

No. 20-7766

IN THE
SUPREME COURT OF THE UNITED STATES

LYNDON DAVIS
Petitioner

V.
DENNIS REAGLE
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Seventh Circuit.

PETITION FOR REHEARING

Lyndon Davis
Petitioner/Pro-se
DOC # 232171
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, IN 46064-9001

Dated July 1, 2021

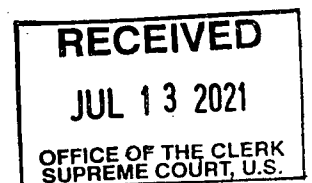


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PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner, Lyndon Davis, respectfully petitions for a rehearing of the denial of a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Seventh Circuit.

The Seventh Circuit's order explaining its reasoning for denying appealability for two of the Petitioner's ineffective assistance of Counsel claims that were disposed of by the District Court is in conflict with this Court's own decision within prior cases, and has also shown that the Circuit Court has misapplied the standard for granting a Certificate of Appealability when the Circuit Court inverted the statutory order of operations violating the Petitioner's due process rights to a fair proceeding and this is why this Court should grant review.

This Petition shows just how the Circuit Court has misapplied the standard conveyed by this Court in coming to its decision.

PETITION FOR REHEARING

The Original Certiorari Petition asked this Court to resolve four issues of first impression (1) Did the United States Court of Appeals for the Seventh Circuit exceed its Scope of the COA (Certificate of appealability) analysis when the Court denied appealability to the Petitioner's Claims that were denied relief by the State and District Court? (2) Is the United States Court of Appeals for the Seventh Circuit's Scope of the COA analysis in Conflict with the United States Supreme Court's Scope of the COA analysis? (3) Did the Petitioner demonstrate ineffective assistance of Counsel to his claims? (4) Is the District and State Court's assessment of the Petitioner's claims debatable?

Moreover, the Petitioner argued to this Court that the Seventh Circuit Court did not follow the Standard Set for granting a Certificate of appealability (CoA) that this Court has Conveyed within Prior Cases (Buck v. Davis, 137 S. Ct. 759, Case No. 15-8049, February 22, 2017. Miller EL v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L. Ed. 2d 931 (2003)). This Court has stated within Prior Cases

that:

" The Certificate of appealability (COA) determination under 28 U.S.C. § 2253(c) requires an overview of the claims in the habeas Petition and a general assessment of their Merits. An appellate Court looks to the district Court's application of the Antiterrorism and Effective Death Penalty Act of 1996 to a Petitioner's Constitutional claims and asks whether that resolution was debatable amongst Jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the Statute forbids it. When a Court of Appeals side-steps this process by first deciding the Merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual Merits, it is in essence deciding an appeal without Jurisdiction. A (COA) does not require a showing that the appeal will succeed. Accordingly, a Court of Appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The standard would mean very little if appellate review were denied because the Prisoner did not convince a Judge, or, for that matter, three Judges, that he or she would prevail. It is

Consistent with 28 U.S.C. § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner has already failed in that endeavor. A prisoner seeking a Certificate of Appealability must prove something more than the absence of frivolity or the existence of mere good faith on his or her part. The petitioner is not required to prove before the issuance of a COA, that some jurist would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. Where a district court has rejected a constitutional claim on the merits, the showing required to satisfy 28 U.S.C. § 2253 (c) is straightforward; the petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. See *Miller EL*, *Supra*. See *Buck Supra*.

The petitioner argued to this court that the Seventh Circuit Court's decision within their order denying the petitioner a COA for his claims did not

express if their decision was based upon if the District Court's resolution of the Petitioner's Claims were debatable or not amongs reasonable Jurist. That instead, the Circuit Court has done a full review of the Petitioner's claims, and a full consideration of the Merits, to make their determination that the Petitioner's claims did not deserve further review because he has not made a substantial showing of the denial of a Constitutional right.

The Petitioner argued that the Circuit Court has stated in its order denying a COA that:

" This Court has reviewed the final order of the District Court and the record on appeal. We find no substantial showing of the denial of a Constitutional right. Accordingly, the request for appealability is denied." (See attached Order from the Seventh Circuit Court)

The Petitioner pointed out to this Court that not only did the Circuit Court's decision not state if the Petitioner's claims were debatable or not, but the Circuit Court has stated that it has went pass the district Court's order and extended their review to the record on appeal just to make a determination concerning the Petitioner's claims.

When the Standard for granting a COA precisely states that:

"An appellate Court looks to the District Court's application of the Antiterrorism and Effective Death Penalty Act of 1996 to a Petitioner's constitutional claims and asks whether that resolution was debatable amongst Jurists of reason!!

The Petitioner points out to this Court that the Circuit Court has acted in a way of deciding an appeal without Jurisdiction by extending their general claim assessment past the District Court's Order, and the claims within the habeas Petition, to the record on appeal just to consider a Certificate of appealability for the Petitioner's claims, thus, sidestepping the process and violating the Petitioner's due process rights to a fair proceeding under the fourteenth amendment of the United States Constitution.

The Petitioner's initial Petition forthrightly has pointed out that the Seventh Circuit has sidestepped the COA process when the Court denied appealability for the Petitioner's claims, and that the Seventh Circuit Court's actions are in

Conflict with this Court's Conclusion Concerning this Matter within Prior Cases. Also, that this Court's denial of Certiorari would be in conflict with Prior Cases.

REASON FOR REHEARING

A petition for rehearing should present intervening circumstances of a Substantial or Controlling effect or to other Substantial grounds not previously Presented. See Rule 44.2.

The Petitioner has described the Shady COA Process used by the Seventh Circuit Court to deny appealability for the Petitioner's claim to receive further review. The Core of the Petitioner's Complaint is that he has made a Substantial Showing that his Constitutional rights were Violated, and that reasonable Jurist would find the State and District Court's assessment of the Petitioner's Constitutional Claims debatable or wrong, or that reasonable Jurist would find it debatable whether the Petition States a valid claim of the denial of a Constitutional right and deserve further review.

The Petitioner has Presented two Claims of ineffective assistance of Counsel that he is asking the Circuit Court or

this Court to review that deserves the relief that he has requested within his habeas Corpus Petition.

- 1) Ineffective assistance of Counsel for failing to Conduct a Pretrial investigation of the Petitioner's Case to learn of available facts that could have changed the outcome of the Case, and
- 2) Ineffective assistance of Counsel for failing to impeach the state's two key eyewitnesses Aniya Lawson and Krystle Gavins with their prior to trial inconsistent statements.

Failure to Investigate

The Petitioner and his co-defendant Robert Davis were both tried for murder within two separate trials. Robert was tried first as the person who had shot and killed the victim to the case, but when not one of the state's three eyewitnesses could identify Robert as the shooter at his trial, the state changed their theory and convinced Robert's jurors that he was guilty for the murder as an accomplice under Indiana's accomplice Liability Law and Robert was convicted

and Sent to Prison for a term of 65 years. A year Later, the State tried the Petitioner in a Second trial for the Same Murder with a theory that Robert was indeed the one who had killed the victim (The Principle) and that the Petitioner was now Guilty as an accomplice for aiding Robert. The State Used the Same three eyewitnesses at the Petitioner's trial that were used at Robert's trial and the Petitioner was not identified at trial by any of the eyewitnesses as well, but the State had also Convicted the Petitioner's Jurors that he was guilty as an accomplice Under Indiana's accomplice Liability Law and the Petitioner was Convicted for Murder as an accomplice to Robert and Sentenced to Prison for a term of 55 years.

The Core of this Complaint is that the State's Prosecutor acted in misconduct Violating the Petitioner's due Process right to a fair trial When the State Knowingly Presented Robert at the Petitioner's trial as the Shooter in a Misleading Way When the State Prosecutor was fully aware that he was not identified as the Shooter who had killed the victim at his own trial a Year Prior to the Petitioner's trial, and that the Prosecutor also Used the Same

accomplice Liability theory and Jury instruction to Convict the Petitioner as they had used to Convict Robert at Robert's trial. The Petitioner has pointed out to the Lower Court's that Under the Indiana's Accomplice Liability Law, that the Prosecutor is not allowed to Convict Robert as an accomplice at one Proceeding, then Present him as the Principle at another Proceeding a year later Concerning the Same Case to Convict another Person as an accomplice to Robert. The State's burden Under the Indiana's accomplice Liability Law is in order to Convict a person as an accomplice the State has to Prove that the Person knowingly and intentionally, aided, induced, or Caused a Principle to Commit an offense. See *April M. Brown V. State of Indiana*, 770 N.E. 2d. 275 (Ind. 2002). There was no stated Principle at Robert's trial for his Conviction.

With no Physical evidence or eyewitness identifying Robert or the Petitioner at both trials, the State Prosecutor needed a way to Convict the Petitioner and the State has chosen to Present false evidence of Robert as the Shooter at the Petitioner's trial to Secure a Conviction, thus, Violating the Petitioner's due Process right under the Fourteenth

amendment depriving the Petitioner of a fair trial. (See Napoe v. Illinois, 360 U.S. 244, 79 S.Ct. 1173, 37 Ed. 2d 1217 (1959), see Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 791 (1935). Also, the Petitioner's trial counsel was ineffective for not being aware that the state was presenting a false theory at the Petitioner's trial when the facts were on the record from the proceeding of Roberts trial that took place a year prior to the Petitioner's trial. The true facts were available and would have been known to the Petitioner's trial counsel if he would have conducted a thorough pre-trial investigation, and counsel could have changed the result of the proceeding if these facts were presented. The Petitioner's trial counsel violated the Petitioner's right to effective counsel under the Sixth amendment of the United States Constitution for his below average representation of the Petitioner's case. (See Strickland v. Washington, 454 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984))

Failure to impeach

The Petitioner's trial counsel allowed the State Prosecutor to peddle false testimony at the Petitioner's trial by knowing that false testimony was being presented and failing to correct what he had known was false, and by failing to

Present evidence of Prior to trial inconsistent statements that he had prior and during the Petitioner's trial that could have shown (Proven) that the State's Key eyewitnesses were falsely testifying, and that the State Prosecutor had Fabricated Key eyewitness Aniya Lawson's trial testimony to Place the Petitioner as a Participant of the crime and near the crime when it had taken Place. The Petitioner's trial Counsel, Kevin Milner, has admitted at the Petitioner's Post-Conviction hearing that he had received a Copy of a deposition that was taken with State's Key eyewitness Aniya Lawson Prior to the Petitioner's trial. When Counsel was confronted at the Post-Conviction hearing about the Contradicting statements within the deposition that were conflicting to Lawson's trial testimony, and why Counsel had failed to Produce the depositions in the Petitioner's defense at trial, Counsel stated that his Strategy was to not show that Lawson was "lying" at the Petitioner's trial.

At the Petitioner's Post-Conviction hearing and during the Petitioner's Post-Conviction Proceeding, he has Submitted a Copy of Lawson's and Krystle Gavin's deposition for the record as evidence to Corroborate the Petitioner's claim. Gavin's trial testimony Wasn't damaging to the Petitioner's

Case, but her deposition Statement Could have helped the Petitioner's Case because it Could have Contradicted Lawson's trial testimony of Seeing the Petitioner as a Participant of the Crime and within inches of the Crime Scene, Gavin Was the Person Who had made the actual 911 call after the Shooting had occurred. Counsel failed to Present her Prior to trial deposition because Counsel did not want to discredit Lawson at the trial (Show that She Was Lying in his own Words). Counsel Was also aware that Lawson had told a total of four different accounts to what She had witnessed at the Crime Scene before the Petitioner had went to trial and was in Possession of the Prior to trial Statements and failed to Present her Prior to trial Statements to challenge her Credibility and impeach her.

The Petitioner's Counsel's Failure to introduce Lawson's Prior to trial Statements to challenge her Credibility when he was aware that She Was falsely testifying fell below the norms of a Competent attorney that is guaranteed to a defendant by the Sixth amendment of the United States Constitution, and also deprived the Petitioner of a fair trial because Counsel has failed to introduce all available relevant evidence into the record for the Jury to Subject

to adversarial testing. Counsel's so called defense strategy of not wanting to show that Lawson was "Lying", that Counsel did not want to discredit her, was so ill-chosen that it rendered Counsel's overall representation constitutionally defective because the Indiana Court of Appeals has contributed the Petitioner's conviction as a result of Lawson's trial testimony. (See Lyndon Davis V. State, Cause No. 45A04-1304-CR-207, March 5, 2014) The Indiana Court of Appeals has stated that Lawson's credibility was a factor to the case. Counsel's actions are deemed ineffective under Strickland V. Washington, Supra, and the Petitioner's conviction is invalid under Napue, Supra, and Mooney Supra, because the Petitioner can not be convicted by the use of false testimony.

The Petitioner Points out to this court that the District Court's assessment of both claims of ineffective assistance of Counsel were unreasonable under Strickland for stating that Counsel was not ineffective, and also unreasonable under Napue and Mooney for overlooking the fact that false evidence (Theory and testimony) was presented at the Petitioner's trial and went uncorrected resulting in the Petitioner's conviction when there is no physical evidence or

eyewitness testimony to link the Petitioner to the Case as a participant, the State's Case was weak without Lawson's false testimony. Lawson Should have been Impeached to change the outcome of the Proceeding with a Strong Reasonable Probability.

To end his argument for a rehearing, the Petitioner elaborates to this Court that for this Court not to fairly resolve his claim and grant certiorari, that this Court will not only be in conflict with its own prior decisions conveyed within other cases, but would also look bias to the system because the Petitioner is representing himself pro se. The Court's rejection of this claim and denial of appealability would be stating that it's O.K. for Circuit Courts to side step the COA process, that it is O.K. for the state to use false theories at a defendant's trial to secure a conviction, and that it is O.K. for false testimony to go uncorrected at a defendant's trial when the State Prosecutor and the Counsel are aware that it is taken place. The Public's trust is at stake with this Court allowing the Petitioner's claims to not get a full review by the proper process of the system when there's evidence that the Petitioner has been deprived of a fair trial by both the State Prosecutor and his own Counsel.

CONCLUSION

For the reasons Set forth in this Petition, the Petitioner, Lyndon Davis respectfully requests this Honorable Court to grant rehearing and his Petition for a Writ of Certiorari.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is Presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2

Respectfully Submitted

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