

No. 22-6655

In The
Supreme Court of the United States

THEODORE WASHINGTON,

Petitioner,

v.

RYAN THORNELL, Director, Arizona Department
of Corrections, Rehabilitation and Reentry,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF THE NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Must a federal habeas court defer to a state-court finding of fact that favors the defendant?

TABLE OF CONTENTS

QUESTION PRESENTEDi

TABLE OF AUTHORITIES..... iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT.....2

ARGUMENT.....2

CONCLUSION5

TABLE OF AUTHORITIES

CASES

Burden v. Zant,
498 U.S. 433 (1991) (per curiam) . 2, 3, 4

Burden v. Zant,
510 U.S. 132 (1994) (per curiam) 4, 5

State v. Mathers,
796 P.2d 866 (Ariz. 1990)..... 3

STATUTES AND RULES

28 U.S.C. § 2254 (1994) 3, 4

28 U.S.C. § 2254(e)(1) 3

Sup. Ct. R. 37.6 1

INTEREST OF AMICUS CURIAE¹

The National Association of Criminal Defense Lawyers is a nonprofit bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of thousands of members, including private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defense and private criminal defense lawyers.

NACDL is dedicated to advancing the proper, efficient, and just administration of criminal justice. Each year, NACDL files amicus briefs in this Court and others in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system. The question in this case, involving the even-handed application of the presumption of correctness afforded state court findings of fact in habeas cases, is such an issue.

¹ Under Sup. Ct. R. 37.6, counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel for all parties received notice of amicus' intention to file this amicus brief ten days before the due date. Counsel for petitioner and respondent have provided their consent to undersigned counsel by electronic mail.

SUMMARY OF ARGUMENT

This Court has rigorously enforced the statutory mandate--rooted in considerations of federalism and judicial competence--that federal habeas courts afford a presumption of correctness to state court findings of fact. In the vast majority of cases, that presumption works to the advantage of the prosecution. Here, however, the state court made findings that squarely support the petitioner--indeed, that should lead to his acquittal. The district court and the court of appeals ignored the presumption of correctness that these findings enjoy.

That was grave error--an error that could cost petitioner his life. Neither the controlling statute nor its underlying purposes permit federal courts to defer only to findings that favor the prosecution; the presumption of correctness applies regardless of the party who benefits. *See Burden v. Zant*, 498 U.S. 433, 436-37 (1991) (per curiam) (summarily reversing court of appeals decision that failed to apply presumption to state-court fact-finding favorable to petitioner). As it did in *Burden*, the Court should grant the writ and summarily reverse the court of appeals' decision.

ARGUMENT

Three men were charged with capital murder--Robinson, Mathers, and petitioner Washington. Robinson was the mastermind. He ended up with a life sentence. App. 38a n.7. Mathers was "present at all times before the entry into the [victims'] residence," App. 197a, and "the record suggests that

[he] was the shooter," App. 37a; *see* App. 150a (state's "theory of the crime" was that Mathers shot both victims). But his conviction was reversed on direct appeal for insufficient evidence, and he was acquitted. *State v. Mathers*, 796 P.2d 866 (Ariz. 1990). Of the three men, only Washington faces execution.

The court of appeals recognized that "[u]nder these circumstances, there may be a temptation to bend the governing legal standards to equalize the outcomes for the three defendants in an effort to achieve what appears to be a just result," but the court rejected that "enticing . . . impulse." App. 42a (quotation omitted). But no bending of legal standards was needed to achieve a just result; all the court of appeals had to do was apply the controlling statute according to its plain language, as this Court mandated in *Burden*. The court's failure to do so warrants summary reversal.

The pre-AEDPA version of 28 U.S.C. § 2254(d) requires federal courts in habeas cases to "presume[] to be correct" a state court finding "on the merits of a factual issue," with narrow exceptions not applicable here.² The state judge who presided over the trial of Robinson, Mathers, and Washington made just such findings; the court concluded that it "has a great deal of difficulty finding a basis to hold [Washington] culpable which does not apply, at least equally or in a greater manner, to James Mathers. If Mathers, who was present at all times before the entry into the [victims'] residence, was not guilty of conspiring to rob and kill, no greater evidence seems to place

² AEDPA incorporates, and strengthens, the presumption of correctness. 28 U.S.C. § 2254(e)(1)

[Washington] at the scene." App. 197a. The state court supported these findings with a point-by-point comparison of the evidence against Washington and Mathers. App. 198a-199a. But neither the court of appeals nor the district court afforded these findings the presumption of correctness that § 2254(d) requires.

That error requires reversal under *Burden*. In that case, the Eleventh Circuit--like the Ninth Circuit here--disregarded a state court finding of fact that favored the petitioner. Petitioner Burden asserted a Sixth Amendment claim based on his trial counsel's alleged conflict of interest from having obtained immunity for a prosecution witness. The state court found that the witness had in fact received immunity. On federal habeas review under § 2254, the district court and the court of appeals ignored that finding and reached a contrary conclusion.

This Court declared, in words equally applicable here, "[t]he Court of Appeals did not even *mention* the trial court's finding that [the witness] received immunity, much less explain why that finding is not entitled to a presumption of correctness." *Burden*, 498 U.S. at 437 (emphasis in original). The Court summarily reversed the Eleventh Circuit's decision and remanded for further consideration of Burden's Sixth Amendment claim. *See id.* at 436-37. When the court of appeals refused again to afford the state court immunity finding a presumption of correctness, the Court entered a second summary reversal. *Burden v. Zant*, 510 U.S. 132, 133-34 (1994) (per curiam).

The Ninth Circuit in petitioner's case committed the same error as the Eleventh Circuit in *Burden*: it failed to afford the presumption of correctness to state court findings that favor the petitioner. Summary reversal is warranted here just as it was (twice) there.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision of the court of appeals should be reversed summarily.

Respectfully submitted,

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