

No. 20-5523

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN JURY — PETITIONER
(Your Name)

vs.

DAVID GRAY, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR REHEARING

Brian Jury
(Your Name)

P.O. Box 540
(Address)

St. Clairsville, OH 43950
(City, State, Zip Code)

N/A
(Phone Number)

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PETition for Rehearing

Pursuant to Rule 44.2, Petitioner suggest that there are "intervening circumstances of a substantial or controlling effect" that militates in favor of granting a rehearing (and certiorari) with respect to this Petitioner, vacating the decision below in his case and remanding the matter back to the court of appeals in light of Buck v. Davis, 137 S.Ct. 759 (2017)

Petitioner's petition for certiorari presented the same (if not similar) merits questions as those this Court resolved in Buck v. Davis, 137 S.Ct 759, this Court denied the petition on October 13, 2020.

This Petitioner asserts that his Certificate of Appealability (COA) denial from the United States Sixth Circuit Court of Appeals was in violation of Buck v. Davis, 137 S.Ct 759 for the following reasons:

I. The Sixth Circuit had inverted the statutory order of operations by first deciding the merits of the petitioner's habeas COA request.

A. The Sixth Circuit justified its denial

of petitioner's COA based on its adjudication of the actual merits.

Three separate courts have divulged their own theories in denying relief in regards to petitioner's Fourth Amendment right violation(s):

1) The state appellate court claimed petitioner's arrest to be warrantless, in contrast to the trial testimony that there was a warrant as the only purported justification for the arrest. It cited Hensley under the reasonable suspicion standard to justify the warrantless arrest -- although an arrest must be made on probable cause.

2) The United States Sixth District Habeas Court concluded that there was probable cause because the alleged victim identified the petitioner -- however, there was no evidence on the record to support the court's assertion that any identification was done prior to or at the moment of arrest.

3) The United States Sixth Circuit Appellate Court's erroneous theory was that petitioner was being followed by police, attempting to get him to stop -- inference be given, rose to the level of probable cause. This statement was taken out of context. There was no supporting evidence that this petitioner was attempting to flee from the police that elevates to a level of probable cause to justify petitioner's

Stoppage/arrest. Moreover, petitioner had disputed and requested an evidentiary hearing at the district court to show the stop/arrest video of this petitioner. Further in the arresting officer's testimony, he stated that a (non-existent) warrant from the instigating sheriff's department was what initiated the process for the arrest of this petitioner -- testimony was neither corrected by the prosecutor nor challenged by the trial counsel throughout the trial proceedings.

There was no disputing this testimony by trial counsel for the veracity or purpose of probable cause throughout petitioner's entire trial, the alleged "warrant" -- which never existed! -- was the only purported justification for the arrest. Probable cause should have come from the instigating sheriff's department per Hensley @ 231.

1. The Sixth Circuit Court of Appeals has put too heavy of a burden on this petitioner at the COA stage.

Petitioner asserts his habeas Fourth Amendment claim, specifically, was adjudicated on the actual merits of the claim. The Sixth Circuit Appellate Court was to only assess the district court's resolution of petitioner's ineffective

appellate counsel claim(s) in her failure to file specific claims on petitioner's state direct appeal. One of the claims was an "unlawful arrest."

A second IAC claim was an ineffective trial counsel claim for failing to file a motion to suppress, et al.

While the very nature to assess an IAC claim requires some inquiry into the underlying claim, a COA should not be foreclosed upon due to the full consideration of the Sixth Appellate Circuit Court. The logic behind Buck is that "the COA inquiry is not coextensive with a merits analysis." Buck @ 773.

2. The Sixth Circuit was without jurisdiction.

When the Sixth Circuit Appellate Court justified its denial of Petitioner's COA based on the adjudication of the actual merits (different from the district court), "it [has] in essence decid[ed] an appeal without jurisdiction. Miller-El v. Cockrell, 537 U.S. @ 336-37." Buck @ 773.

II. Jurist of reason could disagree with the

district court's resolution.

"At the COA stage, the only question is whether the applicant has shown jurist of reason could disagree with the district court's resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further." Buck @ 773; see also 28 U.S.C. § 2253(c)(2).

Likewise, petitioner had shown, for purposes to obtain a COA, that jurist of reason could and would disagree with the district court's resolution that the identification of petitioner was not and could not be used to validate probable cause because such identification came after the arrest and could not be proven from the record to have occurred prior to the arrest.

The Buck Court further stated that "this threshold question should be decided without full consideration of the factual or legal bases adduced in support of the claims." Buck @ 773.

This clearly was not the case being applied to Petitioner's COA request. The Sixth Circuit Appellate Court not only surpassed the "threshold

inquiry," stated within Buck, but it also in essence disagreed with and disregarded the district court's resolution of its probable cause analysis -- providing petitioner's argument that his Fourth Amendment claim was debatable or were adequate to proceed further. When the court ruled on the merits of the claim, disregarding the district court's resolution, it did so "without jurisdiction." Petitioner asserts that the lower courts' decision(s) are erroneous, contrary to Supreme Court precedent, and without factual evidence -- objectively unreasonable.

Petitioner asserts that there was not any reasonable probable cause justification to confirm petitioner's continued conviction without holding a retrial -- or evidentiary hearing -- outside of the alleged (non-existent) warrant originally claimed during petitioner's trial proceedings.

III. Even if this petitioner had failed to show that his claims were meritorious or even debatable, this does not mean he failed to make a preliminary showing that his claims were debatable.

Petitioner asserts that all of his "claims can be debatable even though every jurists of reason might agree, after the COA has been granted and

the case has received full consideration, that petitioner [would] not prevail' Miller-El @ 338." Buck @ 774.

Petitioner respectfully request his original petition for a writ of certiorari to be fully incorporated herewithin to support this argument.

"This Court has the power to issue a GVR order, and such an order is an appropriate exercise of the Court's discretionary certiorari jurisdiction." See 28 U.S.C. § 2106; Lawrence v. Chater, 516 U.S. 163.

Without this Court's order/intervention, the lower court's decision to deny a COA of petitioner's habeas corpus would ultimately affect not only the application of Buck v. Davis, 137 U.S. 759, but it would also legitimize other future courts to deny COAs to habeas claimants who demonstrate using the present standards of a proper preliminary "threshold inquiry" to be granted a COA.

Conclusion

Petitioner respectfully request that he be granted relief (through rehearing and writ of certiorari) by vacating the lower court's judgment, and remanding petitioner's case back to the United States Court of Appeals for the Sixth Circuit for further consideration in light of Buck v. Davis, 137 S. Ct. 759 (2017).

Respectfully submitted,

Brian Juri BMS

Date: 10/26/2020