

22-6596
No. _____

Supreme Court, U.S.

FILED

OCT 17 2022

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2022

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LAVERNE CHARLES HENDERSON,
Petitioner,
VS.
UNITED STATES OF AMERICA
Respondent.

*

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

*

PETITION FOR WRIT OF CERTIORARI

*

ORIGINAL

LAVERNE CHARLES HENDERSON
PRO SE REPRESENTATION
REG. NO. 14239-035
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QUESTIONS PRESENTED FOR REVIEW

Whether the U.S. Court of Appeals for the Eighth Circuit violated Henderson's rights when it ignored this Courts precedent in Miller-El v. Cockrell, Buck v. Davis, Slack v. McDaniel and Barefoot v. Estelle in denying his Motion for Issuance for Certificate of Appealability?

PARTIES TO THE PROCEEDINGS

Laverne Charles Henderson # 14239-035, Petitioner,
USP Leavenworth
P.O Box 1000
Leavenworth, KS 66048

Pro se representation for Petitioner

Attorney for Respondent,
United States,

Elizabeth B. Prelogar;
Solicitor General
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Petitioner, Laverne Charles Henderson, prays that this Honorable Court will issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in the above proceeding on July 25, 2022.

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I.

CITATIONS OF OPINIONS AND ORDERS IN CASE

The opinion and order of the United States District Court for the Eastern District of Missouri to Petitioner's 2255 motion is published and also attached hereto as Appendix "A".

The opinion of the United States Court of Appeals for the Eighth Circuit is unpublished and is attached hereto as Appendix "B".

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II.

JURISDICTIONAL STATEMENT

The judgment of the United States of the United States Court of Appeals for the Eighth Circuit was entered on July

25, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

On August 31, 2022 a timely petition for rehearing/rehearing en banc was denied by the United States Court of Appeals for the Eighth Circuit. A copy of the order denying rehearing is attached hereto as Appendix "C".

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III.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment of the United States Constitution provides:
"No person shall be... deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."
2. The Sixth Amendment of the United States Constitution provides:
"In all criminal prosecutions, the accused shall enjoy the right to... be informed of the nature and the cause of the accusation;... and to have the assistance of counsel for his defense."
3. The statute under which Petitioner sought habeas corpus relief was 28 U.S.C. § 2255 which states in pertinent part:
§ 2255 Federal Custody; remedies on motion attacking sentence
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 sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

*

IV.

STATEMENT OF THE CASE

On February 7, 2019, a federal grand jury for the Eastern District of Missouri, returned a three count indictment charging Laverne Charles Henderson with the offenses of "possession of cocaine with intent to distribute" [Count One], "felon in possession of a firearm" [Count Two], "possession of a firearm in furtherance of a drug trafficking crime" [Count Three]. See **Title(s) 21 U.S.C. § 841(b); 18 U.S.C. § 922(g); & 18 U.S.C. § 924(c)(1)(A)**.

On April 3, 2019, a federal grand jury for the Eastern District of Missouri, returned a superseding indictment in addition to the three count indictment charging Laverne

Charles Henderson and co-defendant with the offense of "conspiracy to distribute cocaine" [Count Four]. See **Title 21 U.S.C. § 846.**

On May 10, 2019, Petitioner withdrew plea of not guilty and entered Plea(s) of Guilty to count(s) One and Three of the indictment with approved Guilty Plea Agreement.

During guilty plea hearing, Petitioner not aware of having to admit to all the elements of the crimes (See Plea Hearing Transcript attached hereto Appendix "D") pleading guilty to, never admitted to all the elements of 924(c) and was unaware that it had to be a factual basis for pleas of guilty matching the conduct charged in the indictment, especially to § 924(c)(1)(A), there were violations under the Federal Rules of Criminal Procedure Title Three, Rule 11 concerning Plea(s). Also Petitioner's counsel was ineffective in regards to these violations by not objecting to them as well as other violations including misadvising and coercing Petitioner to accept the guilty plea of § 924(c)(1)(A) when Petitioner was actually and factually innocent of that charge. This was argued in the 2255 process.

On August 22, 2019 Petitioner was sentenced to 151 months for Count One and 60 months for Count Three, by the district court judge. The sentence was ran consecutive being

a total of 211 months. There was no direct appeal filed.

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V.

EXISTENCE OF JURISDICTION

Petitioner was indicted and convicted in the United States District Court for the Eastern District of Missouri, for possession with intent to distribute cocaine under 21 U.S.C. § 841(b) and possession of a firearm in furtherance of a drug trafficking crime under 18 U.S.C. § 924(c)(1)(A). A section 2255 motion was appropriately made in the convicting court and subsequently denied. A timely appeal to the United States Court of Appeals for the Eighth Circuit was filed.

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VI.

REASONS FOR GRANTING THE WRIT

**THE COURT OF APPEALS HAD GIVEN A OPINION WITHOUT A
EXPLANATION OF WHY PETITIONER WAS DENIED BASED ON THE
STANDARDS FOR COA, THAT IS SET BY THIS COURT**

ARGUMENTS AMPLIFYING REASON FOR WRIT

1. THE EIGHTH CIRCUIT PANEL ERRED DENYING PETITIONERS APPLICATION FOR A CERTIFICATE OF APPEALABILITY BECAUSE THE PANEL GAVE AN IMPLICIT DENIAL AND A DECISION NOT BASED ON THE COA STANDARDS

The COA request that the court "show" that the Petitioner met or made a substantial showing that Petitioner was denied his rights of constitutional and statutory claims. The reviewing court then must show that the Petitioner made or did not make the COA standards that allows him relief by the court. A court that make or issue a indirect denial, makes it impossible to consider if the defendant met or did meet his burden.

An implicit denial fails to articulate any basis for the COA standards set forth in "Slack v. McDaniel" / Buck v. Davis" or any legal analysis that has to be conducted including but not limited to whether the court placed too heavy of a burden on the prisoner at COA stage. See Buck v. Davis, 580 US 100, 137 S.Ct 759, 197 L.Ed. 2d. 1, (2017).

At the COA stage the only question is whether the applicant has shown the "jurist of reason could disagree with the district courts resolution of Petitioner's constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further." Buck v. Davis, 580 US 100, 137 S.Ct 759,

197 L.Ed 2d 1, (2017) (quoting Miller-El v. Cockrell, 537 US 322, 327, 123 S.Ct 1029, 154 L.Ed. 2d 931 (2003)).

The court of appeals never demonstrated the COA standard showing Petitioner had failed to meet upon consideration of COA as reviewed by appellate court that does not set the standard but applies to the standard that the U.S. Supreme Court set in several underlying cases. (**Slack v. McDaniel**; **Barefoot v. Estelle**; **Buck v. Davis**; **Miller-El v. Cockrell**). These cases set the standard for COA, where court of appeals had to demonstrate the COA standards that was not met by a appellant upon review of COA.

The Petitioner was denied implicitly by the appeals court and then filed petition for rehearing/ rehearing en banc for the Panel to view his motion for issuance for COA and that the Panel make their decision based on COA standards by a "jurist of reason finding whether Petitioners claims on his § 2255 motion denied by the district court were debatable. By the court giving an implicit denial, the Petitioner can not assume the reason that the court of appeals denied him COA and neither can the U.S. Supreme Court. It prejudices the Petitioner's defense if the Supreme Court has to assume or guess what the court of appeals is implying in its implicit denial.

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CONCLUSION

Petitioner, Laverne Charles Henderson has been deprived of his fundamental rights in regards to COA standards that the appeals court are suppose to follow before rulings. Based on the arguments presented herein, the court of appeals gave a ruling with an implicit denial and no explanation of their opinion of the Petitioner's claims. Petitioner request and prays that the U.S. Supreme Court will issue writ of certiorari and reverse the judgment of the Eighth Circuit Court of Appeals. Petitioner seeks this request, so the Court of Appeals can give a more explicit opinion of their denial based off the standard of certificate of appealability, and whether any reasonable jurist would find Petitioners constitutional claims are debatable based on the Petitioners motion for issuance for certificate of appealability. The Court must liberally construe a pro se litigants pleadings. See, Haines v. Kerner, 404, U.S. 519, 520-21, 92 S.Ct 594, 30 L. Ed. 2d 652 (1972).

Respectfully submitted on this 13th day of October 2022.

/S./ 

LAVERNE CHARLES HENDERSON
PRO SE REPRESENTATION