No. 21-6325

IN THE
SUPREME COURT OF THE UNITED STATES

LESLIE REED

Petitioner

VERSUS

DARRYL VANNOY, WARDEN
LOUISIANA STATE PENITENTIARY

ORIGINAL

Respondent

On Petition For Writ Of Certiorari

To The

U.S. Court Of Appeals, Fifth Circuit Court No. 20-30545
Before: Smith, Higginson, And Willett Circuit Judges.

The United States District Court, Eastern District Of Louisiana
Before: Lance M. Africk, District Judge.

Pro se

Leslie Reed #616451
Main Prison/Oak-4
Louisiana State Penitentiary
17544 Tunica Trace
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Louis G. Authement, Bar #20089
St. Charles Parish Louisiana
Hahnville, La. 70057

QUESTION PRESENTED

Whether the United States Fifth Circuit Court of Appeals had decided an important federal question in a way that conflicts with the relevant decisions of this court and has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's supervisory power. Cf. *Slack v. McDaniel*, 120 S.Ct. 1595, 529 U.S. 473, 484-485 (2000).

LIST OF PARTIES

Louis G. Authement, Bar #20089
St. Charles Parish Louisiana
Hahnville, La. 70057

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

Pages:

CASES:

STATUTES:

LOUISIANA CONSTITUTION:

OPINION BELOW

Appx (A) U.S. Fifth Circuit Court of Appeals Decision.....Unpublished

Appx (A)(1) U.S. Fifth Circuit Court of Appeals Rehearing.....Unpublished

Appx (B) U.S. Eastern District Court (La.) Decision.....Unpublished

Appx (B)(1) U.S. Magistrate Judge, Finding and Recommendation.....Unpublished

Appx (C) Louisiana Supreme Court Decision.....Reported at State ex rel Reed v. Vannoy, 279 So.3d 938 (La. 2019)

Appx (D) Louisiana Fifth Circuit Court of Appeals.....Unpublished

Appx (E) State Trial Court Judgment.....Unpublished

JURISDICTION

On July 1, 2021, the United States Fifth Circuit Court of Appeals enter judgment in my case. See Appx (A). Moreover, a timely petition for rehearing en banc was filed, which the court denied on July 30, 2021. See Appx (A)(1). . .

This Court has jurisdiction under § 1254(1) to review denials of Certificate of Appealability by a circuit judge, or a panel of a Court of Appeals. See, ***Hohn v. U.S.***, 118 S.Ct. 1969, 1978, 524 U.S. 236, 253 (1998).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Article III § 1 of the Constitution

28 U.S.C.A. § 1254(1)

28 U.S.C.A. § 2253(c)(1)(A)

28 U.S.C.A. § 2254(b)(1)(A)

28 U.S.C.A. § 2254(e)

28 U.S.C.A. §§ 2254(a),(d)(1) and § (d)(2)

STATEMENT OF THE CASE

On December 18, 2013, the grand jury which was impaneled in St. Charles Parish, indicted Leslie Reed, herein (Petitioner), for Second Degree Murder in violation of La. **R.S. 14:30.1** *See, Appx.* **(1)**. Another individual named Keywine Bradford, the co-defendant of Petitioner, was also indicted for the same offense, and tried before a jury which a guilty verdict was returned. Thereafter, sentencing was delayed and the trial court granted the State' motion for a new trial. *See, Appx.* **(2)**. On April 23, 2015, as a result of Mr. Bradford testimony, Petitioner was found guilty by a jury as of count 1: Second Degree Murder. On May 19, 2015, Petitioner was sentence to life imprisonment without the benefit of parole. On January 27, 2016, the Louisiana State 5th Circuit Court of Appeals, affirmed the conviction and sentence on direct reviewed, and the Louisiana Supreme Court denied review.

On February 28, 2018, Petitioner filed an application for post-conviction relief. On May 2, 2018, Hon. Emile R. St. Pierre, trial judge, ordered that all claims contained in the original application for relief be denied. *See, Appx.* (E). On June 26, 2018, the Louisiana State 5th Circuit Court of Appeals, also denied relief upholding the trial court judgment. *See Appx.* (D). On September 24, 2019, the state supreme court denied Petitioner writ application applying for post-conviction relief. *See, Appx.* (C).

On December 28, 2019, Petitioner, pro se, filed an application for federal habeas relief, 28 U.S.C.A. §§ 2254(a), (d)(1), and § (d)(2) in the United States District Court (E.D. (La.)). See, Appx (B)(***Reed v. Vannoy*** (USDC No. 2:20-CV-6.). On August 20,

2020, the district court judge adopted the Magistrate's report and recommendation and denied relief. § 2254(b)(1)(A). The Court also declined to issue a Certificate of Appealability. Petitioner filed a notice of appeal on August 25, 2020.

On October 20, 2020, Petitioner, pro se, filed an application for a certificate of appealability with the United States Fifth Circuit Court of Appeals, appealing the district court's denial of habeas relief 28 U.S.C.A. 2253(c)(1)(A). *See* Appx (A);(A)(1) (***Reed v. Vannoy***, 20-30545)....Moreover, on July 13, 2021, Petitioner filed a petition for rehearing en banc, which was denied by the court on July 30, 2021....

Thus, this petition is timely and properly file before this Honorable Court within the 90 day proscribed.

REASON FOR GRANTING THE WRIT

The United States Fifth Circuit Court of Appeals has decided an important federal question in a way that conflicts with the relevant decisions of this court and has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's supervisory power. Cf. ***Slack v. McDaniel***, 120 S.Ct. 1595, 1604, 529 U.S. 473, 484-485 (2000).

A three judge panel in the United States Fifth Circuit Court of Appeals was incorrect for affirming the district court judgment, dismissing Petitioner's federal habeas petition for failure to exhaust his claim for prosecutorial misconduct. See Appx. (A);(A)(1). ***Slack***, ***supra***, at 484-485, 120 S.Ct. at 1604.

In determinate whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one direct at the district court procedure holding. Section 2253 mandates that both showing be made before the Court of Appeals may entertain the appeal. Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments. The recognition that the "court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be dispose of," ***Ashwander v. TVA***, 297 U.S. 288, 347, 56 S.Ct. 466 (1936), (Brandeis, J., concurring), allows and encourages the court to first resolve procedural issues. The ***Ashwander*** rule should inform the court's discretion in this regard.

Petitioner asserts that the district court abused its discretion in dismissing his application for failure to exhaust state remedies. See, Appx. (B)(1) ***Leslie Reed v. Darrel Vannoy***, (USDC No: 2:20-CV-6 (E.D. (La.))(Magistrate's Judge Report and Recommendation). ***Cooter & Gell v. Hartmarx Corp.***, 496 U.S. 384, 110 S.Ct. 2447 (1990). Generally, a district court abused its discretion when it base its decision on an erroneous view of the law or a clearly erroneous assessment of the facts. ***Supra***, at 405, 110 S.Ct. at 2460-2461. . .Specifically, Petitioner contends the district court's findings that Petitioner "submitted a motion to the state trial court seeking to withdraw the claims originally asserted and to supplement his original post-conviction application" was based on a clearly erroneous assessment of the facts. See (USDC No. 2;20-CV-6.), ***supra***, at p. 6.n.17. . .Cf . . .((USDC No. 2:20-CV-6.), ***supra***; (Original Petition for a Writ of Habeas Corpus §§ 2254(a), (d)(1) . . .specifically. . .(Unreasonable determination of fact) § (d)(2) pp. 15.n.16., -17. 'Thus, § (d) doesn't bar issuance of the writ § 2254(a)'). Referring to State Supreme Court writ application, ***State of Louisiana, Ex rel Reed v. Vannoy***, 279 So.3d 938 (La. 2019). (FN([1])); a thorough review of this State filing in its entirety reveals an extensive discussion of the facts underlying his claim for prosecutorial misconduct. Petitioner asserts that his conviction was tainted by prosecutorial misconduct through overzealous police coercion practices used upon Bradford, co-defendant of Petitioner, during his custodial interrogation which led to Bradford's perjurious trial testimony.

Slack, ***supra***, at 484-485. . .

1 See, ***State v. Harris***, No. 2018-KH-1012. 2020 WL 3867207, post-conviction relief, which is procedural in nature, and speaks to matters of remedy, is not criminal litigation per se; rather, post-conviction relief proceedings, which are designed to allow Petitioner to challenge the legality of their confinement, are hybrid, unique, and have both criminal and civil legal characteristics. *Id.* at 10-11. . .

A fundamental prerequisite to federal habeas relief under § 2254 is the exhaustion of all claims in state court prior to requesting federal collateral relief. See, ***Rose v. Lundy***, 455 U.S. 509, 519-520, 102 S.Ct. 1198 (1992). A federal habeas petition should be dismissed if state remedies have not been exhausted as to all of the federal court claims. ***Rose***, ***supra***; *see* also 28 U.S.C § 2254(b)(1)(A)(Writ shall not be granted unless it appears that the applicant has exhausted state remedies).

The exhaustion requirement is satisfied when the substance of the federal habeas claims has been fairly presented to the highest state court. *See* ***Picard v. Connor***, 404 U.S. 270, 275-278, 92 S.Ct. 509, 512 (1971); ***O'Sullivan v. Boerckkel***, 526 U.S. 838, 845 119 S.Ct. 1728, 1733 ("State prisoner must give states courts full opportunity to resolve any constitutional issues by invoking one complete round of the state's established appellate review procedures.") . . .("In the words of the statute, state prisoners have" "the right . . . to raise" their claims through a petition for discretionary review in the state highest court. § 2254(c))...In Louisiana, the highest State Court for criminal matters is the Louisiana Supreme Court. *See*, ***Baldwin v. Reese***, 541 U.S. 29, 32, 124 S.Ct. 1347, 1351 (2004). ("a state prisoner does not" "fairly presented" a claim to a state court if that court must read beyond a petition or brief (or a similar document) that does not alert it to the presence of a federal claim in order to find material, such as a lower court opinion in the case, that does so."); ***O'Sullivan***, at 847-848, 119 S.Ct. at 1734 ("Section 2254(c), in fact, directs federal courts to consider whether a habeas Petitioner has" "the right under the law of the state to raise, by any available procedure, the question presented.").

Petitioner asserts that he had the right under state law to raise the question presented through application for post-conviction relief. *See*, ***State Ex rel Reed v. Vannoy***, 279 So.3d 938 (La. 2019); (FN [2]) ***Picard***, ***supra***, at 275-278; ***O'Sullivan***, ***supra***, at 845 . . However, on September 25, 2018, while the Louisiana Supreme Court writ application was pending, Petitioner apparently submitted for electronically filing a motion and brief in support to the state highest court seeking to withdraw the claims originally asserted and to supplement his original post-conviction application. *See*, Appx. (F)(Subsections (1), (2) and (3); brief in support of motion) (FN [3]) ***Baldwin***, ***supra***, at 32; ***O'Sullivan***, ***supra***, at 847-848. . .Likewise, Petitioner asserts that his federal court claim is 'substantial equivalent' to the one present to the state courts that satisfy the 'fair presented' requirement. *Id.* Appx. (F)(considering subsection (2) and (3)); ***O'Sullivan***, supra, at 858 ("Discretionary review rules, also foster more useful and effective advocacy. The court recognized on numerous occasion that the process of 'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail. . . is the hallmark of effective appellate advocacy.")...("This maxim is even more germane regarding petitions for certiorari...").

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2 See e.g., La. Const. Art. 5, Supreme Court; jurisdiction; Rule making power; assignment of judges. § 5(c) scope of review: except as otherwise provided by this Constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, it appellate jurisdiction extends to only question of law.

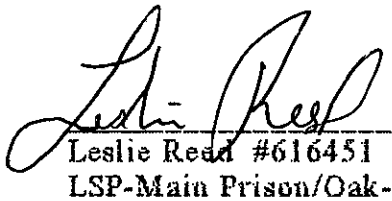
3 See., ***Taylor v. Brown***, 787 F.3d 851 "The prisoner's mailbox rule provides that a prisoner notice of appeal is deem file at the moment the prisoner places it in the prison mail system, rather than when it reaches the court clerk", citing ***Hurlow v. United States***, 726 F.3d 958, 962 (7th Cir. 2013). The rule is justified because "the pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control, or supervise and who may have every incentive to delay." citing ***Houston v. Lack***, 487 U.S. 266, 271, 108 S.Ct. 2379 (1988). . .Legal documents are considered filed on the date that they are tendered to prison staff in accordance with reasonable prison policies, regardless of whether they are ultimately mailed or uploaded. *Id.* 787 F.3d at 858-859, n.10. . .

Moreover, Petitioner asserts importantly, that the substance of his federal claim has been 'fairly presented' to the highest state court in a procedurally proper manner by discretionary review. See, (USDC No. 2:20-CV-6.) (Objection to Magistrates Report and Recommendation); Appx. (G);(G)(1) (Letter requesting status of his motion to supplement and amend), Appx. (H);(H)(1)(Louisiana Supreme Court's clerk is response to letter.) ***Picard***, ***supra***, 404 U.S. at 275-278; ***Slack***, ***supra***, at 485, 120 S.Ct. at 1604.

CONCLUSION

For the foregoing reasons, this court should review this case through certiorari.

Respectfully submitted,



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