22-5200

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2022

ROBERT OULTON

Petitioner,

v.

RICKY DIXON,
Secretary of the Florida
Department of Corrections,

Respondent.

On Petition for Writ of Certiorari to the
United States Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

ROBERT OULTON, DC #I48297
Union Correctional Institution
P.O. Box 1000
Raiford, FL 32083-1000

Petitioner, pro se

QUESTIONS PRESENTED

QUESTION ONE:

IN FILING FOR A COA, CAN A SPECIFIC REFERENCE TO THE RECORD BY AN INDIGENT BE CONSIDERED A SUBSTANTIVE PART OF DEMONSTRATING "A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT"; AND DID PETITIONER DEMONSTRATE A SUFFICIENT SHOWING TO BE GRANTED A COA?

QUESTION TWO:

DID THE ELEVENTH CIRCUIT COURT OF APPEALS IGNORE THE FLORIDA COURT'S CREATION OF NEW EXCEPTIONS TO ESTABLISHED FEDERAL CONSTITUTIONAL LAW WHEN IT DENIED PETITIONER'S COA; AND SHOULD PETITIONER HAVE BEEN GRANTED THE COA?

LIST OF PARTIES

The caption of this case contains the names of all parties to this proceeding, both here and before the United States Eleventh Circuit Court of Appeals. No corporations or parent corporations are involved in this matter.

RELATED CASES

Robert Oulton, Jr. v Florida Dept. of Corr., No. 21-13058-F, U.S. 11th Circuit Court of Appeals. Judgment entered Mar. 21, 2022

Robert Oulton, Jr. v Mark S. Inch, No. 0:21-cv-60688-RNS, 11th Southern Circuit District Court for Florida. Judgment entered Aug. 5, 2021

Robert Oulton v State of Florida, No. 4D20-485, Fla. 4th District Court of Appeal, PCR on Aug. 20, 2020 with Mandate on Oct. 9, 2020.

State of Florida v Robert Oulton, No. 10-6118CF-10A, 17th Judicial Circuit Court, Broward County, Florida.

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OPINION BELOW

The judgment of the United States Circuit Court of Appeals for the Eleventh Circuit that is the subject of this Petition is not yet reported, is addressed as USCA11 Case: 21-13058, and is contained in the accompanying Appendix at tab A.

BASIS FOR INVOKING THE COURT'S JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Eleventh Circuit that is the subject of this Petition was entered 03/22/2022, and 04/21/2022 in confirmation of denial to motion for reconsideration. A petition for writ of certiorari to review that judgment is timely if filed within 90 days after its entry. As Mr. Oulton filed this Petition within that number of days after the Supreme Court of Florida entered its judgment, it is timely, and the Court's jurisdiction to review the questions presented exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

All three questions presented involve the Sixth Amendment to the United States Constitution, which provides in pertinent part that: "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense". Question Two further presents the Fourteenth Amendment to the United States Constitution, which provides in pertinent part that: "No state shall ... 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 law."

STATEMENT OF THE CASE

Petitioner Oulton, charged and incarcerated for first degree murder on April 6, 2010, was found guilty of the lesser second degree murder, sentenced to life in Florida prison on September 26, 2015.

In summary, Oulton was declared indigent, appointed the Office of Public Defender, who filed Oulton's requested need for psychiatric assistance as to his declared military-related posttraumatic stress disorder on September 1, 2010. Despite seven attorneys, four judges, and the court switching his representing law firm to the Office of Conflict Criminal and Civil Regional Counsel (OCCCRC), all acknowledged on the record to Oulton's continued need to receive psychiatric assistance. None of them ever procured Oulton's psychiatric assistance.

Oulton went to trial on advice of counsel without psychiatric assistance not realizing counsel's advice was based on him never investigating Oulton's declared background, nor even tried to have Oulton evaluated.

Oulton raised his denial of psychiatric assistance in post conviction proceeding focusing on trial counsel error for failure to investigate Oulton's known background for being the cause of denying his constitutional right to required psychiatric assistance.

State and the federal district court disagreed with Oulton, denied his COA that the Circuit Court did not reverse. This raises the two questions presented herein.

REASONS FOR GRANTING THE PETITION

QUESTION ONE:

IN FILING FOR A COA, CAN A SPECIFIC REFERENCE TO THE RECORD BY AN INDIGENT BE CONSIDERED A SUBSTANTIVE PART OF DEMONSTRATING "A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT"; AND DID PETITIONER DEMONSTRATE A SUFFICIENT SHOWING TO BE GRANTED A COA?

The United States Eleventh Circuit Court of Appeals (Circuit Court) denied Petitioner Oulton a COA on his Ground Three "*because he did not prove prejudice*" in addressing counsel's Strickland v Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984) violation through Wiggins v Smith, 539 U.S. 510, 123 S. Ct. 2527 (2003) for failure to investigate Oulton's clearly declared military-related mental health background.

Indigent, incarcerated Oulton presented counsel's deficiency and resulting prejudice to the Circuit Court, that included specific reference to his detailed two pages about counsel's wrongness as presented in Oulton's habeas reply brief to the U.S. District Court (ECF No. 35 at 3-5, attached as Appx. H, pgs 3-5). Oulton specifically cited Wiggins at 538. That is, the Wiggins court "*found prejudice as a result of counsel's failure to investigate and present mitigating evidence*" that "*might well have influenced the jury's appraisal*".

Also raised in Oulton's specific reference to the record: "In that the critical question is whether '*there is a reasonable probability that at least one juror would have struck a different balance*' that it '*might well have influenced the jury's appraisal*'." (Wiggins at 537 and 538). The Strickland Court was also cited with "*strategic choices made after less than complete investigation are reasonable only to the extent that 'reasonable professional judgments support the limitation of investigation'*." (Wiggins at 533-34 citing Strickland at 690-91).

Pro se Oulton demonstrated prejudice for obtaining his COA through his specific citings from the record, praying that this Court agrees, granting certiorari. The implications of permitting such citings for pro se prisoners is within the parameters of Haines v Kerner, 404 U.S. 519, that would have a national impact. Oulton was denied his Sixth Amendment constitutional right of effective assistance of counsel in such a way to mandate prejudice on its own.

This Question One is also intimately intertwined with Question Two below. This Question One's decision should also be applied in determining Question Two, as Oulton also used specific reference to prove deprivations. Question Two addresses the result of counsel's failure to investigate that resulted in a complete deprivation of his Fourteenth Amendment guarantee of psychiatric assistance.

QUESTION TWO:

DID THE ELEVENTH CIRCUIT COURT OF APPEALS IGNORE THE FLORIDA COURT'S CREATION OF NEW EXCEPTIONS TO ESTABLISHED FEDERAL CONSTITUTIONAL LAW WHEN IT DENIED PETITIONER'S COA; AND SHOULD PETITIONER HAVE BEEN GRANTED THE COA?

The United States Eleventh Circuit Court of Appeals (Circuit Court) has decided an important question of federal law that has decided an important question of federal law that has not been, but should be, settled by this Court.

The Circuit Court elected to deny issuing a certificate of appealability for Petitioner's habeas appeal Ground Two. That action let stand the U.S. District Court's concurrence with the Florida court's adoption of their Attorney General's novely created exception to the psychiatric assistance mandate this Court established in Ake v Oklahoma, 470 U.S. 68, 105 S. Ct. 1087 (1985), and recertified in McWilliams v Dunn, 582 U.S. ___, 137 S. Ct. 1790, 198 L. Ed. 2d 341 (2017).

Petitioner Oulton timely placed his judge and court on notice of his military-related PTSD challenge and dependency on psychiatric assistance for trial (Appx. M pgs 25-27). This qualified Oulton to receive his Fourteenth Amendment guarantee of psychiatric assistance through Ake v Oklahoma. It was also five years before actual trial, and well before the court replaced the Office of Public Defender with the Office of Conflict Criminal and Civil Regional Counsel ('OCCCRC', Florida's secondary state created defense team). Despite multiple different attorneys and the state prosecutor all regularly stating Oulton's continued need for psychiatric assistance, that included Oulton's actual attorney for trial, Oulton was never provided said assistance (Appx. J, pgs 8-9).

In the state's response to Oulton's original post conviction challenge on this claim, Florida's Attorney General's office declared that a subsequently assigned attorney from a different office is not bound by Ake's mandate because counsel did not file Oulton's original declaration or adopt it (Appx. K, pg 50). This is contrary not only to Wiggins v Smith as addressed in Question One above, but to Ake and the fact this Court made no provisions for counsels, just the accused:

> "We therefore hold that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense" (Ake at 83, as included in Oulton's Request for Reconsideration (Appx. F pg 2)).

Oulton's post conviction court adopted the Attorney General's theory verbatim as did Oulton's federal habeas court The Eleventh Circuit Court of Appeals (Circuit Court) denied Oulton's Ground Two application for a certificate of appealability (COA) for not establishing he was "entitled to relief". In other words, the Circuit Court contends Oulton

did not provide "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253 (c) (2).

While not very artfully presented, 75-year-old indigent, incarcerated Oulton did provide the basics, raising his constitutional deprivations with a simple understanding of the situations (see Haines v Kerner, at 520), that taken in the entirety that included the specific citings of the record, did provide "a substantial showing of the denial of a constitutional right" (28 U.S.C. § 2253 (c) (2)) requiring the granting of a COA.

In Oulton's request for a COA (Appx E) and his request for reconsideration (Appx F), Oulton declared: (a) his Fourteenth Amendment right to psychiatric assistance under Ake v Oklahoma, 470 U.S. 68, 105 S. Ct. 1087 (1985), as (b) deprived by counsel under Strickland v Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); and (c) that he made several specific references to Oulton's reply brief to the U.S. District Court in the identical manner as described in Question One above.

These violations are directly connected with counsel's ineffectiveness from Question One above, as it was Oulton's psychiatric guarantee under Ake that counsel failed to investigate under Wiggins, subject to its own Strickland violation.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Executed on July 20, 2022

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