22-No. 5837

IN THE SUPREME COURT OF THE UNITED STATES

MICAH S. MATTHEWS,

Petitioner,

Vs.

Iowa Court of Appeals
Wyatt Peterson, Judge, et al.

Respondent,

On Petition for Writ of Certiorari from the
APPEAL FROM THE COURT OF APPEALS OF IOWA
No. 20-1317

PETITION FOR WRIT OF CERTIORARI

Micah S. Matthews
P.O. Box 316
Ft. Madison, IA. 52627

Pro Se Litigant

QUESTIONS PRESENTED

(1) Is a state appellate court's refusal to allow a petitioner to file a successive petition for Post-Conviction Relief on an unmitigated, meritorious claim an unconstitutional denial of Due Process under the 14th Amendment?

(2) If PCR counsel is ineffective in presenting the claim of ineffective assistance of trial counsel, is the underlying constitutional entitlement to effective counsel at trial a nullity and lie unenforced?

(3) Do defective jury instructions constitute a material fact sufficient to preclude Summary Judgement on Petition for 2nd Post-Conviction Relief?

(4) Is granting Summary Judgement for the state, a violation of the Due Process Clause of the 14th Amendment, where the record establishes triable claims that have not been addressed?

LIST OF PARTIES

Petitioner, pro se:

Micah Matthews, #6820110, P.O. Box 316, Fort Madison, IA 52627

Respondent:

1. District Court of the Sixth Judicial District, Judge, Douglas Russell, FECR82288.

2. Iowa Court of Appeals for Johnson County, Judge, Wyatt Peterson, No 20-1317.

RELATED CASES

Court of Appeals of Iowa 2010, 791 N.W. 2d 429 State v. Matthews, Oct 6, 2010.

Court of Appeals of Iowa 908 N.W. 2d 540 Matthews v. State Aug 16, 2017.

Court of Appeals of Iowa 2016, 885 N.W. 2d 217, State v. Matthews May 25, 20`16.

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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 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[ ] is unpublished.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 United State district court appear at Appendix _____ to the petition and is

[ ] reported at_____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from **state court:**

The opinion of the highest state court to review the merits appears at Appendix A, to the petition and is

[X] Reported at No. 20-1317 or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the (second state post-conviction relief) court appears at Appendix B to the petition and is

[ ] reported at_____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[ ] For cases from **Federal court**;

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: _____, 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 I including _____ (date) on _____ (date) in Application No. __A__.

The jurisdiction of this Court is involved under 28 U.S.C. § 1254 (1).

[x] For cases from **State courts:**

The date on which the highest state court decided my case was 3/30/22.

A copy of that decision appears at Appendix A.

[x] A timely petition for rehearing was thereafter denied on the following date; 4/14/22, and a copy of the order denying rehearing appears at Appendix B.

[x] A timely petition for further review was thereafter denied on the following date; 6/20/22, and a copy of the order denying Further Review appears at Appendix D.

The jurisdiction of this Court is involved under 28 U.S.C. § 1254 **(a)**.

COSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

United States Constitution, 5th Amendment.

United States Constitution 6th Amendment.

United States Constitution, 14th Amendment.

Iowa Code 822.3 (How to commence proceeding-limitations)

Iowa Code 822.8 (Grounds must be all inclusive)

STATEMENT OF THE CASE

After being convicted in 2009, absent the essential intensified confinement elements for conviction of kidnapping in the first degree. Matthews's conviction was affirmed on Direct Appeal relying on the some defective instructions. During Matthews's first Post-Conviction Relief action, the court acknowledge the "insufficient of evidence" claim, and ruled on the claim by referring to the Trial Court's ruling.

Thereafter, the Appellate court grounded the claim, by unreasonable claiming Matthews failed to preserve his Ineffective Assistance of counsel claim in regards to the 'Insufficient evidence'. In addition, the Appeals Court then excused counsel of any wrong doing and determined Matthews failed to establish prejudice. Nevertheless Matthews took the critical final step for Further Review in the Iowa Supreme Court, which was denied and Procedendo issued thereafter on 10/10/17.Matthews filed a timely Habeas petition, but later dismissed the petition, when a new rule of law allowed him to return file a successive PCR petition.

On October 2, 2020, a ruling granting the states motion for Summary disposition was based on three factor, **(1)** that the appeal of denial of Matthews first PCR became final on October 29, 2017, **(2)** that the Allison case was decided on June 29, 2018 and Mathews second PCR application was filed November 29, 2018, which amounted to fifteen Months after Procedendo and 152 days after the Allison decision, thus did not fail within the Allison parameters for 'promptness'. On appeal Summary Judgement was grant.

REASONS FOR GRANTING THE PETITION

Petitioner Micah Matthews has attempted, at every stage to raise the claim of (insufficient evidence), see Appx. H, K, N, L, with the intent of addressing the errors at law regarding the defective confinement jury instructions for first degree kidnapping. While arguable waived as a freestanding claim, it is reviewable as a sub-claim under ineffective assistance of counsel. The Universal "showing of cause" and/or "**sufficient reason**" pursuant to Iowa Code 822.8, is Ineffective Assistance of counsel, see also Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 2645, 91 L. Ed. 2d 297 (1986).

Supporting statue for relief

The state of Iowa, through the decision in Allison v. State, 914 N.W. 2d 866 (Iowa 2018) separated Iowa Code 822.3 and 822.8. In other words, a second petition based on ineffective assistance of counsel, no longer had to be filed within the three year limitation period of Iowa Code section 822.3. This authorized the Iowa Court of Appeals to allow any petitioner with a "Sufficient Reason" and a "reasonable probability" of relief to file a successive petition pursuant to

Iowa Code section 822.8. Matthews's claim of ineffective assistance of counsel is established by the record and is meritorious, Penson v. Ohio, 488 U.S. 75, 83-84 (I988) (a determination that arguable issues were presented by the record creates a constitutional imperative).For this reason, Matthews asserts the Appeals Court decision to affirm the district courts Summary Judgement was in error and violated the due process clause of the 14th Amendment.

Matthews request for Certiorari is due to the Iowa Court of Appeals arbitrary process for denying permission to file a successive post-conviction petition. While there is no constitutional right to post-conviction review, when a state elects to provide an avenue for post-conviction relief, the process must comport with the protections of the 14th amendment, Yates v. Aiken, 484 U.S. 211, 217-218 (1988); Pennsylvania v. Finley, 481 U.S. 551, 558 (1987) ("when a state opt to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the constitution and, in particular, in accord with the Due Process Clause.")

Lack off Substantive Due Process protection

The procedure in Iowa, lacks due process protections. The Iowa Court of Appeals rejected Matthews's successive petition without any opinion as to the defective confinement instructions that formed the core bases of Matthews's successive petition, violating, Jackson v. Virginia, No. 78-5283.

Matthews does not know why his petition is classified as not being "filed promptly". As Matthews stated on page 13, of his pro se Reply Brief, "even if this court concludes petition didn't meet the "filed promptly" standard of Allison or the provisions of Iowa Code 822.3. The court would still have to reach the merits, pursuant to Iowa Code section 822.8," see **(Appx. M)**. The Courts failure to address either of the foregoing points, establishes the court did not provide a full consideration and resolution of the matter, Anders v. California, 386 U.S. 738 (1967). A review of the record shows that the 'court did not give full consideration to the substantial evidence Matthews put forth in support of his claim, Miller-El v. Cockrell, 537 U.S. 322 (2003).

The significates of Allison, 914 N.W. 2d 866, for which Matthews based his petition, is the rationale that a person

has a right to pursue at least one challenge to the allegation wherein he receives effective assistance of counsel. However, Matthews has not received such effective counsel.

The remedy sought by Matthews is an variation of the right recognized in Martinez v. Ryan, 182 L. Ed. 2d 272 (2012) (wherein under state law, ineffective assistance-of-trial-counsel claims must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if in the initial collateral proceeding, there was no counsel or counsel in that proceeding was ineffective). The rationale on Martinez requires the same due process for state successive post-conviction petitions that Allison and/or Iowa Code 822.8 requires, wherein ineffective assistance of counsel is the exception to set limitation periods. If the 14th Amendment is protected by requiring counsel to be effective, Martinez, 182 L. Ed. 2d 272, then it reasons that absent the level of effective counsel and addition protection required by the 14th Amendment. The Iowa Courts should be required to do so.

Matthews has personally demanded that his defective confinement instruction for kidnapping in the first degree claim be reviewed by every court in which he has pleaded for

nearly 14 years, see **Appx**. H, K, N, L. However, no court has properly addressed the claim, either as an "ineffective assistance of counsel" claim or an "insufficiency of the evidence" claim. The claim has been repeatedly blocked with meritless procedural bars and allegations of overwhelming evidence. However the evidence is only overwhelming due to the ineffectiveness of counsel.

Failure to evaluate under Brecht or Neder

The Appeals court failed to evaluate to some extent the probability of the outcome if the case were tried under proper instructions and the mitigating confinement evidence Matthews has highlighted in this petition, Brecht v. Abrahamson, 507 U.S. 619 (1993).

The Iowa Court of Appeals declared Matthews suffered no prejudice as a result of prior counsels, without citing any standard of review contrary to Neder v. United States, and contrary to Strickland v. Washington for ineffective assistance claims. Matthews's basis for successive post-conviction relief was based on ineffective assistance of his first post-conviction relief counsel in failing to address the defective confinement jury instructions and/or presenting and

arguing trial counsel's ineffectiveness in allowing a defective confinement instruction that relieved the state of its burden "to prove every element of an offense beyond a reasonable doubt," Sandstrom v. Montana, 442 U.S. 510, 524, 99 S. Ct. 2450, 61 L. Ed./ 2d 39 (1979); U.S. Constitution, Amendments V and XIV.

An instruction that omits an element is subject to harmless error analysis, Neder v. United States, 527 U.S. 1, 15, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999), citing Chapman v. California, 386, U.S. 18, 24, 17 L. Ed. 2d 705, 87 S. Ct. 824 (1967). "In order to satisfy its burden of proving that the constitutional error is harmless, the government must prove beyond a reasonable doubt that the defendant would have been convicted absent the violation." Harmlessness is a question of Federal Law, and not of fact. "Therefore, although the court must presume that subsidiary fact finding by the state court are correct, the ultimate determination of whether the existence of constitutional error mandates a new trial requires a de novo determination by this court", 28 U.S.C. § 1257 (a).

Neder is very specific as to how a reviewing court shall conduct harmless error analysis from an omitted element on a jury instruction;

> "Of course, safeguarding the jury guarantee will often require that a reviewing court conduct a thorough examination of the record. If, at the end of that examination, the court cannot conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error. For example, where the defendant contested the omitted element and raised evidence sufficient to support a contrary finding, it should not find the error harmless.
>
> A reviewing court making this harmless—error inquiry does not, as Justice Traynor put it, "become in effect a second jury to determine whether the defendant is guilty," rather a court, in typical appellate court fashion, asks whether the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element, Neder, 527 U.S. at 19.

Omitted Element of Kidnapping in the First Degree

The State proposed instruction #1000.5 on confinement and removal, see **(Appx. G)**. The instructions however omitted the intensifier element, 'significantly,' and 'substantially,' the same as the instruction ruled defective in Moss v. State, No. 15-1624 and State v. Robinson, 859 N.W.2d 464 (Iowa 2015), in that a proper instruction requires the confinement or

removal must have significance independent from the rest of the underlying offense itself in one of the following ways;

A. **(Substantially)** increases the risk of harm to the victim,

B. **(Significantly)** lessens the risk of detection,

C. **(Significantly)** facilitates escape following the underlying offense.

These instructions generally conformed are known as the "Rich Tripartite Test", established in State v. Rich, 305 N.W.2d 739, 745 (Iowa 1981). Thus, to convict for First-Degree Kidnapping, the state must prove that, the facts relating to confinement or removal was substantially more heinous to give rise to the drastic punishment enhancement that is dependent on proof of the intensified elements of confinement.[1]

Matthews contested the Omitted Elements

Before Sentencing, Matthews filed a pro se "Motion in arrest of judgement", claiming the lack of proof regarding the omitted element of confinement, see **(Appx. H)**, However, Matthews was forced to withdraw the motion when the court

[1]see State v. Robinson, 859 N.W.2d 464 (Iowa 2015) also Moss v. State, No. 15-1624, (the error was that the jury instructions for kidnapping completely omitted the intensified Tripartite test for confinement and removal established in State v. Rich, 305 N.W.2d 739, 745 (Iowa 1981)

wouldn't allow counsel to assist in properly presenting the claim, Tr. Tr. 571-573 (**Appx O**). The Claim was nonetheless, preserved for appeal. Matthews raised an "Insufficient Evidence" claim regarding First-Degree Kidnapping, highlighting the correct confinement instruction. In reply, the error at law was ignored and the defective instructions by the district court recited as grounds to confirm Matthews conviction, see (**Appx. K**). A timely post-conviction relief petition was filed raising the "Insufficient Evidence" as a sub-claim under Ineffective Assistance of counsel. The PCR Judge concluded a defense verdict was nigh unto impossible and relied on the trial court decision before denying the claim and petition as a whole. On appeal, the State conceded Matthews preserved the claim, however, the appellate court ruled to the contrary, procedurally barring the claim.

Nonetheless, in the critical final step to satisfy the exhaustion doctrine, Matthews submitted an application for further review and the defective confinement jury instruction for confinement was exhaustively argued, see app. Fur-Rev pp. 3-13.

The trial record contains evidence sufficient to support a contrary finding on the omitted elements

In rejecting Matthews's for 'lack of prejudice', the Iowa Court of appeals in 2017 entire analysis of this issue consisted of the following;

> "As to the Ineffective Assistance claims against the Trial, Appellate, and PCR Counsel, we found Matthews failed to prove prejudice, in part, due to the overwhelming evidence of Matthews guilt, and we affirm the denial of his application."

The Iowa Court of Appeals did not independently review the facts when deciding the issue, instead deferring to facts found on direct appeal in 2010 and PCR in 2015; the 2017 court then mischaracterized the 2010 opinion, interpreting a finding of "overwhelming evidence of guilt" as equivalent to a finding that "evidence overwhelmingly showed sufficient evidence of confinement." The distinction is very crucial, as under Neder, "the showing is limited to asking whether the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element," United States v. England, 2012 U.S. App. LEXIS 17071 (11th Cir. 2012), quoting Neder, 527 U.S. at 19, in other words, the Iowa Court was required to search Matthews's record to see if

any evidence supported a finding that the confinement excited the that necessary to commit the underlying offense and errors at law including the jury instruction now in question.

An actual search of the record reveals that the trial contained insufficient evidence that could have rationally led jurors to convict Matthews of first degree kidnapping. **(1)** The state proposed the defective confinement instructions. This alone should preclude any finding that the instructions were harmless "beyond a reasonable doubt," Neder, 527 U.S. at 18, or that the evidence was "overwhelming". If the state believed the evidence was so "overwhelming" it would have been redundant for the state to propose a defective instruction, with the intent of watering down its burden of proof, Sandstrom, 442 U.S. at 513. **(2)** A properly instructed jury could have reasonable concluded that the taking of the victim to the bank and appearing in front of surveillance cameras, typically known to be at all banks and/or ATM's, did not (substantially) increase the risk of harm to the victim, (significantly) lessen the risk of detection or (significantly) facilitate the risk of escape.

Matthews's has met all three elements, in evaluating the jury instruction error under Neder, 527 U.S. at 19. The

opinion concluding that there was "overwhelming evidence of guilt" is a legal conclusion, not a fact accorded deferential review. State courts finding of historical facts are presumed to be correct, but questions of law and mixed questions of law and fact lack that presumption and are reviewed de novo. Juror return verdicts of guilty or not guilty, not "overwhelming" guilty. The "overwhelming" modifier is respectfully, not fact but a legal conclusion, Mitchell v. Esparza, 540 U.S. 12, 17, 124 S. Ct. 7, 157 L. Ed. 2d 263 (2003).

The question is, did the state meet the burden of proving "beyond a reasonable doubt" that the confinement definitely exceeded the confinement that was an inherent incident of the underlying felony or that the confinement was substantially more heinous to give rise to the drastic punishment enhancement that is dependent on proof of the intensified elements? Neder, 527 U.S. at 19. The lower courts cannot plausibly deny their own reasonable doubt, and have not disproven it as required by Neder; therefore the defective jury instruction were not harmless, neither was counsels failure to address the instruction.

From the outset, the record establishes Matthews suffered from Ineffective Assistance of Counsel. Its evident trial counsel or any counsel thereafter, had no realistic intent of putting forth a strategy to subject the prosecution's case to meaningful adverse testing. To the contrary it's obvious throughout the court proceeding, counsel delivered less than a minimal effort. This is obvious from the repeated failure of all appointed counsel to address the plain error of defective confinement instructions for first degree kidnapping in every stage of the court proceedings.

A long line of cases have established, not only does failing to object to defective jury instructions constitute ineffective counsel, but also result in prejudice, see Reagan v. Norris, 365 F. 3d 66 (6th Cir. 2004) also Sandstrom v. Montana, 442 U.S. 510 (1979). In the present case, the defective instruction watered down the approach to a kidnapping first conviction, by allowing (any) confinement or removal to constitute first degree kidnapping, however slight. This has never been the law in the state of Iowa.

Brecht standard for Collateral Review

On collateral review, the petitioner must show that, in light of the record as a whole, the error had a "substantial and injurious effect" on the jury verdict, Brecht v. Abrahamson, 507 U.S. 619, 623, 113 S. Ct., 1710, 123, L. Ed. 2d 353 (1993); California v. Roy, 519 U.S. 2, 4-6, 117 S. Ct. 337, 136 L. Ed. 2d 266 (1996) (Brecht's harmless error standard applies to jury instructions that omits an element). Instructional errors must result in "actual prejudice" for relief to be granted. Brecht clearly requires a reviewing court to make a de novo examination of the record as a whole, Brecht, 507 U.S. at 638. Accordingly, "where the jury instruction affects a key issue in the trial, 'confinement' that was contested by the defense and supported by the evidence, the error cannot be considered harmless under Brecht."

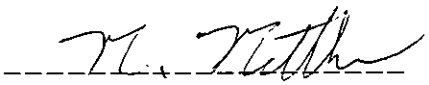
The instructions directly affected the verdict because it directed the jury to convict Matthews if the confinement was significant beyond the underlying offense is supported by **(any)** increase in the risk of harm, lessening of the risk of detection, or facilitation of escape, however slight, which has never been the law Iowa. This satisfies Neder and Strickland standards and constitutes the "substantial and injurious

effect" supporting relief, Brecht, 507 U.S. at 623.For this reason, Matthews's assert there was a genuine issue of material fact precluding Summary Judgement, Fed R. Civ. P. 56 (c). For this reason, Matthews respectfully ask this court to grant Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9/15/22