No. _____

IN THE

Supreme Court of the United States

JOHN OLIVER WOOTEN,

Petitioner,

v.

PATRICK WARREN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a state court decision entitled to deference on federal habeas review if it is undisputed that the state court applied the wrong standard of review because of a clear factual error?

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PETITION FOR A WRIT OF CERTIORARI

John Wooten respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The Sixth Circuit's opinion is available at 814 F. App'x 50 (6th Cir. 2020). The District Court's opinion denying Wooten's petition for habeas relief is not published, but is available at 2019 WL 1651381.

JURISDICTION

The Sixth Circuit entered judgment on May 4, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

First, the Fifth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb."

Second, 28 U.S.C. § 2254(d), part of the Antiterrorism and Effective Death Penalty Act of 1996, states in relevant part:

> (d) 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—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

This case implicates an important question about the scope of federal review of state criminal proceedings under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Specifically, this petition squarely presents the question of what federal courts should do when a state court applies the wrong standard of review based on an unreasonable view of the factual record.

Here, no party disputes that the state court applied the wrong standard of review in reviewing John Wooten's Double Jeopardy claim. Wooten's trial attorney raised a Double Jeopardy objection, and yet the state court reviewed the claim for plain error as an unpreserved objection. The federal courts then deferred to the state court's ruling, reasoning that the state court's decision warranted deference despite the factual error causing it to apply the wrong standard of review. This Court should grant review to make clear that a state adjudication is not entitled to deference if the state court, in its decision, applied a standard of review "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2).

STATEMENT OF THE CASE

I. Wooten strenuously objected to a mistrial at his first trial being without prejudice.

In 2011, Michigan prosecutors charged John Wooten with first-degree murder and assault with intent to commit murder, after he shot two employees of the Pretty Woman Lounge in Detroit during an altercation where employees forcibly ejected him from the bar while armed. One employee, Alphonso Thomas, died. The other, Omar Madison, testified at trial.

Wooten went to trial twice, presenting a defense theory of self-defense. Wooten testified that he heard Madison tell Thomas to get a gun and then heard a shot while being shoved from the bar.

At Wooten's first trial, to head off the anticipated self-defense argument, the state prosecutor asked the lead officer if Wooten ever voluntarily spoke to police about the shooting. The trial judge sustained an objection to this question because it implicated Wooten's Fifth Amendment right not to incriminate himself. The judge also directed the prosecutor not to question the witness about Wooten not talking to police. Nonetheless, the prosecutor again asked the officer, "In this case would you have enjoyed talking to the defendant?" And she answered, "Yes."

In response to this question, the defense asked for a mistrial, citing *Oregon v. Kennedy*, 456 U.S. 667 (1982), and arguing that the prosecutor's disregard of the Fifth Amendment and the trial judge's instructions constituted an "intentional act of prosecutorial misconduct which then would allow jeopardy to attach." The judge granted a mistrial but *without prejudice*, concluding that the prosecutor had made a mistake in the heat of litigation.

But defense counsel pressed again for a mistrial *with prejudice*, arguing that Wooten appeared to be headed for acquittal. In response, the trial judge agreed that the prosecution's case "was in the toilet," and that there was "no way" the jury would find Wooten guilty of first-degree murder. The judge even stated that he would have granted a defense motion for directed verdict, and explained: "[W]as it to the benefit of the prosecution to have had a mistrial granted without prejudice? You bet your sweet bippy." Nonetheless, the judge felt the need to give the prosecutor "the benefit of the doubt."

At the start of his retrial, Wooten *again* urged the court to reconsider dismissing the case without prejudice, explicitly stating that he wanted to "preserve [his] client's right . . . to have that taken up again in the Court of Appeals." The court refused to revisit its earlier decision.

At the end of the second trial, the jury convicted Wooten of second-degree murder.

II. The Michigan Court of Appeals applied the wrong standard of review.

On appeal, Wooten argued that the trial judge erred by not granting mistrial with prejudice. In response, the Michigan Court of Appeals decided—in clear conflict with the record—that "defendant did not object to the trial court's decision to grant the motion for a mistrial." (App. 49.) The court thus found the issue "unpreserved" and reviewable for plain error only. (App. 59–50.) The court then found no plain error occurred because, in its view, the prosecutor's question did not violate the Fifth Amendment. (App. 51–52.) The court did not discuss the prosecutor's conduct in violating the trial judge's repeated instructions.

Wooten applied for leave to appeal, and despite requesting supplemental briefing and oral argument on whether the trial prosecutor intentionally goaded the mistrial, the Michigan Supreme Court denied the application for leave to appeal. *People v. Wooten*, 870 N.W.2d 924 (Mich. 2015).

III. The federal courts deferred to the state analysis utilizing the erroneous standard of review.

Wooten next filed a habeas petition in federal court, arguing that the state courts ran afoul of clearly established constitutional law by not granting a mistrial *with* prejudice.

For purposes of analyzing procedural default, the District Court recognized the state court's mistake about whether Wooten objected to the mistrial without prejudice. (App. 25–26.) But the District Court failed to address how the state court's factual error about the standard of review affected whether AEDPA deference applied; the District Court simply deferred to the state court's analysis without first deciding whether this error created an unreasonable determination of the facts. (App. 34–37.) Thus, the court held that, even if Wooten presented "a close question," the court had to defer to the state court's adjudication. (App. 37.)

Wooten appealed to the Sixth Circuit, contending that the District Court erred by applying AEDPA deference to his Double Jeopardy claim given that the state court *erroneously* applied plain-error review. (App. 8.) Respondent conceded that the state court applied the wrong standard of review.

Nonetheless, the Sixth Circuit applied AEDPA deference, holding that it applies "to the state court's plain-error merits analysis even if the court's underlying procedural reasoning is incorrect." (*Id.*) The Sixth Circuit also presumed the state court adjudicated the Double Jeopardy claim on the merits, citing *Johnson v. Williams*, 568 U.S. 289, 292–93 (2013), and *Harrington v. Richter*, 562 U.S. 86, 99 (2011). (App. 10.) Then, applying AEDPA deference, the Sixth Circuit decided that the state court did not unreasonably apply *Kennedy*. (App. 11–14.)

This petition followed.

REASONS FOR GRANTING THE PETITION

I. This Court should grant review to clarify that the Sixth Circuit's approach conflicts with the text of 28 U.S.C. § 2254(d).

The Sixth Circuit deferred to the decision of the Michigan Court of Appeals despite the state court applying plain error review based a factual determination in clear conflict with the record.

This approach conflicts with the governing habeas statute. Under 28 U.S.C. § 2254(d)(2), federal courts do not defer to state decisions "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." A factual determination meets this standard if it is "objectively unreasonable in light of the evidence presented in the state-court proceeding." *Miller-El v. Cockrell*, 537 U.S. 322, 324 (2003). By the plain text of this statute, deference should not be afforded to a state decision that—because of an erroneous interpretation of the facts—applies the incorrect standard of review.

The Sixth Circuit "presumed" the state court's decision represented a decision on the merits, in reliance on *Williams*, 568 U.S. at 292–93, and *Harrington*, 562 U.S. at 99. (App. 10.) But in *Williams* and *Harrington*, this Court addressed whether to defer to a state decision that either summarily rejects a petitioner's claims or provides an analysis of some claims and not others. The Court held that "the federal habeas court must presume (subject to rebuttal) that the federal claim was adjudicated on the merits." *Williams*, 568 U.S. at 293.

But because of the clear factual error underlying the state court's legal analysis here, any "presumption" in favor of the finding that deference applied to the state court's analysis should not have been applied. In this case, the State is not defending the factual error by the Michigan Court of Appeals. As the Sixth Circuit recognized, "[t]he District Court concluded that [the state court's] preservation ruling was incorrect," and on appeal, the State was "no longer arguing that Wooten failed to preserve his claim." (App. 9.)

This is not a situation where the federal habeas court merely "would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Wooten preserved the claim with multiple objections, and the state court ignored those objections and applied plain-error review. In this circumstance, where a state court's "critical factual determinations were unreasonable," this Court has refused to apply AEDPA deference. *See Brumfield v. Cain*, 576 U.S. 305, 314 (2015).

This Court should grant review to make clear that the Sixth Circuit's decision conflicts with the text of AEDPA and this Court's precedent.

II. This Court should grant review because the Sixth Circuit's decision conflicts with decisions from circuit courts.

Without acknowledging it, the Sixth Circuit's decision conflicted with other circuit court decisions.

For example, the Ninth Circuit reached an opposite conclusion in *Maxwell v. Roe*, 628 F.3d 486, 506 (9th Cir. 2010), a decision the Sixth Circuit did not acknowledge in this case despite its centrality in Wooten's briefing. In *Maxwell*, the court explained that, if a state court bases its decision on a unreasonable factual determination, then "AEDPA deference no longer applies." *Id.* This approach "is in accord with the deference principles of AEDPA because—in light of the state court's reliance on incorrect facts—"[the court] do[es] not know what the state court would have decided . . . [and] there is no actual decision to which we can defer." *Id.*

Similarly, the Seventh Circuit concluded that, when "the trial court based its decision on an unreasonable factual determination, the substantive merits of [the petitioner's] claim are analyzed under the pre-AEDPA standard—that is, *de novo*—because there is no state court analysis to apply AEDPA standards to." *Carlson v. Jess*, 526 F.3d 1018, 1024 (7th Cir. 2008).

And the Eleventh Circuit has decided that "when a state court's adjudication of a habeas claim 'result[s] in a decision that [i]s based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," [18 U.S.C.] § 2254(d)(2), [the federal court] is not bound to defer to unreasonably-found facts or to the legal conclusions that flow from them." *Jones v. Walker*, 540 F.3d 1277, 1288 (11th Cir. 2008).

In direct conflict with these decisions, the Sixth Circuit held in this case that—despite the state court's error of fact in determining Wooten's claim to be unpreserved—"AEDPA deference applies." (App. 8.) This Court should take this case to reconcile the

apparent conflict in appellate case law, likely to provoke significant confusion for federal habeas petitioners.

III. This case presents a clean vehicle for deciding this question.

No party disputes that the state court was wrong to conclude Wooten did not preserve his Double Jeopardy claim. Wooten strenuously objected to the trial court granting a mistrial *without* prejudice, citing this Court's governing Double Jeopardy jurisprudence in *Kennedy*. And the Michigan Court of Appeals clearly relied on plain error review because it mistakenly decided the claim was unpreserved.

Thus, the clarity of the state court's mistake in this case presents an ideal vehicle for this Court to resolve when a federal habeas court defers to a state court decision that applied the wrong standard of review because of a unreasonable determination of the facts. The Court should grant this petition for a writ of certiorari, and ultimately, remand to the Sixth Circuit to review Wooten's Double Jeopardy claim de novo, without the application of AEDPA deference.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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