No. 20-7130

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Kareem J. Cobbins — PETITIONER
(Your Name)

vs.

State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts Of Appeals For The Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kareem J. Cobbins
(Your Name)
Illinois River Corr. Cntr.
1300 W. Locust - P.O. Box 999
(Address)

Canton IL. 61520
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

"The Post-Conviction Hearing Act" provides a three-step process for the adjudication of a petition for postconviction relief. 725 ILCS 5/122-1 et seq. (2012); *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)... Since Federal and Illinois Courts regularly follow Illinois affidavit rule under 5/122-2 and consider it to be procedurally adequate grounds for a claims dismissal (Ineffective Assistance of Counsel).

This United States Supreme Court should grant review in order to inform the lower courts as to how much is expected of a Pro Se petitioner in pleading a constitutional claim. Alternatively should This United States Supreme Court be confident that these questions have already been answered in its prior decisions - also in cases such as *People vs. Hodges*, 234 Ill. 2d at 17, This Court should simply exercise its supervisory authority and remand this cause to the circuit court for second stage proceedings.

Note: The state appellate court clearly relied upon Illinois' affidavit rule when denying Petitioner's ineffective assistance claims - [14-9] at 7-8; see also *Thompkins*, 698 F. 3d at 986.

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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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 _____; 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[✓] is unpublished.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 A 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 _____ 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 3rd District of Illinois Appellate court appears at Appendix C to the petition and is

[✓] reported at 2014 IL App (3d) 140474-U; 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 November 13, 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 September 27, 2017. 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 _____ (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

Petitioners Reply / Claims.(s) / Argument

WHAT TYPE OF ISSUE MAY BE PRESENTED IN A HABEAS PETITON?

The Habeas Petition must allege a federal constitutional claim. The petition may allege, for example, (1) a violation of the privilege against self-incrimination, (2) a violation of double jeopardy, principles, (3) the prosecution's knowing use of false evidence, (4) the state's use at trial of an involuntary confession, (5) a violation of the speedy-trial provisions of the Constitution (not the 120-day rule in Illinois, (6) the denial of the effective assistance of counsel.... "Post Trial Remedies" (A HANDBOOK FOR ILLINOIS PRISONERS) PAGE 50. Copyright 2006, Illinois State Bar Association.

Petitioner was deprived of his constitutional rights to due process and equal protection of the law and rights guaranteed by the fifth, sixth, eighth, and fourteenth amendments of the United States Constitution and to due process of law guaranteed under article I-section 2 of the constitution of the state of Illinois, where cumulative errors at trial resulted in a conviction; and failure to proper appellate review compounded the fundamental miscarriage of justice/interest of justice in this case.

Petitioner contends that his trial and appellate attorney provided him with a performance that was deficient, clearly defective and far below the standard of effective assistance of counsel that the 6th and 14th Amendment of the U.S. Constitution affords every citizen, which decidely altered the opportunity to receive a fair and unbias trial.

The defendant stated the gist of a claim in alleging that his trial counsel was ineffective for failing to obtain a definitive opinion as to his affirmative defense of sanity at the time of the offense.

Continued: Constitutional And Statutory Provisions Involved

In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Right to effective assistance of counsel applies not just at trial, but also on direct appeal, Evitts v. Lucey, 469 U.S. 387.

The Due Process Clause of the 14th amendment guarantees a criminal defendant the effective assistance of counsel on first appeal, as of right. Lucey 469 U.S. 387.

The United States Supreme Court has determined that the same rights are guaranteed on appeal, as during the trial stage, so appellate counsel is not absolved from giving sufficient and reasonable representation.

My counsel has a duty to make reasonable investigations. Strickland v. Washington 104 S. Ct. 2052 (1984). My counsels failure to investigate mitigating evidence, coupled with counsels unsound strategy left the court with a prejudicial imbalance in the courts determination that important clear and convincing factors precluded the imposition at my bench trial, even important medical records/reports were not present as well showing a history of neurological impairment/symptoms dating back to 1993. Federal Habeas Petition, Appendix. These issues could've raised some reasonable doubt. Therefore it is necessary to second guess defense counsel tactics specifically with the benefit of hindsight, because trial counsels tactics/strategy clearly denied defendant a fundamental constitutional, 6th and 14th right.

The proper measure of an attorney's performance remains simply reasonableness under prevailing professional norms. Petitioner's trial counsel was therefore ineffective under Strickland and petitioner's 6th amendment right was impaired.

Continued: Constitutional And Statuatory Provisions Involved

The Sixth Amendment right to confrontation includes the right to cross examine adverse witnesses to show bias, prejudice or ulterior motives. Although the trial court has discretion to limit cross examination to prevent harassment, prejudice, jury confusion, risk to witness safety, and repetitive or irrevelant questioning, such as discretionary authority may be exercised only after the court permits sufficient cross examination to satisfy the confrontation clause. A criminal defendant is entitled to the "widest latitude" to establish bias or motive by a state witness. The confrontation clause is violated where the defendant is prohibited from engaging in cross-examination designed to show a protypical form of bias on the part of the witness (People v. Blue ILL. 2d N.E. 2d (2001).

While the cross-examination beyond the scope of direct examination is generally improper, the defendant is entitled to inquire into matters which explain or discredit a witness's testimony, even if new matter which aids the defense is incidently placed before the jury.
(People v. Harris, 262 ILL. App. 3d. 35, 634 N.E. 2d. 318 (2nd Dist. 1994)

STATEMENT OF THE CASE

On October 24, 2005, at about 9:00 am., the then 31-year old defendant killed his wife by stabbing her in the chest with a butcher knife (R 236-37, 252, 266). Defendant admitted that he killed his wife but claimed that he was insane at the time of the offense (C50)(R 23, 53, 237, 288). Three psychologists examined defendant to try to determine whether he was sane at the time of the offense.

Insanity Evaluations

For the defense, Dr. Randi Zoot examined defendant in the summer of 2006 and was unable to provide a conclusive opinion as to his sanity at the time of the offense (IC8-9). Dr. Zoot explained that the murder had been an "extremely aberrant" act for defendant because he did not have a history of violence or antisocial behavior (IC8-9). She also found, though, that his behavior "did not represent any classic mental illness" (R92). Nonetheless, she could not rule out that there had been something wrong with defendant at the time of the offense because his behavior appeared to be dissociative (R92). She was concerned with the possibility that organic brain damage may have made defendant delusional at the time of the (R92). However, she was not qualified to make that evaluation (R92). She suggested that a neuropsychological evaluation of defendant be conducted (IC8-9)(R42, 53, 55, 64, 68, 92).

Dr. Robert Hanlon was hired by defendant to conduct the neuropsychological evaluation (C73)(R104). At the outset, Dr. Hanlon's evaluation stated that he was hired by defense counsel "to provide an objective assessment of [defendant's] *current* cognitive and behavorial status" (IC45) (emphasis added). Dr. Hanlon concluded that defendant had a "significant functional disability" that could be due to a "chronic, untreated seizure disorder" (IC46). Dr. Hanlon did not offer an opinion as to defendant's sanity at the time of the offense. *People v. Cobbins*, 2012 IL App (3d) 100855-UB, ¶¶ 6, 38.

After reviewing Dr. Hanlon's evaluation, Dr. Zoot filed an addendum to her evaluation in which she stated that it was "unclear" to her whether the condition identified by Dr. Hanlon "had any impact on Mr. Cobbins[']s mental state at the time of the offense and I am still unable to offer an opinion" (IC 10). At the subsequent stipulated bench trial, she explained that she did not have the expertise needed to interpret Dr. Hanlon's evaluation and therefore could not determine whether the condition described by Dr. Hanlon had any impact on defendant's mental state at the time of the offense (R 325, 327-28).

Defendant was evaluated for the State by Dr. Lisa Sworowski. Dr. Sworowski opined that defendant was sane at the time of the offense (IC 151-53). It was her view, among other things, that defendant was "an unreliable historian" (IC 141-43), that feigning of mental or behavioral disorders by defendant could not reasonably be ruled out (IC 143-44), that there was "no reliable evidence to support a diagnosis of a Psychotic Disorder in this case, or any other major mental disorder" (IC 144-45), and that defendant's "deficits and symptoms [were] of insufficient severity to have substantially diminished his capacity to appreciate the criminality of his conduct" at the time of the offense (Ic 151-53).

Bench Trial

A bench trial was held where all of the evidence was presented by stipulation except for testimony by Dr. Zoot and Dr. Sworowski regarding defendant's affirmative defense that he was insane at the time of the offense (R 232 *et seq.*) Dr. Zoot again did not offer an opinion as to defendant's sanity at the time of the offense (R 319-20, 328). The parties stipulated to Dr. Hanlon's evaluation (R 289-90). Dr. Sworowski opined that defendant was sane at the time of the offense (R 376). In summation, the prosecutors pointed out that defendant's psychologists had not offered an opinion as to defendant's sanity at the time of the offense, and found him guilty of the murder (R 489). The court sentenced defendant to a 40-year term of imprisonment (C 151) (R 566).

Direct Review

On direct review, defendant argued that the trial court erred in finding that he was sane at the time of the offense because Dr. Zoot had stated that she had concerns about his mental health, because Dr. Hanlon had found that he suffered from mental illness, and because Dr. Hanlon's credentials had been superior to Dr. Swarowski's. *Cobbins*, 2012 IL App (3d) 100855-UB, ¶ 33. The appellate court disagreed, noting that "Zoot's opinion regarding defendant's sanity was inconclusive, and Hanlon did not offer an opinion regarding defendant's sanity at the time of the offense." *Cobbins*, 2012 IL App (3d) 100855-UB, ¶ 38. The appellate court also rejected a challenge to the length of defendant's 40-year sentence. *Cobbins*, 2012 IL App (3d) 100855-UB ¶ 40.

Postconviction Petition

On March 24, 2014, defendant filed a pro se petition for postconviction relief (C231-44). In pertinent part, defendant claimed that defense counsel was ineffective for not having made sure that Dr. Hanlon examined him for sanity at the time of the offense because a conclusive opinion as to his mental status at the time of the offense had been necessary to make his defense tenable (C240). Defendant claimed the result of his trial would have been different had a definite opinion had been obtained about his sanity at the time of the offense (C240). Defendant added that appellate counsel was ineffective in not raising this argument on direct review (C240).

The court summarily dismissed defendant's petition on May 14, 2014 (C313-16), and denied his motion to reconsider on June 9, 2014 (C372).

Continued: Statement of Case

Appeal from summary dismissal of Postconviction petition

Defendant appealed arguing that a conclusive opinion by a defense expert as to his sanity at the time of the offense would have changed the outcome of the trial by allowing defendant to make an informed decision about whether he should plead guilty or proceed to trial. Defendant also argued that defense counsel was ineffective for forcing a directed verdict of guilty by not providing any evidence to support defendant's defense of insanity at the time of the offense although that was the only disputed issue. On March 31, 2017, a divided appellate court affirmed. People v. Cobbins, 2017 IL App (3d) 140474-U.

REASONS FOR GRANTING THE PETITION

Defendant, who had some history of mental illness but no history of violent behavior, killed his wife by stabbing her in the chest with a butcher knife. Defendant conceded that he killed his wife but raised the defense of insanity at the time of the offense. Defense counsel failed to obtain an expert opinion as to defendant's sanity at the time of the offense. This failure to present a defense directed the trial court to find defendant guilty following a stipulated bench trial where the affirmative defense was the only issue in dispute, and where the State presented an expert's opinion that defendant was sane at the time of the offense.

After the trial court's judgment was affirmed on direct review, defendant filed a *pro se* postconviction petition in which he claimed that defense counsel was ineffective for not having retained a defense expert to offer an opinion as to defendant's affirmative defense. Defendant claimed an opinion on the question had been necessary so as to avoid a directed verdict and so that he could have made an informed decision as to whether to go to trial with a viable defense or to plead guilty in the hopes of a more lenient sentence. Defendant added that appellate counsel was ineffective for not raising this argument on direct review. The circuit court summarily dismissed the petition at the first stage.

On review, a divided appellate court affirmed. *People v. Cobbins*, 2017 IL App (3d) 140474-U. The majority found that defendant did not provide the evidentiary support required to survive first-stage dismissal. *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 25. However, defendant's affidavit explained why he had been unable to secure that evidence which required difficult-to-obtain expert opinion (C 278). *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 47 (McDade, J., dissenting).

The Petitioner did state a substantial showing of a constitutional claim from the denial of his 28 U.S.C. § 2254 petition.

The State Appellate Court clearly relied upon Illinois' affidavit rule when denying Petitioner's claim. [14-9] at 4-8 See also *Thompkins*, 698 F.3d at 986 (A state law ground is independent when the court actually relied on the procedural bar as an independent basis for its disposition of the case.) Furthermore, federal and Illinois courts regularly follow Illinois affidavit rule under 5/122-2 and consider it to be a procedurally adequate ground for a claims dismissal. *Jones v. Calloway*, 842 F.3d 454

Federal Court of Appeals decision affirming grant of federal habeas corpus relief to state Petitioner on grounds that the affidavit rule set forth by the state appellate court, and this rule being regularly followed by federal and Illinois courts undermined the requirements to the rule to Illinois Law under the Post-Conviction Act to proceed the Petitioners claim to the second stage for review-faulting Petitioner for failing to attach affidavits or other evidence or to explain their absence according to Illinois Law. On the contrary Petitioner did provide / state the reasons for the absence in petition / affidavits - "Enough" evidentiary support require to survive the first stage.

The dissenting justice disputed the majority's conclusion that defendant did not provide the evidentiary support required to survive a first stage dismissal. The dissenting justice quoted defendant's detailed explanation in his petition of why he had been unable to furnish more evidentiary support for his claim. (exhibits attached)
Cobbins, 2017 IL App. (3d) 140474-U, ¶ 47 (McDade, J., dissenting).

The Post-Conviction Hearing Act provides a three-step process for the adjudication of a petition for postconviction relief. 725 ILCS 5/122-1 et seq. (2012); *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, a petition must present the gist of a constitutional claim in order to survive dismissal. *People v. Holt*, 372 Ill. App. 3d 650, 652 (4th Dist. 2007). The threshold for meeting the gist standard is low. *Holt*, 372 Ill. App. 3d at 652. The petition at this stage need only contain a limited amount of detail, and the facts alleged should be taken as true and liberally construed in favor of the petitioner unless contradicted by the record.

Reasons For Granting Review: continued

People v. Edwards, 197 Ill. 2d 239, 244 (2001). The petition need not cite legal authority or set forth the claim in its entirety; nor must it set forth every fact necessary to support all the elements of a constitutional claim. Edwards, 197 Ill. 2d at 245.

The Illinois Supreme Court explained in Edwards that:

> "the 'sufficient facts' test imposes too heavy a burden on the pro se defendant. While in a given case the pro se defendant may be aware of all the facts pertaining to his claim, he will, in all likelihood, be unaware of the precise legal basis for his claim or all the elements of that claim. In many cases, the pro se defendant will be unaware that certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a completed and valid constitutional claim. Under the 'sufficent facts' test, however, the pro se defendant must recognize the facts that need to be pled to support a 'valid claim.' This is an unrealistic requirement." Edwards, 197 Ill. 2d at 245.

The Illinois Supreme Court added that requiring a defendant to state a complete claim would be "at odds with the 'gist' standard itself since, by definition, a 'gist of a claim is something less than a completely pled or fully stated claim." Edwards, 197 Ill. 2d at 245

The Illinois Supreme Court has clarified the gist standard explaining that a petition may be summarily dismissed "as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. (Emphasis added.) People v. Hodges, 234 Ill. 2d 1, 11-12 (2009). A claim lacks an arguable basis in law if it is based on a legal theory which is completely contradicted by the record (Hodges, 234 Ill. 2d at 16-17), or a violation of a right which clearly does not exist or apply in the circumstances (Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). A claim lacks an arguable basis in fact when it describes fantastic or delusional scenarios. Hodges, 234 Ill. 2d at 16-17. In addition, a petition alleging ineffective assistance may not be summarily dismissed at the first stage if "(i) it is arguable that counsel's performance fell below an objective standard of reasonableness and (ii) it is arguable that the defendant was prejudiced." Hodges, 234 Ill. 2d at 17.

These are very low standards. The rationale for these low standards reflects the recognition that a pro se petitioner is generally not capable of drafting artful pleadings, constructing legal arguments, or even understanding which legal arguments are supported by the facts and supporting affidavits in the petition. Edwards, 197 Ill. 2d at 244-45. Cf Halbert v. Michigan, 545 U.S. 605, 620-21 (2005) (seven of ten inmates are so lacking in literacy that they can neither write a brief letter correcting a credit card mistake nor even use a bus schedule.)

In this case, defendant conceded that he killed his wife but raised the defense of insanity at the time of the offense. However, defense counsel failed to obtain a necessary expert's opinion as to this affirmative defense. This failure to present a defense directed the court to find defendant guilty following a stipulated bench trial where the unsupported defense was the only issue for resolution. Furthermore, defendant needed to know whether he had a tenable defense in order to make a rationale decision on whether to plead guilty or go to trial.

* Under these circumstances, defendant's claim that defense counsel was arguably ineffective was legally sufficient because it was not "completely contradicted" by the record. Hodges, 234 Ill. 2d at 16. In addition, the defense experts' generalized concern about defendant's mental health shows defendant's claim was factually sufficient because it was not "fantastic or delusional." Hodges, 234 Ill. 2d at 16-17. Therefore, it was error to summarily dismiss defendant's petition at the first stage.

A divided appellate court affirmed. People v. Cobbins, 2017 IL App(3d) 140474-U. The majority found that defendant did not have the evidentiary support required to survive first-stage dismissal because he was "required to */** show that such evidence [of insanity at the time of the offense] exists." Cobbins, 2017 IL App (3d) 140474-U, ¶ 25.

* Defendant's affidavit, though, explained why he had been unable to secure that evidence which required difficult-to-obtain expert opinion (C 278). Cobbins, 2017 IL App (3d) 140474-U, ¶ 47 (McDade, J., dissenting).

The majority also concluded that defense counsel's decision not to retain the expert had been a strategic decision since an expert's opinion "ran the risk of tipping the balance on the issue of defendant's sanity further in the State's favor." *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 27. However, whether counsel's challenged decision was explained by trial strategy is a second stage issue. *People v. Tate*, 2012 IL 112214, ¶¶ 21-22.

The majority added that defendant was not prejudiced because there would have been no option of a guilty plea if a defense expert had opined that defendant was sane at the time of the offense. The majority surmised that in such a situation the State would have no incentive to negotiate a guilty plea because the evidence of defendant's guilt would be overwhelming. *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 28. However, the majority's conclusion is based entirely on the guess that an expert would find defendant sane at the time of the offense. It is wrong for the appellate court to make "random speculations in favor of the prosecution." *People v. Dye*, 2015 IL App (4th) 130799, ¶ 12. The majority also applied the *Strickland* prejudice prong in arriving at this conclusion. *Strickland v. Washington*, 466 U.S. 668 (1984). This was error. The ineffective assistance of counsel standard that applies in postconviction proceedings is different and more lenient. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). The correct standard is that "a petition alleging ineffective assistance of counsel may not be summarily dismissed if (i) it is *arguable* that counsel's performance fell below an objective standard of reasonableness and (ii) it is *arguable* that the defendant was prejudiced." (Emphasis added.) *Hodges*, 234 Ill. 2d at 17.

Relying on the wrong standard again, the majority stated regarding defendant's ineffective assistance of counsel claim that, "[t]o survive first-stage dismissal, a defendant must allege facts sufficient to establish that counsel's performance was objectively unreasonable under prevailing professional norms." *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 26 (citing *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). However as noted above, and as clearly pointed out by this Court in *Petrenko*, "a petition alleging ineffective assistance of counsel may not be summarily dismissed if (i) it is *arguable* that counsel's performance fell below an objective standard of reasonableness and (ii) it is *arguable*

that the defendant was prejudiced." (Emphasis added) *Petrenko*, 237 ILL. 2d at 496 (quoting *Hodges*, 234 ILL. 2d at 17).

The dissenting justice disputed the majority's conclusion that defendant did not provide the evidentiary support required to survive a first-stage dismissal. The dissenting justice quoted defendant's detailed explanation in his petition of why he had been unable to furnish more evidentiary support for his claim. *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 47 (McDade, J., dissenting). The dissenting justice further pointed out that, contrary to the majority's conclusion regarding counsel's strategic choices, defendant risked nothing by obtaining an additional expert opinion since there was no evidentiary balance to tip inasmuch as the expert opinions he already possessed failed to establish any defense. *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 51-53 (McDade, J., dissenting). The dissenting justice further reasoned that it was possible a new expert may have concluded defendant was insane at the time of the offense given the concern expressed by defendant's experts about his mental health. *Cobbins*, 2017 IL App (3d) 140474-U, ¶¶ 51-53 (McDade, J., dissenting). Addressing a point ignored by the majority, the dissenting justice explained that if an expert would have opined defendant was insane at the time of the offense, this would have provided the State with a "strong incentive" to offer defendant a negotiated plea. *Cobbins*, 2017 IL App (3d) 140474-U, ¶ 52 (McDade J., dissenting).

Under these circumstances, where the record shows defense counsel's failure to present any evidence in support of defendant's affirmative defense directed a verdict of guilty, the appellate court's majority applied a too high a standard in requiring the *pro se* defendant to prove his ineffective assistance of counsel claim at the first stage. Review should be granted to remind the lower courts of the low standard for stating the gist of a postconviction constitutional claim. Allowing lower courts to disregard the standards this Court has set for first stage dismissals, and thereby allowing lower courts to incorrectly hold *pro se* defendants to too high a standard, has the practical effect of abolishing or drastically limiting the postconviction remedy and of recreating the situation that prompted the enactment of the Post-Conviction Hearing Act more than 65 years ago, namely, the situation where a "procedural morass offer[s] no substantial hope of relief. "*Marino v. Ragen*, 332 U.S. 561, 564 (1947). Such denial of a remedy for violations of constitutional rights cannot be countenanced by the Honorable Illinois Supreme Court.

I believe that the Federal Court in unacknowledging petitioner's merits was unsubstantial according to petitioner's argument / constitutional claim of Ineffective Assistance of Counsel in his habeas corpus 28 U.S.C § 2254 for the reasons stated:

The "Illinois Supreme Court" did not (give a reason) say it was adjudicating his claim on "any" merits. They did not state they were denying petitioner's claim for any reason at all.

The pivotal question is whether The Federal Courts application for the Strickland standard was. The Seventh Circuit was also a de novo review. It gave § 2254 no operation or function in its reasoning.

Its analysis illustrated a lack of deference to the state courts determination and improper intervention in state criminal processes.

The Illinois Appellate Court and Federal Court(s) could not reasonably have concluded Counsel provided adequate representation was erroneous; they considered his performance to be trial strategy.

Basically, speculative reasoning on determining my counsels "trial strategy" which they never stated was "effective - but instead provided defendant with a performance that was deficient, clearly defective (Ineffective) and far below the standard of effective assistance of counsel that the 6th and 14th Amendment of the U.S. Constitution affords every citizen, which decidely altered me the opportunity to receive a fair and unbias trial. Prejudice / a major disadvantage was evident in my case.

" The conclusion that because the Petitioner's trial attorney's failure to obtain a definitive opinion from his experts as to whether the defendant was insane at the time of the offense, no evidence to meet this burden was presented, that is no defense was presented for the defendant."

> "The sole contested issue was that defendant bore the burden of proving by "clear and convincing evidence" his sanity "at the time of the offense." - 720 ILCS 5/3-2b 6-2 (e) 2004.

The Illinois Supreme Court States:

" Our Illinois Supreme Court issued a profound statement regarding the practices of the courts and how jurisprudence dictates they should always reach the just and correct decision based on its best interpretation of the laws.

Reasons For Granting Review: Continued

Even though The Illinois Supreme Courts response to my Petition for Leave to Appeal was unaccompanied by no explanation for its denial-(which I believe is "Wrong" in itself in not providing me the reason Why. "A "Reason" could've motivated me with a meritorious premise of an argument.") the habeas Petitioner's burden still had to be met by showing there was reasonable basis for the state court to deny relief. There was arguable merit in the petitioner's argument/claim: 28 U.S.C § 2254. The Illinois Supreme Court did not say it was adjudicating his claim on any merits of the case. It did not say it was denying the claim for any reason in their order.: Regarding The Petitioner's claim of Ineffective Assistance of Counsel in the State (Illinois) Appellate Court.

The Illinois Supreme Court States:

Our most important duty as justices of The Illinois Supreme Court to which all other considerations are subordinate, is to reach the correct decision under the law. "People v. Mitchell, 189 Ill. 2d. 312, 339, 727, N.E. 2d 254 Ill. Dec. 1 (2000)" Courts are and should be reluctant to abandon their precedent in most circumstances, but considerations of "stare decisis should not preclude courts from admitting a mistake when they have made one and interpreting the law correctly. For wisdom too often never comes, and so one ought not to reject it merely because it comes too late. "Id at 339" (Quoting Henslee v. Union Planters National Bank & Trust Co., 335 U.S. 595, 600, 69 S. Ct. 290, 93 L.Ed. 259, 1949-1 C.B. 223 (1949).

* Stare decisis is not so static a concept that it binds a courts hand to do justice when it has made mistake. When a thing is wrong, it is wrong. The longer courts wait to right this wrong, the more difficult it is to rectify the error, embedded in the case law usage

Illinois Supreme Court Justice - Justice Frankfurter

Reasons For Granting Review: continued

In sum, the lower court's written order affirming the summary dismissal of the pro se petition, indicates confusion as to how much is expected of the pro se petitioner in pleading a constitutional claim. Such confusion is likely to persist as the appellate court considers future post conviction appeals. It is therefore important for this United States Supreme Court to grant review/relief of this judicial discretion, "TO INFORM THE LOWER COURTS" AS TO HOW MUCH IS EXPECTED OF A PRO SE PETITIONER IN PLEADING A CONSTITUTIONAL CLAIM.

Alternatively should this United States Supreme Court be confident that these questions have already been answered in cases such as Hodges, 234 Ill. 2d at 17, this Court should simply exercise its supervisory authority and remand this cause to the circuit court for second stage proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kareem J. Colbins

Date: January 8, 2021