No. 21-5533

IN THE

SUPREME COURT OF THE UNITED STATES

MARSHA A. SPRINGER — PETITIONER
(Your Name)

vs.

JEREMY HOWARD, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marsha A. Springer, #760966
(Your Name)
Huron Valley Complex-Women
3201 Bemis Rd.
(Address)

Ypsilanti, Michigan 48197
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

IS THE SIXTH CIRCUIT'S DENIAL OF CERTIFICATE OF APPEALABILITY CONTRARY TO THIS COURT'S PRECEDENT? WHERE ONE JUDGE OF THE MICHIGAN SUPREME COURT DISSENTED AND INDICATED HE WOULD HAVE GRANTED LEAVE TO APPEAL CONSTITUTIONAL CLAIM. THEREFORE, HAS PETITIONER DEMONSTRATED REASONABLE JURISTS COULD DEBATE THE ISSUES PRESENTED WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER?

LIST OF PARTIES

[x] 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:

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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

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

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

[X] reported at 2021 U.S. App. LEXIS 16798; 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[ ] is unpublished.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

[X] reported at 2020 U.S. Dist. LEXIS 235972; 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[ ] is unpublished.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 D to the petition and is

[X] reported at 2017 Mich. LEXIS 2109; 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[ ] is unpublished.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[ ] is unpublished.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 June 4, 2021.

[X] 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

Sixth Amendment of the Federal Constitution (Right to Effective Assistance of Counsel).

28 U.S.C. § 2253(c)(2) (Certificate of Appealability).

STATEMENT OF THE CASE

Petitioner motioned for a certificate of appealability (COA) pertaining to habeas issue #1) "She was denied effective assistance of trial counsel because counsel failed to investigate key witnesses before deciding against presenting an entrapment-by-estoppel defense." APPENDIX (A) Springer v. Howard, 2021 U.S. App. LEXIS 16798, at pg. *2 (Order Denying Certificate of Appealability). Justice CLAY of the Court of Appeals for the Sixth Circuit denied COA because, "the state court's standard for granting leave to appeal is different from the standard for granting a certificate of appealability...." (pg.*10). Previously, the District Court denied COA for habeas issue #1 for essentially the same reasons. "The Court respectfully finds Justice Bernstein's 2017 opinion to be of no consequence here. Springer is not entitled to a certificate of appealability, and this objection is overruled." APPENDIX (B) Springer v. Brewer, 2020 U.S. Dist. LEXIS 235972, at pg. *5 (Order Denying Writ of Habeas Corpus and COA). Also, for the same reasons U.S. Magistrate Ray Kent recommended denying COA. APPENDIX (C) Springer v. Brewer, 2020 U.S. Dist. LEXIS 236125)(Magistrate Judge's Report and Recommendation). See also, APPENDIX (D) People v. Springer, 2017 LEXIS 2109 (Michigan Supreme Court Justice BERNSTEIN dissenting indicating he would grant leave to appeal).

STATEMENT OF THE CASE
(continued)

Petitioner's habeas claim stems from an accidental house fire in which firefighters found juvenile decedent Calista Springer restrained to her bed with a homemade chain restraint. On February 23, 2010, following a nine-day jury trial and nine days of deliberation, Petitioner Marsha Springer and codefendant husband Anthony Springer were convicted of torture, and first-degree child abuse.

Calista suffered from pervasive developmental disorder (PDD) and had been diagnosed with several other disorders. APPENDIX (C) Springer v. Brewer, 2020 U.S. Dist. LEXIS 236125, at pg. *6 (Magistrate Judge's Report and Recommendation). Mental health Doctor Jeffrey A. Kaylor was concerned that Calista could kill herself from bad judgment. APPENDIX (E) (Sept. 7, 2000, Email from DR. JEFFREY A. KAYLOR -to- MARSHA SPRINGER).

On February 4, 2014, Petitioner filed in the trial Court a MCR 6.500 collateral pro se motion. Petitioner raised ineffective assistance of trial counsel for failing to investigate and pursue the pre-trial defense of entrapment by estoppel. Petitioner submitted evidence that prior to trial the Court wanted to hear arguments in terms of due process rights because, "the State's involvement condoning the use of the chain by not taking any action would raise argument for the defense...." but counsel failed to raise said arguments. APPENDIX (F) (August 31, 2009 MOTION TO QUASH and MOTION IN LIMINE).

Due to trial counsel's failure to investigate the government's involvement, he first learned at trial that the Springers had "permission" from Community Mental Health to restrain their daughter at night with homemade chain restraint to protect said daughter and family. APPENDIX (G) (Trial Testimony of PATRICIA SKELDING (DHS/CPS) agent; pgs. 997-1000). Ms. Skelding, an agent of Child Protective Service (DHS/CPS), spoke to the Springers at their home about using the chain restraint. She "didn't like it," but "believed it was necessary." (pg. 998 at 1, 3, 7). Her supervisor directed her to speak with her coworker that knew the situation and family. **"And that coworker told me Calista is being chained to her bed with permission from Community Mental Health."** (pg. 998 at 18). On cross-examination Petitioner's attorney Victor Bland specifically asked Ms. Skelding, "you believe that the restraint or chaining to the bed had been authorized; is that correct?" "I believe that, yes."..."According to what they told me and what I believed, yes--I believed it was necessary." (pg. 1000 at 13).

At trial DHS/CPS Cynthia Bare testified. APPENDIX (H) (Trial Testimony (DHS/CPS) supervisor CYNTHIA BARE; pgs. 1022-1028). Ms. Bare stated that she was "Pat Skeldings supervisor" (pg. 1023 at 24), the agency never authorized the Springers to restrain Calista to her bed with the homemade chain restraint. (pg. 1024 at 5). She admitted reviewing Ms. Skelding's report "that indicated Calista was being chained to the bed," and signing off

on said report. (pg. 1025 at 1). However, she explained that her signature approving Skelding's report did not tacitly condone the chain restraint because at the time of the report; "my son was injured in a wreck-and I didn't really have a clear recollection when it came back to me that I had" signed it. (pg. 1025 at 6).

On July 24, 2014 the trial Court denied Petitioner's MCR 6.500 motion. However, on September 30, 2015 the Michigan Supreme Court found the trial Court's reasons for denial inconsistent with the record facts and remanded for a hearing on the defendant's "ineffective assistance of counsel arguments pertaining to the issue of entrapment by estoppel." APPENDIX (I) People v. Springer, 498 Mich. 889 (2015).

Petitioner did not testify at trial. However, she did testify at the ineffective assistance of counsel hearing. APPENDIX (J) (May 12, 2016 Ineffective Assistance of Counsel Hearing). Petitioner stated that early on government officials told her "it was okay for us to restrain her." (pg. 146 at 18). Petitioner stated that DHS/CPS Ms. Skelding knew about the chain restraint. "She was offered to go upstairs and take a look at the improvised restraint." (pg. 147 at 13). However, Ms. Skelding declined because she was there to investigate the hair-pulling accusation. (pg. 147 at 17). When asked by the Prosecutor; (Q). "Were-Did they tell you to use a choker chain to restrain her."

Petitioner answered; (A). "If I remember right -" (Q). "It's yes or no." (A). "Then I'm going to say yes." (Q). "And, in 2004, when Pat Skelding came to your house, she was aware that you were using the choker chain?" (A). "I do believe at that time that the bed alarm had broken once before and we may have improvised a chain restraint at that time, if I remember correctly." (pg. 150 at 11).

Petitioner testified that DHS/CPS Sharon Gerger refused to help pay for the $1500 psychiatric hospital restraint. Ms. Gerger told Petitioner, "but keep on doing what you're doing." (pg. 155 at 25 - pg. 156). Petitioner confirmed that Calista would defeat or break the bed alarm, and then they would use the improvised chain restraint in-between the time it would take to buy a new bed alarm. Petitioner also verified that it's possible that in 2004 it was one of the times they used the improvised chain restraint. (pg. 157 at 14). Petitioner also confirmed that Calista describing to Ms. Skelding in 2004 the exact same chain restraint found on her four years later, was honest and correct. (pg. 158 at 5).

Petitioner's trial attorney Victor Bland admitted that he never interviewed DHS/CPS Patricia Skelding. "I don't believe I did, best-my recollection." (pg. 119 at 21). Also, he never interviewed DHS/CPS Cynthia Bare. "I don't recall trying to interview her." (pg. 120 at 11). Mr. Bland admitted that he became aware of DHS/CPS knowledge of the chain restraint at trial through Patricia Skelding's testimony. "I believe I was more aware of that at the trial than, maybe, at prelim; but, yes." (pg. 120 at 19).

Later, when the Prosecutor asked Mr. Bland if he followed up on finding someone that told the Springers to use the chain restraint, he admitted; "Right. I mean, actually, to some degree, what Pat Skelding said at trial was surprising to me." (pg. 128 at 16).

Lastly, Mr. Bland confirmed that Mrs. Springer told him that the idea of a restraint was condoned. (pg. 119 at 2). And he could have filed a pre-trial motion on that point. "I could have." (pg. 119 at 5). Mr. Bland stated; "Again, I wasn't convinced in my mind that there was prior authorization for what they did." (pg. 121 at 6).

This Court is very clear about counsel's Constitutional obligation to investigate the facts, before he can weigh the evidence and make a competent decision. Competent counsel can be expected to undertake a "thorough investigation of law and facts relevant to plausible options" for the defense. Strickland v. Washington, 466 U.S. 668, 690; 80 L.Ed.2d 674; 104 S.Ct. 2052 (1984); see also Wiggins v. Smith, 539 U.S. 522; 123 S.Ct. 2527, 2538; 156 L.Ed.2d 471 (2003). It does not invariably suffice that a lawyer make some efforts to investigate a case; the proper inquiry is "whether the known evidence would lead a reasonable attorney to investigate further."

REASONS FOR GRANTING THE PETITION

The fact that Michigan Supreme Court Justice BERNSTEIN dissented from the decision to deny leave to appeal and would have granted leave to appeal with regard to habeas issue #1 (APPENDIX (D) People v. Springer, 2017 LEXIS 2109); demonstrates that jurists of reason could decide this issue differently or that the issue deserves encouragement to proceed further. Respectfully, the lower Court's conclusion for denying COA; "the state court's standard for granting leave to appeal is different from the standard for granting a certificate of appealability...." (APPENDIX (A) Springer v. Howard, 2021 U.S. App. LEXIS 16798, at pg. *10), is immaterial of this Court's standard for issuing a COA.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To demonstrate this denial, the applicant is required to show that "reasonable jurists could debate whether, or agree that, the petitioner should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 483-84; 120 S.Ct. 1595; 146 L.Ed.2d 542 (2000); Miller-El v. Cockrell, 537 U.S. 322, 327; 123 S.Ct. 1029; 154 L.Ed.2d 931 (2003). A certificate of appealability analysis is not the same as "a merits analysis." Buck v. Davis, 137 S.Ct. 759, 773; 197 L.Ed.2d 1 (2017). Instead, the COA analysis is limited "to a threshold

inquiry into the underlying merit of [the] claims" and whether "the District Court's decision was debatable." Id. at 774 (quoting Miller-El, 537 U.S. at 327, 348).

Considering the dissenting opinion of Michigan Supreme Court Justice Bernstein's decision to grant leave to appeal on habeas issue, as evidence of a "reasonable jurist" that could debate whether "the issues presented were adequate to deserve encouragement to proceed further"; is not a novel conclusion. Please see APPENDIX (K) (Habeas Judges Finding that Michigan Supreme Court Justices that would have Granted Leave to Appeal Shows Jurists of Reason could decide the Issues Deserve Encouragement to Proceed Further; McGuire v. Ludwick, 2009 U.S. Dist. LEXIS 69983, at pg. *29-30; Farley v. Lafler, 2005 U.S. Dist. LEXIS 30266, at pg. *5; Jones v. Renico, 2004 U.S. Dist. LEXIS 33022, at pg. *48-49; Robinson v. Stegall, 2001 U.S. Dist. LEXIS 11655, at pg. *58).

> "The fact that two Michigan Supreme Court justices would have granted petitioner's application for leave to appeal following the affirmance of his conviction by the Michigan Court of Appeals shows that jurists of reason could decide the issues raised in this petition differently or that the issues deserve encouragement to proceed further." Id. Farley v. Lafler, 2005 U.S. Dist. LEXIS 30266, at pg. *5.

Not only, is the State Supreme Court's dissenting opinion evidence of reasonable jurists that could debate whether the issues presented deserve encouragement to proceed further; but the above habeas Judge's opinions are additional evidence of reasonable jurists that have made the same conclusions.

The question presented is not unique to Petitioner Springer. Certainly on the national level, there are other habeas petitioners who have been denied a certificate of appealability because of a determination that State Supreme Court Justice's dissenting opinion to grant leave to appeal, is not evidence of a reasonable jurists pursuant to federal law.

This Court stressed that the standard for certificate of appealability is much less stringent than the standard for success on the merits. Miller-El v. Cockrell, 537 U.S. 322 (2003). In Miller-El, this Court held that the Fifth Circuit had applied too stringent a standard in denying petitioner's COA on his claim that the prosecutor had committed a Batson violation during jury selection. This Court stressed that the petitioner need not show that he is likely to succeed on appeal or even that any reasonable judge would, after hearing the appeal, rule in his favor. Instead, this Court reiterated the standard from Slack v. McDaniel, that the petitioner need merely show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong [or] that the issues deserve encouragement to proceed further." Reaffirming that the

question is a "threshold inquiry."

Because the Sixth Circuit's inquiry of a certificate of appealability is in conflict with other federal Courts, respectfully, this Court should exercise it's discretionary jurisdiction and grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marcela Hernandez

Date: Aug. 10, 2021