No. 20-7782

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD W. GREER,

Petitioner,

vs.

SHERIE KORNEMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald W. Greer #165571

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Western Missouri Correctional Center

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QUESTIONS PRESENTED

I. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT AFFORDS DEFERENCE TO THE DETERMINATIONS OF THE STATE COURT, YET THE STATE COURT RELIED ON THE OUTCOME DETERMINATIVE TEST TO FIND THAT THE ADMISSION OF STATEMENTS OBTAINED BY THE DEFENDANT IN VIOLATION OF MIRANDA V. ARIZONA WAS ERROR, BUT THEN APPLIED THE HARMLESS ERROR STANDARD TO FIND NO PREJUDICE BASED ON MERELY SUBSTANTIAL EVIDENCE OF THE DEFENDANT GUILT?

II. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT AFFORDS DEFERENCE TO THE DETERMINATIONS OF THE STATE COURT WHICH FOUND NO PREJUDICE BY THE IMPROPER ADMISSION OF THE DEFENDANT'S INVOCATION OF SILENCE IN VIOLATION OF DOYLE V. OHIO, BUT DID NOT CONSIDER THAT THERE WERE NUMEROUS DOYLE VIOLATIONS WHICH OCCURRED WITHOUT A CURATIVE INSTRUCTION BEING GIVEN?

II. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT DOES NOT APPOINT COUNSEL OR HOLD AN EVIDENTIARY HEARING ON A PETITIONER'S CLAIM BASED ON NEWLY DISCOVERED EVIDENCE SHOWING PRIMA FACIE THAT COUNSEL APPOINTED TO REPRESENT HIM AT ALL CRITICAL STAGES OF STATE COURT PROCEEDINGS SUFFERED FROM A CONCURRENT CONFLICT OF INTEREST FALLING WITHIN CUYLER V. SULLIVAN BY ASSIGNMENT OF TOO MANY CASES, WHICH THE STATE SUPREME COURT HAS HELD INEVITABLY CREATES THE VERY CONFLICT OF INTEREST UNDER WHICH COUNSEL LABORED?

LIST OF PARTIES

All parties appear in the caption of the case on the cover.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES AND RULES

PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES SUPREME COURT

Petitioner, Ronald W. Greer, respectfully prays that a Writ of Certiorari issue to review the judgment of the Eighth Circuit for the United States Court of Appeals which issued on October 20, 2020 in no. 20-1557 and denied reconsideration of its judgment denying him a Certificate of Appealability on September 1, 2020 from the judgment of the U.S. District Court, Western District of Missouri in case no. 19-00675-CV-W-NKL-P, which issued on February 18, 2020 denying Ronald's petition for habeas relief (28 U.S.C. § 2254) and a Certificate of Appealability ("COA").

OPINION BELOW

The U.S. District Court denied Ronald's petition for habeas relief (28 U.S.C. § 2254) and a COA, thereby affirming the judgments and sentences affirmed in the Western District, Missouri Court of Appeals, in case no.'s WD76945 and WD80462. The Opinion appears at Appendix A hereto. On September 1, 2020, the Eighth Circuit, Court of Appeals denied Ronald's application for COA in case no. 20-1557, which appears at Appendix B hereto, and on October 20, 2020, denied his petition for reconsideration shown at Appendix C hereto. Because institutional posture and COVID-19 protocols prevented Ronald from filing this petition by the December 20, 2020 deadline, he filed a motion for an additional 30 days, or until January 20, 2021, to file this petition.

JURISDICTION

Assuming the Court grants Ronald until January 20, 2021 to file this petition, the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case.

U.S. CONST., AMEND. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy or life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST., AMEND. 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 sitrict 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 defense.

U.S. CONST., AMEND. 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 its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Ronald Greer was charged with the forcible rape and forcible sodomy of JW, two counts of armed criminal action, and resisting arrest in Pettis County, Missouri case no. 12PT-CR00583-01. According to the trial testimony of JW, the State's only eyewitness, she was jogging on a trail when Ronald, who she had encountered a few days before, approached her, held a pocketknife handle against her throat, and forced her through nearby woods and into a clearing where he pulled down JW's shorts and underwear, repeatedly put his finger in her vagina, and fondled her breasts before he put his penis in her vagina. JW also testified that Ronald put his penis in her mouth, ejaculated and forced her swallow. JW said Ronald then got up and ran towards the trail after he warned her not to tell anyone what had happened or he would harm her children. When JW was examined at a hospital later that day, the examining nurse found nothing inconsistent with consensual sexual interaction. Tests of JW's underwear also indicated the presence of DNA consistent with Ronald's profile.

Ronald was arrested at a nearby park on the evening of the incident. A folding pocketknife was recovered from his pocket during a search incident to arrest. At the police station, where Ronald was handcuffed to a bench in the booking room, security video recorded him saying that he needed to be caught. Ronald also told a detective that he was not upset with police for his arrest because he deserved it. Ronald's statements were presented to the jury.

Jurors were also shown a video and were allowed to refer to a transcript of a brief interview between Ronald and the detective, who had Mirandized him before asking questions. This interview, which occurred in a different room than the booking area, lasted approximately five minutes.

When the detective confronted Ronald with information that a woman had accused him of raping her, he immediately ended the interview and told the detective that there was no sense in continuing because, regardless what the alleged victim had claimed, she was not going to get anything more out of him.

A video of Ronald's interview was played for the jury, and jurors were provided with a transcript of that video to refer to during deliberations. Defense counsel did not object to admission of the video or the transcript which allowed the jury to view and read about his invocation of silence

Ronald was then transported to a hospital for a post-rape exam where he again refused to talk with officers about the case. Four days later, Ronald was questioned about the rape allegations by his parole officer, who did not Mirandize him before questioning him. Trial counsel moved to suppress Ronald's statements to his parole officer on the bases that he was in custody, he had not been Mirandized, and he had already invoked his right to silence, which the trial court overruled ostensibly because Greer had not previously invoked his right to silence before speaking with the parole officer. According to the testimony of the parole officer, while Ronald did not make an outright admission that he had raped anyone, he did ask for her help so that he could be placed in the Sexually Violent Pradator Unit.

During closing argument the prosecutor reminded the jury of Ronald's reaction when confronted with a direct accusation of guilt: "When Detective Green said, 'Well, I'll be super honest with you, we've got a girl that says you raped her tonight.' Picture what an innocent person would do. Picture the reaction of an innocent man and then remember the defendant's reaction as he calmly sat there and simply said, 'Tonight?'"

Similarly, the prosecutor told jurors that when Ronald's parole officer spoke with him in jail, "he brought up the topic of getting into the Sexually Violent Predator Unit. He knew that he needed that kind of help. He knew that he was guilty of these offenses." Defense counsel made no objection to these arguments, and Ronald was subsequently convicted as charged.

For his convictions Ronald was sentenced as a persistent sexual offender to life without the possibility of parole plus two (2) additional life sentences plus a seven year sentence, with all sentences to be served consecutively. Further facts necessary for this petition will be set out in the grounds asserted below.

REASONS FOR GRANTING THE PETITION

I. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT AFFORDS DEFERENCE TO THE DETERMINATIONS OF THE STATE COURT, YET THE STATE COURT RELIED ON THE OUTCOME DETERMINATIVE TEST TO FIND THAT THE ADMISSION OF STATEMENTS OBTAINED BY THE DEFENDANT IN VIOLATION OF MIRANDA V. ARIZONA WAS ERROR, BUT THEN APPLIED THE HARMLESS ERROR STANDARD TO FIND NO PREJUDICE BASED ON MERELY SUBSTANTIAL EVIDENCE OF THE DEFENDANT'S GUILT?

The Missouri Court of Appeals found that the trial court erred by allowing admission of Ronald's alleged statements to his parole officer asking for her help in sending him to the Sexually Violent Predator Unit because Ronald had previously invoked his right to silence pursuant to Miranda v. Arizona, 384 U.S. 486 (1966) and his Fifth Amendment rights. Despite finding error, however, the court concluded that Ronald suffered no prejudice because there was no reasonable probability that the jury would have reached a different conclusion had the evidence not been admitted. In reaching this conclusion, the state appellate court reiterated that it was applying the "reasonable probability" standard, also known as the outcome determinative test. But Miranda violations require a more nuanced review for prejudice. See, Chapman v. California, 386 U.S. 18 (1967).

Here the state appellate court appeared to apply the harmless error standard, but then couched its conclusion in the context of the outcome determinative test when it opined there was no likelihood of a different outcome because of the other properly admitted statements Ronald made to police; however, as is more fully discussed in Question II below, the "other" statements to which the court referred were largely admitted in violation of Doyle v. Ohio, 426 U.S. 610 (1976) and Ronald's rights under the Fifth Amendment. Finally, the "decisive effect" standard upon which the state appellate court relied is actually a component of Missouri plain error jurisprudence, see, e.g. State v. Dexter, 954 S.W.2d 332 (1997), not where, as here, the error was preserved by objection and in a motion for new trial.

The improper admission of Ronald's purported statements was prejudicial because evidence that he allegedly wanted help with placement in a sexual predator unit was tantamount to a confession and "probably the most probative and damaging evidence" against him. See, Arizona v. Fulminante, 499 U.S. 279, 296 (1991). Had the state appellate court properly applied the harmless error standard when determining prejudice, there is a reasonable probability that the outcome of Ronald's appeal would have been different.

The district court below rejected this claim after it concluded that the state court did not misapply federal law when determining prejudice from the Miranda violation outlined above. But in reaching its conclusion, the district court deferred to the state court's determinations, despite the fact that the state court had conflated application of the outcome determinative test to a Miranda violation. Under the facts here, Ronald made the requisite showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2) and deserving of "encouragement to proceed further" in the Court of Appeals. Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoted case omitted).

II. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT AFFORDS DEFERENCE TO THE DETERMINATIONS OF THE STATE COURT WHICH FOUND NO PREJUDICE BY THE IMPROPER ADMISSION OF THE DEFENDANT'S INVOCATION OF SILENCE IN VIOLATION OF DOYLE V. OHIO, BUT DID NOT CONSIDER THAT THERE WERE NUMEROUS DOYLE VIOLATIONS WHICH OCCURRED WITHOUT A CURATIVE INSTRUCTION BEING GIVEN?

For his appeal, Ronald asserted a claim that the trial court plainly erred and abused its discretion by allowing admission of a video depicting his invocation of his right to silence when confronted with allegations of sexual misconduct. During closing argument, the prosecutor also reminded jurors of Ronald's invocation of his right to silence and offered the following commentary: "Picture what an innocent person would do. Picture the reaction of an innocent man and then remember the defendant's reaction as he sat there and simply said, 'Tonight?'"

The state appellate court found this was plainly erroneous and a violation of Ronald's rights under the Fifth Amendment and contrary to Doyle v. Ohio, 426 U.S. 610, 617-619 (1976). Despite finding plain error, however, the state court found that Ronald was not prejudiced ostensibly because "there was only one Doyle violation", making it unlikely that the error had "a decisive effect on the jury" in light of the "considerable" evidence of Ronald's guilt.

Although Ronald finds no clear standard of this Court for determining the prejudicial effect of a Doyle violation, the Eighth Circuit has adopted the "harmless beyond a reasonable doubt" standard for Doyle violations. See, Bass v. Nix, 909 F.2d 297, 304-305 (8th Cir. 1990). Here, the state appellate court correctly noted that there are four key factors in Bass when assessing prejudice for a Doyle violation: (1) whether the government made repeated Doyle violations; (2) whether any curative affort was made by the trial court; (3) whether the defendant's exculpatory evidence was transparently frivolous; and (4) whether the other evidence of the defendant's guilt was overwhelming. Id. (citations omitted).

Contrary to the conclusion reached by the state appellate court, a competent review of the record reveals that there were multiple Doyle violations in this case. See, Doyle, 426 U.S. at 619 (A defendant can establish a violation by identifying thse instances where the prosecution brought attention to his invocation of silence). As already discussed, jurors were subjected to atleast two instances whereby the state prosecutor referred to Ronald's silence: (i) by virtue of the video depicting his invocation of silence; and (ii) by the prosecutor's closing argument regarding Ronald's reaction when confronted with the sexual misconduct allegations. But there were arguably other Doyle violations as well, including a video -- admitted over objection by counsel -- depcting Ronald stating to detectives "I ain't got nothin' to say to them" and a transcript of that video, both admitted as Exhibits 23 and 23T respectively, which the jury was allowed to review during deliberations.

Not only do the above references to Ronald's silence account for at least four violations under Doyle, but without a limiting instruction by the court there was nothing to prevent the jury from repeatedly referring to the transcript and videos of Ronald's statements. Thus, not only were there multiple Doyle violations in this case, but no curative effort was made by the court in order to mitigate the prejudicial effect of those violations. See, Bass, supra, 909 F.2d at 305.

Having met the first two factors set out in Bass (whether there were repeated Doyle violations and whether any curative instruction was given), Ronald's Doyle claim next hinged on whether the evidence against him was "overwhelming." Id. Here, the state appellate court rejected whether Ronald suffered any prejudice because the evidence against him was "significant." In reaching this conclusion, the state appellate court correctly noted that Ronald had asserted a defense that his encounter with the complaining witness, JW, was consensual; that there were no eyewitnesses; that there was no evidence of forcible sexual conduct; and, that Ronald made no admissions that he had raped and sodomized JW.

Based on the foregoing facts and circumstances, all four factors identified in Bass were met in this case; to wit: there were more than one Doyle violation; there was no curative instruction given by the court; Ronald's consent defense was not frivolous; and, the evidence against him was not overwhelming but, as conceded by the opinion of the state appellate court, "significant."

Rather than consider the number of Doyle violations Ronald suffered, the state appellate court affirmed the judgment of the post-conviction motion court which inexplicably held that any objection by trial counsel on the basis of a Doyle violation would have been "nonmeritorious"; however, as already discussed, the first direct review court actually held that the trial court plainly erred by allowing admission of Ronald's statements invoking his right to silence.

Ronald was also prejudiced because, given the number of times that the prosecution repeatedly referred to his invocation of silence, it is highly likely if not certain that jurors implicitly equated Ronald's Fifth Amendment plea with guilt which, "in light of contemporary history, [is] far from negligible." Gruenewald v. United States, 353 U.S. 391, 424 (1957).

In denying relief and a COA for the Doyle violations Ronald suffered, the district court below adopted the reasoning advanced by repondent that claims for habeas relief which are predicated on plain error are procedurally defaulted, see Clark v. Bertsch, 780 F.3d 873 (8th Cir. 2015), and in any case constituted "harmless error" in light of "the overwhelming evidence of his guilt." Contrary to the district court's conclusion, however, Ronald exhausted his Doyle claim by asserting it on direct appeal, in a post-conviction proceeding, and in Ground Four of his petition by alleging the state court misapplied federal law when it found that any objection on the basis of Doyle would have been nonmeritorious; therefore, trial counsel was not ineffective for failing to object.

A certificate of appealability may issue only if the appellant has made "a substantial showing" of the denial of a constitutional right. Cox v. Norris, 133 F.3d 565, 569 (1997). This means the appellant must show how the issue was resolved could be be debated among reasonable jurists. See, Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoted case omitted). Ronald has shown that his Doyle claims should proceed because jurists could debate how the issue was resolved, particularly because the state appellate court never considered the number of Doyle violations and inexplicably contradicted itself by concluding that any objection on the basis of Doyle would have been meritless.

For the reasons stated above, Ronald prays the Court grant his petition on the basis that he has made a substantial showing that he was denied his Constitutional rights under the Fifth and Fourteenth Amendments as to warrant issuance of a Certificate of Appealability and appellate review which considers the number of Doyle violations as part of its prejudice analysis.

III. HAS A PETITIONER SUBSTANTIALLY SHOWN THE DENIAL OF A CONSTITUTIONAL RIGHT WARRANTING ISSUANCE OF A COA WHEN THE DISTRICT COURT DOES NOT APPOINT COUNSEL OR HOLD AN EVIDENTIARY HEARING ON A PETITIONER'S CLAIM BASED ON NEWLY DISCOVERED EVIDENCE SHOWING PRIMA FACIE THAT COUNSEL APPOINTED TO REPRESENT HIM AT ALL CRITICAL STAGES OF STATE COURT PROCEEDINGS SUFFERED FROM A CONCURRENT CONFLICT OF INTEREST FALLING WITHIN CUYLER V. SULLIVAN BY ASSIGNMENT OF TOO MANY CASES, WHICH THE STATE SUPREME COURT HAS HELD INEVITABLY CREATES THE VERY CONFLICT OF INTEREST UNDER WHICH COUNSEL LABORED?

Ronald was represented at trial, on appeal and for his post-conviction proceedings in the underlying state criminal matter by counsel appointed by the Office of the Missouri Public Defender ("MSPD"). After the conclusion of all state court proceedings, Ronald delivered a letter to MSPD complaining about the performance of his appointed counsel. On March 31, 2017, MSPD Deputy Director J. Gregory Mermelstein sent Ronald a reply.

In response to Ronald's complaints, inter alia, about the numerous Doyle violations his trial and appellate attorneys overlooked, Mr. Mermelstein conceded that, although MSPD "attorneys try to do a good job for [their] clients", they only succeed "sometimes" because "all [MSPD] attorneys have too many cases." (See Appendix D).

It is not only a violation of the Missouri Supreme Court's Rules of Professional Conduct for an attorney to represent an excessive number of clients, but the Missouri Supreme Court has held that a disqualifying conflict of interest "is inevitably created" when a public defender is compelled by an excessive caseload to choose between the rights of the various indigent defendants he or she is representing. See, State ex rel. Mo. Pub. Defender Comm'n v. Waters, 370 S.W.3d 592, 608 (Mo. 2012) (quoted case omitted).

Crucially, a "conflict of interest" that affects the adequacy of the legal representation an indigent defendant receives is not merely a state law issue; rather, it necessarily implicates an overarching federal interest in a defendant's right to the effective assistance of conflict-free counsel. See, Cuyler v. Sullivan, 466 U.S. 335, 355 (1980); U.S. Const., IV Amend.

Underscoring Ronald's assertion that the MSPD and its arrotneys must labor under the crushing weight of too many cases and not enough resources, not even the MSPD is able to articulate how many cases were assigned to his counsel, leaving the MSPD with "no way to give [him] the number" of cases he seeks to emphasize here. (See Appendix E). To Ronald's benefit, however, absent the actual number of cases that each counsel had been assigned during all critical stages of his state court proceedings, it is impossible to qualify any assertions that the public defenders who were appointed to represent him were not working under an excessive number of cases which affected the quality of the representation he received and deprived him of the assistance of effective counsel. Cf. Strickland v. Washington, 466 U.S. 688, 687-688 (1984).

Compounding the dire circumstances indigent Missouri defendants, like Ronald, must navigate toward their ultimate conviction, Missouri has consistently "ducked its constitutional and moral responsibility to provide poor defendants with adequate legal counsel" even to this day, thereby continuing the legacy of conflicted attorneys having to choose one defendant over another with respect to the quality of the representation they will receive. (See Appendix F).

Instead of appointing conflict-free counsel to represent Ronald and thereafter hold an evidentiary hearing on his conflict of interest claim, see, Wood v. Georgia, 450 U.S. 261 (1981) (Mere "possibility of a constitutional violation" arising from a potential conflict of interest requires reversal if a court fails to undertake an inquiry) Id. at 272 & n. 18, the district court below denied this claim on the bases that it was procedurally barred because it was not raised in state court, and because Ronald could not demonstrate prejudice for his claim that counsel were "ineffective."

Foremost, where, as here, information regarding counsel's conflict of interest does not come to light until after all state court proceedings, "cause" is established to overcome any procedural default for that claim. See, Murray v. Carrier, 477 U.S. 478, 488 (1986) (A petitioner can demonstrate cause to overcome a procedural default if the factual basis for the claim asserted was not reasonably available during state court proceedings).

Further, to the extent that the district court found that Ronald had failed to demonstrate prejudice only serves to underscore why a petitioner asserting a conflict of interest claim should be entitled to appointment of conflict-free counsel and an evidentiary hearing if the petitioner has made a colorable claim or prima facie showing of counsel's conflicts of interest.

If the reasoning of the district court was applied in wholesale fashion to all claims asserting a conflict of interest, it would require indigent defendants like Ronald to: (a) rely on the very same appointed counsel who labors under a conflict of interest to identify their own conflict and articulate how their objectively deficient performance affected the adequacy of the representation the defendant received; or (b) assume the role of counsel in order to identify, as a lay person from a cold record, the errors and omissions constituting the deficient performance of their conflicted public defender.

Under the facts in this case, Ronald has asserted a colorable claim and made a prima facie showing that his appointed trial, appellate and post-conviction counsel all labored under a concurrent conflict of interest by assignment of too many cases, thereby affecting the quality of the representation he received in the underlying state criminal matter, and depriving him of his rights to the effective assistance of counsel, a fair trial and due process of law as guaranteed by the Sixth and Fourteenth Amendments.

The Eighth Circuit Court of Appeals denied Ronald's petition for COA to review the district court's decision denying this claim. Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue only if the appellant has made "a substantial showing" of the denial of a constitutional right. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). This is a "modest standard." Randolph v. Kemna, 276 F.3d 401, 403, n. 1 (8th Cir. 2002). As this Court explained in Slack v. McDaniel, in determining what constitutes the requisite showing for obtaining leave to appeal a district court's decision denying habeas relief, an appellant must "show that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 & n. 4 (1983)).

When a district court rejects a constitutional claim on the merits or on procedural grounds, to obtain a COA an appellant must demonstrate both that: (a) the dispositive ruling is debatable; and (b) the claim of the denial of a constitutional right is debatable as well. Slack, 529 U.S. at 484-485. In Barefoot this Court elaborated on the standard for issuance of a COA as follows:

> In requiring a question of some substance, or a substantial showing of the denial of a federal right, obviously the appellant need not show he should prevail on the merits. He has already failed in that endeavor. Rather he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.

Barefoot, supra, 463 U.S. at 893 & n. 4 (quotations removed; citation omitted).

Based on the foregoing, Ronald prays the Court find he has made a substantial showing of the denail of his constitutional rights under the Sixth and Fourteenth AMendments to the effective assistance of counsel and due process of law such that issuance of the COA is appropriate so that the Court of Appeals may appoint conflict-free counsel and convene an evidantiary hearing on Ronald's conflict of interest claim.

IMPORTANCE OF THE QUESTIONS PRESENTED

This case presents fundamental questions regarding the application of this Court's decisions in Brecht v. Abrahamson, 507 U.S. 619 (1993), Doyle v. Ohio, 426 U.S. 610 (1976), Strickland v. Washington, 466 U.S. 668 (1984), and Slack v. McDaniel, 529 U.S. 473 (2000) and their progeny with respect to the standard by which prejudice will be assessed, the adverse effect of represted references to a defendant's invocation of silence, and whether the negative impact on the adequacy of the representation an indigent defendant receives from conflicted appointed counsel requires appointment of conflict-free counsel and an evidentiary hearing on a petitioner's conflict of interest claim.

CONCLUSION

For the questions presented and for the reasons stated, Ronald prays this Court grant a Writ of Certiorari in this matter. Ronald further prays for any other and further relief the Court may deem appropriate under the circumstances.

Respectfully submitted,

1-19-2021

Ron Greer

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