

20-8248

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

MAY 20 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD W. WILLIAMS

— PETITIONER

(Your Name)

vs.

SHERIE KORNEMAN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

RICHARD W. WILLIAMS #307771

(Your Name)

Western Missouri Correctional Center

(Address)

609 E. Pence Road, Cameron, Missouri 64429

(City, State, Zip Code)

(816) 632-1390

(Phone Number)

QUESTION(S) PRESENTED

- 1) Does having biased jurors on a jury panel, one of which stated during voir dire questioning, "murder is murder. I don't believe there's a defense for murder," violate a defendant's Sixth and Fourteenth Amendment rights to due process and effective assistance, that would give cause for issuance of a Certificate of Appealability and encouragement for further proceedings?
- 2) Does being deprived of conflict-free and effective assistance at all critical stages, because counsel of the Missouri Public Defender's Office appointed to represent the defendant labored under the weight of too many cases, which the state supreme court concedes inevitably creates a conflict of interest, violate a defendant's Sixth and Fourteenth Amendment rights to due process and effective assistance, that would give cause for issuance of a Certificate of Appealability and encouragement for further proceedings?

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:

RELATED CASES

Williams v. Korneman, 2020 U.S. App. LEXIS 39981 (8th Cir. Mo. Dec. 21, 2020)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	14

INDEX TO APPENDICES

- APPENDIX A - Williams v. Korneman, U.S. Eighth Cir. no. 10-1741 (Dec. 21, 2020),
cited at 2020 U.S. App. LEXIS 39981, mandate Dec. 28, 2020
- APPENDIX B - Williams v. Korneman, U.S. Dist. no. 19-00724-CV-W-HFS-P (Apr. 3, 2020)
- APPENDIX C - Williams v. Korneman, U.S. Eighth Cir. no.
petition for rehearing
- APPENDIX D
- APPENDIX E
- APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Burton v. Johnson, 948 F.2d 1159 (1991)	9
Cuyler v. Sullivan, 446 U.S. 335 (1980)	11, 13
Davis v. Ayala, 576 U.S. 257 (2015)	9
Dyer v. Caldron, 151 F.3d 979 (9th Cir. 1988)	9
Glebe v. Frost, 574 U.S. 21 (2014)	9
Hughes, 258 F.3d 462	10
Johnson v. Armontrout, 961 F.2d 748 (1992)	10
Johnson v. Norris, 915 F.2d 372 (8th Cir. 1990)	11
Martinez v. Ryan, 132 S.Ct. 1309 (2012)	12
Stevenson v. Wallace, 2014 U.S. Dist. LEXIS 103033 (2014)	10
Strickland v. Washington, 466 U.S. 668 (1984)	9
U.S. v. Allsup, 566 F.2d 68 (9th Cir. 1977)	9
U.S. v. Gonzalez, 214 F.3d 1109 (9th Cir. 2000)	9
U.S. v. Martinez-Salazar, 528 U.S. 305 (2000)	9
Woods v. Bowersox, 2013 U.S. Dist. LEXIS 45387 (E.D. Mo. 2013)	12
Woods v. Georgia, 450 U.S. 261 (1981)	12

STATUTES AND RULES

28 U.S.C. § 2254	5
------------------	---

OTHER

U.S. Const., VI Amend.	9, 10, 11, 13
U.S. Const., XIV Amend.	10, 13
47 Am. Jur.2d Jury (1995)	9

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 2020 U.S. App. LEXIS 39981; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

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

☐ For cases from state courts:

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

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 21st, 2020.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, 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).

[] For cases from state courts:

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

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const., Amend. XIV: 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 any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On May 4th, 2010, Petitioner and decedent, John Joslin ("Joslin"), met through a mutual friend. After Petitioner and Joslin drank alcohol in Petitioner's hotel room, both men went to Joslin's house to look at a room Petitioner was going to rent. Joslin drank more alcohol and took crack, then became aggressive toward Petitioner. When Petitioner refused to buy Joslin more alcohol and drugs, Joslin choked Petitioner and bullied him. When Petitioner tried to leave, Joslin said, "you ain't going nowhere, you my nigger bitch now." After Joslin assaulted Petitioner again, Petitioner tried to escape out a back door but found it locked by a deadbolt. Panicked, Petitioner picked up two knives from the kitchen as he made his way toward the front room where Joslin was. As Petitioner approached Joslin, he could hear Joslin tell someone on the phone that they could come over to get some of Petitioner's "black ass."

When Petitioner encountered Joslin and confronted him about the phone call, Joslin said, "your ass is mine tonight." Joslin then slammed Petitioner onto the floor, choked him and threatened to kill him before going into his bedroom and returning naked. When Petitioner refused to go into Joslin's bedroom, Joslin punched and choked Petitioner before forcing Petitioner to perform oral sex. After Joslin was finished, Petitioner went into the front room where he broke down crying and in shock. Joslin then came into the front room and threatened that he would make Petitioner perform oral sex again in the morning. Joslin then returned to his bedroom, leaving Petitioner alone in the front room. Fearing he would be assaulted again, Petitioner retrieved a different knife from the kitchen and confronted Joslin, who was laying in bed. When Joslin saw Petitioner, he reached out to grab him as he had before, at which point Petitioner stabbed Joslin. Joslin expired from his wounds, and Petitioner was charged and convicted of first degree murder and armed criminal action. For his convictions, Petitioner received consecutive sentences of Life without parole for murder, and 30 years for armed criminal action.

STATEMENT OF THE CASE

Petitioner was denied relief on appeal. Petitioner then filed a timely motion for state post-conviction relief under Missouri Supreme Court Rule 29.15. After an amended motion was timely filed by appointed counsel, the post-conviction motion court overruled Petitioner's motion, which was affirmed on appeal.

Following state court proceedings, Petitioner filed a timely petition for habeas corpus relief under 28 U.S.C. § 2254 which asserted the claims underlying the questions presented herein. On October 6th, 2020, the District Court denied Petitioner's petition and denied his right to a Certificate of Appealability (COA). Petitioner timely appealed and sought a COA in the Eighth Circuit, which were denied on December 21st, 2020. This Court granted Petitioner additional time to file this petition.

REASONS FOR GRANTING THE PETITION

- 1) Does having biased jurors on a jury panel violate a defendant's Sixth and Fourteenth Amendment rights to due process, effective assistance, and a fair trial by an impartial jury?

The trial court permitted biased jurors to be empaneled. One juror knew the victim personally, and another jurors worked with a key witness for the state, Det. Frank Till, for over 20 years, and knew another witness, Det. Eric Powell, for over 20 years. Both investigated the case. Juror Marie Atha, during voir dire questioning, unequivocally stated: "Murder is murder. I don't think there's a defense for murder."

In his pro se post-conviction motion, Petitioner asserted that trial counsel, Theresa Lininger, provided ineffective assistance by her failure to object or move to strike potentially biased venirepersons who were seated on the defendant's jury panel. The courts denied this claim due to the sworn testimony of trial counsel, who stated during the defendant's evidentiary hearing, that: "Mr. Williams and I discussed that there were other jurors that he wanted off more strongly than the jurors who knew various people." (NOTE: The defendant's (5) motions to appear at his own evidentiary hearing were denied by the court). The court also denied this claim due to Respondent's assertion that there was no evidence of actual [juror] bias. (Doc #11 at 19).

The Petitioner has recently just received exculpatory evidence in the form of (2) letters, written by the Petitioner. See Exhibit A of this Petition. Based on the content of Petitioner's letters, at least two issues are irrefutable: (i) there was never a discussion between Petitioner and counsel about the jury; and (ii) Petitioner had no knowledge of juror bias until receiving his trial transcript. Petitioner's letters, which were in the files of counsel and available for use at Petitioner's post-conviction hearing, were not provided by the Missouri Public Defender until March 26, 2020.

There were other venirepersons who were selected for the Petitioner's jury panel despite compelling evidence of bias or favorable to finding the Petitioner guilty.

REASONS FOR GRANTING THE PETITION

Specifically, juror Jeremy Worth conceded that the victim's stepson, Jeremy Huffman, worked for Worth's grandfather and that Huffman and Worth were friends, making it far more likely that Worth and the victim met or socialized under any number of scenarios, and in some capacity, regardless as to what degree, developed a disqualifying relationship.

Another juror, Connie Phillips, admitted that she knew and had worked with Det. Till, a primary state witness, for (20) years, and has known Det. Eric Powell for (20) years. Both of these officers were the principal investigators of the case against Petitioner.

In State v. Butts, 159 S.W.2d 790, a Missouri reviewing court found error after the trial court allowed members of the same police department to serve as jurors and witnesses in the defendant's trial. See also, State v. Langley, 342 Mo. 447, 116 S.W.2d 38. In State v. Petty, 610 S.W.2d 126, two retired police officers with 30 years experience served on the jury and both knew a sergeant who was a state witness. Although both officers unequivocally stated they could be fair and impartial jurors and would judge a police officer's testimony like any other witness, the reviewing court concluded that it was incompatible with justice for the defendant to have been tried by a jury that included two retired officers. The reviewing court went on to stress that it would be the better practice to fill a jury with individuals who had not spent a lifetime as a police officer. (Crist, P.J., Reinhard and Snyder, J.J.). In all of these cases, which mirror the circumstances that underlie Petitioner's claims respecting Ms. Phillips' relationship with Det. Till and Det. Powell, the reviewing court found that the error required remand for a new trial.

Also, juror Marie Atha, when asked by trial counsel during voir dire questioning, is there anyone who believes that there is never a defense to the charge of murder? Ms. Atha answered adamantly, "I guess I don't. Now if it's self-defense that's different. But, murder is murder. I don't think there's a defense for murder."

REASONS FOR GRANTING THE PETITION

Keep in mind, that at the start of the proceedings the judge stated that the defendant had committed the offense of murder in the first degree, or, in the alternative murder in the second degree. Venireperson Stephens made similar comments and was dismissed based on the responses she gave during voir dire questioning.

In Hightower v. State, 1 S.W.3d 626 (Mo.App.), the Missouri court of appeals found that a juror's comments that murder is murder was indicative of an attitude that favored the prosecution. Because the juror's remarks during voir dire gave credence to the assertion that the juror was biased, the defendant was prejudiced and a new trial was required. Similarly, in State v. Grondman, 190 S.W.3d 497, a juror's statement that murder is murder was basis to strike that juror, and counsel's failure to do so would be objectively deficient and require a new trial. See also, State v. Clark-Ramsey, 88 S.W.3d 484 (same).

When Petitioner's counsel probed venire person Atha further during voir dire, she never swayed from her belief that "murder is murder and there's no defense for it," thereby eliminating any possibility that Ms. Atha had been rehabilitated. The judge and prosecutor in this case failed to further examine this juror to determine the extent of her bias. This juror should have never been allowed on the jury panel in any capacity. The Respondent may argue that Ms. Atha was only an "alternate juror" and thereby had no say in the final verdict of the case, but this does not remove the taint of her influence on other jurors.

Missouri Section 494.485 provides that alternate jurors shall be selected in the same manner, shall have the same qualifications, shall be subject to the same examinations and challenges, and shall take the same oath and shall have the same functions, powers, facilities and privileges as the principal jurors. Ms. Atha's interactions with other members of Petitioner's jury created a significant risk that the entire panel of fact finders was tainted, compounding the biases and prejudice to Petitioner posed by jurors Phillips and Worth, for which Petitioner need only show implied bias and not actual bias.

REASONS FOR GRANTING THE PETITION

To disqualify a juror for cause requires a showing of either actual or implied bias, that is ... bias in fact or bias conclusively presumed as a matter of law. U.S. v. Gonzalez, 214 F.3d 1109 (C.A. 9 2000); 47 Am. Jur. 2d Jury § 266 (1995). More frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence. *Id.* at 1112; U.S. v. Allsup, 566 F.2d 68, 71 (9th Cir. 1977).

In contrast, implied bias presents a mixed question of law and fact which is reviewable de novo. Dyer v. Caldron, 151 F.3d at 979. In Dyer, the court explained that, "even if the putative juror swears up and down that it will not affect his judgment, we presume conclusively that he will not leave [it] ... at the jury room door." Burton, 948 F.3d at 1159; Dyer, 151 F.3d at 982 (Reversed and remanded for new trial).

The Sixth Amendment guarantees criminal defendants a verdict by an impartial jury. As the court in Dyer recognized, the bias or prejudice of even a single juror is enough to violate that guarantee. *Id.* at 973. Accordingly, the presence of a biased juror cannot be harmless; rather, the error requires a new trial without requiring the defendant to show actual prejudice. *Id.* See also, U.S. v. Martinez-Salazar, 528 U.S. 305, 120 S.Ct. 774, 782 (2000). According to the Rules of Civil Procedure, the burden to show that an error was harmless beyond a reasonable doubt falls on the prosecution, not upon the defendant. See, Davis v. Ayala, 576 U.S. 257; Glebe v. Frost, 574 U.S. 21, 23.

In this case, the principal jurors in question had a close, long-term and pre-existing relationship with key people involved in the trial; to wit: the jurors either knew the prosecutor or the victim, or was a colleague of the detectives who investigated the case, or testified in the trial. Juror Phillips meets the requirements for showing implied bias. While juror Worth, and Marie Atha meet the requirements for being actually biased.

REASONS FOR GRANTING THE PETITION

Trial counsel rendered ineffective assistance during the jury selection phase of Petitioner's trial by failing to strike biased jurors who were seated on the jury panel. Had post-conviction counsel, Laura Martin, challenged trial counsel's testimony at the hearing on Petitioner's post-conviction motion by relying on the same evidence that Petitioner presented to the District Court below, post-conviction counsel would have demonstrated by a preponderance of the evidence that the testimony upon which the state post-conviction motion court relied on to deny relief was inconsistent with the facts of this case.

In Stevenson v. Wallace, 2014 U.S. Dist. LEXIS 103033 (2014), the U.S. District Court for the Eastern District of Missouri considered facts on point with the instant case. In this case, the court's consideration of whether post-conviction counsel's failure to raise that claim in state court was itself ineffective. Although counsel's failure to move to strike a biased juror was not intentional, the District Court found that such failure was unreasonable and constituted ineffective assistance requiring reversal because "a defendant whose attorney fails to attempt to remove biased persons from a jury panel is prejudiced." Johnson, 961 F.2d at 756 (Granting habeas relief because counsel's failure to seek to exclude an obviously biased juror "constituted ineffective assistance of counsel of a fundamental degree."). See also, Hughes, 258 F.3d at 462 (By empaneling biased juror, prejudice under Strickland, 466 U.S. at 687 is presumed and a new trial is required). Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

For all of the foregoing reasons, Petitioner prays the Court grant the Writ of Certiorari and find cause to issue a Certificate of Appealability and encouragement of further proceedings to Petitioner. In the alternative, Petitioner motions this Court to grant a hearing to Petitioner to determine the extent of juror bias in this case.

REASONS FOR GRANTING THE PETITION

- 2) Does appointment of a public defender who suffers from an undisclosed conflict of interest and who represents too many indigent clients concurrently violate a defendant's Sixth Amendment right to effective assistance and make a substantial showing of the denial of a defendant's constitutional right as to warrant a Certificate of Appealability?

Petitioner was represented by appointed counsel of the Missouri Public Defender at all critical stages of the proceedings, including pretrial, trial, sentencing, appeal and post-conviction proceedings under Missouri Rule 29.15. After Petitioner had exhausted all state court remedies, the Director of the Missouri Public Defender issued a letter which conceded for the first time in the public domain that "all" attorneys who work for the Missouri Public Defender must labor under the crushing load of too many cases. The context of the Director's letter included the same period when Petitioner's state court proceedings occurred.

In Missouri Public Defender Commission v. Waters, the Missouri Supreme Court analyzed whether a Sixth Amendment violation occurs when counsel appointed by the Public Defender are assigned too many cases. 370 S.W.3d 592 (Mo. 2012). In finding that a Sixth Amendment violation does, in fact, occur when appointed counsel must labor under the load of too many case, the state Supreme Court stressed that "a conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." Id. at 607-608 (quoting In re Edward S., 173 Cal.App.4th 397, 92 Cal.Rptr.3d 725, 746-47 (Cal.Ct.App. 2009)).

To the extent that counsel appointed to represent Petitioner labored under a conflict of interest, Petitioner need not demonstrate Strickland prejudice; rather, under the standard established by this Court in Cuyler v. Sullivan, 446 U.S. 335, 355 (1980), Petitioner need only demonstrate "that the conflict of interest actually affected the adequacy of the representation." Johnson v. Norris, 915 F.2d 372, 378 (8th Cir. 1990) (No conflict of interest because counsel's mental illness occurred after trial).

REASONS FOR GRANTING THE PETITION

The process for determining whether an attorney's conflict of interest had an adverse affect on the quality of the representation was established by this Court in Woods v. Georgia, which announced that a reviewing court's failure to inquire into the mere "possibility" of a Sixth Amendment violation arising from an attorney's conflict of interest is grounds for reversal, "regardless of the nature" of the conflict. 450 U.S. 261, 272 n. 18 (1981).

While the District Courts of Missouri appear to recognize this Court's directive in Woods, no judicial inquiry (i.e. hearing) is afforded to allow a defendant the opportunity to prove up the manner and the extent to which counsel's conflict of interest adversely affected the quality of the representation received. See, Woods v. Bowersox, 2013 U.S. Dist. LEXIS 45387 (E.D. Mo. 2013) at [*37-38] (Defendant required to prove that counsel's failure to pursue strategy was linked to conflict) (cited case omitted).

In this case, Petitioner has demonstrated a "possibility" if not a certainty that a Sixth Amendment violation arose by the conflicts under which his appointed public defenders labored, which affected the quality of the representation Petitioner received including, but not limited to, counsel's failure to object or otherwise move to strike venirepersons and jurors who expressed bias or were incapable of being impartial, inter alia, due to unduly familiar relationships with various law enforcement officials who had investigated the case against Petitioner and testified as a witness against him.

Petitioner was also denied a Certificate of Appealability after the District Court rejected this issue because Petitioner had purportedly failed to establish the prejudice necessary to overcome the procedural bar to equitable relief established by this Court in Martinez v. Ryan, 132 S.Ct. 1309 (2012). But by applying the Martinez prejudice standard to this claim, the reasoning of the District Court underscores why a Certificate of Appealability should be issued in this case.

REASONS FOR GRANTING THE PETITION

Specifically, by applying the standard for prejudice in Martinez to the question of counsel's conflict, the court below necessarily implicated the "but for" standard for prejudice in Strickland. But Petitioner did not merely argue that counsel were ineffective; rather, he also asserted a Sixth Amendment violation arose as a result of the conflicts of interest under which counsel labored. A conflict of interest claim, however, does not require a showing of Strickland prejudice, but only that the conflict affected the quality of the representation received. See, Cuyler, 446 U.S. at 348, 355.

To the extent that the courts below may have found the conflicts of interest under which counsel labored harmless, yet this Court has held that an inquiry should be held to determine the affect of counsel's conflict and whether it was harmless, certiorari should be granted because reasonable jurists disagree as to how this issue should be resolved, which is the threshold for issuance of a Certificate of Appealability.

Writ of Certiorari should also be granted because it was fundamentally unfair for the lower courts to deny Petitioner a judicial inquiry for his conflict claim. As a practical matter, if counsel labors under an actual conflict of interest by assignment of too many cases which prevents counsel from providing all clients with rigorous and competent representation, it is highly unlikely that a defendant who is deprived of an evidentiary hearing and conflict-free counsel will be able to identify the issues that conflicted counsel were unwilling or unable to assert against themselves and their fellow public defenders. See, e.g., Jackson v. State, 37 S.W.3d 595, 598 (Ark. banc 2001) (Conflict of interest for one public defender to assert claims against another public defender).

For all of the reasons above, Petitioner prays the Court grant the Writ of Certiorari to determine if an evidentiary hearing is warranted or whether a Certificate of Appealability should be issued and inquiry made on Petitioner's claim that his appointed counsel labored under a conflict of interest, in violation of Petitioner's rights to effective assistance and due process of law under the Sixth and Fourteenth Amendments.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard W. Williams

Date: May 21, 2021