

NO.:

IN THE
SUPREME COURT OF THE UNITED STATES

Johnny Rice - Petitioner;
v.

State of Indiana - Respondent(s);

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES SUPREME COURT

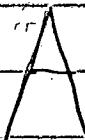
APPENDIX OF PETITIONER

Attorney for Petitioner:

Johnny Rice, Petitioner, pro se
DOC # 249455

Wabash Valley Correctional Facility
P.O. Box 111
Carlisle, IN 47838

APPENDIX



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOHNNY RICE,)
Petitioner,)
v.) No. 2:19-cv-00520-JRS-MJD
WARDEN,)
Respondent.)

Final Judgment

The Court now enters final judgment. The petition for a writ of habeas corpus is **denied**.

Date: 11/23/2020

Roger A.G. Sharpe, Clerk

BY: Beij Rose
Deputy Clerk, U.S. District Court

James R. Sweeney II
JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

JOHNNY RICE
249455
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
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CARLISLE, IN 47838

Caroline Templeton
INDIANA ATTORNEY GENERAL
caroline.templeton@atg.in.gov

Mr. Rice appealed, arguing that he was convicted based on insufficient evidence. The Indiana Court of Appeals affirmed, *id.* at *4, and the Indiana Supreme Court denied leave to transfer, dkt. 11-8.

Mr. Rice then filed a petition for post-conviction relief, arguing that trial and appellate counsel were ineffective. *Rice v. State*, 2019 WL 2181212, at *3 (Ind. Ct. App. May 21, 2019) ("Rice II"). The trial court denied the petition after a hearing. *Id.* The Indiana Court of Appeals affirmed, *id.* at *6, and the Indiana Supreme Court denied leave to transfer, dkt. 11-19.

On October 29, 2019, Mr. Rice filed a 28 U.S.C. § 2254 habeas corpus petition in this Court.¹ The petition alleges that trial counsel was ineffective for (1) failing to challenge the charging information based on a lack of probable cause and (2) failing to seek a hearing to challenge the affidavit supporting the charging information based on alleged falsehoods in the affidavit. He further argues that appellate counsel was ineffective for failing to raise these same arguments on direct appeal.

II. Law Governing 28 U.S.C. § 2254 Petitions

A federal court may grant habeas relief to a person in custody pursuant to the judgment of a state court only if the petitioner shows that he is in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a). Where a state court has adjudicated the merits of a petitioner's claim, a federal court cannot grant habeas relief unless the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

¹ Days later, he filed another copy of the petition, this time with a certificate of service. In all other respects, the two petitions are identical.

28 U.S.C. § 2254(d). Put differently, "[a] state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011).

"The decision federal courts look to is the last reasoned state-court decision to decide the merits of the case." *Dassey v. Dittmann*, 877 F.3d 297, 302 (7th Cir. 2017) (en banc). If the last reasoned state court decision did not adjudicate the merits of a claim, or if the plaintiff can overcome § 2254(d)'s bar, federal habeas review of that claim is *de novo*. *Thomas v. Clements*, 789 F.3d 760, 766–68 (7th Cir. 2015).

III. Discussion

The Indiana Court of Appeals applied the correct standard to Mr. Rice's ineffective assistance of counsel claims. *See Rice II*, 2019 WL 2181212, at *4 (applying *Strickland v. Washington*, 466 U.S. 668 (1984)).

Both on post-conviction review and in this Court, Mr. Rice's ineffective assistance of counsel claims are nothing more than an attempt to relitigate his criminal trial. He argues that trial counsel should have challenged his charging information and the supporting affidavit. But the only supposed deficiencies he identifies in these documents are the statements alleging that M.S. performed oral sex on him against her will. *See* dkt. 5 at 4–5. And, in support of his claims, he merely rehashes the evidence presented at trial. *See id.* at 5–10.

The Indiana Court of Appeals concluded that the charging information was supported by probable cause and that Mr. Rice had failed to show that the accusations of forced oral sex were false. *Rice II*, 2019 WL 2181212, at *4 ("Because M.S.'s additional statements, which Rice does not acknowledge, let alone address, supported a finding of probable cause that she was forced by Rice to engage in oral sex through force and without her consent, any challenge to the sufficiency

of the probable cause affidavit or the Information on this basis would not have been successful."); *id.* at *5 ("Rice presented no evidence at the PCR hearing that Detective Floyd testified falsely, recklessly, or without regard to the truth [as to the claims of forced oral sex] in the probable cause affidavit."). These conclusions are reasonable, so § 2254(d) bars relief.

IV. Certificate of Appealability

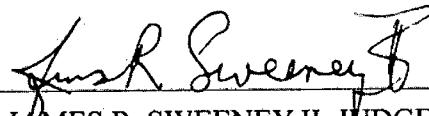
A state prisoner must obtain a certificate of appealability if he seeks appellate review. 28 U.S.C. § 2253(c)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In deciding whether a certificate of appealability should issue for a claim decided on the merits, "the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (citation and quotation marks omitted). Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Courts requires the district court to "issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Reasonable jurists would agree that Mr. Rice's claims are barred by 28 U.S.C. § 2254(d) or otherwise meritless. Therefore, a certificate of appealability is **denied**.

V. Conclusion

Mr. Rice's petition for a writ of habeas corpus is **denied**, and a certificate of appealability shall not issue. Final Judgment in accordance with this decision shall issue.

IT IS SO ORDERED.

Date: 11/23/2020



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

APPENDIX

B

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
CRIMINAL DIVISION, ROOM SIX
THE HONORABLE MARK STONER, JUDGE

STATE OF INDIANA)
)
VS) CAUSE NO. 49G06-1409-F1-043880
)
JOHNNY RICE)

TRANSCRIPT OF SENTENCING PROCEEDINGS
(June 4, 2015)

APPEARANCES:

FOR THE STATE: MS. KATHERINE MELNICK
 Deputy Prosecutor

FOR THE DEFENSE: MR. DANIEL CUCCHINI
 MS. LAURA PITTS
 Counsel for the Defendant

DEFENDANT IN PERSON

Susan Evans Melvin, Official Court Reporter
Marion Superior Court
Criminal Division Room Six

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e.g. "Appendix B"

1 STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR
2 COUNTY OF MARION)) SS:
) COURT, CRIMINAL DIVISION SIX

3

4 STATE OF INDIANA)
5 VS.) CAUSE NUMBER
) 49G06-1409-F1-043880
6 JOHNNY RICE)

7

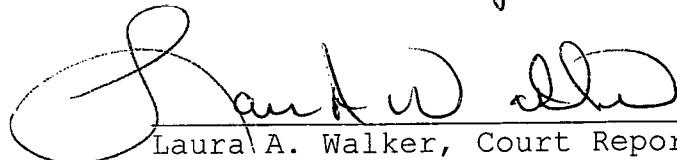
8 COURT REPORTER'S CERTIFICATE

9 I, Laura A. Walker, Court Reporter of the Marion
10 County Superior Court, Criminal Division Six, Marion
11 County, State of Indiana, do hereby certify that I am the
12 Court Reporter of said Court, and having prepared said
transcript of the proceedings of the Marion County
Superior Court, Criminal Division Six, duly appointed and
sworn to report the evidence of cause tried therein.

13 That upon the Jury Trial heard on May 18, 2015 and
14 May 19, 2015, took down, by machine, all of the
statements by counsel, the evidence given during the
15 hearing of this cause, the objections of counsel thereto,
and the rulings of the Court upon such objections, the
16 introduction of exhibits, the objections thereof, and the
Court's ruling thereon.

17 I further certify that the foregoing transcript, as
18 prepared, is full, true and correct and complete of the
proceedings heard in Criminal Court Six.

19 IN WITNESS THEREOF, I have hereunto set my hand and
20 affixed my Seal this 9th day of Sept, 2015.

21 
22 Laura A. Walker, Court Reporter
23 Superior Court of Marion County
24 Criminal Court Six

25

1 would have been prepared to have done a specific
2 verdict form to try to address that issue. But
3 it didn't come up, and particularly in terms of
4 the facts of this case, I think the jury clearly
5 could distinguish between counts one and two.

6 Um, but, it was an interesting charging
7 information. I'm done on that.

8 As to count one - actually count two, which
9 is the serious bodily injury - no, it's not.
10 One is the serious bodily injury. The Court on
11 that sentence, sentences the defendant to 36
12 years in the Department of Correction. The
13 Court suspends four of those years. Places him
14 on sex offender probation. Again, in the belief
15 that I can only deal with the law as I currently
16 see it, and the belief that take someone for a
17 substantial period of incarceration which in
18 this case would be 27 years, uh, 27 actual
19 years, which under the old code would have been
20 a 54-year-sentence, to take someone of that
21 length of time and not to integrate them back
22 into society in a responsible way would be a
23 terrible mistake for society and for the
24 defendant. So, the Court wants the probation
25 department to be around to help reintegrate back

1 into society. He is only 28 years of age and
2 will be younger than I am when he gets out on
3 this. And so, I believe that that sentence - so
4 the Court, on count one and two, same sentences,
5 but runs them concurrently. Runs the sentences
6 on 3, 4, and 5, as the jury found them, all run
7 concurrently.

8

9 MR. CUCCHINI: And Your Honor, I guess for
10 the record, the Court integrated counts one and
11 two were the same sentence.

12 THE COURT: Yes.

13 MR. CUCCHINI: Count two is a level three.

14 THE COURT: Thank you. Again, interesting
15 charging information - okay. I'm not done yet.
16 It certainly seems that when the screeners get
17 hold of sex offenses that they go out of their
18 way to include lesser-includeds as opposed to
19 other ones. I think the State creatively found
20 the way to not make those lesser includeds in
21 your argument, and I'll compliment you on that
22 as I would compliment Mr. Cucchini on the
23 quality of his final argument which I thought
24 was very good given what appeared to be the
25 overwhelming evidence against him that he was

INDEX OF APPENDIX

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***** PUBLIC DOCKET *****

APPEAL,HABEAS,CLOSED

U.S. District Court
Southern District of Indiana (Terre Haute)
CIVIL DOCKET FOR CASE #: 2:19-cv-00520-JRS-MJD

RICE v. WARDEN

Assigned to: Judge James R. Sweeney II

Referred to: Magistrate Judge Mark J. Dinsmore

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 10/29/2019

Date Terminated: 11/23/2020

Jury Demand: None

Nature of Suit: 530 Habeas Corpus
(General)

Jurisdiction: Federal Question

Petitioner**JOHNNY RICE**represented by **JOHNNY RICE**

249455

WABASH VALLEY - CF

WABASH VALLEY

CORRECTIONAL FACILITY - Inmate

Mail/Parcels

6908 S. Old US Hwy 41

P.O. Box 1111

CARLISLE, IN 47838

PRO SE

V.

Respondent**WARDEN**represented by **Caroline Templeton**

INDIANA ATTORNEY GENERAL

302 West Washington Street

Indiana Government Center South,

Fifth Floor

Indianapolis, IN 46204

317-233-1939

Fax: 317-232-7979

Email: caroline.templeton@atg.in.gov

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/29/2019	<u>1</u>	PETITION for Writ of Habeas Corpus, filed by JOHNNY RICE. (No fee paid with this filing) (Attachments: # <u>1</u> Memorandum Decision from Indiana Court

		of Appeals, # <u>2</u> Indiana Supreme Court order, # <u>3</u> Envelope)(DJH) (Entered: 10/30/2019)
10/29/2019	<u>2</u>	MOTION for Leave to Proceed in forma pauperis filed by Petitioner, JOHNNY RICE. (Attachments: # <u>1</u> Transaction History, # <u>2</u> Case Summary, # <u>3</u> Counselors Statements and Affidavit of Special Circumstances, # <u>4</u> Envelope) (DJH) (Entered: 10/30/2019)
10/30/2019	<u>3</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (DJH) (Entered: 10/30/2019)
10/31/2019	<u>4</u>	RECEIPT #IP067144 for habeas filing fee in the amount of \$5.00, paid by petitioner. (AKH) (Entered: 10/31/2019)
10/31/2019	<u>5</u>	AMENDED Petition for Writ of Habeas Corpus against WARDEN, filed by JOHNNY RICE. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Exhibit, # <u>3</u> Envelope) (TMC) (Entered: 11/01/2019)
11/02/2019	<u>6</u>	ORDER TO SHOW CAUSE (State Conviction) - Johnny Rice's petition for a writ of habeas corpus challenges the petitioner's conviction and sentence in Indiana state court case number 49G06-1409-F1-043880. Respondent is ORDERED to enter an appearance by 11/12/2019. If respondent argues that all claims in the petition are subject to one of the procedural bars for dismissal outlined in Rule 5(b), respondent is ORDERED to file a motion to dismiss based on a complete procedural bar by 12/13/2019. If Track 1 does not apply, respondent is ORDERED to answer the petition by 1/3/2020. The Court does not anticipate extending respondent's deadlines absent respondent specifically setting forth extraordinary circumstances (SEE ORDER FOR ADDITIONAL INFORMATION AND DEADLINES). Signed by Judge James R. Sweeney II on 11/2/2019 (Copy mailed to Petitioner).(LBT) (Entered: 11/04/2019)
11/04/2019	<u>7</u>	***PLEASE DISREGARD - DUPLICATE ENTRY OF <u>7</u> *** ORDER TO SHOW CAUSE (State Conviction) - JOHNNY RICE's petition for a writ of habeas corpus challenges the petitioner's conviction and sentence in Indiana state court case number 49G06-1409-F1-043880. Respondent is ORDERED to enter an appearance by 11/12/19. If respondent argues that all claims in the petition are subject to one of the procedural bars for dismissal outlined in Rule 5(b), respondent is ORDERED to file a motion to dismiss based on a complete procedural bar by 12/13/19. If Track 1 does not apply, respondent is ORDERED to answer the petition by 1/3/2020. The Court does not anticipate extending respondent's deadlines absent respondent specifically setting forth extraordinary circumstances (SEE ORDER FOR ADDITIONAL INFORMATION AND DEADLINES)Copy sent to Petitioner via US Mail. Signed by Judge James R. Sweeney II on 11/2/2019.(JRB) Modified on 11/5/2019 (RSF). (Entered: 11/04/2019)
11/07/2019	<u>8</u>	ORDER - denying as moot <u>2</u> Motion for Leave to Proceed in forma pauperis because Mr. Rice has paid the \$5.00 filing fee associated with this action. There is no other fee due at this time. Copy to petitioner via US Mail. Signed by Judge James R. Sweeney II on 11/7/2019. (RSF) (Entered: 11/08/2019)

11/12/2019	<u>9</u>	NOTICE of Appearance by Caroline Templeton on behalf of Respondent WARDEN. (Templeton, Caroline) (Entered: 11/12/2019)
11/13/2019	<u>10</u>	CONSENT to Jurisdiction to US Magistrate Judge filed by JOHNNY RICE. (Attachments: # <u>1</u> Envelope)(TMC) (Entered: 11/14/2019)
01/02/2020	<u>11</u>	RETURN TO ORDER TO SHOW CAUSE, re <u>6</u> Order to Show Cause (State Conviction), filed by WARDEN.. (Attachments: # <u>1</u> Exhibit A-Chronological Case Summary, # <u>2</u> Exhibit B-Docket, No. 49A02-1506-CR-00614, # <u>3</u> Exhibit C-Appellant's Brief 49A02-1506-CR-00614, # <u>4</u> Exhibit D-Appellee's Brief 49A02-1506-CR-00614, # <u>5</u> Exhibit E-Memorandum Decision 49A02-1506-CR-00614, # <u>6</u> Exhibit F-Petition to Transfer- 49A02-1506-CR-00614, # <u>7</u> Exhibit G- Response to Petition to Transfer-49A02-1506-CR-00614, # <u>8</u> Exhibit H-Order Denying Transfer 49A02-1506-CR-00614, # <u>9</u> Exhibit I- Chronological Case Summary 49G06-1705-PC-020279, # <u>10</u> Exhibit J-Docket 18A-PC-02226, # <u>11</u> Exhibit K- Brief of Appellant 18A-PC-02226, # <u>12</u> Exhibit L- Brief of Appellee 18A-PC-02226, # <u>13</u> Exhibit M-Reply Brief of Appellant 18A-PC-02226, # <u>14</u> Exhibit N- Memorandum Decision 18A-PC-02226, # <u>15</u> Exhibit O-Petition for Rehearing 18A-PC-02226, # <u>16</u> Exhibit P- Order Denying Rehearing 18A-PC-02226, # <u>17</u> Exhibit Q-Petition to Transfer 18A-PC-02226, # <u>18</u> Exhibit R-Notice Regarding Transfer 18A-PC-02226, # <u>19</u> Exhibit S-Order Denying Transfer 18A-PC-02226)(Templeton, Caroline) (Entered: 01/02/2020)
01/02/2020	<u>12</u>	NOTICE of <i>Manual Filing</i> , filed by Respondent WARDEN, re <u>11</u> Return to Order to Show Cause. (Templeton, Caroline) (Entered: 01/02/2020)
01/07/2020	<u>13</u>	RECEIPT For Court Records - 8 volumes (KAA) (Entered: 01/07/2020)
01/14/2020	<u>14</u>	MOTION to File Oversized Traverse, filed by Petitioner JOHNNY RICE. (Attachments: # <u>1</u> Envelope)(TMC) (Entered: 01/15/2020)
01/14/2020	<u>15</u>	Reply re <u>11</u> Return to Order to Show Cause, filed by JOHNNY RICE.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Envelope)(TMC) (Entered: 01/15/2020)
01/16/2020	<u>16</u>	ORDER granting <u>14</u> Motion to File Oversized Traverse - SEE ORDER. Copy sent to Petitioner via US Mail. Signed by Judge James R. Sweeney II on 1/16/2020. (JRB) (Entered: 01/17/2020)
06/01/2020	<u>17</u>	Correspondence REQUESTING COPY of Case Docket Sheet, filed by Johnny Rice. Copy/Copies provided via US Mail. (Attachments: # <u>1</u> Public Docket, # <u>2</u> Envelope) (JRB) (Entered: 06/01/2020)
11/23/2020	<u>18</u>	Order Denying Petition for a Writ of Habeas Corpus - Petitioner Johnny Rice filed a 28 U.S.C. § 2254 petition for a writ of habeas corpus challenging two 2015 Indiana convictions for rape, strangulation, and battery. The petition alleges that Mr. Rice's trial and appellate counsel were ineffective. Mr. Rice's petition for a writ of habeas corpus is denied, and a certificate of appealability shall not issue. Final Judgment in accordance with this decision shall issue.

		(See Order.) Copy to petitioner via US Mail. Signed by Judge James R. Sweeney II on 11/23/2020.(RSF) (Entered: 11/25/2020)
11/23/2020	<u>19</u>	Final Judgment - The Court now enters final judgment. The petition for a writ of habeas corpus is denied. Copy to petitioner via US Mail. Signed by Judge James R. Sweeney II on 11/23/2020.(RSF) (Entered: 11/25/2020)
12/11/2020	<u>20</u>	NOTICE OF APPEAL as to <u>19</u> Closed Judgment, <u>18</u> Order, filed by Petitioner JOHNNY RICE. (No fee paid with this filing) (Attachments: # <u>1</u> Envelope) (AAS) (Entered: 12/11/2020)
12/11/2020	<u>21</u>	DOCKETING STATEMENT by JOHNNY RICE re <u>20</u> Notice of Appeal (Attachments: # <u>1</u> Envelope)(AAS) (Entered: 12/11/2020)

Case #: 2:19-cv-00520-JRS-MJD

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 25, 2021
Decided March 3, 2021

Before

DANIEL A. MANION, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 20-3408

JOHNNY RICE,
Petitioner-Appellant,

Appeal from the United States District
Court for the Southern District of Indiana,
Terre Haute Division.

v.

No. 2:19-cv-00520-JRS-MJD

FRANK VANIHEL,
Respondent-Appellee.

James R. Sweeney II,
Judge.

O R D E R

Johnny Rice has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254. We construe this filing as an application for a certificate of appealability. After reviewing the final order of the district court and the record on appeal, we find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, Mr. Rice's request for a certificate of appealability is **DENIED**. His request to proceed in forma pauperis is also **DENIED**.