

No. 20-6208

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 19 2020
OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

IRA L. JACKSON — PETITIONER
(Your Name)

vs.

SEC'Y, DEPARTMENT OF CORR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

IRA Lee Jackson #597150
(Your Name)

3420 N.E. 168th Street
(Address)

Okeechobee, Florida 34972-4624
(City, State, Zip Code)

Not Applicable
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the Eleventh Circuit was in error when it failed to grant a certificate of Appealability based on the District Court's ~~Clisby~~ error.
- 2) Whether the Eleventh Circuit was in error when it denied Mr. Jackson's motion for Reconsideration based on its own merits determination of his ineffective assistance of counsel claim.

~~SEARCHED~~
~~INDEXED~~
~~MAILED~~
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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A order of 11th Circuit Court of Appeal

APPENDIX B order of Denial U.S. Middle District Court

APPENDIX C Order 5th DCA Denying Ineffective Appellate Counsel

APPENDIX D Order 5th DCA Denying Rule 3.850 Appeal

APPENDIX E order 18th Cir Denying Rule 3.850

APPENDIX F order 18th Cir Denying Rule 3.800

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>APPrendi v. New Jersey</u> , 120 S.Ct. 2348 (2000) . . .	- 4
<u>BUCK v. Davis</u> , 137 S.Ct. 759 (2017)	3, 4, 6
<u>Clisby v. Jones</u> , 960 F.2d 925, 936 (4th Cir. 1992) .	3, 6
<u>State v. Greer</u> , 475 F.3d 556 (3rd Cir. 2007)	4
<u>SLACK V. McDaniEL</u> 120 S.Ct 1545 (2000)	4
<u>Strickland v. Washington</u> 104 S.Ct 2052 (1984)	3
<u>Thomas v. STATE</u> 745 So.2d 1119 (5th DEK 1999)	3, 6
<u>In re winship</u> , 90 S.Ct. 1068, 25 L.Ed. 368 (1970) 4	
775.082 (9), 775.084 (1)(d) 776.08	
STATUTES AND RULES	

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PROVIDED TO
OKEECHOBEE CORRECTIONAL
INSTITUTION
8-13-20d
FOR MAILING

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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 _____; 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**:

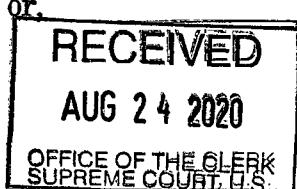
The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

reported at Jackson v. State 50.3d (FL5CA2017); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the 3850 appeal Jackson v. State 206 So.3d 717 court appears at Appendix D to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

1.



JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case
was _____.

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: May 14, 2020, and a copy of the order denying rehearing appears at Appendix A.

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 C.

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 N/D (date) on N/D (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The mandate of the Eleventh circuit Court of Appeals requires District Courts to resolve all claims for relief raised in habeas proceedings, regardless of whether relief is granted or denied. See *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (en banc). A claim for is any allegation of a constitutional violation. *Clisby*, 960 F.2d at 936. Two claims may be distinct even if both allegations arise from the same alleged set of operative facts. *Id.* When a District court fails to address all the claims, we will vacate the District court's judgment without prejudice and remand the case for consideration of all remaining claims. " *Id.* at 938.

Ineffective assistance of counsel constitutes a violation of a defendant's Sixth Amendment right, and thus is a claim of constitutional violation. *Strickland v. Washington*, 466 U.S. 668, 684-86, 104 S.Ct. 2052 2063-64 80 L.Ed. 2d 674 (1984).

In Claim Five of Mr. Jackson's 2254 petition he raised two distinct claims of ineffective assistance of appellate counsel. First, for not raising a double jeopardy violation as fundamental error where dual enhancements as a VCC and PRR on a single count of burglary of dwelling, citing *Thomas v. State*, 745 So. 2d 1119 (Fla. 5th DCA 1999). Second, for not raising issue of violent career criminal act were based on non-qualifying predicate offenses of burglary of unoccupied conveyance and grand theft. (OOC. 1 at 24). See generally §§ 775.084(1)(d) and 775.082 (9) Florida Statutes. Defense counsel indicated that the Prosecutor could elect only one enhancement.

Consequently, the District court failed to address the merits of the second part of Claim Five, but stated: "Allegations not specifically addressed herein are without merit". (OOC. 23 at 10). An evidentiary hearing was necessary to afford him an opportunity to present evidence that proves he is actually innocent of being a violent career criminal, because he was sentenced based on a non-qualifying predicate offense, in light of section 776.08 Florida Statute. In construing Jackson's pro se pleadings liberally, this court will find that he is also raising a due process challenge to the length of his sentence, which exceeds the maximum authorized by law.

In re Winship, 397 U.S. 388, 90 S.Ct. 1068, 25 L.Ed. 368 (1970), this court made clear beyond a peradventure that Winship's due process protections extend, to some degree, to determinations that go not to a defendant's guilt or innocence but simply to the length of his sentence". *Apprendi v. New Jersey*, 530 U.S. 466, 481, 120 S.Ct. 2348, 147 L.Ed. 435 (2000). Indeed "due process requires that the sentence for crime of conviction not exceed the statutory maximum." *United States v. Greer*, 475 F.3d 556, 573 (3rd Cir. 2007)

These claims demonstrate that a "reasonable jurist would find the district court's assessment of the constitutional claim debatable or wrong". *Slack v. McDaniel*, 473, 484, 120 S.Ct. 1595, 146 L.Ed. 542 (2000). In *Buck v. Davis*, 580 U.S. ___, 137 S.Ct. 759, 197 L.Ed. 2d 1 (2017), the court held that the Fifth Circuit exceeded the limited scope of the C.O.A. analysis. The C.O.A. statute sets forth a two-step process: An initial determination whether a claim is reasonably debatable, and then if it is, an appeal in the normal course.

Here, the Eleventh Circuit Court of Appeal exceeded the limited scope of the C.O.A. analysis of whether Jackson had shown extraordinary circumstances which are ultimate merits determinations the panel should not have reached.

STATEMENT OF THE CASE

- 1) On 11/28/2017, Mr. Jackson filed a timely and meritorious 28 U.S.C. § 2254 Petition to Vacate, Set Aside, or Correct Sentence.
- 2) On 1/1, the District Court issued an order to show cause.
- 3) On 1/1, the State of Florida filed its response and appendix.
- 4) On 1/1, Mr. Jackson filed his reply.
- 5) On 10/17/2019, the District Court issued an order Denying all claims and Denied a certificate of appealability.
- 6) On 1/1/2019, Mr. Jackson filed Motion in opposition to Courts order
- 7) On 1/1, Mr. Jackson filed his Motion for issuance of Certificate of Appealability
- 8) On 1/1, the District Court Denied certificate of Appealability
- 9) On 1/1, Mr. Jackson filed motion for Certificate of Appealability with the Eleventh Circuit Court of Appeals
10. On 3/20/2020, the Eleventh Circuit Denied Certificate of Appealability
- 11) On 1/1/2020, Mr. Jackson filed a motion for reconsideration
- 12) On 1/1/2020, the Eleventh Circuit Denied motion for reconsideration

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REASONS FOR GRANTING THE PETITION

1) CLISBY V. JONES

Mr. Jackson claimed in his § 2254 Petition that he was denied effective assistance of both defense trial counsel and Appellate counsel over the conduct in his state criminal case. The District court denied his Petition without making a merits determination concerning claim Five, alleging ineffective appellate counsel for not raising double jeopardy challenge to sentences for Violent Career Criminal (VCC) 775.084(c)(d) and Prison release reoffender (PRR) 775.082(9), Fla. Statute for a single offense of burglary, citing Thomas v. State, 745 So.2d 1119 (Fla. 5th DCA 1999). (DOC.1 at 24) He also alleged, he was sentenced Violent Career Criminal (VCC) without a non-qualifying predicate offense of grand theft. (DOC.1 at 25)

The District court denied his motion without making a merits determination concerning the non-qualifying predicate offense in light of section 776.08 Florida Statutes, which set forth enumerated violent felony offenses. The District court's failure to allow Mr. Jackson to be heard on this claim constitutes a suspension of the writ in violation of the United States Constitution. (DOC.23 at 10) (APPX. B)

Mr. Jackson then filed a motion for C.O.A. in the Eleventh Circuit Court of Appeals, alleging the District court denied his petition without making a merits determination concerning the second part of claim Five concerning due process violation because he was sentenced under the Violent Career Criminal (VCC) Act based on a non-qualifying predicate offense, in light of section 776.08 Florida Statutes. After reconsideration, the panel found his ineffectiveness claims to be meritless. (APPX. A) 2) BUCK V. DAVIS

Mr. Jackson declares that the panel's decision is in error because it is contrary to United States Supreme Court precedents. In BUCK V. DAVIS, 580 U.S. —, 137 S.Ct. 759, 197 L.Ed. 2d 1 (2017). This court held that the Fifth Circuit exceeded the limited scope of the C.O.A. analysis, which set forth a two-step process: an initial determination whether a claim is reasonably debatable, and then if it is an appeal in normal course

Mr. Jackson has made a reasonable showing, that a reasonable jurist would find the District court's assessment of the constitutional claim debatable or wrong. Thus, required C.A. should issue, an appeal in normal course

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John L Jackson E-597158

Date: 8-12-20