

No. 22-5565

RECEIVED
SUPREME COURT OF THE UNITED STATES
AUGUST 10, 2022

IN THE

SUPREME COURT OF THE UNITED STATES

FEDNER PIERRE-LOUIS - PETITIONER,

Supreme Court, U.S.
FILED
AUG 10 2022
OFFICE OF THE CLERK

vs.

ATTORNEY GENERAL NEW JERSEY - RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
C.A. No. 21-2943

PETITION FOR WRIT OF CERTIORARI

Fedner Pierre-Louis
517438/SBI 750989C
East Jersey State Prison
Lock Bag R
Rahway, New Jersey 07065

QUESTION(S) PRESENTED

1. WHETHER THE RULING OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT IS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW WHERE THE COURT FAILED TO GRANT A CERTIFICATE OF APPEALABILITY ON A CLAIM THAT JURIST OF REASON COULD CLEARLY FIND DEBATABLE?
2. WHETHER THE POST-CONVICTION RELIEF (PCR) COURT'S GRANTING OF PETITIONER'S PCR, AND SUBSEQUENT REVERSAL OF ITS OWN DECISION, AND THEN THE NEW JERSEY SUPREME COURT'S REVERSAL OF THE PCR COURT'S DECISION TO REVERSE ITSELF CLEARLY ESTABLISHES THAT JURISTS OF REASON COULD FIND PETITIONER'S CLAIM DEBATABLE?
3. WHETHER THE PETITIONER MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, WHICH JURISTS OF REASON COULD CLEARLY FIND DEBATABLE?

LIST OF PARTIES

[X] 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:

Patrick A. Nogan, Administrator; and Attorney of the State of New Jersey

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	9

INDEX TO APPENDICES

APPENDIX A	September 28, 2021 District Court Opinion
APPENDIX B	March 28, 2022 Order Denying Certificate of Appealability

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Collins v. Sec'y of Pa. Dep't of Corr.</u> , 742 F.3d 528 (3d Cir. 2014)	7
<u>Harrington v. Richter</u> , 562 U.S. 86 (2011)	7
<u>Strickland v. Washington</u> , 466 U.S. 668, 687 (1984)	5,7
 STATUTES AND RULES	
<u>N.J.S.A. 2C:43-7.2</u>	4
28 U.S.C. 2254	4

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 _____; 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 3-28-2022.

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 August 10, 2022 (date) on June 24, 2022 (date) in Application No. 21 A 850.

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

This case involves a provision of the Sixth Amendment of the United States Constitution, which provides for the right to effective assistance of trial counsel. The statutory provision of the United States Code 28 U.S. 2254(d)(1)-(2) governing the standard for the issuance of a Petition for a Writ of Habeas Corpus.

STATEMENT OF THE CASE

This petition seeks relief from the decision of the U.S. Court of Appeals for the Third Circuit affirming the Order of the United States District Court for the District Of New Jersey, which denied petitioner's petition, brought pursuant to 28 U.S.C. 2254 by a New Jersey prisoner. The petition sought relief from a conviction and sentence in the New Jersey State court on which he remains incarcerated.

(A) New Jersey State Court Proceeeeings.

(1) Trial Court: Petitioner was charged by way of Indictment No. 02-10-01296, with crimes stemming from the shooting death of Dr. Jeffrey Perchick occurring on March 1, 2002, in Elizabeth, New Jersey. Petitioner was ultimately convicted of aggravated manslaughter, robbery, felony murder, and related weapons offenses.

At Petitioner's sentencing, the judge merged aggravated manslaughter, robbery, and possession of a weapon for unlawful purpose into the conviction for felony murder, and sentenced Petitioner to a forty-five year term of imprisonment, with an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2. On the conviction for third-degree unlawful possession of a weapon, the court sentenced Petitioner to a term of five years consecutive to the forty-five year term for first-degree felony murder. Petitioner filed an appeal to the Appellate Division, which was affirmed the conviction, but vacated the unlawful possession of a weapon and remanded for re-sentencing. The Petitioner has not yet been resentenced.

(B) The Federal Court Proceedings

Petitioner timely filed his habeas petition on April 4, 2018. Petitioner thereafter filed an Amended petition dated September 10, 2018. The State filed their answer on

May 28, 2019, and Petitioner filed his traverse on July 8, 2019. The District Court issued an opinion on September 28, 2021. (Appendix A). Petitioner filed for his Certificate of Appealability with the Third Circuit Court of Appeals on November 7, 2021. The Third Circuit Court of Appeals denied Petitioner's petition on April 22, 2022. (Appendix B).

Petitioner timely filed his Petition for a Writ of Certiorari, and motioned for an extension of time to retrieve his court orders, opinions, and documents, which was granted.

This matter involves the question of whether the District Court's ruling that the state court's ruling is not contrary to clearly established federal law, an unreasonable application and determination of the facts in light of the evidence presented in state court is also contrary to clearly established federal law. Petitioner asserts this occurred when the District Court failed to evaluate the Post-Conviction Relief (PCR) court's order granting a new trial finding that the two prongs established in Strickland v. Washington, 466 U.S. 668, 687 (1984) were satisfied. The District Court singularly focused on the subsequent ruling of the same court reversing its own ruling on January 30, 2009 based on evidence that was not supported by the record.

Judge John S. Triarsi, J.S.C., presided over Petitioner's trial and state collateral review proceedings. The Respondents filed a motion for reconsideration on January 26, 2009, based on the certification of Robert Hasanoeddin, an Investigator with the Office of the Public Defenders. The certification of Investigator Hasanoeddin was based on "recently located files." The contents of those files contained notes of the interviews conducted by Investigator Hasanoeddin. Despite, the misrepresentations of the prosecutor, the trial court deviated from its initial ruling granting Petitioner a new trial

based on the ineffectiveness of counsel due to the failure to present an alibi defense that Petitioner and his family requested trial counsel to present. The prosecutor offered no new evidence to substantially alter Judge Triarsi's initial finding that trial counsel failed to conduct an investigation into Petitioner's alibi.

During Petitioner's trial, on December 2, 2004, trial counsel exposed that no Notice of Alibi had been filed on Petitioner's behalf. As a result of this deficiency, trial counsel was prevented from eliciting favorable testimony from the state's chief witness. The mere fact that trial counsel's inactions resulted in the exclusion of potential exculpatory evidence, the PCR judge, who also presided over Petitioner's trial, granted him a new on January 16, 2009, trial based on ineffective assistance of counsel for his deficient performance dealing with the alibi defense.

On January 30, 2009, the PCR court reinstated Petitioner's conviction for dubious reasons, which were not established on the record. The New Jersey Supreme Court reversed the decision finding that the factual findings by the PCR court were insufficient to allow for a definitive ruling, and remanded the matter for a new evidentiary hearing before a new PCR court judge on February 2, 2014.

The New Jersey Supreme Court's ruling to reverse the January 30, 2009 decision should have reinstated the January 16, 2009 order reversing the Petitioner's conviction based on the findings in the record that trial counsel failed to investigate Petitioner's alibi. Instead, the New Jersey Supreme Court's ruling remanded Petitioner's case for another unnecessary evidentiary hearing.

REASONS FOR GRANTING THE PETITION

When a claim of ineffective assistance of counsel has been exhausted in state court, review of that claim by a federal habeas court is significantly circumscribed. The federal court does not review the Strickland claim de novo; rather, "[t]he pivotal question is whether the state court's application of the Strickland standard was unreasonable." Harrington v. Richter, 562 U.S. 86, 101, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011) (emphasis supplied); Collins v. Sec'y of Pa. Dep't of Corr., 742 F.3d 528, 547-48 (3d Cir. 2014). This "doubly" deferential standard of review means that, "so long as fairminded jurists could disagree on the correctness of the state court's decision," a state court's determination that a Strickland claim lacks merit precludes federal habeas relief. Harrington, 562 U.S. at 101, 105.

In this particular instance, the District Court's decision to deny Petitioner's claims because the state record established that he received ineffective assistance of counsel and was thus granted a new trial on January 16, 2009.

The District Court's decision was contrary to the above standard of review and was therefore an unreasonable determination in light of the evidence presented that the state court's application of the Strickland standard was unreasonable. Also, that jurist of reason could find it debatable that the state court's application of the Strickland standard was unreasonable.

Following an evidentiary hearing, the Post-Conviction Relief (PCR) court found that Petitioner satisfied both prongs of the Strickland standard, and granted the PCR reversing the Petitioner's conviction. Subsequently, in an unprecedented move, the state prosecutor moved to reopen the evidentiary hearing after obtaining a certification

of Robert Hasanoeddin, an Investigator with the Office of the Public Defenders. The certification of Investigator Hasanoeddin was allegedly based on "recently located files." The contents of those files contained notes of the interviews conducted by Investigator Hasanoeddin. However, this information had no significance to the PCR judge's decision granting the PCR and reversing the defendant's conviction. More importantly, the record did not support the information. Nevertheless, the PCR judge reversed its decision and reinstated Petitioner's conviction. On appeal of this order, the New Jersey Supreme Court granted certification, and vacated the PCR judge's decision to reverse its own decision granting the PCR. The New Jersey Supreme Court ruled that the PCR court's latter decision reversing its granting of the PCR, that the factual findings by the PCR court were insufficient to allow for a definitive ruling, and remanded the matter for a new evidentiary hearing before a new PCR court judge.

Petitioner contends that the New Jersey Supreme Court's remedy should have been to reinstate the PCR court's earlier order granting the PCR, especially, since the latter decision was not supported by the record and was insufficient. Another evidentiary hearing was unnecessary, and only provided the State the unfair advantage of attempting to rebut the PCR court's findings granting the PCR petition.

The Petitioner has met the high standard necessary to obtain habeas relief in this matter. The fact that the PCR judge, who also presided over Petitioner's trial, granted the PCR establishes the PCR court's later reversal of its own decision on information not supported by the record, and subsequently determined by the New Jersey Supreme Court to be insufficient, is clearly debatable.