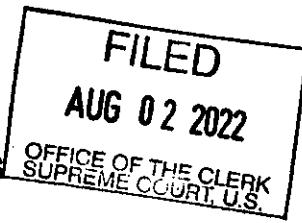


No. 22-5516

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Antrell D. Lewis — PETITIONER
(Your Name)

vs.

United States of America — 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)

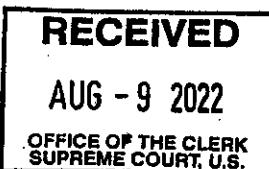
PETITION FOR WRIT OF CERTIORARI

Antrell Desharron Lewis Pro-se
(Your Name)

FCI Pekin P.O. Box 5000
(Address)

Pekin IL, 61555
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. Did trialcounsel provide ineffective assistance in light of this courts holding in Burrage by failing to investigate the drug alleged to have caused the overdose death?
2. Did Petitioner properly raise a claim of prosecutorial misconduct in light of Massaro under ineffective assistance of counsel in a 2255 proceeding?

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

United States v. Lewis 895 F.3d 1004 (8th Cir. June 15, 2018)

Lewis v. United States, 2019 U.S. Lexis 136 (U.S. Jan. 7, 2019)

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28 U.S.C. 841(b)

28 U.S.C. 2255

28 U.S.C. 802(32)

OTHER

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 United States v. Lewis 895 F.3d 1004; 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 is unpublished.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 Lewis v. United States No 19-CV-1005; 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 N/A; 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 _____.

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 15, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

STATEMENT OF THE CASE

The Petitioner distributed heroin to another dealer named Joshua Manning, who in turn sold it to other users. Consequently one of Manning users injected some heroin mixture into himself and fatally overdosed. On November 15th of 2016 a federal grand jury charged Petitioner in the indictment with conspiracy to distribute drug mixtures (Count 1) and distributing of a mixture containing heroin and fentanyl which resulted in an overdose death (Count 2) see *United States v. Lewis* 895 F.3d 1004(8th C. 2018). The allegation of death raised the statutory penalty ranges to twenty years to life in prison. *Lewis* 895 F.3d at 1005 citing 21 U.S.C. 841(b)(1)(C).

At trial, in the beginning Manning before he started buying grams of heroin from Petitioner, he stated that he knew another dealer named Bob Scott to obtain heroin. In February of 2016, Manning met Petitioner and started purchasing heroin from him as well. According to Manning he met Petitioner in Debuque, Iowa when Petitioner flagged his car over and he got into the back seat of Manning's car. Petitioner introduced himself to Manning as Lucky, gave Manning 0.5 grams of heroin to try and had Manning save his phone number in Manning's phone. As noted, Manning started buying 5 grams and gram quantities of heroin from Petitioner a couple of times per week *Lewis* 895 F.3d at 1006. The record revealed that the Petitioner made a distribution of some drugs to Manning on the early morning hours of March 3rd of 2016. It is less clear, whether Manning alone redistributed those drugs or other

drugs to Jeremy Stierman or Vanamberg or Kelly or whether Nadermann had a part in the potential redistribution of some drugs.

At trial, Manning acknowledged that Nadermann had "a little bit" of heroin with him when he picked Manning up in Maquoketa. (TR-529) According to Manning the group stopped on the way to Dubuque and used Nadermann's heroin at that time.

Petitioner points out that the intervening acts of redistribution relieves him of responsibility for the ultimate severe bodily injuries of Vanamburg and Kelly or death of Stierman that occurred see United States v. Smith 450 F 3d 856, 860 (8th Cir. 2006).

Petitioner contends in his 28 U.S.C. 2255 motion that his is legally factually and actually innocent of the charge of distributing furanyl-fentanyl that was independent or but-for cause of (victim Stierman) death. Petitioner points out that it was not a combination of heroin and furanyl-fentanyl that killed the victim. See Lewis v. United States, No 2:19-CV-1005(LTS). Following Burrage, Petitioner contends that the contributory role played by the heroin was legally insufficient to establish but-for causation required for the enhanced statutory penalty, see Burrage v. United States, 571 U.S. 204, 134 S. CT. 881 L Ed. 2D 715 (2014) a case decided before Petitioner's trial. For example as noted above at trial the record revealed that on the date of death the victim used multiple drugs as was the case in Burrage.

On this Writ For Certiorari, keep in mind the questions discussed below and how Petitioner is charged he can establish how the Eighth Circuit created a conflict amongst the circuits.

REASONS FOR GRANTING PETITION

In view of **Ewing**, the Eighth Circuit Court of Appeals holding in Petitioner's case looks like a misapplication of the beyond a reasonable standard see **United States v. Ewing** 749 F.ed Appx 317, 328-29 (6th C., August 31, 2018) citing **Burrage v. United States** 571 U.S. 204, 216, 134 S. Ct. 881, 187 L. Ed.2d 715 (2014).

This argument in **Ewing** would have made for an interesting trial defense, and it is one that was likely available to him even prior to **Burrage**. Be that as it may, and assuming **Burrage** places increased importance on **Stierman's** autopsy report that would not excuse counsel's failure to explore this line of defense previously see **Hinton v. Alabama** 571 U.S. 263, 272-74, 134 S. Ct. 1081, 188 L.Ed.2d(2014). Deference must be given to counsel's strategic decisions, but strategic choices made after less than complete investigation of law and facts are reasonable precisely to the extent that reasonable professional judgment support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *id* at 274 quoting **Strickland**, 466 U.S. at 690-91.

With that being respectfully said, a reasonable jurists could not agree with the district court's determination that defense counsel's decision to not retain a medical expert was a reasonable, strategic decision. *id* at 274. Keep in mind, without holding an evidentiary hearing, the district court denied 2255 relief see **Lewis v. United States**. No 19-CV-1005(LTS)(Doc 27 filed(8-31-2021).

Petitioner asserts that the district court should have granted an evidentiary hearing to find out if defense counsel had considered whether to hire a medical expert but determined that it was not necessary given that the sole cause of death according to the autopsy of Stierman was furanyl-fentanyl overdose and again over looking that the discovery revealed that Petitioner was not the only source of drugs supplied to Stierman immediately before his death. *Hinton*, 571 U.S. at 274 (as noted above).

Indeed, the autopsy report listed acute furanyl-fentanyl toxicity as the cause of death, and toxicology test showed only furanyl-fentanyl in his blood, although furanyl-fentanyl, its metabolite non-fentanyl, see 802(32)(A), and his urine was found to contain no morphine opiates see *Burrage v. United States*, 571 U.S. 204, 218-19, 134 S. Ct. 881, 187 L Ed.2d 715(2014), which held that a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. 841(b)(1)(C) unless the government shows that the use of a drug that the defendant distributed "is a but-for cause of the victim's death or serious bodily injury. *Ewing* 749 Fed Appx at 328-29.

Petitioner respectfully asserts that had trial counsel sought to obtain an expert to review toxicology reports and other evidence, counsel would have received at least two expert opinions demonstrating that the substances distributed by Petitioner may not have caused the death of Stierman. In support of his argument, Petitioner points out the Sixth Circuit opinion in *Ewing* 749 Fed Appx at 329. This opinion in *Ewing* supports the conclusion that, although there was no presence of morphine in Stierman's urine suggested other drug use, such use could have occurred up to four days prior.

And "any medical expert" can explain that the presence of a drug in the urine is hard to use for the purposes of death. *Burrage* 571 U.S. at 207. Keep in mind, Petitioner that on his 2255, asserted that counsel was ineffective for failing to investigate whether the drug he distributed caused *Stierman's* overdose. Petitioner points out that counsel provided him with discovery that revealed a discrepancy between the remaining drugs found on the victim at the time of his overdose that they had claimed came from Petitioner a combination of heroin and furanyl-fentanyl and the drugs found through his blood test was furanyl-fentanyl only, see *Lewis* 895 F.3d at 1006. As noted by Petitioner in his 2255 motion, had *Stierman* overdosed on the drugs that he sold to *Manning*, the toxicology results would have shown 6-MAM in *Stierman's* blood. *Ewing* 749 Fed Appx at 328-29. In support of this question, Petitioner citing the Court's decision in *Burrage v. United States* 571 U.S. 204, 207, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014), in which the Court held that, at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. 841(b)(1)(C) unless such use is a but-for cause of the death or injury. *id* at 218-19. As noted above, he also analogized his case to *United States v. Ewing* 749 Fed Appx 317 (6th Cir. 2018) cert denied, 139 S.Ct. 855, 202 L.Ed.2d 619 (2018) where this court vacated a conviction for distributing a mixture containing heroin and fentanyl, the use of which resulted in the death of an individual, due to an unexplained gap in the evidence with respect to the victim's death was from the mixture of heroin and fentanyl that *Ewing* sold to him. *Id* at 329. The court explained that, because no heroin metabolites were found in the victim's blood, it was highly unlikely that he had used heroin

in the several hours before his death. *Id.* The Sixth Circuit concluded that in the absence of evidence to explain the absence of heroin or its metabolites in the victim's blood, "the jury lacked sufficient evidence to conclude beyond a reasonable doubt that the heroin mixture sold by **Ewing** contained the fentanyl that caused the victim's death. *Id.* at 380.

Petitioner respectfully asserts like in **Ewing**, there was an "unexplained gap" between the substance he was charged with distributing and the substance that caused **Stierman's** overdose. **Lewis** 895 F.3d at 1006. Therefore, a reasonable jurists could disagree with the district court's conclusion that Petitioner failed to show that counsel was not ineffective for failing to investigate whether the drug he distributed caused the victim's overdose in light of **Burrage**.

SECOND QUESTION

The issue in Petitioner's 2255, which the district court did not address under ineffective assistance of counsel, potentially requires a fact-intensive analysis of the nature and circumstances of Petitioner's alleged prosecutorial misconduct and its relationship... to the performance of the issue under collateral proceeding see **Massaro v. United States**, 538 U.S. 500, 504, 123 S. Ct. 1690, 155 L^{Ed}.2d 714 (2003) and also **Barajas v. United States** 877 F.3d 378, 383 (8th Cir. 2017).

The Petitioner retains the right to raise claims alleging ineffective assistance of counsel, as long as the defendant properly raises those claims by collateral review under 28 U.S.C. 2255 see

Evitts v. Lacey 469 U.S. 387, 395, 105 S. Ct. 830, 83 LEd.2d 821 (1985) Petitioner may and in many cases, must wait to raise ineffective assistance claims for the first time on collateral review. **Barajas** 877 3d at 383 citing **Massaro** 538 U.S. at 508-09. As discussed below, the district court's failure to address Petitioner's claims of prosecutorial misconduct, as noted, **Lewis v. United States** No. 19-CV-1005(LTS) a major issue that makes this Courts task of fully examining the record below more difficult.

As Noted, Dr. Goodin Testified To The Following:

Q: Okay. And so in this case, there's no GAM found in the heart blood?

A: It's usually identified in the urine, and we did not find it in either heart blood or urine.

Q: And in this case though, the furanyl/fentanyl was found in the heart blood?

A: Yes

Q: And no other opiates or opioids were found in the blood?

A: None were identified.

Q: And so your identification of opiates or opioids as being in the cause of death is because of the presence or the screening test on the urine?

A: Yes.

Q: And would furanyl fentanyl cause a positive screening test for opiates or opioids?

A: It might, yes.

Q: Doctor in your opinion, if Mr. Stierman had not used furanyl fentanyl, would he have died on March 3rd of 2016?

A: No

Q: And why is that?

A: Because I found no other cause of death.

Q: And so your investigation pointed to the furanyl fentanyl?

A: Yes.

Petitioner presented evidence of a pattern of misconduct that should have alerted the district court. see **United States v. Benson** 957 F.3d 218, 234 (4th Cir. 2020). Certainly, the autopsy report would establish his innocence of the penalty enhancement provision of 21 U.S.C. 841(b)(1)(C) on its own. **Burrage** 571 U.S. at 218-19. It shows that the victim died from furanyl-fentanyl without an indication of heroin use. see **United States v. Ewing** 749 Fed Appx 317, 329-30 (6th Cir. 2018). This information was exculpatory, however, if one accepts as true. Petitioner cannot be liable under the penalty enhancement provision of 21 U.S.C. 841(b)(1)(C) **Benson** 957 F.3d at 234.

Thus the doctrine of procedural default prevents criminal defendants from reviving forfeited claims without showing of cause and prejudice in order to "conserve judicial resources and to respect the law's important interest in the finality of judgments". **Massaro**, 538 U.S. at 504. It also promotes the timely resolution of constitutional issues. see **Wainwright v. Sykes** 433 U.S. 72, 89, 97 S. Ct. 2497, 53 L Ed.2d 594 (1977). (Suggesting that the doctrine prevents "sandbagging" and encourages the earliest possible resolution of constitutional issues. In **Massaro**, however, this Court found that requiring a criminal defendant to bring ineffective assistance claims on direct appeal does not promote the objectives of the procedural default doctrine. 538 U.S. at 504. This is because, practically speaking, it is difficult to identify and evaluate counsel's relevant conduct on direct review, and it is often impossible to determine prejudice prior to a final judgement. **id** 505-06. Thus, defendants

are permitted to raise ineffective assistance claims for the first time on collateral review, leaving Strickland's height threshold to guard finality in this context. 466 U.S. at 693 (explaining that the standard for proving ineffective assistance of counsel reflects concerns about the finality of criminal convictions).

Therefore, given the procedural posture, reasonable jurist could debate the district court's rejection of this ineffective assistance claim. see **Miller v. Cockrell** 537 U.S. 322, 335-36 123 S. Ct. 1029, 154 L.Ed.2d 931 (2003). The Petitioner also asserts that a reasonable jurist could debate an evidentiary hearing on both of his claims of ineffective assistance of counsel, if he has alleged facts that if proven, would entitle him to relief, see **Machibrode v. United States**, 368 U.S. 487, 496, 82 S. Ct. 510, 7 L.Ed.2d 473 (1962).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Aatrell Peebles

Date: 8/12/2022