

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

SHERWOOD L. BOSTIC,

Petitioner,

20-7367

ORIGINAL

Case No.: _____

v.

STATE OF FLORIDA,

Respondent.

Supreme Court, U.S.
FILED

JAN 22 2021

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS OF
THE ELEVENTH CIRCUIT

Sherwood L. Bostic, # 288203
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

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SUPREME COURT, U.S.

QUESTION PRESENTED

I. DID THE U.S. CIRCUIT COURT OF APPEAL ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ERRED WHEN IT SUSTAINED THAT PETITIONER HAS NO CONSTITUTIONAL RIGHT TO COUNSEL IN HIS STATE POST CONVICTION EVIDENTIARY HEARING.

LIST OF PARTIES

- A. Trial defense counsel; James Forrest (APD).
- B. State Attorney General; Ashley Moody.
- C. State of Florida

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IN THE SUPREME COURT OF THE UNITED STATES,
PETITION FOR WRIT OF CERTIORARI

Petitioner Sherwood L. Bostic respectfully prays a Writ of Certiorari to be issued to review the Judgment of the Opinion of the 11th Circuit Court of Appeals appearing at appendix (D) which is unpublished.

JURISDICTION

The date which the U.S. Circuit Court of Appeal of the 11th Circuit decided my case was on 7-30-2020, and the ensuing timely reconsideration denial on 9-30-2020. Thus, the Jurisdiction of this Honorable Court is invoked under U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

U.S. Constitution's 14th Amendment Due Process Clause.

U.S. Constitution's 6th Amendment's rights to effective counsel.

U.S. Code 28 U.S.C. 2254, 2253(C)(2).

STATEMENT OF CASE

Federal Habeas Corpus 2254:

On 4-24-2018 Petitioner filed his 2254 alleging the Denial of the Assistance of Counsel at his evidentiary hearing in violation of the U.S. Constitution's Due Process Clause, Equal Protect Clause, and the right to Post Conviction Counsel.

Order of denial by District Court:

Then on 4-6-2020, the U.S. District Judge Timothy J. Corrigan denied and dismissed Petitioner's Federal 2254 on the basis that there is No Constitutional Right to Counsel in State Post Conviction proceedings, under Pennsylvania v. Finley, 481 U.S. 551 (1987); Jones v. Cosby, 137 F.3d 1279 (11th Cir. 1998) in case # 3:17-cv-595-J-32JBT, Middle District, Jacksonville Florida Division.

The Appeal in the 11th Circuit Court:

On 7-30-2020 the 11th Circuit Court of Appeal denied Petitioner's Certificate of Appealability pursuant to 28 U.S.C. 2253(c)(2) as he failed to make a substantial showing of the denial of a Constitutional Right.

Motion for Reconsideration of Appeal:

Then on 9-30-2020, the 11th Circuit Court of Appeal denied petitioner's motion for Reconsideration of the Order dated 7-30-2020.

REASON FOR GRANTING THE PETITION

QUESTION ONE

"DID THE CIRCUIT COURT OF APPEAL ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED, THAT THE U.S. DISTRICT ABUSED ITS DISCRETION BY NOT GRANTING HIS FEDERAL HABEAS CORPUS 28 U.S.C. 2254, UNDER SLACK V. MCDANIEL, 529 U.S. 473 (2000)?"

ARGUMENT

The claim is premised on the prayer that this Court will entertain Certiorari review of the fact the denial of the (COA) status by the 11th Circuit Court was a clear violation of the United States Code 28 U.S.C. 2253(c)(2), as petitioner had a Violation of the Due Process Clause of the U.S. Constitution's 14th Amendment.

To start off with, petitioner asserts that when he made a *prima facie* case of Ineffective Assistance of Trial Counsel in his state motion for Post Conviction relief under Fla. R. Crim. P. 3.850 and hearing was granted, he should have been afforded Post Conviction Counsel. See Graham v. State, 372 So.2d 1363 Fla. (1979).

Mr. Bostic avers that he is Raised this Claim in his Appeal of his post conviction motion after hearing and then on his timely 28 U.S.C. 2254 petition. Then he further asserted this Constitutional Violation on his Appeal to the 11th Circuit. Thus, exhaustion was had. In the 11th Circuit Court, it held that Mr. Bostic failed to raise a constitutional violation as the law stands, but Mr. Bostic hereby contends that this Court Should Review this claim as a Violation of Due

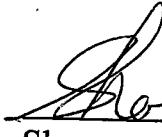
Process Clause of the U.S. Constitution's 14th Amendment and expand the dictates of Martinez v. Ryan, 132 S.Ct. 1309 (2012).

Furthermore, petitioner asserts that in Martinez this court held that if a defendant wholly fails to raise a substantial claim of ineffective assistance of trial counsel in his first tier of post conviction relief on the basis of the lack of counsel or ineffective of counsel. He can raise it for the First Time in his Federal Habeas Corpus petition under the doctrine laid out in Martinez on the Basis of the Due Process Clause. Mr. Bostic again should have this court to revisit is determination that he should have a Constitutional Right to Counsel in his First Tier Post Conviction Proceedings in State Court.

With that being said, on June 23rd, 2015, petitioner filed his legally sufficient motion for post conviction relief in state court under Fla. R. Crim. P. 3.850, creating a cognizable claim.

The State Post Conviction Court ordered a hearing to litigate the matter. Then at a preliminary hearing the petitioner Asked for the Appointment of Post Conviction Counsel and the court denied such without elaboration, even without inquiring to petitioner's Ability to Read, Write, or Comprehend the Law, or how to elicit direct or cross-examination of testimony at the hearing. Moreover, at the hearing, the Assistant State Attorney made a direct-examination of prior counsel Mr. Forrest, and petitioner was given the chance to cross-examine prior, and petitioner began testifying as he didn't even know how to do a cross-examination of a witness.

Then the State Court even inquired if petitioner wanted to do a cross of prior counsel, and Mr. Bostic said No. Being as such, when the court wholly failed to appoint counsel to assist petitioner, it did so without any meaningful inquiry into Mr. Bostic's education, courtroom procedure. Thus, Mr. Bostic asserts that this honorable court should expand the doctrine laid out in Martinez to include, in this limited factual scenario, the right to counsel in a post conviction proceeding under the due process clause of the U.S. Constitution's 14th Amendment.


Sherwood L. Bostic DATE: 1-22-21
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