No. 20-7365

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD BROUNT — PETITIONER
(Your Name)

vs.

BRIAN E. FROSH — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ronald Brount, #1166469
(Your Name)
River North Correctional Center
329 Dellbrook Lane
(Address)

Independence, VA 24348
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did The United States Court Of Appeals For The Fourth Circuit ERR In Denying The Petitioner A Certificate Of Appealability?

LIST OF PARTIES

[X] 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

Brount v. Frosh, No. 17-cv-01465-PWG, U.S. District Court for the District of Maryland. Judgment entered November 6, 2019

Brount v. Frosh, No. 19-7799, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on May 21, 2020

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STATUTES AND RULES

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

[X] 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,
[X] is unpublished.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,
[X] is unpublished.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[ ] is unpublished.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 _____ 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[ ] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 21, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 6, 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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 _____.

[ ] 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

U.S. CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the Right... to have the Assistance of Counsel for his defence.

U.S. CONST., AMEND. XIV

Section 1.... No... State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 2254

(a) The Supreme, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted

unless it appears that —

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the court of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under under the law of the State to raise, by any available procedure, the question presented.

28 U.S.C. Section 2253

(c).

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from —

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

A. Introduction

Your Petitioner, Ronald Broant ("Broant" or the "petitioner") is serving three concurrent Life sentences, plus twenty years, imposed on June 6, 2012 by the Circuit Court of Montgomery County, Maryland in Case No. 119260, for felonies committed in 1981. He appealed his convictions. Following his unsuccessful attempts challenging his convictions on direct appeal and post-conviction proceedings, Broant sought federal Habeas Corpus Relief.

On May 25, 2017, Broant's petition for a Writ of habeas corpus under 28 U.S.C. Section 2254 was filed in the United States District Court for the Western District of Virginia, and it was transferred to the District of Maryland. The Petition asserted the following claims of constitutional error:

(1) The State Trial Court Forced [Broant] Against His Will To Proceed To Trial Represented By A

Public Defender After [Brount] Had Waived His Right To Be Represented By A Lawyer; and

(2) [Brount] Was Deprived Of His Right to the Effective Assistance of Counsel At: Critical Stages In The Trial Court Before Trial.

By Memorandum Opinion and Order entered on November 6, 2019, the District Court denied and dismissed Brount's Section 2254 Petition, based upon its conclusion that "Brount failed to file a timely application for leave to appeal the denial of post-conviction relief under state law, thereby rendering his claims procedurally defaulted." This conclusion rests upon the District Court's determination that "[t]o the extent that Brount may intend to argue in his Reply that the Court of Special Appeals improperly dismissed the Application for Leave to Appeal as untimely . . ., the procedural default is unaltered" since "[t]he Application for Leave to Appeal was dismissed as untimely on a state procedural rule (Md. Rule 8-204(b)(3)(A), which provides an independent and adequate ground for the dismissal." Memo. Op. at 7.

The district court also declined to issue a certificate of appealability based upon its "find[ing] that Brount has not made the requisite showing" "that reasonable jurists 'would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and whether the district court was correct in its procedural ruling." "[w]here, as is the case here, a petition is denied on procedural grounds. . . . See Appx. 1Ra (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

On appeal, the Fourth Circuit Court of Appeals also declined to issue a certificate of appealability because "[w]e have independently reviewed the record and conclude that Brount has not made the requisite showing" "both that the dispositive procedural ruling is debatable and that the petition states 'a debatable' claim of the denial of a constitutional right." See Appx. 2a (citing Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012), citing Slack, 529 U.S. at 484).

On Petition for Rehearing, Brount argued that

the Court of Appeals' decison overlooked the fact that Brount, "on November 10, 2016 (the last day to timely file an application for leave to appeal the [trial] court's Order of October 11, 2016 denying post-conviction relief), "delivered a 25-page Application for leave to appeal the trial court's order denying post-conviction [relief] ... to prison authorities at the Keen Mountain Correctional Center in an envelop addressed to the clerk of the trial court, with first class postage prepaid, via certified mail/return Receipt Requested, for filing using the facilities mail system designed for legal mail" and that "[t]he certified mail Receipt was date-stamped November 10, 2016." (Citing Pet. Reply To Answer, at 3, para. 7 and attached Exhibits A and B).

Brount also argued that the Court of Appeals overlooked the fact that the Court of Specials of Maryland did not dismiss the Application for Leave to Appeal "as untmely" pursuant to "Md. Rule 8-204(b)(2)(A)," and instead, "dismissed" the "application for leave to appeal" "pursuant to Md. Rule 8-602(a)(3)." (Citing October 11, 2016 Order by the trial court)(cited by the Court of Specials of Maryland in its January 3, 2017 Judgment).

B. State Post-Conviction Proceedings

1. Trial Court

On March 2, 2016, Brount executed and submitted to the Circuit Court For Montgomery County, Maryland (the "trial court"), a Petition for Post-Conviction Relief under Maryland's Uniform Post-Conviction Procedure Act (the "UPPA"). The Petition, which was filed and docketed on March 7, 2016, was denied on the merits by the trial court by Order entered on October 11, 2016, following a hearing on the Petition on August 26, 2016. Thereafter, Brount sought leave to appeal the October 11, 2016 Order denying post-conviction relief, in accordance with the provisions Md. Code Section 7-109(a) and Md. Rule 8-204(b).

2. Appellate Courts.

(a) Court of Special Appeals

On Application for Leave to appeal the October 11, 2016 Order denying post-conviction relief, the Court of Special Appeals dismissed the said Application by Order dated January 3, 2017 "pursuant to Rule 8-602(a)(3)."

The body of the January 3, 2017 Order of dismissal states, in pertinent part, as follows:

"On October 11, 2016, the circuit court entered an order denying post conviction relief. Appellant filed an Application for Leave to Appeal which was docketed on November 22, 2016. Appellant filed his Application more than 30 days after the entry of the October 11, 2016 order. The requirement in Maryland Rule 8-204(b)(2)(A) that an application for leave to appeal be filed within thirty days after entry of judgment is jurisdictional. . . . If the requirement is not met, this Court does not acquire jurisdiction, and the appeal must be dismissed. . . ."

Id.

On Motion For Reconsideration, filed in the Court of Special Appeals pursuant to Md. Rule 8-602(c), Brount alleged facts and offered proof showing:

(1) that "[o]n November 10, 2016, [Brount], an incarcerated prisoner, was in the custody of the Virginia Department of Correction, confined at the Keen Mountain Correctional Center in Buchanan County,

Virginia" and that "[o]n that date, while the correctional Center was on lockdown status, [Brount] placed in an envelope addressed to the Clerk of the Circuit Court of Montgomery County, with first class postage affixed thereto, his Application for Leave to Appeal, along with a Cover Letter dated November 10, 2016. [Brount] handed the envelope containing his Application for Leave to Appeal and the said Cover Letter to a Correctional Sergeant to be placed in the institutions mailing system and mailed as Legal mail; and

(2) "[Brount's] Application [for Leave to Appeal] was filed by him on November 10, 2016, ... by certified mail. Return Receipt Requested, as evidenced ... by the Certified Mail Receipt date-stamped November 10, 2016, a true copy of which is attached hereto as Exhibit B. Id., at 2, para. 2.

By Order dated January 26, 2017, the Court of Special Appeals denied Brount's Motion for Reconsideration.

(b) Court of Appeals of Maryland

On Petition for a Writ of Certiorari filed in the Court of Appeals of Maryland, pursuant to Md. Rule 8-

303, the Court of Appeals denied the Petition by Order entered on March 27, 2017. Brown v. State, No. 585 (Md. 2016).

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit's Decision Condoned The District Court's Misapplication Of The Doctrine Of Procedural Default; And Thus, Calls For The Exercise Of This Court's Supervisory Powers.

As previously noted, the district court's procedural ruling that Brount's claims of federal constitutional error "are procedurally defaulted, rests upon the district court's legal and factual determinations that:

(1) Respondent asserts [that] none of [Brount's] claims [were] presented "properly" to the state post-conviction court at the appellate level [because] Brount failed to file a timely application for leave to appeal the denial of post-conviction relief under state law, thereby rendering his claims procedurally defaulted. Appx. 9a (citing Respondent's Answer, at 9 and 16);

(2) To the extent that Brount . . ., argue[s] in his Reply that the Court of Special Appeals improperly dismissed [his] Application for Leave to Appeal as untimely . . ., the procedural default is unaltered. Appx. 9a (citing Brount's Reply, at 3-4); and,

(3) [Brount's] Application for Leave for Appeal was dismissed [by the Court of Special Appeals] as untimely based on a state procedural Rule [:] Md. Rule 8-204 (b)(2)(A), "which provided an independent and adequate ground for the dismissal," id. (citing Coleman v. Thompson, 501 U.S. 722-731-32 (1991) and that Brount offers no argument to establish cause and prejudice. Appx. 10a.

The district court's procedural default Ruling is wrong, and thus, jurists of Reason would find it debatable whether the district court's procedural Ruling was correct.

In Reaching its decision, the district court, in its analysis (1) disparaged Brount's Reply as simply arguing] that the Court of Special Appeals "improperly" dismissed [Brount's] Application for Leave to Appeal as untimely, and (2) failed to acknowledge and consider the specific facts alleged By Brount's Reply, Raising a substantial question about the existence of the prerequisite in question: whether Brount had actually violated an applicable state procedural Rule. See Appx. 9a - 11a.

With Respect to the prerequisite of whether Brount violated an applicable state procedural Rule, the district court, in its analysis, failed to address Brount's Reply that:

(1) On November 10, 2016, Brount mailed to the Clerk for the Circuit Court for Montgomery County, Maryland, an Application for Leave to Appeal from the circuit court's October 11, 2016 Order denying post-conviction Relief, by Certified Mail / Return Receipt Requested, evidenced by the Certified Mail Receipt date-stamped November 10, 2016 and attached to the Reply marked Exhibit A; and,

(2) By Order dated January 3, 2017, the Court of Special Appeals dismissed Brount's Application for Leave to Appeal from the October 11, 2016 Order denying post-conviction Relief pursuant to Md. Rule 8-602(a)(3).

A. The Procedural Default Doctrine

Procedural default analysis begins with the federal court's determination that the State court denied the prisoner Relief due to failure to comply with state procedures. See Coleman v. Thompson, 501 U.S. 722, 750 (1991). Addressing the procedural doctrine, the Fourth Circuit explained:

"If a state court clearly and expressly bases its dismissal of a habeas petitioner's claim on a state procedural rule, and that procedural rule provides an independent and adequate ground for the dismissal, the habeas petitioner has procedurally defaulted his federal habeas claims." Breard v. Pruett, 134 F.3d 615, 619 (4th Cir. 1998) (citing Coleman, 501 U.S. at 731-32; see also Noel v. Norris, 194 F. Supp. 2d 893, 903 (E.D. Ark. 2002), supplemented (Apr. 16, 2002) and aff'd 322 F.3d 500 (8th Cir. 2003) ("the federal court is barred from reviewing a petitioner's habeas claim under the doctrine of procedural default if ... the petitioner has actually violated an applicable state procedural rule[22]).

It is important to recognize, however, that the state court must have actually imposed the procedural bar. If the state court had the opportunity to impose the bar and failed to do so, the claim is not defaulted. Thus, the fact the state court could have (or indeed, should have) imposed a procedural bar is not enough; it must actually have done so. Caldwell v. Mississippi, 472 U.S. 320, 327 (1985); accord Holloway v. Horn, 355 F.3d 707, 714 (3d Cir. 2004) ("A federal court is not bound to enforce a state procedural rule when the

State itself has not done, even if the procedural rule is theoretically applicable to [the] facts") (internal quotation marks omitted); see also Coleman v. Dretke, 395 F.3d 216, 220 (5th Cir. 2004); Peoples v. Campbell, 377 F.3d 1208, 1235 (11th Cir. 2004).

"A state rule is 'adequate' if it is firmly established and regularly or consistently applied by the state court. . . ." Brown v. Lee, 319 F.3d 162, 169 (4th Cir. 2003)(citing Johnson v. Mississippi, 486 U.S. 578, 587 (1988)). In deciding whether a state procedural bar is consistently applied, the federal court will only consider the specific state procedural bar at issue; whether other state procedural bars are consistently applied is not relevant. See Moran v. McDaniel, 80 F.3d 1261, 1269-70 (9th Cir. 1996); accord Reid v. True, 349 F.3d 788, 805 (4th Cir. 2003)("the fact that a state procedural rule is adequate in general does not answer the question of whether the rule is adequate as applied in a particular case")

Procedural default is an affirmative defense that, if not timely and properly raised by the State, is waived. Trest v. Cain, 522 U.S. 87, 89 (1997); accord Gray v. Netherland, 518 U.S. 156, 165-66 (1996). Because procedural

default constitutes an affirmative defense in habeas cases, the burden rests with a state to prove the adequacy of the relied-on procedural bar." Jones v. Sussex I State Prison, 591 F.3d 707, 716 (4th Cir. 2010); see also Yeatts v. Angelone, 166 F.3d 255, 261 (4th Cir. 1999) ("[T]he issue of procedural default generally is an affirmative defense that the state must plead in order to press the defense thereafter"); Scott v. Schriro, 567 F.3d 573, 580 (9th Cir. 2009) (placing the burden on the state to show adequacy); Pike v. Guarino, 492 F.3d 61, 73 (1st Cir. 2007) ("The habeas respondent (here, the Commonwealth) bears the burden 'not only of asserting that a default occurred, but also of persuading the court that the factual and legal prerequisites of a default . . . are present.'") (alteration in the original) (quoting 2 Randy Hertz and James S. Liebman, Federal Habeas Corpus Practice and Procedure sec. 26.2a at 1265 n.5 (5th ed. 2005)).

B. Brount Did Not Violate An Applicable State Procedural Rule On Application For Leave To Appeal From The Circuit Court October 11, 2016 Denying Post-Conviction Relief In The Court Of Special Appeals Of Maryland

In this case, contrary to the district court's factual determination that Brount's Application for Leave to Appeal was dismissed based on "Md. Rule 8-204(b)(2)(A)," the Court of Special Appeals of Maryland, in truth and in fact, actually dismissed Brount's Application for Leave to Appeal the denial of post-conviction Relief, filed under Md. Code Ann., Crim. Proc. Section 7-109, "pursuant to Md. Rule 8-602(a)(3)."

Because the Court of Special Appeals dismissed Brount's Application for Leave to Appeal the denial of post-conviction Relief, the Respondent (here, the State) bore the burden "not only of asserting that a default occurred, but also of persuading the [district] court that the factual and legal prerequisites of a default [were] present," which included "the burden ... to show [the] adequacy [of Md. Rule 8-602(a)(3)]." Ibid. The Respondent failed to meets its burdens.

In its Answer to Brount's Section 2254 Petition, the Respondent asserted that the claims raised in Brount's petition "are procedurally defaulted," citing Coleman v. Thompson, 501 U.S. 722, 729-57 (1991) and argued that [Brount's] petition should be denied "For this reason alone," because, although he raised his claims "to the state

post-conviction court at the circuit court level[;] n[]one of [Brount's] claims was presented 'properly' to the post-conviction court at the appellate level despite [the] opportunity to do so." This is the extent of Respondent's procedural default defense.

Nowhere in its Answer does the Respondent attempt to persuade the district that the factual and legal prerequisites of a default were present, or to show the adequacy of Md. Rule 8-602(a)(3) to support the Court of Special Appeals' Order of Dismissal of Brount's Application for Leave to Appeal the denial of post-conviction Relief, filed under Md. Code Ann., Crim. Proc., Section 7-109. Indeed, nowhere in its Answer does the Respondent state its reliance upon a specific procedural Rule to support its argument that Brount's claims are procedurally defaulted."

In its Answer, the Respondent initially asserted the defense of non-exhaustion under 28 U.S.C. Section 2254(b) and (c). Under the heading "EXHAUSTION." in its Answer, the Respondent argued that Brount's Section 2254 petition should be dismissed "for non-exhaustion." This argument rests upon the Respondent's assertions that "Brount ha[d] not presented [his] claims to all

'appropriate' state courts because [Brount] failed to file a timely application for leave to appeal the denial of post-conviction relief 'under state law.'" The Respondent continued by arguing that "[n]otwithstanding this failure, Brount's petition need not be dismissed for failure to satisfy the exhaustion requirement set forth in 28 U.S.C. [Section] 2254 (b)-(c). ... Because Brount no longer has available state remedies to pursue his claims." Respondent then added that "Respondent[] do[es] not waive the exhaustion requirement[s] if this Court believes that Brount's petition presents claims for which State court review remains viable."

For a person convicted of a criminal offense in Maryland, the exhaustion requirement under 28 U.S.C. Section 2254 (b) and (c) may be accomplished either on direct appeal or in post-conviction proceedings. To exhaust a claim through post-conviction proceedings, it must be raised in a petition filed in the Circuit Court and in an application for leave to appeal to the Court of Special Appeals. Md. Code Ann., Crim. Proc. Section 7-109. If the Court of Special Appeals denies the application, there is no further review available and the claim is exhausted. Md. Code Ann., Cts and Jud. Proc. Section 12-202. However, if the

application is granted but relief on the merits is denied, the petitioner must file a petition for writ of certiorari to the Court of Appeals. See Williams v. State, 292 Md. 201, 438 A.2d 1301, 1305 (1981).

While it is true, of course, that the Court of Special Appeals dismissed Brount's Application for Leave to Appeal from Order denying post-conviction relief based on a state procedural rule, it did not do so based on Md. Rule 8-204(b)(2)(a). Instead, the Court of Special Appeals' Order of Dismissal "clearly and expressly states that Brount's Application for Leave to Appeal the denial of post-conviction relief was dismissed "pursuant to Md. Rule 8-602(a)(3)." See Appx. 24a. Rule 8-602 (Dismissal By Court) provides in pertinent part that "[o]n motion or its own initiative, the Court [of Special Appeals] may dismiss an appeal for any of [ten (10)] reasons[,] including "(3) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202." Md. Rule 8-602(a)(3).

In this case, Brount did not file in the Circuit Court of Montgomery County, Maryland, a notice of appeal prescribed by Md. Rule 8-202, because he was not

required to do so, "under State law," to appeal to the Court of Special Appeals from the Circuit Court's Order denying post-conviction relief. See Md. Code. Ann., Crim. Proc. Sec. 7-109 (a) ("within 30 days after the court passes an Order in accordance with this subtitle, a person aggrieved by the Order ... may apply to the Court of Special Appeals for leave to appeal the order"); Coleman v. Warden, Md. House of Corrections, 239 Md. 711, 212 A. 2d 463 (1965) (No appeal as of right lies from denial of post-conviction relief; review may be sought only by way of application for leave to appeal); Cf, Grandison v. State, 425 Md. 34, 38 A. 3d 352 (Decision was discretionary whether to require strict compliance with Rules requiring an appeal of post-conviction proceedings to begin with application for leave to appeal, and thus Court of Appeals could treat as an application for leave to appeal defendant's pro se notice of appeal from denial of motion to reopen post-conviction proceedings in capital murder case, so as to allow consideration of defendant's claims on appeal). See also Md. Rule 4-408 ("An application for leave to appeal to the Court of Special Appeals shall be governed by Rule 8-204).

Rule 8-204 (b)(1) provides that "[a]n application for leave to appeal to the Court of Special Appeals shall be filed in

duplicate with the clerk of the lower court." Rule 8-204 (b)(2)(A) provides in pertinent part that "the application shall be filed within 30 days days after entry of the... order from which the appeal is sought." An application for leave to appeal which is not filed within 30 days from passage of an order denying a petitioner post-conviction relief has to be denied. See Clark v. Warden, Md. Penitentiary, 5 Md. App. 274, 246 A.2d 316 (1968); accord Md. Rule 8-204(f)(1).

In its January 3, 2017 Dismissal Order, the Court of Special Appeals correctly observed (1) that "[o]n October 11, 2016, the circuit court entered an order denying post-conviction relief" and (2) that Brount "filed" an Application for Leave to Appeal "which was docketed on November 22, 2016." Appx. 24a. These two observation, apparently, led the Court of Special Appeals to assume, without findings, that Brount "filed his application more than 30 days after the entry of the October 11, 2016 Order." Appx. 24a. If this assumption was correct, as a matter of fact, the Court of Special Appeals could have (and, indeed, should have) "denied" Brount's application for leave to appeal for failure to comply with the requirement in Maryland Rule 8-204(b)(2)(A) that an application for leave to appeal "be filed within 30 days after entry.

of the ... order from which the appeal is sought," ibid., pursuant to Md. Rule 8-204(f)(1). Rule 8-204(f), which govern disposition of an application for leave to appeal, provides that "[o]n review of the application, any response, the record, and any additional information obtained pursuant to section (c) of this Rule, without the submission of briefs or the hearing of argument, the Court shall: (1) deny the application; (2) grant the application and affirm the judgment of the lower court; (3) grant the application and reverse the judgment of the lower court; (4) grant the application and remand the judgment to the lower court with directions to that court; or (5) grant the application and order further proceedings in the Court of Special Appeals in accordance with section (g) of this Rule. Here, Blount's application for leave to appeal was not grant. However, when an application for leave to appeal is granted, and it is determined that the application was not filed timely, the appellate court has no jurisdiction and "the appeal" must be dismissed. See Keyes v. State, 195 Md. App. 19, 5 A.3d 1113 (2010)

Instead of denying Blount's Application for Leave to appeal the denial of post-conviction, as untimely, based upon its assumption that Blount filed his application more

more than 30 days after the entry of the October 11, 2016 order, the Court of Special Appeals dismissed Breunt's Application for Leave to Appeal the denial of post-conviction Relief pursuant to Md. Rule 8-602(a)(3) because the notice of appeal Required by Md. Rule 8-202(a) was not timely filed. See Keys v. State, supra. However, the notice of appeal Requirement in Md. Rule 8-202(a) is inapplicable in cases in which an appeal is sought by application for leave to appeal under Md. Rule 8-204. See Md. Rule 8-202(a). As a Result, Md. Rule 8-602(a)(3), as applied in this case, is inadequate to support the January 3, 2017 Dismissal Order of the Court of Special Appeals. Consequently, jurists of Reason would find it debatable whether the district court was correct in its procedural default Ruling.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,

Ronald Breunt, Pro Se

Date: February 23, 2021