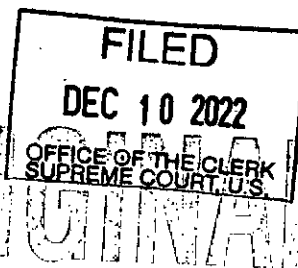


No. 22-6428



IN THE
SUPREME COURT OF THE UNITED STATES

Jermaine Scott — 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 Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jermaine Scott
(Your Name)
Yazoo City - Low
P.O. Box 5000
(Address)

Yazoo City, MS, 39194
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1.) Whether the United States Court of Appeals for the Fifth Circuit abused its discretion when it denied petitioner's request for issuance of a certificate of appealability, based on its conclusion that petitioner did not make the requisite showing under 28 U.S.C. 2253(c)(2), and on its conclusion that the district rejected petitioner's 2255 motion claims on the merits?

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:

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- APPENDIX E 'Order'; United States District Court for the Southern District of Mississippi. (May 9, 2022).
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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 A to the petition and is

☒ reported at Case No. 22-60169; 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☐ is unpublished.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 Case No. 3:18-CR-225-DPJ-FKB; or,

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

☐ is unpublished.

☐ For cases from **state courts**: N/A

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☐ is unpublished.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 September 12, 2022

N/A ☐ No petition for rehearing was timely filed in my case.

N/A ☐ 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 _____.

N/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**: N/A

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

(1) U.S. Constitution, Article III, Sec. 2, Cl. 1: The judicial Power shall extend to all Cases, in Law and Equity arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...

(2) U.S. Constitution, Amendment 5: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand Jury...; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...; nor be deprived of life, liberty, or property, without due process of law...

(3) U.S. Constitution, Amendment 6: In all criminal prosecutions, the accused shall enjoy the right to... be informed of the nature and cause of the accusation...; and to have the Assistance of Counsel for his defense.

(4) 18 U.S.C. 3231: The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

(5) 18 U.S.C. 3232: Provides that proceedings are to be in the district and division in which the offense was committed, and unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed.

(6) 28 U.S.C. 1254: Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writs of certiorari granted upon the petition of any party to any civil or criminal case, before or

after rendition of judgment or decree...

(7.) 28 U.S.C. 2253(C)(1)(B), (2):

(C)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from...

(B) the final order in a proceeding under section 2255 [28 U.S.C.S. 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right...

(8.) 28 U.S.C. 2255(a): A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence,

STATEMENT OF THE CASE

On October 29, 2021, petitioner filed a 'Motion Under 28 U.S.C. 2255'. The U.S. District Court for the Southern District of Mississippi denied that motion on March 10, 2022, and on that same date, the district court 'Ordered' that the requested COA should not issue. Although petitioner raised several ineffective assistance of counsel claims in the district court in requesting the issuance of a certificate of appealability by a 'circuit judge', petitioner only presented the contention that trial counsel rendered ineffective assistance of counsel by failing to challenge the Government's lack of standing to prosecute his case in the district court. Subsequent to petitioner's filing of his 'Application For Issuance of A Certificate of Appealability' the Court of Appeals denied both petitioner's request for a COA and his motion to proceed in forma pauperis, on September 12, 2022.

REASONS FOR GRANTING THE PETITION

Petitioner argues that the Supreme Court should grant a writ of certiorari in this case because the United States Court of Appeals for the Fifth Circuit abused its discretion when it denied petitioner's request for issuance of a certificate of appealability, based on its conclusion that petitioner did not make the requisite showing under 28 U.S.C. 2253(c)(2), and on its conclusion that the district court rejected petitioner's 2255 motion claims on the merits. And, petitioner earnestly prays that this Honorable Court will both recognize and appreciate to the fullest extent the national importance of having the Supreme Court decide the question involved in this petition for writ of certiorari, as well as the very great importance of this case not only to the petitioner but to all other similarly*defendants and the great mass of the citizens of this country, all of whom are interested in the practical workings of the courts of the United States, and in the proper exercise of their jurisdiction as limited and controlled*Article III, Section 2, Clause 1 and the Due Process Clause of the Fifth Amendment and also the assistance of counsel mandate of the Sixth Amendment of the U.S. Constitution, as interpreted by the stare decisis of the Supreme Court. It is important to all citizens that the federal government be structured as required by the Constitution, but it is particularly important to persons, such as this petitioner, who is compelled to participate in federal court proceedings that the court's processes be not used to defeat the fundamental fairness which must mark all judicial proceedings, and, that the court in this case abide by the rules of law established "to guard against the danger of judicial tyranny," U.S. v. Landers, 690 F. Supp. 615, 621 (6th D.C. 1988) (quoting The Federalist, No. 47); to ensure that petitioner receive effective assistance of counsel, and to protect

*(situated)

*(by)

their jurisdiction from conduct which may impair their ability to carry out their Article III functions. see Poulos v. New Hampshire, 345 U.S. 345, 426 (1953) ("For history [has] prove[n] that judges too [are] sometimes tyrants.").

In petitioner's 'Application For Issuance of A Certificate of Appealability' ("Application"), petitioner made only one contention, i.e., that "counsel failed to challenge the Government's (the prosecutor's) standing to prosecute the case in the district court." Id. Petitioner would argue that consideration of the record in this case will show that contrary to the Court of Appeals' conclusion in its 'Order' denying petitioner's request for COA and motion to proceed in forma pauperis, -- because petitioner "has not made the requisite showing," Id., that is because petitioner did not make "a substantial showing of the denial of a constitutional right," Id. (quoting 28 U.S.C. 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000)), however, petitioner sufficiently "demonstrated" that reasonable jurists would find the district court's assessment of [his] constitutional claim debatable or wrong," Slack, 529 U.S. at 484, and made an indisputable "substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2); Slack, 529 U.S. at 484. In this case, there can be no doubt that petitioner's entitlement to effective representation of counsel is a constitutional right. According to the Sixth Amendment "[i]n all criminal prosecutions, the accused shall enjoy the right to [among other things], ... be informed of the nature and cause of the accusation; ... and to have the Assistance of Counsel for his defend[er]." Id. And, "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970).

Considering then that one of the requirements of constitutionally effective assistance of counsel is that counsel must sufficiently familiarize himself with the facts of the case and the law so that he can advise the defendant meaningfully on available options, and that this obligation requires the attorney to make reasonable

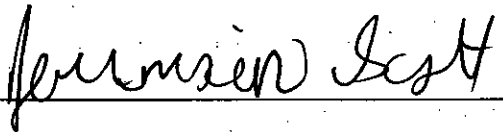
investigations or to make a reasonable decision that makes particular investigations unnecessary; see Wiley v. Wainwright, 793 F. 2d 1190, 1193-94 (11th Cir. 1986) (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)), and that the law surrounding the question of 'standing' is clearly-established, the relevant facts in this case in conjunction with the governing, clearly-established law regarding Article III standing; see Schlesinger v. Reservists, 418 U.S. 208, 215 (1974) (quoting Flast v. Cohen, 392 U.S. 83, 95 (1968); Lujan v. Defs. of Wildlife, 504 U.S. 555, 559-61 (1992); Warth v. Seldin, 422 U.S. 490, 518 (1975); Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009); Alamo Forensic Servs. v. Bexar Cty., 861 Fed. Appx. 564, 569 (5th Cir. 2021), inarguably shows that petitioner's counsel's failure 'to challenge the Government's standing to prosecute the case in the district court', see Ashwander v. TVA, 297 U.S. 288, 346 (1936); Tyler v. Judges, 179 U.S. 405 (1900), deprived him of constitutionally effective assistance of counsel within the meaning of both prongs of Strickland v. Washington.

Petitioner argues that to the extent that the Court of Appeals rested its denial of petitioner's request for a COA on its understanding that "[w]here a district court has rejected a claim on the merits, a movant 'must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong,'" Order, at pg. 2, and, while that is an accurate statement of the law, where as in this case "the [district] court [has] erroneously conflated the constitutional requirement of standing... within the meaning of Article III with the statutory requirement for 'subject matter jurisdiction' under 18 U.S.C. 3231," U.S. Dist. Court, Order, at pg. 3, and the venue requirement of 18 U.S.C. 3232, the court of appeals abused its discretion and decided petitioner's request for COA in error. The Court of Appeals denial of petitioner's request for COA was erroneous because the district court's misguided, 'so-called', assumption, that petitioner was 'challenging the jurisdiction of the court' under 3231 and 3232, in light of and in complete disregard of the inexhaustive list of clearly-established Supreme Court precedent regarding the requirements of Article III standing permit-

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: December 10, 2022