

No. 20-6765

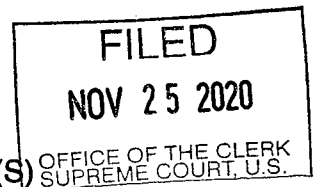
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

KEVIN WAYNE DISKSON PETITIONER
(Your Name)

vs.

LARIE DAVIS, DIRECTOR RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

T.D.C.J. # 01946777
Kevin Wayne Diskson
(Your Name)

Telford Unit
3899 State Hwy. 98
(Address)

New Boston, Texas 75570
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did the Fifth Court of Appeals Commit error for Concluding that Appellant's Ineffective Assistance of Counsel Claim Could not be debated among Jurists. The Appellant's Claim Was, trial Counsel Was Ineffective for failing to Call an expert witness to Show that the Victim was high on PCP When he Claim the Appellant Shot him. (See) (COA, pg. 5-7).

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:

RELATED CASES

- *Pavel v. Hollins* 261 F.3d 210 (2nd Cir 2001).
- *Schell v. Witke* 218 F.3d 1017 (9th Cir 2000).
- *Slack v. McDaniel* 529 U.S. at 484, 120 S.Ct. 2595 (2000).
- *United States v. Tucker* 716 F.2d 576 581 (9th Cir 1983).

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STATUTES AND RULES

28 USC 2253 (c)(2)

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 A to the petition and is

☐ reported at N/A; 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☒ is unpublished.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 _____ to the petition and is

☐ reported at N/A; 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☒ is unpublished.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 _____ to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the N/A 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 5th Circuit Sep 3, 2020

☐ 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 N/A.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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 Sixth Amendment, Right to effective assistance of Counsel.

The Fourteenth Amendment, right to due process.

STATEMENT OF THE CASE

Appellant was charged and indicted with first degree felony murder, to which he plead not guilty CR-15. After hearing evidence and arguments of the Counsel a jury found Appellant guilty of the offense as charged in the indictment. CR-178. Following a hearing on punishment for life, CR-173.

Dickson appealed, but the Fifth Court of appeals affirmed the judgment of the trial Court. Dickson did not file a pro with the Texas Court of Appeals. Dickson filed a state application for writ of habeas Corpus Challenging his conviction which was denied by CCA. Dickson then filed a federal habeas Corpus writ that was denied on June 24, 2019. He filed a

CA with the Fifth Circuit which was denied. Appellant now files the instant writ of Certiorari with the U.S. Supreme Court.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit Committed error by Concluding the Appellant's IAC claim was not debatable among jurists. In *Constrase* this is not the Case, the Appellant demonstrated how his Trial Counsel's Performance fell below an Objective Standard of reasonableness for failing to Present testimony from an expert to Show the Jury that the Victim was high on PCP at the time he was Shot. And that it was More likely than not, the Victim at the hospital was experiencing the affects of PCP which was Causing him to hallucinate. When he told the Medical Staff attending to his gun shot to the Stomach that Buck's brother was the shooter.

The Appellant demonstrate both Prongs of the Strick Land test. in both his State and Federal Writs. Trial Counsel's Omission not to Call

an expert Witness deprived the Appellant evidence that would have supported his defense at trial. According to *Strickland v. Washington*, 104 S.Ct. 2052 (1984), Counsel had an obligated duty to put the adversary to the test. Clearly, Appellant's Counsel fail to challenge the dying declaration given by the victim on the basis that he was high on PCP when he said, "Buck's brother shot me." The dying declaration was a very crucial piece of evidence against the Appellant. Nevertheless, had trial Counsel proffered testimony from an expert witness, then the State's theory would have been undermined.

The Appellant Presented

several Cases within his 2254 federal habeas Corpus writ to Support his ineffective Claim. Take the first Case for instance: in Pavel, the second Circuit found that trial Counsel's performance to be deficient to the extent that he did not Call a medical expert to testify as to the Significance of the physical evidence Presented by the Prosecutor. (See) Pavel v. Hollins, 261 F3d 210 (2nd Cir 2001). Moreover, the Ninth Circuit Concluded in Tucker that it was Competent for a lawyer to Call an accountant to assist in a fraud Case. (See) United States v. Tucker, 716 F.2d 576, 581 (9th Cir 1983). Lastly, the Ninth Circuit found Counsel was ineffective for failing to Consult with a finger print expert. (See) Schell v. Witke 218 F.3d 1017 1028-30 (9th Cir 2000).

The Fifth Circuit ignored the above Case law. Based on the

Cases that were cited in the Appellant's COA, the Fifth Circuit should have concluded that the IAC claim was debatable among jurists of reason. (see) *Slack v. McDaniels*, 529 U.S. at 484, 120 S.Ct. 1595 (2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin Wayne Dickson

Date: NOV 25, 2020