No. 20-8080

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jason C. Johnson — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason C. Johnson
(Your Name)
P.O. Box 99
(Address)
Pontiac, IL 61764
(City, State, Zip Code)
N/A
(Phone Number)

QUESTION(S) PRESENTED

① Should Jason C. Johnson be held as being culpably negligent in the untimely filing of his Petition For Leave to Appeal in the Illinois Supreme Court, his Writ of Certiorari in the United States Supreme Court, and his Post Conviction, when the Fact is he was being represented by Johnson Law office?

② Shouldn't Johnson Law office be held to answer to the Court, as to why they chose not to file Jason C. Johnson's P.L.A. in the Illinois Supreme Court, his Writ of Certiorari both from his direct appeal, then after reassuring him they would file a Post Conviction in its place, stated they Could not help him?

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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:

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 _____ 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[X] reported at May, 20, 2014; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ 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 _____.

[ ] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was 11-18-2020. A copy of that decision appears at Appendix _____.

[X] A timely petition for rehearing was thereafter denied on the following date: 8-13-2020, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ineffective assistance of Appellate Counsel and Post Conviction Counsel meets both Standards of the Strickland test 1) Counsels performance fell below an objective standard of reasonableness, and 2) Counsels deficient performance prejudiced the defendant resulting in an

STATEMENT OF THE CASE

In attached Statement of Facts.

REASONS FOR GRANTING THE PETITION

See attached motions

STATEMENT OF FACTS

On December 11, 2013, the Defendant was charged by way of Information with two counts of Predatory Criminal Sexual Assault, in violation of 720 ILCS 5/11-1.40(a)(1), both Class X felonies punishable by up to sixty years in the Illinois Department of Corrections. (R. Vol. I, C. 9-10) The Information was superseded prior to preliminary hearing by the filing of a True Bill of Indictment, filed January 9, 2014, containing two counts, each subject to the same penalty discussed above. (R. Vol. I, C. 17-18) The first count of the Indictment alleged penile penetration of M.B., a minor person, who was then under the age of thirteen, by the Defendant (R. Vol. I, C. 17), and the second count alleged digital penetration of the same individual (R. Vol. I, C. 18)

On February 5, 2014, the People filed a Motion to Allow Hearsay Statements of M.B., pursuant to 725 ILCS 115-10(a)(2), alleging that certain statements were made by M.B. on December 3, 2013, to Tara Crady at the Tazewell County Children's Advocacy Center (heretofore CAC). (R. Vol. I, C. 26) Also on February 5, 2014, the People filed a "2nd Motion to Allow Hearsay Statements of M.B." [sic.], pursuant to 725 ILCS 115-10(a)(1) and (2), and alleged that certain statements were made by M.B. on November 25, 2013, to Shelly Barker, mother of M.B. (R. Vol. I, C. 27) Although it is not reflected in the docket, the motions were joined for purposes of hearing, which was held on February 26, 2014, before the Honorable Judge Huschen. (R. Vol. I, C. 3-4)

At the hearing on the motions, Tara Crady with the CAC testified as to her training and experience in relation to interviewing children, which includes persons up to the age of majority, concerning allegations of sexual or physical abuse. (R. Vol. III, 3-7) On direct examination, Tara Crady testified that she interviewed M.B. on

December 3, 2014 (R. Vol. III, 9), explained what the CAC was, how the interview with M.B. was conducted as far as layout of the room and building (R. Vol. III, 7-9), and that the interview was recorded, later identifying People's Exhibit 1 as being an audio/video recording of the interview itself, answering affirmatively when asked that the exhibit fairly and accurately recorded the conversation and interview of M.B and acknowledging that she had reviewed that exhibit that same day prior to testifying (R. Vol. III,10-12). On cross examination, Tara Crady testified that M.B. told her the last incident involving the Defendant was the same date as of the interview at the CAC, something Tara Crady knew to be false, but something Ms. Crady failed to clarify with M.B. as being false. (R. Vol. III, 13-14) Furthermore, Tara Crady testified that M.B. gave inconsistent statements as to the names of family pets (R. Vol. III, 16) as well as to telling her ~~younger~~ OLDER brother, who Tara Crady also interviewed and who denied ever being told anything (R. Vol. III, 18). In addition, Tara Crady admitted that she did not identify or in any way delineate the frequency, number or when the alleged incidents occurred. (R. Vol. III, 16-17)

Also at the hearing on the motions, Shelly Barker, mother to M.B., testified that on November 25, 2013, while she and M.B. were riding in a vehicle just chitchatting, M.B. disclosed that the Defendant touched her special spot, in response to which Shelly Barker testified that she asked leading questions of M.B., including, but not limited to, the following:

> "I asked if he put his finger or if he put his hands inside of her underpants…";
> "I asked if he had her touch her private area…";
> "I asked if she was in pain…";
> (R. Vol. III, 28-29).

Shelly Barker explained that the conversation lasted about twenty minutes, and that she immediately drove M.B. to the hospital. (R. Vol. III, 30) On cross examination, Shelly Barker admitted to having recently moved a far distance away, making visitation with the Defendant costly and inconvenient. (R. Vol. III, 33-35). Shelly Barker, despite having already testified there were no other incidents of a sexual nature that involved M.B., then described one incident involving a solicitation made by M.B.'s cousin and a separate incident of genital exposure at M.B.'s school. (R. Vol. III, 35-36).

The Court later issued a written Order filed on March 4, 2014, stating as follows:

> "The Court having reviewed the video tape of the interview of the victim and considered the evidence produced at hearing, finds that both of court statements complain of a sexual act perpetrated upon a child and it describes an act which is an element of the offense of aggravated criminal sexual abuse.
> Further, based on the interviewing techniques used by CAC the time, content and circumstances of the statements made to Tara Crady provide sufficient safeguards of reliability.
> Further the time, content and circumstances of the statements made to Shelly Barker provide sufficient safeguards of reliability.
> State's motion to admit the out of court statement of the victim pursuant to 725 ILCS 5/115-10 is granted subject to the victim testifying at trial." [sic.] (A-15)

Some months later, on May 19, 2014, at the jury trial of this cause, the People called Shelly Barker to testify, during which her testimony as to the conversation with the minor was substantially different than that provided at the hearing held on February 26, 2014. Most notably, Shelly Barker testified at the February 26, 2014, hearing that she had only had a conversation with her daughter, immediately taking her to the hospital. However, at the trial of this cause, Shelly Barker added additional pertinent

information that had been excluded from her testimony at the hearing, including, but not limited to, the following:

> "Well, I immediately started crying. I called a good friend of mine, Andrea, whose husband is a police officer, and asked if I should take her to the hospital or the police station or if I should wait to call her pediatrician in the morning. And he had told her to tell me to take her to the ER."
> [sic.] (R. Vol. IV, 21)

Trail counsel for the Defendant did not object to the double hearsay nature of the testimony above. *Id.* On May 20, 2014, the People called Tara Crady, who provided testimony substantially similar as that provided at the hearing on the People's motions. During the testimony of Ms. Crady, the following exchange took place in relation to the foundation for the videotaped recording of the interview conducted at the CAC:

> "Q. Now, was this particular interview audio and video recorded?
> A. It was.
> Q. Have you had the opportunity to view the video recording of that interview that took place with [minor's name omitted] on December 3rd, 2013?
> A. Yes.
> Q. Going to show you what has been marked for identification purposes as People's Exhibit Number 1. Do you recognize what that is?
> A. I do.
> Q. What is that?
> A. This is a copy of the interview that I did with [minor's name omitted].
> Q. Is that a - - have you had an opportunity to review that video?
> A. I have.
> Q. And is that a true and accurate copy of the interview that took place on December 3rd, 2013?
> A. It is.
> Q. Does that video fairly and accurately record the conversation that took place during this interview that you had with [minor's name omitted] on December 3rd, 2013?
> A. It does.
> MR. MINGER: Your honor, I would ask that People's Exhibit Number 1 be admitted.

even after their breakup, she frequently still spent weekends with M.B. and the Defendant, especially due to her having to continue to pick M.B. up due to the Defendant's work schedule. (R. Vol. V, 46-47) She described the Defendant as a loving father, who it would seem engaged in routinely healthy parent-child interactions. (R. Vol. V, 47-48) ~~Ms~~ MRS. Eichelkraut reiterated her understanding of the incident with H.E. discussed above (R. Vol. V, 50-51), and, most importantly, also testified that pretty much all of the time that the Defendant had any time with M.B., she was always present, including the timeframe that fit with the original statement/complaint made by M.B (R. Vol. V, 58, 62-63, 65-66).

In addition, the Defendant was then called to testify in his own defense, and he testified as to his work schedule as well as that of his coinciding visitations, not to mention the fact that his ~~girlfriend, Ms.~~ WIFE MRS. Eichelkraut, frequently, if not entirely, effectively supervised those visitations with her presence. (R. Vol. V, 76-77) The Defendant also testified as to the tensions created with M.B.'s mother, Shelly Barker, following her plans and later actual move to Galesburg, Illinois. (R. Vol. V, 82-86) Finally, the Defendant denied ever engaging in any activity whatsoever that would have lead to the allegations in this cause. (R. Vol. V, 86-87)

Also on May 20, 2014, the jury returned verdicts of guilty against the Defendant of both counts with which he was charged. (R. Vol. I, C. 6) The Defendant then retained new counsel, who filed on June 16, 2014, his Entry of Appearance, a Substitution of Attorneys, as well as a Motion to Continue the sentencing hearing (R. Vol. I, C. 57-60), which was granted on June 20, 2014. (R. Vol. I, C. 6) Following court on June 20, 2014, counsel for the Defendant realized that no post-trial motions had

been filed, and subsequently filed a handwritten motion entitled "Motion for Judgment Nothwithstanding the Verdict, to Set Aside the Verdict, or, in the Alternative, to Grant a New Trial in this Cause." (R. Vol. I, C. 62) Subsequently, on August 14, 2014, counsel for the Defendant filed a Motion for Leave to Amend Defendant's Post-Trial Motion, or, in the Alternative, to File Amended Post-Trial Motion *Nunc Pro Tunc* in tandem with Defendant's Amended Motion for Judgment Notwithstanding the Verdict, and For a New Trial, alleging that the trial court erred in granting the People's motions, in failing to enter a sufficiently detailed order, in failing to raise the issue when new evidence not heard during the hearing on the People's motions was brought out at trial, and in improperly admitting a videotaped interview, as well as that the evidence was insufficient upon which to find the Defendant guilty and that trial counsel for the Defendant was ineffective. (R. Vol. I, C. 68-81)

Thereafter, on August 15, 2014, the trial court granted leave to amend the post-trial motion (Supp. R. Vol. VII, 20), but denied said motion. (Supp. R. Vol. VII, 15-20) Specifically, the court found that there was sufficient indicia of reliability in relation to the minor's statements when looking to the time, content, circumstances, and lack of agenda by either individual testifying in relation to the minor's statements. (Supp. R. Vol. VII, 16-17) The court further found that the order related to the People's motions was sufficient, because it contained factual findings, referring to the interview technique during the C.A.C. interview. (Supp. R. Vol. VII, 16) The court went on to explain that it did not believe that the admission of new evidence was improper, because that evidence was inconsequential. (Supp. R. Vol. VII, 20) In addition, the court found that no issue existed as to the admission of the video, because counsel for the Defendant did

not object, which the court attributed to trial strategy, there was no evidence tending to show any tampering with the video that was admitted as substantive evidence, and that, even had counsel objected, the People could have sought to lay further foundation. (Supp. R. Vol. VII, 17-18) In relation to the new evidence admitted at trial that had not been heard during the hearing on the People's motions, the judge ruled that the new evidence was inconsequential. (Supp. R. Vol. VII, 19) Furthermore, the court found that the evidence was sufficient upon which to find the Defendant guilty, because the minor testified that the Defendant licked his finger and touched her privates, which she described as the place from which she pees, and that she could feel it in her privates. (Supp. R. Vol. VII, 19) Finally, the court attributed the actions or inactions of counsel, alleged to have been ineffective assistance in the motion, to trial strategy. (Supp. R. Vol. VII, 19-20)

The case then proceeded to sentencing. The only evidence in aggravation was presented by stipulation that the People would call the victim's mother, Shelly Barker, who "... would testify that [M.B.] is continuing counseling, and there's no end in sight for counseling at this point." (Supp. R. Vol. VII, 21)

In mitigation, the court received several character reference letters and a letter from the Defendant in the form of a group exhibit. (Supp. R. Vol. VII, 22) The Defendant was then afforded an opportunity to make a statement in allocution, which expressed concern for his family, a desire they continue their counseling, and his intention of making his time in prison productive. (Supp. R. Vol. VII, 23-24) The People argued harm was caused to the alleged victim, that the alleged victim was put through a trial with her father, cited the Defendant's previous criminal history, which

included traffic offenses, among them four Class A misdemeanors, that the Defendant held a position of trust over the alleged victim, and that the court's sentence was necessary to deter others. (Supp. R. Vol. VII, 26-28) The People then recommended a sentence of twenty-five years in the Illinois Department of Corrections on count one with a consecutive sentence of fifteen years to the Illinois Department of Corrections on count two. (Supp. R. Vol. VII, 29-30) The Defense highlighted that the Defendant's previous criminal history as referenced by the People is significantly old, that the Defendant's own letter demonstrated his intention to rehabilitate himself while incarcerated, that the Defendant was a productive citizen, who was employed, spent time with his family, attended church, did not have any previous problems associated with anger, domestic violence, alcohol, or drug problems prior to being charged in this cause, that nothing required a sentence of more than the minimum, that the Defendant had never been sentenced to prison. (Supp. R. Vol. VII, 30-32) The Defendant then sought the minimum of six years incarceration on each count to be served consecutively. (Supp. R. Vol. VII, 33)

The court found as a factor in mitigation that the Defendant's conduct did not cause serious harm, and as factors in aggravation that the Defendant did cause psychological harm, did have a prior criminal history, that the sentence was necessary to deter others, and that the Defendant held a position of trust. (Supp. R. Vol. VII, 34) The court then sentenced the Defendant to twenty years in the Illinois Department on each count, consecutive to each other (A-16), and gave the Defendant his appellate admonishments pursuant to Supreme Court Rule. (Supp. R. Vol. VII, 36-37)

Defendant then caused to be filed a Motion to Reconsider on September 12, 2014, which was heard on November 26, 2014. (R. Vol. I, C. 120-123) At that hearing, the Defense argued that the sentence imposed was excessive, that it was not in keeping with the constitutional objective of restoring the offender to useful citizenship coupled with imposing punishment, which was argued was built into both the class of offense and enhanced punishment for it, that the sentence was not in keeping with the spirit and purpose of the law, and that recidivism, a concern with any sex offense, was both unlikely to occur and decreased by the requirement that the Defendant register for life as a sex offender upon his release from prison. (R. Vol. VI, 2-5) The defense also referenced that the Defendant was at the time of sentencing thirty-eight years-old, that prior to being charged with the offense, the Defendant was an otherwise contributing member of society with a job, who attended church and contributed to society, and that the Defendant's statement in allocution and personal letter was not filled with excuses for his conduct. *Id.* The People argued that the Defendant received a low to mid range sentence, that emotional harm to M.B. occurred, that the Defendant had prior criminal offenses, that the Defendant held a position of trust, and was necessary to protect society. (R. Vol. VI, 6-7) In ruling, the trial court found that the Defendant committed the offense against his own child, and was not, therefore, a useful citizen previously. (R. Vol. VI, 10) The court concluded by denying the motion, saying that the Defendant's conduct was "despicable." *Id.* Notice of Appeal was timely filed on December 26, 2014. (R. Vol. I, C. 127-128)

Reason For Granting The Petition

The only reason Jason C. Johnson did not File a Petition of Leave to Appeal in the Illinois Supreme Court From his direct appeal is because Johnson Law OFFice (who represented Mr. Johnson at that time) told him he did not need to, and that their Post Conviction they were to File For him would be enough. which a Few month's Later Johnson's Law OFFice told Jason C. Johnson that there were no issues that they felt were on record that they could address in a Post Conviction which in turn ruined all his guidlines he needed to meet in Court.

Mr. Johnson knew nothing of the Law which is why him and his Family hired Johnson Law OFFice and they led him astray and gave him No hope or guidance. With their Law OFFice giving bad legal advice stating Not to File his P.L.A. or Writ of Certiorari on his direct appeal directly effected Mr. Johnson's Post Conviction Petition being denied due to beina untimely filed. If Johnson's Law office would have stated the adverse effects of not filina said Petitions Mr. Johnson would have put forth retaining new counsel sooner makina up for lost time.

These issues cannot be catagorized as strategy or harmless err because it denied Mr. Johnson reasonable assistance of counsel. See Mickens v. Taylor 535 U.S. 162, 166 (2002) (Prejudice presumed when assistance of counsel" denied entirely or during a critical stage of the proceeding). These issues directly effected the decision of Mr. Johnson's Post Conviction and its timeliness. This should have allowed the Petitioner to go to an evidentiary hearing of his Post Conviction Petition, and allow Johnson Law office the chance to come in and be admonished as to why they saw fit to not file the necessary petitions on behalf of Jason C. Johnson.

Conclusion

In conclusion the Petitioner Jason C. Johnson Pro Se. prays the Honorable U.S. Supreme Court grants his Writ of Certiorari Petition and sends his Post Conviction Petition back for an evidentiary hearing.

Respectfully Submitted,

Sign X _____ Pro Se

Jason C. Johnson

P.O. Box 99

Pontiac, IL 61764

OFFICIAL SEAL
AMY B WYKES
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/18/23

Amy B. Wykes

3-15-21