

20-7309

ORIGINAL

IN THE SUPREME COURT.  
OF THE UNITED STATES

FILED

JAN 13 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

PHILLIP MALDONADO,

Petitioner

C.A. NO. \_\_\_\_\_

V.

COMMONWEALTH OF PENNSYLVANIA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Phillip Maldonado  
#LZ-1993  
209 Institution Dr.  
P.O. Box 1000  
Houtzdale, PA 16698

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JAN 22 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

QUESTION PRESENTED

I. DOES THE FEDERAL CONSTITUTION'S ARTICLE VI, CLAUSE 2 SUPREMACY CLAUSE PRESCRIBE A RULE OF DECISION UNDER INTERPRETATION OF THE SIXTH AMENDMENT PER STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) MANDATING STATE COURTS TO APPLY, ON DIRECT APPEAL AND COLLATERAL REVIEW, THE TWO-PRONG, REASONABLENESS/PREJUDICE, REASONABLE PROBABILITY/RESULT-DETERMINATIVE TEST AND STANDARDS TO IAC CLAIMS, AND ARE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS AND/OR ARTICLE IV PRIVILEGES AND IMMUNITIES CLAUSE VIOLATED BY, RESPONDENTS' MORE RESTRICTIVE THREE-PRONG ARGUABLE MERIT/REASONABLENESS/PREJUDICE, BY A PREPONDERANCE OF THE EVIDENCE AND OUTCOME-DETERMINATIVE IAC TEST AND STANDARDS, SUCH THAT ALL OTHER SUBSTANTIAL AND SUBSTANTIVE FOURTH, SIXTH, TENTH, AND FOURTEENTH AMENDMENT CLAIMS ADJUDICATED ON THE MERITS UNDER THE RUBRIC OF COUNSELS' INEFFECTIVENESS ARE IN CONFLICT WITH THE SUPREME LAW OF THE LAND UNDER STRICKLAND?

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the highest state court to review the merits, incorporating the state collateral-review court's factual, procedural, and legal findings denying relief under state habeas corpus/Post Conviction Relief Act relief, 42 Pa.C.S. Section 9541 et seq., and affirmed by the Pennsylvania Superior Court at Appendix "A" to the petition and is [X] reported at Commonwealth v. Phillip Maldonado, No. 83 MDA 2020, J-s22044-20 (Pa. Super. 2020).

The opinion of the highest court of the state in which a decision could be had denied discretionary review, and is attached at Appendix "B", and is [X] docketed at Commonwealth v. Phillip Maldonado, No. 402 MAL 2020.

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court decided Petitioner's case was December 2, 2020. A copy of that

opinion appears at Appendix "B".

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

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT

SIXTH AMENDMENT

TENTH AMENDMENT

FOURTEENTH AMENDMENT

POST CONVICTION RELIEF ACT, 42 Pa.C.S. Sec. 9541 et esq.

#### STATEMENT OF CASE

Excepting out the allegation that Petitioner ever sold heroin to the victim at any time, Petitioner incorporates herein the Statement of the Case as summarized by the state court's opinion at Appendix "A", pg. 1-10.

#### REASONS FOR GRANTING THE PETITION

Pursuant to Supreme Court Rules, Rule 10(b) and 10(c), Petitioner avers certiorari should issue where the state courts have decided an important question of federal law that has not been, but should be, settled by this Court, and/or in a way that conflicts with clearly established decisions of this Court.

Particulary, the state courts have determined and denied Petitioner's Sixth Amendment counsel ineffectiveness claims in a way that conflicts the clearly established federal law of Strickland v. Washington, 466 U.S. 668

(1984). Also, the question presented concerning the lawful standards governing IAC claims under Strickland are claims that obviously need to be clarified, reaffirmed and/or other settled by this Court.

Specifically, Respondent's state law IAC-standard, contrary to Strickland, employs a more restrictive three-prong, see Appendix "A", pg. 12 (citing Commonwealth v. Medina, 209 A.3d 992, 1000 (Pa. Super. 2019)(arguable merit, reasonableness, prejudice)), preponderance of the evidence, see 42 Pa.C.S. Section 9543(a)("To be eligible for relief[, ] ..., the petitioner must plead and prove the following by a preponderance of the evidence all of the following:), and an out-come determinative prejudice test. See, e.g. Appendix "A", pg. 20 (... Appellant cannot show that there is a reasonable probability of a different outcome and, hence, cannot demonstrate prejudice.").

The supreme Law of the Land of Strickland appears to have unequivocally and clearly established a less restrictive two-prong, reasonable probability, result-determinative IAC; -- expressly rejecting the "outcome determinative" and "by a preponderance of the evidence" standard.

In Weaver v. Massachusetts, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017), this Court "assumed" "under a proper interpretation of Strickland, even if there is no showing of a reasonable probability of a different outcome, relief still must be granted if the convicted person shows that attorney errors rendered the trial fundamentally unfair." Id., at 435.

Most recently in Andrus v. Texas, 590 U.S. \_\_\_\_ (2020), this Court vacated and remanded to a state court of Criminal

Appeals because this Court was uncertain if the state appellate court applied the correct Strickland-standard for reasonableness, prejudice, or for neither. Petitioner will assert on certiorari that Respondents' state courts and PCRA IAC-standards, like the state court in Andrus, has a requirement "to meet [the] burden under Strickland [], [Petitioner must] show by a preponderance of the evidence that his counsel's representation fell below an objective standard of reasonableness and that [by a preponderance of the evidence] there was a reasonable probability that the [outcome] of the proceeding would have been different, but for counsel's deficient performance." Andrus, 590 U.S., (Alito, J., dissenting opinion)(sl. op., at \*1).

Because state law generally requires that trial/direct appeal counsel IAC claims be deferred until PCRA state collateral/habeas corpus review, each of the determinations of substantial and substantive Fourth, Sixth, Tenth, and Fourteenth Amendment violations, as caused by counsel's deficient performance, have been undermined by the taint of Respondents' more restrictive and less protective state decisional and statutory laws governing IAC claims; thus, depriving Petitioner of a full, fair, and meaningful opportunity to be heard by state judges who, under these facts of their holdings on trial counsel's ineffectiveness, cannot be "presumed to know [or follow] the law." Andrus, 590 U.S., (sl. op., at \*17, n.5)(per curiam)(citing and quoting Lambrix v. Singletary, 520 U.S. 518, 532, n. 4 (1997)).

#### CONCLUSION

The petition for certiorari should be granted.

Respectfully,

X *Phillip Maldonado*  
Phillip Maldonado

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DATED: *Ja*quary 4, 2021