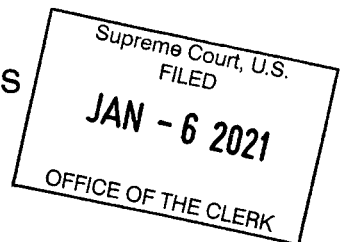


No. 20-7374

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DEMITRIUS W. ALEXANDER — PETITIONER
(Your Name)

vs.

STATE OF ALABAMA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE 11th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

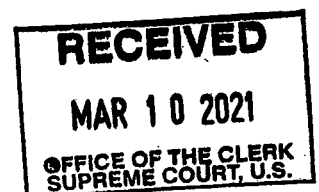
PETITION FOR WRIT OF CERTIORARI

DEMITRIUS WAYNE ALEXANDER
(Your Name)

3520 MARION SPILLWAY ROAD
(Address)

ELMORE, AL 36025
(City, State, Zip Code)

(334)
(Phone Number)



QUESTION(S) PRESENTED

1. Whether both state and Federal Court's rulings were in error when evidence gained pursuant to an unconstitutional search and seizure was used against petitioner Demitrius Wayne Alexander during trial?
2. Whether both state and Federal Courts were in error for denying petitioner Alexander post-conviction relief and ruling that Alexander's trial counsel was NOT ineffective for failing to obtain a firearm expert witness to investigate forensics and pursue reasonable defense strategy?
3. Are both state Rule 32 courts and Fed. District and Appeals courts' decisions in petitioner Demitrius Alexander's case in conflict with this Honorable Court's decisions in such cases as Mapp v. Ohio, Strickland v. Washington, etc.?
4. Whether U.S. Court of Appeals for the eleventh circuit was in error for denying Alexander a C.O.A.?

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: CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA; COURT OF CRIMINAL APPEALS OF ALABAMA; SUPREME COURT OF ALABAMA; U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA; ~~U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.~~

RELATED CASES

- Alexander v. State of Alabama,
- JEFFERSON COUNTY CIRCUIT COURT OF ALABAMA -
CASE NO'S: CC-2012-0465; CC-2012-0465.60;
- COURT OF CRIMINAL APPEALS OF ALABAMA -
CASE NO: CR-17-0538 / S.Ct. Ala. No. 1180082;
- U.S. DIST. COURT FOR THE NORTHERN DIST.
OF ALABAMA - CASE NO. 2:19-CV-00930-RDP-SGC
- U.S. COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT - Appeal / case No. 20-11997-H
Case style: Demitrius W. Alexander
v.
Warden Headley, et al.

Final Judgment entered Oct. 9, 2020.

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- Rule 32, Ala. R. Crim. P. 4, 5a, 5g

FEDERAL RULES OF APPELLATE PROCEDURE

- Rule 27, Fed. R. App. P.

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 B 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 C 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 JEFFERSON COUNTY CIRCUIT court appears at Appendix C 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 OCT. 09, 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 Dec. 17, 2018. 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 C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

- AMENDMENT IV
- AMENDMENT V
- AMENDMENT VI
- AMENDMENT VIII
- AMENDMENT XIV

• AMENDMENT IV - "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

• AMENDMENT V - "No person shall... be deprived of life, liberty, or property, without due Process of law; nor shall Private property be taken for Public use, without just compensation."

• AMENDMENT VI - "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; 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 defence."

• AMENDMENT VIII - "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

AMENDMENT XIV - "Section 1. All

persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of Law; nor deny to any person within it's jurisdiction the equal protection of the Laws."

STATEMENT OF THE CASE

I, Demitrius Wayne Alexander, am petitioning this Honorable Court for a writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. I appealed the dismissal of my Rule 32 petition, in which I attacked my April 2014 conviction for murder, a murder I did not commit.

(Alexander v. State of Alabama, 15-12-465.60, CR-17-0538, (Ala. crim. App.)).

In my Rule 32 pet and 28 U.S.C.S. § 2254 Habeas Corpus petitions I raised constitutional claims that: 1) evidence gained pursuant to unconstitutional search and seizure was used against me at trial, a violation of the IV, V, VI, XIV Amendments to the U.S. Constitution, and that my trial counsel rendered ineffective assistance for failing to request and retain an expert forensics/firearms witness to aid in preparation and execution of my defense at trial. My petitions were denied in conflict with both state and Fed. Law and U.S. S. Ct. holdings. A certificate of Appealability was denied when it should have been granted.

REASONS FOR GRANTING THE PETITION

The decisions of the Jefferson County Circuit Court, the Alabama Court of Criminal Appeals, and the United States Court of Appeals for the Eleventh Circuit are all in conflict with prior decisions of the U.S. Supreme Court on the same point of law. In their opinions, the court stated that the defendant Mr. Alexander's mail containing lyrics/personal papers was not the product of an unconstitutional search and seizure and that his mail was not subject to suppression, and, also, that Mr. Alexander's counsel did not render ineffective assistance of counsel for failing to have the mail (lyrics) suppressed. However, in the case of Mapp v. Ohio, 381 U.S. 684 (1961), the Supreme Court held that, as a matter of due process, evidence obtained by a search and seizure in violation of the Fourth Amendment is inadmissible in a state court as it is in Federal Court.

The rule which excludes unconstitutional evidence from being admitted in a state criminal trial is an essential part of both the Fourth and Fourteenth

Amendments.

In his order denying Mr. Alexander's first Rule 32 petition for post-conviction relief, then Jefferson County Circuit Judge J. William Cole ruled that because Alexander's mail was opened and given to police by his mother, the search and seizure of the mail was not a state action subject to suppression.

However, Mr. Alexander's mother was acting as an 'agent of the police', and assisting the police with an investigation, which according to Ala. S. Ct. Case, Ex parte Hilley, 48 Ala. App. 157, 262 So.2d 772 (Ala. 1972), did in fact make the search and seizure of Mr. Alexander's mail a violation of both the Fourth and Fourteenth Amendments and requires a new trial absent the introduction of the unconstitutional evidence.

In Ex parte Hilley, the Supreme Court held that to make a person an agent of the police in this context, two facts must be shown.

First, the police must have instigated, encouraged, or participated in the search, Second, the individual must have engaged in the search with the intent of assisting the police with their investigation.

The petitioner Alexander's Mother's warrantless search of his sealed post-marked mail meets BOTH of the criteria set forth in Ex parte Hilley. Police had previously photographed Mr. Alexander's mail without a warrant prior to the opening and seizing of the mail and the petitioner Demitrius W. Alexander's mother unsealed, opened, read and turned the mail (lyrics) over to the police to assist their investigation, violating the Fourth and Fourteenth Amendments as well as U.S. Code 18 U.S.C.S. § 1703 (b).

In Chapman v. U.S., 365 U.S. 610, 5 L. Ed. 2d 828, the Supreme Court held that a judgment of a Court of Appeals affirming a conviction of crime must be reversed

where evidence obtained through an unlawful search was admitted at trial.

Both the state and U.S. Court of Appeals for the Eleventh circuit erred in failing to follow the decisions of this Honorable Court on the same point of Law. Petitioner Demetrius Wayne Alexander's conviction requires reversal and a new trial should be scheduled absent this unconstitutional evidence.

Habeas Corpus relief was due to Mr. Alexander as he is in custody in violation of the Constitution, laws, and treaties of the United States.

28 U.S.C. § 2254 (a)

Mr. Alexander's Due process guarantees of the Fourteenth Amendment have been violated in numerous ways. Also his 6th Amendment right to effective assistance of counsel was violated.

~~1. On February 24, 2020,~~ Appellant Alexander filed Petitioner's OBJECTION to Magistrate's 'R & R'. On March 12, 2020, U.S. District Judge R. David Proctor denied Appellant Alexander's 28 U.S.C. § 2254 Habeas Corpus Petition. In his Memorandum Opinion, Judge Proctor erroneously overruled Alexander's OBJECTIONS and Accepted Magistrate Judge Staci G. Cornelius's recommendations, which were UNREASONABLE and CONTRARY to State and Federal Law.

Appellant Alexander is contending ON APPEAL that both the STATE RULE 32 COURT AND U.S. District Court's rulings with respect to this INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM (III.) were ERRONEOUS because both courts failed to consider properly the Federal Court's

-HOLDING in Strickland v. Washington
and UNREASONABLY APPLIED Federal
LAW.

Appellant also contends that both
the State Courts and Fed. Habeas
Court (U.S. District for the Northern
District of Alabama) failed to con-
sider properly the federal court's
holding in Draughon v. Dretke,

427 F.3d 286 (5th cir. 2005):

"In it's opinion, the District
Court HELD that Draughon's
counsel provided INEFFECTIVE
ASSISTANCE at BOTH the guilt
and SENTENCING PHASES of his
trial, and that the State's con-
trary decision was an UNREAS-
ONABLE APPLICATION of SETTLED
FEDERAL LAW. It ORDERED the
STATE to either RELEASE HIM or
TRY HIM AGAIN."

In Draughon, counsel's failure
to investigate forensics deprived
the inmate of a SUBSTANTIAL
ARGUMENT as to: the path of the
fatal bullet, and set up an un-

challenged FACTUAL PREDICATE for the State's main argument that he intended to kill.

The federal District Court concluded that the state habeas court's REJECTION of the STRICKLAND claim was an UNREASONABLE APPLICATION of FEDERAL LAW.

In Appellant Demetrius Wayne Alexander's case, Counsel's failure to INVESTIGATE FORENSICS DEPRIVED him of a SUBSTANTIAL ARGUMENT as to: WHETHER the BALLISTICS of the FATAL BULLET(S) matched the Kel-Tec P.32 PISTOL and SET UP an UNCHALLENGED FACTUAL PREDICATE for the State of Alabama's main argument that the Kel-Tec P.32 PISTOL found (allegedly) in safe (which was CONFISCATED by Jefferson County Sheriff's Deputies without a warrant) was a MATCH to the FATAL BULLETS and that Appellant Alexander used the pistol to kill the victim.

- Lawden Yates, and/or Charles Stephenson, who are both competent FORENSIC FIREARM EXPERTS, and have been utilized by Alexander's Trial Counsel, David S. Luker, in other cases, were both available during time of Appellant Alexander's trial. Alexander requested his Counsel to procure a FIREARM Expert prior to trial, however Counsel failed to do so. This was DEFICIENT PERFORMANCE.

Appellant Alexander attempted to contact Luker several times, but got no answer / response. Alexander was attempting to get NAMES of Experts to meet the STRICT requirements of Ala. R. Crim. P. Rule 32.3 and 32.6(b) for his State Rule 32 Appeal. (CR-17-0538) Appellant Alexander was finally able to reach Katherine Luker, who is also an attorney, (and David Luker's wife) and get the names of these FIREARM experts in 2019.

Through 'No Fault of His Own' was Appellant Alexander not able to get these EXPERT WITNESS NAMES in time to include them in his first Rule 32 Petition and the Alabama State Courts UNREASONABLY APPLIED PROCEDURAL BARS to deny Alexander RELIEF on this claim.

see Court of Criminal Appeals Memorandum Opinion CR-17-0538 pages 11-12 I-F: "Alexander next argues that he received INEFFECTIVE ASSISTANCE OF COUNSEL because trial counsel failed to retain a firearms expert."

Then the Court of Appeals goes on to say: "Alexander's claim, however, is insufficiently pleaded..." "Here, Alexander did not identify an expert who was able to assist with his defense..." Then the Court unreasonably applied Yeomans v. State, 195 So.3d 1018, 1029 (Ala. crim. App. 2013).

If Yeomans truly had mental health issues, he had more than likely seen a Mental Health expert / psychiatrist in his lifetime.

Appellant Alexander has had some mental health issues in the past and he can name more than one psychiatrist he has seen in the past. One being a Dr. Lucas from Brookwood, and the other being a Dr. Naqvi from Bryce Hospital in Alabama. Alexander can / could not, however, remember any forensic firearm experts at time of first Rule 32 proceedings, because his INADEQUATE LAWYER never obtained one for his DEFENSE, as REQUESTED by Alexander.

There has never been any reason before Alexander was FALSELY ACCUSED of this MURDER for him to know any names of FORENSIC FIREARM EXPERTS. The Alabama Court of Criminal Appeal's argument and denial of relief on this ground was unreasonable and erroneous.

see Hinton v. State, 134 S.Ct.

1081, 1089, 188 L.Ed. 2d 1

(Ala. crim. App. 2014): In

Hinton, counsel was INEFFECTIVE

- for failing to obtain a competent FIREARM EXPERT. His conviction WAS REVERSED.

Alexander is seeking the same- REVERSAL of his CONVICTION.

Appellant Alexander further asserts that the FACTS of HIS CASE, Hinton, and Draughon v. Dretke are MATERIALLY INDISTINGUISHABLE.

from Draughon v. Dretke: "The importance of this (EXPERT) testimony cannot be overstated. Competent counsel would have been KEENLY AWARE of it's IMPORTANCE and WHAT WOULD FOLLOW without it, the PREJUDICE to Draughon.

see Appellant Alexander's 28 U.S.C. § 2254 Habeas Petition: Alexander v. Warden Headley, et al., No. 2:19-cv-930-RDP-SGC, pages 8a-8b.

Appellant Alexander's trial counsel rendered INEFFECTIVE ASSISTANCE.

A claimant MUST show ACTUAL prejudice in an INEFFECTIVE ASSISTANCE of COUNSEL claim.

"Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)"

∴ Stallworth v. State, 171 So.3d 53,
63 (Ala. crim. App. 2015).

Appellant Alexander's trial counsel
FAILED to OBTAIN an EXPERT WITNESS
in FORENSICS (firearms/toolmarks).
The expert would have viewed the
State's forensic EVIDENCE, INTER-
VIEWED Appellant and other possible
witnesses, given guidance to
counsel in HOW TO CROSS-EXAMINE
the State's witnesses, including,
challenging the State's witnesses
knowledge of the current status
of research and STANDARDS in
forensic interviewing, and could
have taken the stand to provide
defense expert testimony on the
case. An EXPERT witness could
have given trial counsel such re-
sources to help DEFEND Demitrius
Wayne Alexander, A.K.A.
Demitrius Wayne Frith. The
failure to obtain such witness's
HELP and POSSIBLE TESTIMONY
from said witness FATEALLY
FLAWED Demitrius Wayne
Alexander's DEFENSE.

- Trial counsel failed to EFFECTIVELY cross-examine the state's expert (firearm) witness. One example of counsel's failure was in not asking Dancy Sullivan to produce/publish photographs of her SCANNING ELECTRON MICROSCOPE results, in order to show THE JURY whether the fatal bullet's forensic characteristics actually MATCHED those of the Kel-Tec P.32 pistol, (rifling) and whether there were inconsistencies between the fatal bullets and the Kel-Tec P.32 pistol.

The Appellant Demetrius Alexander's trial counsel was SO INEFFECTIVE regarding this issue, he even made comments during CLOSING which were PREJUDICIAL to Alexander and IN AGREEMENT with the State's Firearm Expert witness.

Here is an excerpt from the Reporter's Trial Transcript (R.591):

Mr. Luker: "There is NO QUESTION that GUN FIRED THE SHELLS THAT KILLED THIS WOMAN. And THAT IS A TRAGEDY."

This testimony was some of the most DAMNING to Alexander and it was made by HIS counsel.

This testimony by Appellant's trial counsel constitutes REVERSIBLE ERROR. see U.S. v. Cronin, 466 U.S. 648, 658-659, 80 L.Ed. 2d 657 (1984).

Alexander's trial counsel failed to subject state's expert witness to meaningful ADVERSARIAL TESTING.

The two-prong test of Strickland v. Washington has been met and the Appellant Alexander respectfully moves this Honorable Court ~~for a new trial~~ to assert CORRECTIVE ACTION and VACATE Alexander's CONVICTION. Appellant has properly exhausted this claim and requests this court to ~~reverse~~ reverse and remand his case for a new trial, one where Mr. Alexander can have and utilize an expert forensic witness for his defense, minus the inadmissible evidence, as well.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christina W. Alexander

Date: 1-6-2020