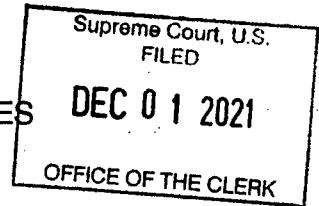


No. 21-6619

IN THE
SUPREME COURT OF THE UNITED STATES



Jeremiah Y. Nation — PETITIONER
(Your Name)

vs.

Scott Frakes — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeremiah Y. Nation
(Your Name)

P.O. Box 900 Tecumseh, NE 68450
(Address)

Tecumseh, NE 68450
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

- 1) Should a Certificate of Appealability be issued on a Fourth Amendment claim in a Habeas Corpus petition if there was a dispute in the U.S. District Court regarding whether or not the State Court held an evidentiary hearing on the claim, and the petition was dismissed on procedural grounds?
- 2) Is an evidentiary hearing required on a constitutional violation claim where the facts are in dispute?
- 3) Should a U.S. Court of Appeals make findings of reason when issuing or denying an application for a Certificate of Appealability?

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

State v. Nation, No. CR17-1614, District Court of Lancaster County in Lincoln, NE. Judgment entered April 9, 2019

State v. Nation, No. A-19-518, Nebraska Court of Appeals. Judgment entered April 7, 2020

Nation v. Frakes, No. 8:21cv57, U.S. District Court for the District of Nebraska. Judgment entered July 9, 2021

Nation v. Frakes, No. 21-2743, U.S. Court of Appeals for the Eighth Circuit. Judgment entered September 15, 2021

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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

☒ 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 _____; 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☒ is unpublished.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 2021 WL 3663888; 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 C to the petition and is

☒ reported at 2020 WL 1683101; 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 September 15, 2021.

☒ 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).

STATEMENT OF THE CASE

On February 16, 2021, Jeremiah Y. Nation (hereinafter, "Petitioner"), filed a petition for a Writ of Habeas Corpus in the U.S. District Court for the District of Nebraska wherein it claimed that the Petitioner's conviction was obtained by use of evidence gained pursuant to an unconstitutional search. (Filing 1) On February 18, 2021, the U.S. District Court ordered Scott Frakes (hereinafter, "Respondent") to respond by either filing a motion for summary judgment or state court records in support of an answer. (Filing 8) On May 4, 2021, the Respondent filed a motion for summary judgment. (Filing 12) On May 18, 2021, the Petitioner filed a motion for additional state court records. (Filing 15) On July 9, 2021, the U.S. District Court granted the Respondents motion for summary judgment and dismissed the Petitioner's Habeas Corpus petition with prejudice. In the same order and judgment the U.S. District Court also denied the Petitioner a Certificate of Appealability. (Filing 21) On August 4, 2021, the Petitioner timely filed a Notice of Appeal in the U.S. District Court. (Filing 22) On August 10, 2021, the Petitioner-Appellant filed an application for a Certificate of Appealability to the U.S. Court of Appeals for the Eighth Circuit. On September 15, 2021, the U.S. Court of Appeals for the Eighth Circuit denied the Petitioner-Appellants application for a Certificate of Appealability and dismissed the appeal.

ISSUE IN THE U.S. DISTRICT COURT

The issue before the U.S. District Court was whether or not the Petitioner had already recieved an opportunity for full and fair litigation of his Fourth Amendment claim in State Court.

REASONS FOR GRANTING THE PETITION

1) There was a factual dispute in the state court regarding your petitioners Fourth Amendment violation claim (see U.S. District Court original filing #18, Appellant Brief p.19-22, 27-37; Appellee Brief p.9-16), and the state court refused to hold an evidentiary hearing on the claim. (see Appendix D) Some Courts have concluded that "'full and fair Consideration' in the context of the Fourth Amendment includes 'at least one evidentiary hearing in a trial court and the availability of meaningful appellate review when there are facts in dispute, and full consideration by an appellate court when the facts are not in dispute.' *Bradley v. Nagle*, 212 F.3d 559, 565 (11th Cir. 2000) (quoting *Caver v. State of Ala.*, 577 F.2d 1182 1191 (5th Cir. 1978)); see also *Mason v. Allen*, 605 F.3d 1114, 1120 (11th Cir. 2010) (state evidentiary hearing not required where facts were undisputed).

2) The U.S. District Court for the District of Nebraska erred by refusing to hold an evidentiary hearing and dismissing your petitioners Habeas Corpus petition. That Courts decision to not hold an evidentiary hearing conflicts directly with this Courts decision in *Townsend v. Sain* 372 U.S. 293 (1963) "Where the facts are in dispute, the federal Court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in collateral proceeding. In other words, a federal evidentiary hearing is required unless the state court trier of fact has after a full hearing reliably found the relevant facts." *Townsend v. Sain* 372 U.S. 312, 313 (1963)

3) The U.S. District Court erroneously held that the petitioner was Stone-barred because he had already received an opportunity for full and fair litigation of his Fourth Amendment claim in state court. The U.S. District Court then erred by dismissing the Habeas Corpus petition and refusing to issue a Certificate of Appealability. In *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), this Court held that "When the District Court denies a habeas petition on procedural grounds without reaching the prisoners underlying Constitutional claim, a C.O.A. should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a Constitutional right, and that jurists of reason would find it debatable whether the District Court was correct in its procedural ruling". In this case, because there is no record of an evidentiary hearing held in the state court on the constitutional violation claim and most circuit Courts have concluded that the opportunity for full and fair litigation in the context of the Fourth Amendment includes at least one evidentiary hearing, jurists of reason would find it debatable whether the District Court was correct in its procedural ruling and a Certificate of Appealability should have been issued.

4) The U.S. Court of Appeals for the Eighth Circuit erred by not issuing a C.O.A., and not making any findings as to why the Court denied the Appellant-Petitioner's application for a C.O.A..

5) This Court has jurisdiction under 28 U.S.C.A. §1254(1) to review the denial of an application for a C.O.A by a Circuit Judge or panel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeremiah Y. Nation

Date: 11-3-21