

AUG 04 2022

OFFICE OF THE CLERK

No. 22-5368

IN THE
SUPREME COURT OF THE UNITED STATES

KULTAR SINGH GORAYA — PETITIONER
(Your Name)

vs.

SEC'y, FLA. DEPT. OF CORR., ET AL., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KULTAR SINGH GORAYA
(Your Name)
BRCRF
5914 JEFF ATEES ROAD
(Address)

MILTON, FLORIDA 32583
(City, State, Zip Code)

(850)-983-4100
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

WHETHER THE ELEVENTH CIRCUIT COURT OF
APPEALS APPLIED ON IMPROPER HEIGHTENED
STANDARD UNDER SLACK V. MCDANIAL, 120 S.Ct 1595
at 1604 (2000) AND BUCK V. DAVIS, 137 S.Ct 759 at 773 (2017).
WHEN DENYING PETITIONER A CERTIFICATE OF
APPEALABILITY FOR HIS GROUND ONE?

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

THERE IS NO RELATED CASES FOR HIS
GROUND ONE BECAUSE ANY COURT NEVER
GAVE THE OPINION ON MERITS OF THE GROUND
ONE. AND THE GROUND ONE IS THE STATE FAILED
TO MEET ITS BURDEN OF PROOF, FOR KILLING
HIS MISSING WIFE SINCE 2007.

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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 EXHIBIT 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☐ is unpublished.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 EXHIBIT C 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☐ is unpublished.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☐ is unpublished.~~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☐ is unpublished.~~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 09, 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: JUNE 2, 2022, and a copy of the order denying rehearing appears at EXHIBIT A.

☐ 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).~~

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION.

STATEMENT OF THE CASE

IN OCTOBER 2007 PETITIONER'S THIRTY TWO YEAR OLD WIFE WENT MISSING FROM HER MANTEGO BAY HOME. PETITIONER'S WIFE LIVED WITH PETITIONER AND IS THE MOTHER OF THEIR THEN TWO YEAR OLD SON. THE POLICE INVESTIGATION YIELDED NO EVIDENCE OF WRONG DOING. IN SEVEN (7) YEARS, FOUR DETECTIVES INVESTIGATED THE MATTER, BUT NONE ESTABLISHED A SOLID LEAD. MOREOVER, POLICE FOUND NO DIRECT, PHYSICAL, OR SCIENTIFIC EVIDENCE TO SUGGEST THAT PETITIONER'S WIFE HAD BEEN KILLED OR EVEN HARMED BY PETITIONER. RESPONDENT PROCEEDED IN ITS HOMICIDE THEORY WITHOUT EVIDENCE OF PETITIONER'S WIFE'S BODY, FACT OF DEATH, CAUSE AND MANNER OF DEATH, OR CRIMINAL AGENCY OF THIS PETITIONER, EXCEPT BY TORTUROUS AND BARE INFERENCE.

SEVEN YEARS AFTER PETITIONER'S WIFE DISAPPEARED, AND STILL WITHOUT A BODY TO PROVE HER DEATH, ITS CAUSE AND MANNER OR ANY CRIMINAL AGENCY, PETITIONER WAS INDICATED

FOR MURDER IN THE SECOND DEGREE (FLORIDA STATUTE, 782.04(2)) OF HIS MISSING WIFE (RUPINDER). (DOC. 21-1, EX. 001, at 6). RESPONDENT THEORIZED, APPARENTLY OUT OF WHOLE CLOTH, THAT PETITIONER KILLED HIS WIFE BY CHOKING HER ON A DATE SOMEWHERE ABOUT OCTOBER, 2, 2007.

ON SEPTEMBER, 01, 2015 THE CAUSE CAME BEFORE THE CIRCUIT COURT JUDGE MARGARET O. STEINBECK FOR JURY TRIAL. AT THE CLOSE OF RESPONDENT'S CASE AND ALL THE EVIDENCE, PETITIONER TIMELY MOVED (TWICE) FOR A JUDGMENT OF ACQUITTAL, WHICH WAS DENIED. (DOC. 21-1, EX. 1i, at 1834-1843 ; 1874-1875). THE JURY DELIVERATED AND FOUND PETITIONER GUILTY AS CHARGED. (DOC. 21-1, EX. 001, at 60). AND THE CIRCUIT COURT SENTENCED PETITIONER TO LIFE IMPRISONMENT. (DOC. 21-1, EX. 1C, at 617).

REASONS FOR GRANTING THE PETITION

PETITIONER AYERS, THAT THE ELEVENTH CIRCUIT COURT OF APPEALS APPLIED TOO HEAVY A BURDEN UPON HIM WHEN DENYING HIS REQUEST FOR PERMISSION TO APPEAL FOR HIS GROUND ONE (1) THE DENIAL OF GROUND ONE (1) HIS 28 U.S.C., SECTION 2254 HABEAS CORPUS PETITION BY THE DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION. CONTRARY TO SLACK V. MCDANIAL, 120 Sct 1595 at 1604 (2000) AND BUCK V. DAVIS, 137 Sct 759 at 773 (2017).

I WOULD FIRST NOTE THAT PETITIONER WAS/IS SEEKING TO CERTIFICATE OF APPEALABILITY FOR HIS GROUND ONE ONLY. AND THE GROUND ONE, THE STATE FAILED TO MEET ITS BURDEN OF PROOF. ANY COURT NEVER GAVE THE OPINION ON GROUND ONE'S MERITS.

IN SLACK, THIS COURT STATED THAT:

"WHERE A DISTRICT COURT HAS REJECTED THE CONSTITUTIONAL CLAIMS ON THE MERITS, THE SHOWING REQUIRED TO SATISFY

§ 2253(c) is STRAIGHT FORWARD:

THE PETITIONER MUST DEMONSTRATE THAT
REASONABLE JURISTS WOULD FIND THE DISTRICT COURT'S
ASSESSMENT OF THE CONSTITUTIONAL CLAIMS DEBATABLE
OR WRONG.... WHEN THE DISTRICT COURT DENIES A
HABEAS PETITION ON PROCEDURAL GROUND WITHOUT
REACHING THE PRISONER'S UNDERLYING CONSTITUTIONAL
CLAIM, A COA SHOULD ISSUE WHEN 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." ID
(EMPHASIS ADDED).

SEVENTEEN YEARS LATER, THIS COURT EXPLAINED
THE LEVEL OF THE ANALYSIS TO BE CONSIDERED WHEN
DETERMINING TO GRANT OR DENY A COA TO A PETITIONER

IN BUCK V. DAVIS, 137 Sct 759 at 773 (2017).

THERE, THE COURT EXPLAINED:

" THE COA INQUIRY, WE HAVE EMPHASIZED, IS NOT CO-EXTENSIVE WITH A MERITS ANALYSIS. AT THE COA STAGE THE ONLY QUESTION IS WHETHER THE APPLICANT HAS SHOWN THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OR THAT JURISTS COULD CONCLUDE THE ISSUE PRESENTED ARE ADEQUATE TO PROCEED FURTHER. THIS THRESHOLD QUESTION SHOULD BE DECIDED WITHOUT FULL CONSIDERATION OF THE FACTUAL OR LEGAL BASIS ADDUCED IN SUPPORT OF THE CLAIMS."

BUCK, at 773 (CITATIONS OMITTED) (EMPHASIS ADDED).

HERE, THE DISTRICT COURT DENIED PETITIONER'S GROUND ONE ON PROCEDURAL GROUND. PETITIONER RAISED

THE CONSTITUTIONAL CLAIM IN HIS GROUND ONE (1)
THAT THE STATE FAILED TO PROVE ANY OF THE
ELEMENTS OF SECOND DEGREE MURDER, AND THAT
HIS CONVICTION RAN AFOUL OF THE DUE PROCESS CLAUSE
OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION UNDER JACKSON V.
VIRGINIA, 443 U.S. 307, 318-19 (1979).

UNDER THE DENIAL OF THE GROUND ONE FOR
PROCEDURAL GROUND, THE DISTRICT COURT FOUND PETITIONER
DID NOT ALERT THE STATE TO THE NATURE OF HIS FEDERAL
CLAIM FOR HIS GROUND ONE.

(SEE ENCLOSED EXHIBIT 8, at 6,7 OF 11 OR RECORD DOC. 41, at 6,7 OF 11).

IT WOULD BE A FUNDAMENTAL MISCARRIAGE OF JUSTICE
TO NOT ADDRESS THE MERITS OF THE CLAIM (GROUND ONE).
BALDWIN V. JOHNSON, 152 F.3d 1304, 1319 (11TH CIR 1998).

HOWEVER, THIS WAS INCORRECT, BECAUSE PETITIONER
FILED A STATE HABEAS CORPUS PETITION IN THE STATE
APPELLATE COURT THAT THE COURT ACCEPTED AND DENIED
BY ORDER OF THE COURT. SEE ENCLOSED EXHIBIT # D.

STATE HABEAS PETITION SPECIFICALLY ARGUES THE
FOURTEENTH AMENDMENT, DUE TO INSUFFICIENT EVIDENCE.
SEE ENCLOSED EXHIBIT # E OR RECORD DOC. 21-1, EX. 10.

PETITIONER'S STATE HABEAS PETITION PLAINLY
"ALERTED" THE STATE COURT TO THE NATURE OF HIS
FEDERAL CLAIM FOR HIS GROUND ONE.

ALSO, PETITIONER WOULD LIKE TO POINT OUT THAT
THE GROUND ONE OF HIS § 2254 WAS EXHAUSTED
WHERE, IN HIS DIRECT APPEAL OF HIS JUDGMENT AND SENTENCE
HE USED CLEARLY ESTABLISHED FEDERAL LAW ARGUING
HIS ENTITLEMENT TO RELIEF.

IN HIS INITIAL + REPLY BRIEFS, GROUND ONE:

THE STATE FAILED TO MEET ITS BURDEN OF PROOF AND

IN GROUND FIVE, HE SPECIFICALLY SUBMITTED THAT A

FEDERAL SOURCE OF LAW WHEN HE STATED THAT THE

COMBINED ERRORS COMPLAINED OF ABOVE, AND IN THE

WHOLE THIS INITIAL AND REPLY BRIEFS, DENIED

PETITIONER HIS RIGHT TO A FAIR TRIAL AND VIOLATION

OF THE 6TH AMENDMENT TO THE U.S.C.

(DOC. 21-1, EX. 2, at 19, 23-35, 47-48; EX. 04, at 1-9, 14).

ALSO, GROUND ONE OF HIS § 2254 WAS EXHAUSTED

WHERE, IN HIS MOTION RULE 3.850 HE USED VIOLATION OF

THE 5TH, 6TH AND 14TH AMENDMENTS TO THE U.S.C.

(DOC. 21-1, EX. 21 AND 23).

NEXT, IN PETITIONER'S "MOTION FOR CERTIFICATE OF APPEALABILITY" HE MADE " ① THE MERITS OF AN UNDERLYING CLAIM. ② THE PROCEDURAL ISSUE THAT HE SEEK TO RAISE AND A SUBSTANTIAL SHOWING OF THE DENIAL OF HIS CONSTITUTIONAL RIGHTS UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION. SEE ENCLOSED EXHIBIT # F MOTION FOR CERTIFICATE OF APPEALABILITY.

PETITIONER AVERS THAT HE SHOULD HAVE BEEN GRANTED A CERTIFICATE OF APPEALABILITY BY THE ELEVENTH CIRCUIT COURT OF APPEAL. HOWEVER, THAT COURT PLACED TOO HEAVY OF A BURDEN UPON PETITIONER WHEN DENYING HIM A COA. CONTRARY TO SLACK AND BUCK, SUPRA.

PETITIONER RESPECTFULLY REQUESTS THIS
HONORABLE COURT REVERSE AND REMAND THIS CASE
BACK TO THE ELEVENTH CIRCUIT WITH INSTRUCTIONS
TO GRANT PETITIONER A COA ON GROUND ONE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Kultar Singh
KULTAR SINGH GORAYA, Y58237

Date: JULY 4, 2022