

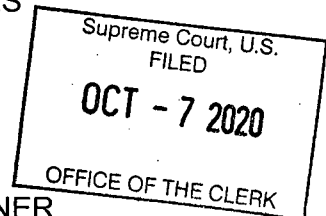
20-6040

No. 20-6836

3:19-cv-00774-Rcy

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Charlie Bell Bullock — PETITIONER
(Your Name)

vs.

Harold Clarke, Director — 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)

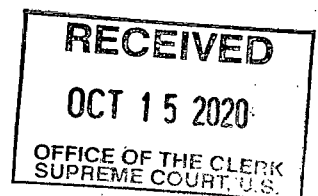
PETITION FOR WRIT OF CERTIORARI

Charlie Bell Bullock #1071668
(Your Name)

1821 Estaline Valley Rd.
(Address)

Craigsville, VA 24430
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. Does the Confrontation Clause require a victim to be made available for cross examination if pictures of them are submitted and is counsel ineffective for not objecting to such an occurrence?
2. Does the prevailing professional norm require a trial attorney to know the correct standard of review?
3. Does the prevailing professional norm require a trial attorney to know the elements of the offense?
4. Can an attorney's cumulative errors be ineffective assistance even if ~~each~~^{each} error, by itself, was not.

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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STATUTES AND RULES

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 C 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☒ is unpublished.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 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☒ is unpublished.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 A 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 8-25-20.

~~*~~ 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: _____, 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. § 1254(1).

~~*~~ For cases from **state courts**:

The date on which the highest state court decided my case was 9-27-19.
A copy of that decision appears at Appendix A.

[] 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. Sixth Amendment Confrontation Clause.
2. Sixth Amendment right to effective assistance of counsel.
3. Fourteenth Amendment Due process right violation.

STATEMENT OF THE CASE

The alleged "victim" in this case, Antoine Smith (A.S.) showed up at the petitioner's residence in Richmond, Virginia armed with a .380 caliber pistol on July 1st, 2015. (The petitioner had hit A.S. with his fist earlier that day at A.S.' sister's ~~house~~, (Brittney's) house.) A.S. was subsequently shot through the hands. Casings from A.S.' .380 caliber pistol were recovered by police at the petitioner's home. Nevertheless, the petitioner was convicted of "malicious wounding" and several firearm charges. Moreover, although pictures of A.S.' injuries were submitted as evidence at trial without objection, A.S. was not made available for cross examination and did not testify. Both, the Va. Supreme Court and the Eastern District Federal Court determined that the petitioner "started" the gunfight with the individual that came to the petitioner's home with a gun, even though the petitioner had to call a friend to bring him a gun when Brittney and A.S. refused to leave.

The petitioner's counsel obviously did not research or prepare a defense for the petitioner, but rather "offered him up" as a sacrifice on the altar of injustice. Rather than having a meaningful adversarial defense presented at trial, counsel allowed a "gross miscarriage" of justice to occur, and forced the petitioner to defend himself in this post-conviction arena, that is highly deferential to the state, with no training in the law. What about his right to effective assistance of counsel? The petitioner did his best to present his claims with his limited knowledge of the law and, in the Federal District Court, referred to the arguments and pleadings proffered in his State habeas proceeding. Rather than giving liberal construction to the petitioner's pleadings, the Federal District Court called his petition "rambling, repetitive, and fail[ing] to identify clearly any specific claims for relief." The Court then denied a COA so that the petitioner could not even get the 4th Cir. Appellate Court to weigh in. The 4th Circuit upheld that denial and now the petitioner is required to do the impossible, get this court to

grant Certiorari to a prose prisoner whose rights have been violated. The prison is on perpetual Covid-19 lockdown with absolutely no access to the law library. The petitioner is required to attempt to hand write claims that he has already proffered in the state habeas and Federal habeas proceedings. For purposes of brevity, the petitioner will summarize this case. Trial Counsel did not object to pictures of the alleged victim being submitted as evidence although this court could hold that those pictures were a form of testimony that would require confrontation rights^{to} be afforded. Trial counsel did not point out that there is no malice when two people willingly engage in armed combat and the petitioner filed a habeas corpus ad testificandum to allow A. S. to admit to the court that he willingly engaged the petitioner in combat. The law is crystal clear that willing participation in a gunfight never produces "malicious wounding or murder" but only "unlawful wounding or manslaughter". The petitioner was denied consideration of this claim because counsel failed to raise it. Trial Counsel did not ensure that the correct standard of

review was utilized at trial for a self defense claim. In Virginia, there is a significant difference between self defense at home and self defense at large. In Hines v. Commonwealth, 292 Va. 674 (2016), the Va. Supreme Court explained that "an individual threatened in his own home and reasonably fearing for himself or his family has no duty to retreat, and may kill an attacker who threatens him or his family" and went further by adding that "the same right that applies in an individual's house also applies to the curtilage around his house". It is undisputed that Brittney was hitting the petitioner's car with a hammer and that A.S. had the .380 pistol. This settled law in Virginia was never considered by the trial court because trial counsel never raised it. Instead, the trial court used the standard of review for self defense at large which requires retreat, making known an intention for peace... etc. Trial counsel did not avail himself of the physical facts rule which would conclusively demonstrate that A.S. was shot while holding the .380 in firing position.

In the petitioners state habeas, the petitioner submitted an illustration that, if viewed by any reasonable jurist, ~~it~~ definitively shows that A. S. was shot while holding a pistol in the firing position. These facts were never raised by trial counsel.

In the first question presented, the petitioner asks this Court to determine if the pictures of the alleged victim's gunshot wounds were "testimony" that would require confrontation be afforded and if the prevailing professional norms would require an objection by counsel in the absence thereof. The petitioner argues that it is testimony and that counsel was ineffective for not objecting and, therefore, there has been a clearly ^{unreasonable} ~~application~~ application of this court's settled law in Strickland v. Washington, 466 U.S. 668 (1984).

The second question also arises under Strickland, supra. The petitioner argues that under the prevailing professional norms, an attorney is required to know the correct standard of review for a defense that they raise. The lower courts in this case unreasonably apply Strickland by determining that counsel was not ineffective for failing to ensure that the correct standard of review was followed at trial. This trial error by counsel was raised in a cumulative errors claim in the state habeas and was glossed over rather than being

responded to and adjudicated. Then, in a blatant abuse of discretion, the federal district Court responded to this claim by creating its own facts that are not supported by the record. The petitioner never left the "curtilage" of his home during the entire incident, yet the federal district court claims that he "left ^{his} ~~the~~ house to obtain a firearm and shot at A.S. down the street." The district court concluded from this that the petitioner was not defending his home. The reality, as the record reflects, is that Bob brought the gun to the back corner of the petitioner's house and the petitioner came up the alley beside his house and confronted A.S. at the front of his house. The court's ruling is unreasonable in light of the facts in the record. The federal district court advocated for the state by creating a defense for a claim the state never addressed. All of this was concocted to avoid the fact that trial counsel failed to use the correct standard of review for self defense in the home when presenting a defense. His failure was unreasonable under prevailing professional norms and the lower courts' rulings to the contrary are an unreasonable application of the settled law in Strickland.

In the third question presented, the petitioner would like the court to create a definitive standard of review under Strickland. The federal district courts have created a standard that cannot be met. For instance, the first Circuit holds that a petitioner must show that counsel's choice was so patently unreasonable that no competent attorney would have made it. Rivera v. Thompson, 879 F.3d 7, 12 (1st Cir. 2018). The 11th Circuit holds that a petitioner must establish that no competent counsel would have taken the action that his counsel did take, U.S. v. Freixas, 332 F.3d 1314, 1320 (11th Cir. 2003). Contrast these recent rulings under Strickland with the pre-Strickland rulings in Moore v. U.S., 432 F.2d 730 (3d Cir. 1970), which only required a petitioner to show that counsel did not exercise [the] normal skill and knowledge which normally prevails at the time and place; or U.S. v. DeCoster, 487 F.2d 1197 (D.C. Cir. 1973), which stated that counsel must render the reasonably competent assistance of an attorney acting as his diligent advocate. The underlying ineffective assistance claim in this case involves the difference between unlawful and malicious wounding in Virginia. This time and place should require an attorney to know that the element of malice must be proven by the government

and in this case, it was not. Indeed, the judge who tried the case openly said that the petitioner was reckless for confronting the victim with a firearm in order to disarm him. There is a significant difference, in this time and place, between recklessness and malice.

Counsel can not have known that difference and not objected. Under the pre-Strickland cases, the petitioner has met his burden, but under the more recent cases the courts have demanded more than this court required under Strickland and they need to be reined in.

The fourth, and final, question involves cumulative errors by an ~~attorney~~ attorney. In Chambers v. Mississippi, 410 U.S. 284, 298 (1973), this Court held that the combined effect of multiple trial errors violates due process where it renders the resulting criminal trial fundamentally unfair. The lower courts are not following this clearly settled law, and, in this case, have unreasonably ruled contrary to it.

REASONS FOR GRANTING THE PETITION

There is a well know "Cliche" that says "A picture is worth a thousand words". Question 1, in this petition, has far reaching national consequences if it goes unanswered. Imagine if state prosecutors no longer have to produce their witnesses, but can just show pictures, like happened in this case, in a world where nearly everyone carries a camera. Does the confrontation Clause protect against such an occurrence and are attorneys meeting the current professional norms when they do not object to such an occurrence?

Questions 2 and 3 demonstrate that although Americans have a secured right to effective Counsel in a criminal proceeding, that right cannot be enforced in a post conviction proceeding, by persons not trained in the law, within a two year time period. The cases cited by the petitioner, in this petition, show that the bar has been set so far beyond what a laymen can demonstrate that the right no longer exists, practically. In this age of criminal justice reform, this court should strike the first blow by answering the

two questions, presented as #2 and #3, and give the lower courts specific guidance in the two areas of law that those questions refer too, namely: correct standards of review; and the elements of a crime. Prevailing professional norms certainly include this knowledge, don't they?

Question 4 is needed to clarify the issue of cumulative errors by trial counsel. Can there occur a circumstance where even though one error, by itself, may not be ineffective assistance, but the result of multiple errors is? Just like the previous reasons for granting this writ, this question also has implications that are important to all Americans and should be addressed by this court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charlie Bullock

Date: 10-6-20