois denied his 28 U.S.C. § 2254 petition for writ of habeas corpus on the merits and declined to issue a certificate of appealability (COA), petitioner, pursuant to 28 U.S.C. § 2253, sought a COA with the United States Court of Appeals for the Seventh Circuit. The court denied issuing petitioner a COA by disregarding the issues of the request and relying on a procedural ground contrary to the record.

1. The Court of appeals ignored the issues presented in petitioner's COA request¹, which were (1) his convictions are contrary to Illinois law defining the substantive elements of constructive possession (the base element to his convictions of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and defacing identification marks of a firearm (720 ILCS 5/24-5(b) (West 2012)), thus making them unreasonable applications of Jackson v. Virginia, 443 U.S. 307 (1979) and violations of his Fourteenth Amendment right to due process; and (2) the district court did not accord him a full and fair Jackson review, thus violating his Fifth and Fourteenth Amendment rights to due process and equal protection of the laws.

The first issue of petitioner's requests for a COA (and the gist of his Jackson claim) consisted of three very specific arguments. As shown in his response to the respondent's answer,

1. The requests could not be appended hereto due to IDOC officers misplacing them and other legal documents.

petitioner initiated his arguments with Illinois authorities defining the substantive elements of constructive possession, focusing mainly on the "immediate and exclusive control" element. Appx. E at 8-9. Afterwards, he first argued that none of the State's witnesses or evidence placed him entering, exiting, an occupant of or in close proximity to the car containing the defaced handgun on the day it was found (Appx. D at 2-4), thus he was not proven to be in immediate and exclusive control (or, in other words, actual possession) of the car. Appx. E at 9-15. Next he argued that since officers had to forcibly enter the car in order to find the weapon because they didn't find the car's key on him or in his belongings (Appx. D at 4), the State failed to prove his "intent and capability to exercise control" (or, in other words, constructive possession) of the car. Appx. E at 16-19. Lastly, he argued that the State failed to prove he knew the weapon was in the car. *Id.* at 19-24.

The second issue of petitioner's requests for a COA was based on the district court's treatment of his *Jackson* claim. Before denying relief, the court neither explicitly referenced Illinois law defining the substantive elements of constructive possession - as required by *Jackson* - nor addressed the ones cited by petitioner as support for his contention of being entitled to relief under 28 U.S.C. § 2254(d)(1). Appx. B at 7-11.

2. On December 26, 2019, the court of appeals denied petitioner's requests for a COA (as well as other motions pertinent to appealing the district court's decision). Appx. A. In so doing, the court did not perform a threshold inquiry - an over-

view of the claims in the habeas petition (and the issues in the requests) and a general assessment of their merits. *Id.* Instead, it found no substantial showing of the denial of a constitutional right, not in the issues before it, but in a procedural ruling (the dismissal of the petition as untimely) never made by the district court. *Ibid.*

On January 8, 2020, petitioner timely petitioned the court of appeals for rehearing, arguing that the court overlooked or misapprehended the facts that (1) his habeas petition was not dismissed as untimely but denied on the merits; (2) his notice of appeal was timely filed; and (3) his requests for a COA presented issues that reasonable jurists could debate over or disagree with the district court's resolution of his petition. The court denied rehearing. Appx. C.

REASONS FOR GRANTING THE PETITION

In Square Conflict with this Court's precedents, the Court of appeals, without performing a threshold inquiry, denied issuing a COA where it was contended that the district court denied the habeas petition in opposition to this Court's governing Standard of review. Instead of overruling the habeas claims (and the issues in the COA request) and generally assessing their merits, the court found no substantial showing of the denial of a constitutional right on the disposition of the petition it knew, or reasonably should have known, did not reflect the record.

This Court should grant certiorari to reiterate compliance with its precedents are paramount, to ensure this important question does not become a tool to undermine the office of the great and efficacious Writ by depriving petitioners of their inherent right to full and fair hearings, and to reverse the Court of appeals' manifestly erroneous ruling.

- A. The Court Of Appeals Erred In Denying A COA When It Asserted A Habeas Disposition Contrary To The Record To Find No Substantial Showing Of The Denial Of A Constitutional Right Rather Than On Performing A Threshold Inquiry Into Whether Petitioner Was Accorded A Full And Fair Jackson Review.

This Court has expressly held that a COA determination under 28 U.S.C. § 2253 requires a threshold inquiry—an overview of the claims in the habeas petition and a general assessment of their merits to question whether the district court's

resolution of the constitutional claims are debatable or disagreeable amongst jurists of reason. Miller-El v. Cockrell, 123 S. Ct. 1029, 1039 (2003). This procedure is indispensable in determining whether a petitioner has made "a substantial showing of the denial of a constitutional right" for the issuance of a COA. § 2253 (2).

The focal point before the court of appeals in petitioner's requests for a COA was that the district court did not accord him full and fair review under Jackson v. Virginia, 443 U.S. 307 (1979). Petitioner's contention was premised on the fact that in Jackson (443 U.S. at 324 n.16), this Court mandated the standard to be applied with explicit references to the substantive elements of the criminal offense as defined by State law, and the district court did not comply with this requirement before denying his petition. This is evidenced by the fact that the court's opinion (Appx. B) is completely devoid of Illinois authorities defining the substantive elements of constructive possession (the base element to petitioner's firearm-related convictions). When petitioner brought this "mistake of law" to the court's attention, it stated that it was not required to cite Illinois caselaw because it could cite federal caselaw when laying out the elements of the offense. Appx. F. The court's statement cannot be correct. First, it conflicts with Coleman v. Johnson, 132 S. Ct. 2060, 2064 (2012), where this Court expressly held that under Jackson, federal courts must look to State law for the substantive elements of the criminal offense. Second, it is nonsensical to think the court was not required to cite State law when Jackson (443 U.S. at 324) and other courts within the circuit did so when they analyzed the claims before

them. See e.g., Curtis v. Montgomery, 552 F.3d 578, 581-83 (7th Cir. 2009); Ford v. Ahitow, 104 F.3d 926, 939 (7th Cir. 1997); and U.S. ex rel. Conde v. Scott, 224 F.Supp.2d 1203, 1206-07 (N.D. Ill. 2002).

The district court's unfair treatment of petitioner's habeas claim did not stop at its failure - and subsequent refusal - to explicitly reference Illinois law defining the elements of constructive possession ((1) knowledge of the presence of the weapon and (2) immediate and exclusive control over the area where the weapon was found. See People v. Davis, 93 N.E.3d 519, 530 (2017)); it also ignored the ones cited by petitioner as support for his contentions. Specifically, it gave zero regards to Illinois law defining the "immediate and exclusive control" element as "actual possession" of the car wherein the defaced handgun was found. See e.g., People v. Schmalz, 194 Ill. 2d 75, 79 (2000) (Actual possession is when a person has immediate and exclusive control of a thing); People v. White, 33 Ill. App. 3d 523, 531 n.3 (1975) (Constructive possession requires actual possession of the locus in or on which the pistol is found); and People v. Billing, 52 Ill. App. 3d 414, 421 (1977) (Same).

Like the State appellate court, the district court completely ignored the fact that none of the State's witnesses or evidence (Appx. D at 2-4) placed petitioner entering, exiting, an occupant of, in close proximity to or in possession of the key to the locked, parked car on the day the weapon was found. Thus, the State failed to prove beyond a reasonable doubt the essential element of petitioner's actual possession of the car. To make

matter worse, the court ignored petitioner's argument of costello reversed on grounds similar to the facts in his case. See e.g., *People v. Zentz*, 26 Ill. App.3d 265 (1975); *People v. Elders*, 63 Ill. App.3d 554 (1978); and *United States v. Medrano*, 5 F.3d 1214 (9th Cir. 1993). In denying relief, the court, although required to accord deference to the State appellate court's decision, did so absolutely (abandoned its independent review of the claim), which this Court does not condone. See *Miller-El*, 123 S. Ct. at 1041 ("Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review").

The issues presented in petitioner's requests for a COA unequivocally made a substantial showing of the denial of his Fifth and Fourteenth Amendment rights to due process and the equal protection of the laws. Based on Illinois authorities clearly defining the substantive elements of constructive possession and the district court's failure to accord a full and fair Jackson review, reasonable jurists (such as those who are legal owners of vehicles and would not want to be imprisoned for contraband found in their vehicle that someone else was using outside their presence) could debate over or disagree with the way the petition was resolved. Nevertheless, the Court of appeals did not consider the COA request, evident by its order (Appx. A) bearing no indication of the issues and a general assessment of their merits. Instead, it found no substantial showing of the denial of a constitutional right based on a disposition never made by the district court - the petition's dismissal as untimely. *Id.*

Because the court of appeals denied a COA based on a contrary reading of the record, this Court should grant review and reverse the manifestly erroneous ruling. See e.g., Jimenez v. Quarterman, 129 S.Ct. 681 (2009) (Certiorari granted, and the denial of a COA based on the court of appeals contrarily reading a statute concerning the timeliness of the habeas petition reversed).

B. The Question Presented Is Important.

The question presented threatens the function of the great Writ, thus making it extremely important. As this Court stated, "[t]he writ of habeas corpus plays a vital role in protecting constitutional rights." Slack v. McDaniel, 120 S.Ct. 1594, 1603 (2000). Its historic office is vindication of due process—to provide a prompt and efficacious remedy for whatever Society deem to be intolerable restraints. Fay v. Noia, 372 U.S. 391, 401-02 (1963).

When habeas petitioners allege that they are in custody in violation of their constitutional rights, this Court has expressly held that careful consideration and plenary processing of their claims is to be accorded without reserve. Harris v. Nelson, 394 U.S. 286, 298 (1969). And it's the courts' utmost duty to ensure these provisions are provided. *Id.* at 292.

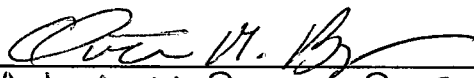
It is undisputed on this record that neither the court of appeals nor the district court provided careful consideration and plenary processing of petitioner's habeas issues and the authorities governing them. The lower courts, in essence, have

Said that the office of the great Writ means nothing to them; they have discretion and will use it to deny relief whether or not entitlement to it is shown. Allowing the courts' actions to go unchecked not only jeopardizes petitioner's freedom for the next 19 years but also the freedom of all future unlawfully convicted petitioners who can be denied relief based on partial review and unfounded procedural grounds. There is a pressing need for this Court's intervention to condemn this issue, lest the great Writ of habeas corpus becomes a proceeding only in form, not in substance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Antonio M. Bogan, Pro Se

Date: March 10, 2020