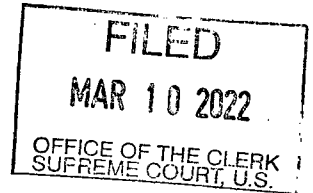


21-8091

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JERMAINE JACKSON — PETITIONER
(Your Name)

vs.

SUPT. CLARK, SCI-ALBION — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THIRD CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

JERMAINE JACKSON

(Your Name)

10745, ROUTE 18

(Address)

ALBION, PA 16475

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Did our Third Circuit Court of Appeal make a mistake when a constitutional right was violated and they did not grant a C.O.A. for Prosecutor use of images on Power Point slides not in evidence and trial counsel's ineffectiveness for not moving to demur felony murder in absent of an underlying felony and Post Conviction was ineffective for not raising this claim?

Answer: Yes

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

Commonwealth v. Jackson, CP-09-CR-3598-2012
Commonwealth v. Jackson, 1810 EDA 2013 (Pa. Super. Apr. 7, 2016)
Commonwealth v. Jackson, (Pa. Supreme Ct. Allocatur Denied Aug. 30 2016)
Commonwealth v. Jackson, 3540 EDA 2018 (Pa. Super. Post Conviction denied July 19, 2019)
Commonwealth v. Jackson, (Pa. Supreme Allocatur Denied Feb. 10, 2020)
Jermaine Jackson v. M. Clark,
Jermaine Jackson v. M. Clark, No. 20-1988 (E.D. Pa. Habeas Corpus Denied March 1, 2021)
Jermaine Jackson v. M. Clark, same (E.D. Pa. Dist. Ct. Order)
Jermaine Jackson v. M. Clark, C.A. No. 21-2256 (U.S. THIRD CIR. CT. OF APPEAL Dec. 1, 2021)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7-16
CONCLUSION.....	17

INDEX TO APPENDICES

APPENDIX A	District Court Opinion & Order.
APPENDIX B	Third Circuit Court of Appeals Order Denying a COA
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383 (U.S. Supreme 1983)	11, 16
Martinez v. Ryan, 566 U.S. 1 (U.S. Supreme 2012)	13
Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029	11, 16
Miles v. United States, 103 U.S. 304, (U.S. Supreme 1881)	16
Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, (1979)	16, 13
Slacks v. Daniels, 529 U.S. 473, 120 S.Ct. 1595.	11, 13
Workman v. Supt. S.C.I.-Albion, — F.3d —, (3rd Cir. 2018)	13
In re: Glasmann, 175 Wash. 2d 696, 286 P.3d 673, (2012)	10
State v. Walker, 182 Wash. 2d 463, 321 P.3d 941, (2014)	10
State v. Watters, 313 P.3d 243 (Nev. 2013)	10
State v. Reineke, 266 Or. App. 299, 337 P.3d 941, (2014)	10
STATUTES AND RULES	
Fourteenth Amendment	3, 11
Sixth Amendment	3
28 U.S.C. § 2253 (c) (2)	11
28 U.S.C. § 2253 (c) (3)	3
OTHER	
Wired Magazine 2014	7
Visual's For Today's Prosecutors by R. Bower 2013	8

CONT'D CASES

PAGE

Commonwealth v. Jackson, 3540 EDA 2018 (Pa. Super. 2018)	ii
Commonwealth v. Mays, 675 A.2d 724, (Pa. Super 1996)	15

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 B 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 A 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 December 1st, 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 March 21, 2022 (date) on June 21, 2022 (date) in Application No. 21 A 444.

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

Amendment 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;

Amendment XIV

... 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 to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. § 2253(C)(3)

(3) A certificate of appealability under paragraph (1) shall indicate which specific issues satisfy the showing required by paragraph (2)

STATEMENT OF THE CASE

Procedural History

On August 8, 2012, a motion to suppress and a motion to bar the death penalty was filed. The State withdrew the death penalty. Petitioner trial was severed from his co-defendants.

Petitioner was tried by jury before Judge Rea B. Boylan, on May 20, 2013, and was found guilty of second degree murder. Petitioner was sentenced to Life.

On June 14, 2013, a timely notice of appeal was filed to the superior court. Relief was denied on April 7, 2016. The Pa. Supreme Court denied allocatur.

On July 27, 2017, Petitioner filed his first post conviction. On September 18, 2018, a hearing was held. On November 21, 2018 relief was denied.

On December 12, 2018, an appeal was filed and relief denied on July 10, 2019. On August 12, 2019, allocature was filed; then, denied on January 23, 2020. Writ of Certiorari was filed and denied on February 18, 2020, No. 19-7791.

Factual History

On December 28, 2011, Officer Douglas Slemmer of Bristol Township responded to a call of a shooting at 17 Crabtree Lane in Levittown. He found Danny DeGennaro bleeding from the chest in his entryway. Him and James Meszaros's, were home at the time.

Meszaros testified: while going to the bathroom and returning, he saw Mr. DeGennaro walking towards him, he said, "here we go," then his eyes rolled up, and he fell backwards. Meszaros, did not see the shooting nor did he hear a gun shot. He called 911.

Officer Slemmer testified that he saw no signs of forced entry. He seen blood on the stairs, wall, floor, all in the house.

Detective T. Furhmann found a bullet case, shotgun wadding and sheathing from the shotgun. He found a bullet hole in a wall in the living room.

Petitioner co-defendant Bakr who had a deal with the state testified that her and Henderson (another co-defendant) agreed to help Petitioner rob someone who owed him money for drugs. They met Petitioner, Powell and Gist (the other co-defendant) in a parking lot. They planned to go to DeGennaro house to get money that was owed. Powell, would be the one to hold the gun on DeGennaro.

They pulled up to DeGennaro's house. As they sat in the car, they seen two men inside the house. Henderson called regarding a car, so he could see if either man would answer.

After the call, they drove around and stopped. Both men departed and Bakr could not see them anymore. Five minutes later she heard gun shot noise. She drove away and Powell with Gist ran after her. She let them in the car, and both are nervous. Powell and Gist said, they shot DeGennaro, but the physical facts showed he was shot once.

Bakr, testified Petitioner and Powell left her car, in order, to place him on the scene, then place Powell and Gist together leaving the scene.

Henderson, whom also had a deal with the state testified that: Petitioner was on the phone with her while inside the house and she heard him say go ahead, then, she heard two shots.

Both witnesses had an incentive to place the Petitioner on the scene, but forgot to place him leaving. Also: Bakr claimed a planned robbery, while Henderson said, it was about a debt that was owed.

REASONS FOR GRANTING THE PETITION

1. THE MAGISTRATE ALONG WITH THE DISTRICT AND THIRD CIRCUIT ERRED BECAUSE THE PETITIONER HAVE SHOWN A DENIAL OF A CONSTITUTIONAL RIGHT

The Prosecutor use of Power Point slides that evoked graphic displays from words and images that were never introduced as evidence. denied the Petitioner a fair trial under due process of law.

This is an issue of first impression in Pennsylvania and is debatable amongst jurist of reason.

The electronic equipped courtrooms in our states makes digital displays easy to expand and evoke ~~provocative~~ displays that appeals to the prejudicial side of the jurors, so they would form in their minds a fixed bias against the Petitioner.

The Power Point displays were at one time a target for entertainment and advertising venues. Now it have become prevalent in the judicial system, which require checks and balances.

In a 2014 article in wired magazine, it was described in a publication for Prosecutors intentional use of Power Point slides to engage in misconduct

It suggested Power Point slides in trials that presaged what happen in a defendant's trial.

In 2013, the training arm of the National District Attorney's Association "America's School for Prosecutors," is how it bills itself - published a 290 page book¹ that advises prosecutors on how to use visuals aids... Spelling gimmicks - "memorable for the jurors" - work especially well with slide shows, the book advises... The book has lots of charts that make creative use of a defendant's mug shot - putting it in a bull's-eye, for example - and offers many suggestions on visualizing the concept of "reasonable doubt," an undertaking that has landed prosecutors in trouble with the appellate courts time and again.

K. Armstrong, "The Sneakiest Ways Prosecutors Get A Guilty Verdict," wired magazine. December 23, 2014, <http://www.wired.com/2014/12/prosecutors-powerpoint-presentations>.

The Prosecutor in Petitioner trial used several of these subliminal techniques to secure a guilty verdict of felony murder by creating images with words that were not of any evidential value. Those visuals were not evidence.

NOTE: 1

Visuals for Today's Prosecutors 2013 by R. Bower. The book became unavailable and out of print.

So, objective was employed to have an unavoidable effect to create prejudice towards the Petitioner from his jury panel. The Power Point slides formed in their minds a fixed bias and hostility that led them to disregard there being no evidence of an underlying felony beyond a reasonable doubt. The manacles images conjured in the jurors minds images of when African Americans were slaves and under the care, custody of control by the government, and its citizens. And, that all African Americans deserve nothing more/less than being back in shackles.

This case was tried on race, and not the evidence. The Petitioner was/is of African American descent and Mr. DeGennaro, the deceased, was/is Italian American. White against Black, was interjected in the jurors minds from those shackle images and chains.

Trial counsel objected to the Power Point slides shown:...

"The two words that were put up were get money. They--they appeared to have been drawn in blood... The color was red, and there were drips coming down from the letters. That--those two words displayed in that fashion were displayed for 17 minutes straight"... N.T. 5/20/13, 102.

And perhaps the most egregious one of the presentation was a--a depiction of chains, Your Honor. There was a--a depiction put on the wall of manacles... they were not handcuffs, they were--frankly they were old style manacles that would cover the entire wrist held together by way of a heavy chain, and in one of the manacles was a cellphone. Your Honor, that conjures up so many inappropriate visions in this case about that--the time period, specific type of chain that was used, frankly the race of my client...

... Similarly, Your Honor, the words go ahead were put on -- on the board in red again with this -- this text or font graphic that looks as if it was written in blood... Id. at 103-05.

What is debatable for jurist of reason is the Prosecutor putting images on the Power Point slides that are not in evidence. This tactic was designed to inflame the jury.

Other states in the country have made this type of conduct debatable amongst jurists.

See, State v. Walker, 182 Wash.2d 463, 321 P.3d 976 (2014). (100 slides with images that reflect the prosecutor's personal opinion on guilt. Id. at 472-73); In re: Glasmann, 175 Wash.2d 696, 286 P.3d 673, 2012. (Using Power Point slides bearing captions on photographs of the Defendant. The court pointed out those captions were not in evidence. Id. at 701-02)

See, State v. Watters, 313 P.3d 243 (Nev. 2013). (Power Point slide displayed "Guilty" on a booking photo of the Petitioner. Id. at 246).

See, State v. Reineke, 266 Or. App. 299, 337 P.3d 941 (2014). (the prosecutor put "Guilty", "His DNA on the murder weapon", "His refusal to speak at the police station" on the defendant photograph. Id. at 303-05.)

The Petitioner have made a substantial showing of the denial of a constitutional right. He had a right to a fair trial, absent images

that were not apart of evidence. The district court made a mistake by not issuing a C.O.A. under § 2253 (c)(2) when the criteria was met. See, *Slacks v. Daniels*, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed2d 542, 549 (U.S. Supreme Ct. April 26, 2000).

It is debatable rather, or not, the images on the slides could be used as evidence of guilt along with the slides.

The Petitioner constitutional right to a fair consideration of evidence absent those images were not in accords with due process of law under the 14th Amendment. Again: a COA should have issued. *Barefoot v. Estelle*, 463 U.S. , 894 L Ed 2d 1090, 103 S.Ct. 3383.

It is further contested the our third circuit reasoning in its order on this claim, did not determine the images on the slides were evidence. They stated the slides were permissible, an issue that was not argued.

Their reasoning determine that Petitioner was not entitled to relief, which run a foul in this Court, ruling in *Miller-El v. Cockrill*, 537 U.S. 322, 154 L Ed 2d 931, 951, 123 S.Ct. 1029, (U.S. Supreme Ct. 2003).

"To that end, our opinion in *Slack* held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for COA merely because it

believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail...

This is exactly what occurred with the third circuit court of appeals. The jurists adopted the magistrate and district courts reasoning without an independent analysis, thereby concluding the Petitioner could not demonstrate an entitlement to relief.

For this reason the Petitioner comes in the Court asking for a writ of certiorari.

2. THE MAGISTRATE ALONG WITH THE DISTRICT AND THIRD CIRCUIT COURT MADE A MISTAKE BY DENYING A COA WHEN A CONSTITUTIONAL RIGHT WAS ESTABLISHED

In *Slacks v. Daniel*, supra L. ed. 2d at 549, this High Court stated to: "(b) Determining 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 directed at the district court's procedural holding." *Slacks v. Daniel*, supra. L. ed. 2d at 549.

The R&R adopted by the district court and denial of a COA, is flawed.

The Petitioner established: he was entitled under the Sixth Amendment to effective assistance of counsel at his trial. He demonstrated how pcra counsel was ineffective for failing to challenge trial counsel ineffective-ness when he did not move to demur the felony murder charge. This criteria have support from this High Court decision in *Martinez v. Ryan*, 566 U.S. 1, (2012). (A claimant shows post conviction counsel's performance was unnecessary/~~unreasonably~~ deficient, when the requirement is satisfied with a substantial claim of ineffective assistance of trial counsel.) Also see, *Jeffrey Workman v. Superintendent of Albion*, ___ F.3d ___, (3rd Cir. 2018)

(... "If Workman shows that his underlying ineffective assistance of trial counsel claim has some merit and that his state post conviction counsel's performance fell below an objective standard of reasonableness, he has shown sufficient prejudice from counsel's ineffective assistance that his procedural default must be excused under Martinez.")

The COA should have issued by the third circuit court of appeals, because the district court R&R ruled this claim was procedurally barred and meritless under the constitution. This two part component was debatable among jurist of reason. Here's Why:

The magistrate R&R on page 12-13 is mistaken. The Petitioner trial counsel may have move for the charges of first degree murder and burglary, which is right. He failed to move for a demur of felony murder and robbery, which is the claim before the courts.

Counsel at trial was nevertheless constitutionally ineffective, because there was no evidence of an underlying robbery, let alone burglary to support felony murder.

The State's witness Officer D. Slemmer, made it clear that no evidence exist whatsoever of a forced entry.

The State's other witness Mr. Mezaro testified that he removed the drugs from the house so that they would not be found by police. N.T. 5/14/13, pgs. 76, 89, 88-90, 112-13, 177-78. Which establish no drugs, money, or valuables were removed from the house or the victim.

There was no testimony from any witnesses that support a robbery theft, or burglary.

The magistrate R.&R. in this matter was mistaken when on page 13 he stated: "Jackson's legal arguments also fails. Even unsuccessful theft can serve as the basis for burglary or robbery charges"... That would be accurate, if there were evidence of a theft occurring. E.g., the Petitioner tried to take money from the deceased, but he resisted, then, shots rang out. Or, the deceased was trying to stop the Petitioner from leaving with valuables he seen in the house.

The magistrate R.&R., also in error by stating: Moreover, even if Jackson had intended to retrieve legitimately owed funds, bringing firearms introduces a threat of violence that transforms any debt collection into robbery. Citation omitted. The Petitioner did not commit a robbery in this matter, because no money or items were missing.

The case of: Commonwealth v. Mays, 675 A.2d 724, 730, (Pa. Super. 1996) does not support the Petitioner claim under the meritless test. This case states: "... the defendant will be guilty of robbery in the taking of said victim's property by such force. There was no property taken in this matter, before this High Court. Since this is a fact, the Mays case is misplaced.

What is debatable amongst jurists in this case is: the state is mandated under due process of law to put forth evidence

to prove each and every element of each offense charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781. *Miles v. United States*, 103 U.S. 304, 312, (1881).

The third circuit adoption of the magistrate and district court reasoning without an independent analysis are mistaken by denying a COA on this merit base claim that is not procedural defaulted.

This claim meets the standards enunciated in the following cases: *Barefoot v. Estelle*, supra, *Slacks v. Daniels*, supra, *Miller-EL v. Cockrail*, supra.

The Petitioner seeks the granting of a writ of certiorari for the reasoning argued.

CONCLUSION

For the reasons put forth for both claims; one out of the two,
or both should be entertained.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jermaine Jackson

Date: June 1, 2022