

No. \_\_\_\_\_

---

In The  
Supreme Court of the United States

---

ROBERT STEELE,

*Petitioner,*

v.

DAN REDINGTON,

*Respondent.*

---

**On Petition For A Writ Of Certiorari to the  
United States Court of Appeals for the Eighth Circuit**

---

**PETITION FOR A WRIT OF CERTIORARI**

---

KEVIN L. SCHRIENER  
COUNSEL OF RECORD FOR THE PETITIONER  
LAW & SCHRIENER LLC  
231 S. Bemiston, Suite 800  
Clayton, Missouri 63105  
314-721-7095 – telephone  
314-863-7096 – fax  
[kschriener@schrinerlaw.com](mailto:kschriener@schrinerlaw.com)

---

## **QUESTIONS PRESENTED FOR REVIEW**

The Eighth Circuit Court of Appeals denied Steele's Application for a Certificate of Appealability (COA) following the district court's denial of his § 2254 petition. The question presented is:

**Whether this Court should summarily reverse the Eighth Circuit's denial of a COA where the underlying issues were clearly debatable by jurists of reason?**

**LIST OF PARTIES AND CORPORATE DISCLOSURE  
STATEMENT**

All parties appear in the case caption on the cover page of this petition.

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	ii
LIST OF PARTIES .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES CITED .....	v
PETITION FOR WRIT OF CERTIORARI .....	1
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF CASE .....	5
REASONS FOR GRANTING THE WRIT .....	16
I.     This Court Should Summarily Reverse The Decision Below Denying a COA Because The Eighth Circuit Misapprehends the Governing Standard.	
CONCLUSION .....	24
INDEX TO APPENDICES .....	i

## TABLE OF AUTHORITIES CITED

CASES	PAGES
<i>Banks v. Dretke</i> , 540 U.S. 668 (2004) . . . . .	5
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972) . . . . .	7, 8, 10
<i>Buck v. Davis</i> , 137 S.Ct. 759 (2017) . . . . .	6, 12, 13
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007) . . . . .	6
<i>Greenholtz v. Inmates of Nebraska Penal and Correctional Complex</i> , 442 U.S. 1 (1979) . . . . .	10
<i>Martinez v. Ryan</i> , 566 U.S. 1 (2012) . . . . .	12, 14
<i>McGee v. McFadden</i> , 139 S. Ct. 2608 (2019) . . . . .	5
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003) . . . . .	5, 13
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) . . . . .	11
<i>Tennard v. Dretke</i> , 542 U.S. 274, 289 (2004) . . . . .	5
<i>Tharpe v. Sellers</i> , 138 S. Ct. 545 (2018) (per curiam) . . . . .	5
<i>Vitek v. Jones</i> , 445 U.S. 480 (1980) . . . . .	10
<i>Wilkinson v. Austin</i> , 545 U.S. 209, 221 (2005) . . . . .	10
STATUTES	
28 U.S.C. § 1257 . . . . .	1
28 U.S.C. § 2253 . . . . .	2, 5

**CONSTITUTIONAL PROVISIONS AND STATUTES**

U.S. CONST. amend V1.....	2
U.S. CONST. amend VIX.....	2
MO. REV. STAT. § 546.610.....	9

**SUPREME COURT RULES**

13.3 .....	1
Rule 29.6.....	iii

In The  
Supreme Court of the United States

---

**PETITION FOR WRIT OF CERTIORARI**

Petitioner Robert Steele respectfully prays that a Writ of Certiorari issue to review the judgment of the Eighth Circuit Court of Appeals entered in this case.

**OPINIONS BELOW**

The order of the Eighth Circuit denying Steele a certificate of appealability is printed at Appendix (hereinafter “App.”) App. 1a. The memorandum and order of the district court denying § 2254 relief is printed beginning at App. 2a.

**JURISDICTION**

The judgment of the Eighth Court of Appeals was entered on August 4, 2022, denying Steele a certificate of appealability. That court denied Steele’s timely filed petition for rehearing on October 28, 2022. This Court has jurisdiction under 28 U.S.C. § 1257 to review this petition. Blakeney’s petition for certiorari is due on January 26, 2023. *See* Rule 13.1.

## **CONSTITUTIONAL STATUTORY PROVISIONS INVOLVED**

### **U.S. Const. Amend. VI**

The Sixth Amendment to the United States Constitution provides: "No person shall ... be deprived of life, liberty, or property, without due process of law."

### **U.S. Const. Amend. XIV**

The Fourteenth Amendment to the United States Constitution provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

### **28 U.S.C. § 2253**

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending

removal proceedings.

- (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-
  - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
  - (B) the final order in a proceeding under section 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.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

## STATEMENT OF THE CASE

Mr. Steele filed in the United States District Court for the Western District of Missouri a § 2254 petition challenging his state court conviction and sentence for involuntary manslaughter, and second degree assault in the Circuit Court of Oregon County, Missouri, *see State v. Steele*, No. 10AM-CR00274 (37<sup>th</sup> Judicial Cir.). In his habeas petition, Mr. Steele raised the following grounds for relief: (1) the trial court erred in denying his motion to dismiss his case for a violation of his right to speedy trial; (2) the trial court erred when it overruled his motion to dismiss based upon the Ripley County Sheriff's Department taking him into custody and not delivering him to the Missouri Department of Corrections; (3) he was denied the right to counsel at the time he “waived” his right to speedy trial counsel and new counsel never renewed the motion; (4) trial counsel was ineffective for failing to seek dismissal of the charges based on prosecutorial misconduct; and (5) trial counsel was ineffective for failing to seek dismissal of the charges based on prosecutorial misconduct when he was illegally brought to Ripley County.

The state filed its response to the petition, and Mr. Steele filed a traverse. On February 16, 2022, the Honorable Beth Phillips, Chief United States District Judge for the Western District of Missouri, denied Mr. Steele’s habeas petition

and denied him a certificate of appealability as to his claims finding that they were not debatable among reasonable jurists. Mr. Steele filed a timely notice of appeal on March 18, 2022.

Mr. Steele filed a timely notice of appeal, and filed with this Court an application for a certificate of appealability on all five grounds raised in his habeas petition. On August 4, 2022, the panel denied Mr. Steele’s application. On October 28, 2022, the Eighth Circuit denied his petition for panel rehearing.

### **REASONS FOR GRANTING THE WRIT**

#### **The Eighth Circuit’s denial of a COA so clearly misapprehends the governing standard as to call for summary reversal.**

The threshold for a certificate of appealability is very low—as the Court has had to remind lower federal courts from time to time. *See Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003); *Tennard v. Dretke*, 542 U.S. 274, 289 (2004); *Banks v. Dretke*, 540 U.S. 668, 705 (2004); *Buck v. Davis*, 137 S. Ct. 759, 767, 780 (2017); *Tharpe v. Sellers*, 138 S. Ct. 545, 546 (2018) (per curiam). *See also McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019) (Sotomayor, J., dissenting from denial of certiorari), *reh’g denied*, No. 18-7277, 2019 WL 4923611 (U.S. Oct. 7, 2019).

Steele is entitled to one if he makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To do that, he needs to show that at

least one reasonable jurist could “disagree with the district court’s resolution of his constitutional claims,” or “conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). In a word, his claim just needs to be “debatable” *id.* at 774—a modest standard he can meet even if “every jurist of reason might agree [he] will not prevail,” *id.* But review of Blakeney’s ineffective assistance claim is yet more forgiving because it was aimed not at winning ultimate relief but at securing an evidentiary hearing.

That Steele meets these relatively modest requirements is easily debatable. Because the Eighth Circuit panel’s contrary, unreasoned denial “departs in so stark a manner” from the modest standards that governed Steele’s request, *Erickson v. Pardus*, 551 U.S. 89, 90 (2007), the Court should grant certiorari review and summarily reverse.

In *Buck v. Davis*, 137 S.Ct. 759, 773-774 (2017), this Court rejected the reasoning of the Fifth Circuit in denying a COA, holding that the court had improperly reviewed the merits of the claim:

The court below phrased its determination in proper terms—that jurists of reason would not debate that Buck should be denied relief, 623 Fed. Appx., at 674—but it reached that conclusion only after essentially deciding the case on the merits. . . . We reiterate what we have said before: A “court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,” and ask “only if the District Court’s decision was debatable.” *Miller-El*, 537 U.S., at 327, 348,

123 S.Ct. 1029.

## **THE EIGHTH CIRCUIT'S COA DENIAL IS CLEARLY WRONG.**

*It's at least "debatable" that Steele's habeas claims are colorable.*

### **Ground 1: Trial Court Error - Speedy Trial**

Mr. Steele argued that the Missouri Court of Appeals' decision was an unreasonable application of *Barker v. Wingo*, 407 U.S. 514 (1972), as well as an unreasonable determination of the facts in the record. The district court, however, disagreed finding that the decision of the Missouri Court of Appeals as to Mr. Steele's speedy trial claim was not an unreasonable application of clearly established Supreme Court precedent and was not based upon an unreasonable determination of the facts in light of the evidence.

It is debatable among reasonable jurists, however, that the Missouri Court of Appeals made a reasonable determination of the evidence and reasonably applied *Barker v. Wingo*, 407 U.S. 514 (1972), when it upheld the trial court's failure to dismiss Mr. Steele's case based upon the denial of his rights to speedy trial. Furthermore, the district court mischaracterized Mr. Steele's federal habeas claim finding that he did not explain what was unreasonable about the state court's decision and that he did not dispute the court of appeals' calculation of the events

causing delay. Petitioner argued in his amended petition and reply that the court of appeals unreasonably applied *Barker* because it did not analyze each of the four factors that make up the balancing test because it merely found that there was no prejudice. Also, Steele argued it was unreasonable for the court of appeals to attribute 90% of the total delay to Steele because he neither requested or acquiesced to these delays. The district court also faults Mr. Steele for not alleging how he was prejudiced by the delay. The prejudice is clear - he was incarcerated during the entire time and if not for Ripley County manipulating his custody, his case would have been more quickly resolved. For this reason alone, the Court of Appeals should have granted a COA as to this claim.

It is debatable among reasonable jurist whether the Missouri Court of Appeals unreasonably applied *Barker* when it found that there was no presumptive prejudice. Furthermore, it is debatable that the Missouri Court of Appeals made a reasonable determination of the facts for accounting all but 10% of the delay at the hands of Steele

Because it is debatable among reasonable jurists whether Steele was denied his right to a speedy trial, the panel should have issued a COA as to this ground for relief.

## **Ground 2: *Unlawful Custody by Ripley County and Effect upon Speedy Trial Rights***

Steele argued that the Missouri Court of Appeals unreasonably applied federal law in denying his claim that he was unlawfully taken to Ripley County instead of the Missouri Department of Corrections (MDOC) violating his rights to due process. Again, for the same reasons as set out in Ground 2, it is debatable whether the appellate court's decision was an unreasonable determination of *Barker*, and an unreasonable determination of the facts. Furthermore, the district court chided Steele for not providing why he could not be transported to Ripley County. Steele, however, alleged that under Mo. Rev. Stat. § 546.610<sup>1</sup>, that the Cape Girardeau County Sheriff's Department had a plain duty to deliver him to the MDOC without delay. It is debatable among reasonable jurists whether Steele's right to due process was violated by his unlawful transfer to Ripley County, and that his resulting prosecution there violated due process of law. A protected

---

<sup>1</sup>Mo. Rev. Stat. § 546.610 provides that:

When any offender shall be committed to the department of corrections the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by a general and usual deputy, cause such offender to be transported to a place designated by the director of the department of corrections and delivered to the chief administrative officer thereof.

liberty interest may arise from either the Due Process Clause of the United States Constitution, or from "an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (citations omitted). A state's statutory scheme, if it uses mandatory language, can give rise to a constitutional liberty interest. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 12 (1979) It is debatable among reasonable jurists that Mo. Rev. Stat. § 546.610, which is written in mandatory language, gave Mr. Steele a due process right to be taken directly to the MDOC. Also, it is debatable that Steele's subsequent prosecution in Ripley County (later transferred on a change of venue to Oregon County) violated due process. *C.f. Vitek v. Jones*, 445 U.S. 480 (1980) (holding that transfer to mental hospital violated due process).

Because it is debatable among reasonable jurists whether Steele's right to due process and a speedy trial were violated, the Eighth Circuit should have issued a COA as to this ground for relief.

### **Ground 3: *Hobson's Choice and Denial of Counsel***

In denying habeas relief as to this claim, the district court found that: (1) even if Steele did not make a formal request for speedy trial it would not have mattered as it would be outweighed by the other *Barker* factors; and (2) even if his new attorney's performance was deficient for not renewing his request for a

speedy trial, Steele suffered no prejudice as his rights to a speedy trial was not violated. Again, for the same reasons as set out in Ground 2, it is debatable whether the appellate court's decision was an unreasonable determination of *Barker*, and an unreasonable determination of the facts.

When Steele appeared in circuit court for a preliminary hearing, represented by public defender Steven Lynxwile, Lynxwiler moved for leave to withdraw as Steele's counsel because he had a conflict of interest in that Steele had indicated he had information inculpating another client of Lynxwiler's in another case. The court then informed Mr. Steele that he could either proceed without counsel at his preliminary hearing or waive his right to speedy trial. Also, Lynxwiler, who was no longer his attorney, advised Steele to waive his right to speedy trial. Given this Hobson's choice, Steele chose to waive his right to a speedy trial. *Id.* It is debatable among reasonable jurists whether Steele was deprived of counsel and the Missouri Court of Appeals reasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984).

The Eighth Circuit should have issued a COA should as to this ground for relief.

**Misapplication of *Martinez* and Grounds 4 and 5.**

The district court found that Steele's claims (Grounds 4 and 5) that counsel was ineffective for failing to seek dismissal of the charges based on prosecutorial misconduct were procedurally defaulted and without merit. Steele argued that he could overcome this default under *Martinez v. Ryan*, 566 U.S. 1 (2012). In order to overcome a procedural default under *Martinez*, Steele had to show that his postconviction counsel was ineffective in failing to present this issue of ineffective assistance of trial counsel in the state court postconviction proceeding, and that the issue that was omitted was "substantial." In determining whether an issue is substantial, a district court should not perform a full merits review. Rather, the process is akin to that for determining whether a certificate of appealability should be issued. *Martinez v. Ryan*, 566 U.S. at 14. In *Buck v. Davis*, 137 S.Ct. 759 (2017), this Court held that all a petitioner must show to receive a COA is that "jurists of reason could disagree" with how the issue should be resolved, or that "the issues presented are adequate to deserve encouragement to proceed further." 137 S.Ct. at 773-74. "[W]hen a reviewing court . . . 'first decid[es] the merits of an appeal, . . . then justif[ies] its denial of a COA based on its adjudication of the

actual merits,' it [places] too heavy a burden on the prisoner at the COA stage." Id. (emphasis in original).

In *Buck*, this Court reversed the denial of a certificate of appealability on Mr. Buck's claim that he was subjected to cruel and unusual punishment, then granted relief on the merits. But Mr. Steele's claims in Grounds 4 and 5 are certainly substantial enough to deserve "encouragement to proceed further." In Ground 4, Steele alleged that the prosecutor had a conflict of interest because his firm was suing Steele and the prosecutor used those proceedings to deny Steele access to retain an attorney of his choice in his pending criminal case - a serious accusation. In Ground 5, Steele alleged that the prosecutor had him unlawfully transferred to Ripley County to apply pressure on him to settle a civil dispute outside of court. When this failed, the prosecutor's firm referred the case to another law firm who brought suit. The district court chided Steele for not indicating why the prosecutor's motives matter. As argued in Ground 2, the transfer of Steele to Ripley County and not the MDOC violated his rights to due process.

The approach used by the district court, however, was an attempt to review the merits of this ground, was rejected in *Buck* as well as *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). There, this Court explained, "[A] court of appeals

should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief." The district court's analysis of the merits, in general, applied a far stricter standard than the COA standard. The district court performed a full merits review finding that counsel was not ineffective for failing to seek dismissal of the charges due to prosecutorial misconduct.

This Eighth Circuit should have granted Steele a COA as to these grounds for relief to review the correct standard to be applied under *Martinez*.

## **CONCLUSION**

For the foregoing reasons, this Court should grant Steele's petition for a writ of certiorari, reverse, and remand to the Eighth Circuit.

Respectfully submitted,

KEVIN L. SCHRIENER  
*Counsel of Record for Petitioner*  
LAW & SCHRIENER LLC  
231 S. Bemiston, Ste 800  
Clayton, Missouri 63105  
314-721-7095 – telephone  
kschriener@schrienerlaw.com

January 26, 2023.

## **APPENDIX**

Judgment of the Eighth Circuit Court of Appeals (Aug. 4, 2023)..... 1a

Order of the United States District Court for the Eastern District of Missouri  
denying Habeas Relief (Feb. 16, 2022) ..... 2a