

No. _____

20-6209

IN THE
UNITED STATES SUPREME COURT

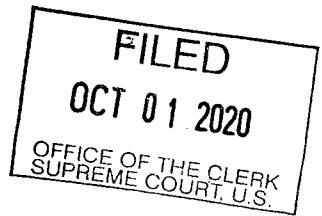
Louis Sanders -- Petitioner,

-vs-

ORIGINAL

Warden Perry Corr. Inst. -- Respondent,

PETITION FOR A WRIT OF CERTIORARI



Louis Sanders
#~~100002~~ 16430
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Petitioner, pro-se

QUESTION PRESENTED

CERTIORARI SHOULD ISSUE TO REVIEW THE JUDGEMENT BELOW WHERE THE FOURTH CIRCUIT DENIED CERTIFICATE OF APPEALABILITY IN CONFLICT WITH RELEVANT DECISIONS OF THIS COURT'S THRESHOLD INQUIRY STANDARDS ANNOUNCED IN MILLER-EL AND SLACK V. McDANIEL.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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

The case is from federal court and the opinion of the United States Court of Appeals and appears at Appendix A of the petition and is unpublished.

The decision of the U.S. District Court of South Carolina appears at Appendix B of the petition and is unpublished.

This case is from federal court and the date on which the United State Court of Appeals decided my case May 27, 2020.

The date on which the U.S. District Court decided my case December 12, 2019.

A timely petition for rehearing was filed and the date the U.S. Court of Appeals denied rehearing was June 30, 2020.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE SIXTH AMENDMENT provides:

All persons shall enjoy the effective assistance of counsel in his defense. U.S. Const. VI Amend.

THE FOURTEENTH AMENDMENT provides:

That all persons shall not lose life, liberty or property without due process of law. U.S. Const. XIV amend.

STATEMENT OF THE CASE

FEDERAL COURT PROCEEDINGS

Louis Sanders, (hereafter "Petitioner"), filed a pro-se petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 in the United States District Court of South Carolina on October 4, 2018, alleging numerous claims of ineffective assistance of counsel constituting a denial of the Sixth and Fourteenth Amendments of the Federal Constitution. (C/A No.9:18-cv-02783-MGL).

On April 5, 2019 Respondents filed a Motion for Summary Judgment. Petitioner timely filed an Opposition and Reply on May 13, 2019 and Respondents filed a Reply to the Reply on May 20, 2019.

On July 23, 2019 United States Magistrate Bristow Merchant issued a Report and Recommendation denying the habeas petition and granting Respondent's motion for summary judgement. (Appendix C). Petitioner lodged timely objections to the R&R and on December 17, 2019 United States District Judge Mary Geiger Lewis issued an order adopting the Magistrate's R&R and dismissing the petition with prejudice. (Appendix B).

A timely notice of Appeal was filed and the United States Court of Appeals for the Fourth Circuit issued an Informal Briefing Order. (No.20-6090). Petitioner timely filed a pro-se Informal Brief seeking certificate of appealability. On May 27, 2020 the U.S. Fourth Circuit Court of Appeals denied COA dismissing the appeal. (Appendix A). Petitioner filed a timely petition for rehearing and rehearing was denied June 30, 2020. (Appendix D).

This petition for writ of certiorari is as follows:

STATE COURT PROCEEDINGS

Petitioner was indicted in Richland County in August 2007 for murder (2007-GS-40-6002). Petitioner was represented by Camille Everhart, Deon O'Neal and Casey Secor Esquires. A jury trial was conducted on July 28-August 1, 2008 and was found guilty as indicted. Petitioner was sentenced to life imprisonment.

A timely notice of appeal was filed. On direct appeal he was represented by Tricia A. Blanchette, esquire who filed an Anders brief raising one issue. Petitioner filed his pro-se Anders brief raising four (4) issues. On January 27, 2010, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence, and granted counsel's petition to be relieved. State v. Sanders, Op.No.2010-UP-047 (S.C.Ct.App. filed Jan.27, 2010). The Remittitur was issued on February 12, 2010.

On May 4, 2010, Petitioner filed a pro-se application for post conviction relief Sanders v. South Carolina, 2010-CP-40-2933. Petitioner was represented by appointed PCR counsel Nicole Simpson, esquire and an evidentiary hearing was convened on April 21, 2012. On March 16, 2016 (dated March 7, 2016) the PCR Judge issued a written order denying the relief. Petitioner filed a timely notice of appeal and was represented by Kathrine Hudgins of the South Carolina Commission on Indigent Defense. Hudgin's raised one issue in a Johnson petition seeking to be relieved as counsel. On May 23, 2017 Petitioner filed his pro-se Johnson petition two issues.

On August 9, 2018 the South Carolina Court of Appeals denied the petition and granted counsel's request to be relieved. The Remittitur was sent down on August 27, 2018 and filed with the

Clerk of Court for Richland County on August 29, 2018.

REASONS FOR GRANTING THE WRIT

The United States Court of Appeals for the Fourth Circuit's denial of certificate of appealability conflicts with relevant decisions of this Court in *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003) and *Slack v. McDaniel*, 529 U.S. 473 (2000).

Sections 28 USC §2253(c) provides that a certificate of appealability ("COA") may be issued "only if the appellant has made a substantial showing of the denial of a constitutional right." 28 USC §2253(c)(2)(West 2001). This was succinctly applied by this Court in *Miller-El*, 537 U.S. 322, 123 S.Ct. 1029, 1039-40 (2003)(AEDPA's section 2253(c) "codified our standard announced in *Barefoot v. Estelle*, 880 (1993), for determining what constitutes a requisite showing [for obtaining leave to appeal district court's denial of habeas corpus relief].

Under the controlling standard a petitioner must show that reasonable jurists could debate whether, or for that matter, agree that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further, *Slack v. McDaniel*, 529 U.S. [473] at 484 (2000)(quoting Barefoot, supra at 893, n.4).

The Fourth Circuit is limited at the COA stage to a "threshold inquiry" distinct from the underlying merits that neither requires nor permits full consideration of the factual or legal bases adduced in support of Respondent's claims. In *Miller-El v. Cockrell*, 537 U.S. 322, 325 (2003) ("The question is debatability of the underlying constitutional claim, not the

resolution of that debate.").

The District Court found the majority of Petitioner's ineffective assistance of counsel claims procedurally defaulted and failed to apply this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012) where this Court opened the narrow exception to reviewing the merits of the underlying claims where state appointed collateral (PCR) counsel rendered ineffective assistance at the initial collateral review.

Petitioner's underlying claims encompass two specific provisions of the Bill of Rights [Sixth Amendment's Effective Assistant of Counsel and the Fourteenth Amendment's Right to a Fair Trial] that so infected the trial with unfairness as to make the resulting conviction a denial of due process, where the procedure employed by the State and trial counsel violated due process in that it offended the above principles of justice so rooted in the traditions conscience of our people as to be ranked fundamental. See e.g. *Patterson v. New York*, 432 U.S. 197, 202 (1977).

This Court may modify or set aside any judgment or decree lawfully brought before it for review, and may direct the entry of such order or require such further proceedings as are prayed for here as may be just under the circumstances. 28 USC §2106.

CONCLUSION

Petitioner respectfully prays certiorari issue or in the alternative, grant, vacate and remand with instructions.

Respectfully

/s/ Louis Sanders

Louis Sanders, pro-se