

21-7716
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
APR 18 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Paul Douglas Jackson — PETITIONER
(Your Name)

VS.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul Douglas JACKSON
(Your Name)
Wainwright Unit
2665 Prison Road #1
(Address)

Lovelady, Texas 75851
(City, State, Zip Code)

936-636-7321
(Phone Number)

QUESTION(S) PRESENTED

Whether Jackson is entitled to relief or an evidentiary hearing, where the United States Court of Appeals Fifth Circuit and the United States District Court for the Northern District of Texas decision conflicts with other Courts or its own opinion, where Jackson presented a claim of Actual Innocence accompanied by a claim of Constitutional violation, a Denial of Effective Assistance of Counsel that was contrary to, or objectively unreasonable application to Jackson, federal right to Due Process of his 6th and 14th Amendment(s).

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:

- JACKSON v. Lumpkin, USDC No. 3:21-cv-2632 X-BN
Judgment Entered: December 17, 2021
- No. 22-10019, Court of Appeals, Fifth Circuit
Jackson v. Lumpkin USDC No. 3:21-cv-2632
Judgment entered: February 18, 2022

RELATED CASES

1) Miller v. Drethe, 420 F.3d. 356, 366 (5th Cir 2005)

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APPENDIX C - Notice of Appeal by Jackson USDC No. 3:21-cv-2632-X-BN
Dated: January 5, 2022, Stamped on same Dated both
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Judgment entered January 10, 2022

APPENDIX E - Decision of United States Court of Appeals No. 22-10019
Jackson v. Lumpkin, USDC No. 3:21-cv-2632
Judgment entered: February 18, 2022

APPENDIX F

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 E 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 is unpublished.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 _____; 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/18/2022.

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 12/17/2021. A copy of that decision appears at Appendix B.

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 - in all criminal prosecution 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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment - 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 deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. § 2254(d)(1-2), - A decision that was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States; or

§ 2254(d)(2) - decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding ...

28 U.S.C. § 2254(e)(2) - a factual predicate that could not have previously discovered through the exercise of due diligence; and

- the fact underlying the claim would be sufficient to establish by clear and convincing evidence, but for, Constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Standard of Review

Under the AEDPA, applies to all federal habeas applications filed on or after April 24, 1996. Because Ineffective Assistance Claim involves mixed questions of law and fact, it is reviewed under 28 U.S.C. § 2254(d)(1-2) see *Morales v. Cain* 246 F.3d. 471, 475-76 (5th Cir. 2001) (Mixed question of law and fact reviewed under unreasonable application prong of § 2254(d)); *Moawad v. Anderson*, 143 F.3d. 942, 946 (5th Cir. 1998) (ineffective assistance of counsel claims).

The AEDPA, provides that habeas relief may not be granted unless the challenged state court proceeding resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court - § 2254(d)(1) - A decision must be more than merely incorrect in order to constitute an unreasonable application of federal law; it must be objectively unreasonable habeas relief is inappropriate when a state court, at a minimum, reaches a satisfactory conclusion.

To establish that an attorney was ineffective for failure to investigate, a petitioner must alleges with specificity what the investigation would have revealed and

How it would have changed the outcome of the trial.

In Wiggins, 539 U.S. at 536, 123 S.Ct. 2527 finding that counsel is not in a position to make a reasonable strategic choice when his investigation supporting [that] choice was unreasonable. Bouchillon v. Collins, 907 F.2d. 589, 597 (5th Cir 1990). Tactical decision must be made in the context of a reasonable amount of investigation, not in a vacuum. Profitt v. Waldrup, 831 F.2d. 1245, 49 (5th Cir. 1987) - finding that "our unusual deference to tactical decision is not relevant when the decision are base on information that was faulty because of ineffective investigatory step (see Strickland 466 U.S. at 649, 104 S.Ct. 2052.

In Spriggs 993 F.2d. at 88, held, in order to avoid turning Strickland into an automatic rule of reversal in the non-capital sentencing context, The Court believe that in deciding an ineffectiveness claim, A Court must determine whether there is a reasonable probability that but for trial counsel's error the defendant's non-capital sentence would have been significantly less harsh. . .

In *United States v. Grammas*, that the Court held that the Supreme Court's decision in *Glover v. United States* 531 U.S. 198, 203, 121 S.Ct. 696, 148 L.Ed. 2d. 604 (2001) (see *United States v. Grammas* 376 F.3d. 433, 438 (5th Cir 2004))

The Court later clarified, however the Glover's impact was limited to case involving the federal sentencing guideline Grammas 376 F.3d. at 438 n.4. Quoting by CNE - "Miller v. Drenke, 420 F.3d. 356, 366 (5th Cir 2005) is whether the conscious and informed decision on trial tactics and strategy cannot be basis for constitutionally ineffective assistance of counsel unless it is so ill chosen that it permeates entire trial with obvious unfairness (constitute 6th Amendment and 14th Amendment).

STATEMENT OF THE CASE

On August 23, 2017, The Court of Criminal Appeals issued an order to the trial court to conduct additional fact-finding related to Applicant Jackson Grounds for Relief concerning trial counsel's ineffectiveness, that alleges:

- Trial counsel was ineffective for failing to investigate and interview eye-witness made known to counsel at least one week before trial
- Trial counsel, Mr. Humpkireys, was ineffective for failing or refusing to subpoena Applicant's Jackson family member who wanted to testify on Applicant's Jackson behalf before sentencing.

Applicant Jackson told counsel that he wanted to subpoena several critical witness that included, but was not limited too, Applicant's family member who were available to testify and wanted to testify at sentencing. Applicant's defense was that he did not commit the offense of Aggravated Assault. Applicant family was available to testify and would have testified that the complainant had "told her teacher that Applicant did not do anything to her but that her mother was angry with Applicant and had told complainant, what to say and how to say it. Had the trial court conducted a "live evidentiary hearing the supplement record would reveal that the complainant was pressured to make such allegation against Applicant.

REASONS FOR GRANTING THE PETITION

Where the United States Court of Appeals, 5th Circuit decision conflict with its own opinion and the United States District Court for the Northern District of Texas decision to Denied, Petitioner's Jackson Due Process of his federal Right of 6th and 14th Amendment

Where the Court's failure to grasp the significance of Jackson's Actual Innocence Claims, accompanied by a claim of a constitutional violation, and the Court's rejected and failure to entertain Jackson's Claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Paul Douglas Jackson #
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Date: April 13, 2022