

APR 17 2020

OFFICE OF THE CLERK

No. 19-8371

IN THE
SUPREME COURT OF THE UNITED STATES

Angelo Ham — PETITIONER
(Your Name)

vs.

WARDEN WILLIAMS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Angelo Ham
(Your Name)

380 Redemption Way
(Address)

McCormick, S.C. 29899
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) Whether South Carolina law regarding juveniles right to appeal the Family Courts waiver order immediately conflict with the Federal Constitution and other Federal Court rulings?
- 2.) Whether juvenile counsel was ineffective for failing to appeal or discuss with the petitioner his rights to immediately appeal the Family Courts transfer order?

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

U.S. v. Smith, 851 F.2d 706 (4th Cir. 1988)
State v. Pittman, 2005 WL 433206 (S.C. 2005)
Sanders v. State, 314 S.E.2d 319 (S.C. 1984)
State v. Lockhart, 267 S.E.2d 720 (S.C. 1980)
U.S. v. Angelo D., 88 F.3d 856 (10th Cir. 1996)
U.S. v. Doe, 49 F.3d 859 (2d Cir. 1995)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4- 8 .
REASONS FOR GRANTING THE WRIT	9-10.
CONCLUSION.....	10.

INDEX TO APPENDICES

APPENDIX A *Family Court waiver order dated 8/3/2005.*

APPENDIX B *PCR order of dismissal dated 12/7/2010.*

APPENDIX C *S.C. Court of Appeals order dated 3/11/2014.*

APPENDIX D *PCR order of dismissal dated 2/3/2017.*

APPENDIX E *S.C. Supreme Court Order dated 1/18/2018.*

APPENDIX F *U.S. Magistrate Judge R&R dated 7/23/2019.*

Appendix G: U.S. District Judge order dated 8/23/2019.

Appendix H: U.S. Court of Appeals order dated 1/24/2020.

Appendix I: U.S. Court of Appeals order dated 3/30/2020.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>Aiken v. Byers</u> , 765 S.E.2d 572 (S.C. 2014)	
<u>Ham v. State</u> , 790 S.E.2d 191 (S.C. 2016)	
<u>Sanders v. State</u> , 314 S.E.2d 319 (S.C. 1984)	
<u>State v. Luckhart</u> , 267 S.E.2d 720 (S.C. 1980)	
<u>U.S. v. Smith</u> , 851 F.2d 706 (4th Cir. 1988)	
<u>U.S. v. Angela D.</u> , 88 F.3d 856 (10th Cir. 1996)	
<u>U.S. v. Doe</u> , 49 F.3d 859 (2d Cir. 1995)	

STATUTES AND RULES

Rule 59(e) and 60(b) of the S.C. Rules of Civ. Pro.

OTHER

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 H/I 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 United States district court appears at Appendix F/G 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 C/E 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 Darlington County Court of Common Pleas court appears at Appendix B/D 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 1/24/2020.

☐ 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: 3/30/2020, and a copy of the order denying rehearing appears at Appendix I.

☐ 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 1/18/2018.
A copy of that decision appears at Appendix E.

☐ 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

- 1) JUVENILE'S right to immediately appeal the Family Courts transfer order.
- 2) INEFFECTIVE ASSISTANCE OF COUNSEL for failing to discuss the ADVANTAGES AND DISADVANTAGES of appealing the Family Courts transfer order.
- 3) COLLATERAL ORDER DOCTRINE.

STATEMENT OF THE CASE

On September 10, 2004, while on parole, Ham and two others committed an Armed Robbery and during the course of that crime, one of his co-defendants shot and killed the victim. Ham was 15 years old at that time. The other two defendants were adults. The triggerman was the only one who had possession of the weapon before, during, or after the crime. After undergoing several evaluations conducted by the states expert psychologist Dr. Joel Heftner, Ham went to a waiver hearing, held by the Honorable Roger E. Henderson on July 18, 2005 at which Dr. Heftner recommended that Ham remain in the custody of the Family Court for rehabilitation purposes. Also, at the waiver hearing, the state called investigator Calvin Jackson as a witness at which he testified to every statement that was given regardless if the statement was taken by him or not. It was a total of six statements given from six different people. Ham is one of those six people and is the only person that his attorney had ever talked to. Ham and his counsel only had two conversations at this point. Once when Ham was at the S.C.D.J.T. Facility and the other when Ham arrived at the courthouse for the waiver hearing. Ham's counsel failed to object to this testimony and despite the recommendation by the psychologist, the

FAMILY COURT WAIVED HAM TO THE COURT OF GENERAL SESSIONS TO BE TREATED AS AN ADULT FOR MURDER, ARMED ROBBERY, AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. HAM'S COUNSEL DID NOT RECEIVE A COPY OF THE FAMILY COURT'S WAIVED ORDER, DID NOT APPEAL SUCH ORDER, OR DISCUSS WITH HAM HIS RIGHTS TO APPEAL SUCH ORDER. INSTEAD, HAM'S COUNSEL PROCEEDED TO BE APPOINTED AGAIN TO HAM'S CASE IN THE COURT OF GENERAL SESSIONS WHERE HE CONSENTED TO A BOND HEARING WITHOUT CONSULTING WITH HAM FIRST. HAM WAS INDICTED BY A DARLINGTON COUNTY GRAND JURY FOR MURDER, ARMED ROBBERY, AND CRIMINAL CONSPIRACY IN THE OCTOBER 2005 TERM OF THE COURT OF GENERAL SESSIONS. HOWEVER, ACCORDING TO RECORDS FROM THE S.C. COURT ADMINISTRATION, THE DARLINGTON COUNTY COURT OF GENERAL SESSIONS WAS NOT IN SESSION OR OPEN SO THAT THE GRAND JURY COULD REPORT THEIR FINDINGS. ON APRIL 17, 2006, HAM PLEADED GUILTY TO MURDER, ARMED ROBBERY, AND CRIMINAL CONSPIRACY BUT HE WAS ONLY SENTENCED TO FIVE YEARS FOR CRIMINAL CONSPIRACY AT THAT TIME. ON SEPTEMBER 14, 2007, HAM WAS SENTENCED TO LIFE WITHOUT PAROLE FOR MURDER AND TWENTY-FIVE YEARS FOR ARMED ROBBERY. THESE SENTENCES ARE CONCURRENT. THE LIFE WITHOUT PAROLE SENTENCE WAS RULED UNCONSTITUTIONAL PURSUANT TO AIKEN V. BYERS, 410 S.C. 534, 765 S.E.2D 572 (S.C. 2014). SEE ALSO HAM V. STATE, 417 S.C. 388, 790 S.E.2D 191 (S.C. 2016). ON DECEMBER 7, 2010, THE HONORABLE

Thomas A. Russo denied and dismissed Hams PCR Application stating that "this Court finds the Applicant failed to meet his burden of proving plea counsel should have appealed the family court judges decision to transfer the case to general sessions. Such a transfer order is interlocutory and not immediately appealable." In this PCR Application, Hams alleged that his juvenile counsel was ineffective for failing to discuss with Hams his rights to appeal the juvenile waiver order or appeal such order. Hams juvenile counsel testified at the PCR evidentiary hearing that he did not recall discussing Hams right to appeal the waiver order." The PCR court went on and dismissed Hams PCR Application quoting 'SANDERS' that specifically states that "the Family Court order transferring jurisdiction over a defendant to the Court of General Sessions is interlocutory and not subject to immediate appeal to this court." id. at n.1 (citing STATE V. LOCKHART, 275 S.C. 100, 267 S.E.2d 720 (1980)). Hams PCR counsel did not timely file a Rule 59(e) motion to correct the misapplication of federal law and insisted on filing a notice of appeal in the S.C. Supreme Court. The Supreme Court later transferred Hams appeal to the S.C. Court of Appeals to give a ruling. Pending this appeal, Hams filed a motion pursuant to Rule 60(b) asking the PCR court to set aside the

PCR court order because HAMS PCR counsel was ineffective for failing to properly preserve HAMS issue for appellate review. Within a week, the PCR court dismissed the Rule 60(b) motion and the S.C. Court of Appeals denied HAMS appeal. On March 18, 2014, HAMS filed his second PCR alleges that his PCR counsel was ineffective for failing to properly preserve HAMS issues for review along with three other issues, two of which dealt with errors specifically in the Family Court. The same judge that presided at the waiver hearing is the same judge that denied and dismissed HAMS second PCR on February 3, 2017. After properly filing his Rule 59(e) motion, the PCR court still decided to dismiss HAMS second PCR Application. HAMS then filed his notice of appeal in the S.C. Supreme Court, at which, in turn, was dismissed on January 18, 2018. HAMS filed his habeas petition on February 1, 2018. On May 31, 2018, the state filed a motion to dismiss, at which, the U.S. District Judge denied on October 18, 2018. On December 21, 2018, the state filed a motion for summary judgment in the U.S. District Court, at which, HAMS responded on February 1, 2019 only addressing the issue regarding his right to appeal the Family Court waiver order. On July 23, 2019, the U.S. Magistrate Judge issued his report and recommendation recommending that the District Court should dismiss HAMS habeas petition regarding

this issue stating that "because U.S. v. Smith, 851 F.2d 706 (4th Cir. 1988) is a federal criminal law precedent, it has no bearing in state criminal law." HAM objected to the Report and Recommendation regarding this issue and the U.S. District Judge adopted the Report and dismissed HAM's habeas petition stating that "HAM is merely rehashing his previous assertion and that the S.C. law denying a juvenile his rights to immediately appeal the Family Courts waiver order is not contrary to or an unreasonable application of clearly established federal law." HAM then appealed the District Judge order on September 10, 2019, at which, HAM cited this issue. On January 24, 2020, the U.S. Court of Appeals denied HAM's certificate of appealability and dismissed HAM's appeal. HAM then filed a timely petition for rehearing on February 5, 2020, at which, was denied on March 30, 2020.

This petition follows.

REASONS FOR GRANTING THE PETITION

According to South Carolina law regarding juveniles right to appeal an waiver order, the state ruled that "this transfer order is interlocutory and not immediately appealable." See, SANDERS, 281 S.C. 53, 56 N.1, 314 S.E.2d 319, 321 N.1 (1984). (citing STATE v. LOCKHART, 275 S.C. 160, 267 S.E.2d 720 (1980)). A juvenile can only appeal the Family Court order after he has been sentenced in the Court of General Sessions as an adult.

However, this conflict with federal law and other appellate courts, even an appellate court in South Carolina, on a number of reasons. In fact, every federal circuit that has addressed this issue has held that "the juvenile waiver order is interlocutory and is immediately appealable under the collateral order doctrine." See, U.S. v. Angelo D., 88 F.3d 856, 858 N.1 (10th Cir. 1996).

In deciding U.S. v. Angelo D., the appellate court emphasized that "the legal and practical benefits of being tried as a juvenile — which include pretrial detention in a foster home or community-based facility near the juvenile's home instead of in an adult prison, and the sealing of

records and the withholding of the juvenile's name and picture from the media, — would be destroyed if the defendant were forced to wait until after trial and a final judgment in order to appeal." id. (see also, U.S. v. Doe, 49 F.3d 859, 865 (2d Cir. 1995)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large loop, is written over a horizontal line.

Date: April 17, 2020