

No. 22-6830

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
NOV 23 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Michael Joseph Loukas — PETITIONER
(Your Name)

vs.

Sarah Schroedar — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Joseph Loukas
(Your Name)

N.6141 Industrial Park dr.
(Address)

Munising MI 49862
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. Was the Sixth Circuit decision based on an unreasonable determination of the facts in light of the Evidence presented in the state court proceeding i.e holding that trial counsel was not ineffective for not raising a meritless defense, directly related, on the Erroneous claim that defendants medication warning labels warned him of intoxication or impairment.
2. Did the lower court Attempt to leverage their opinion to deny petitioners direct Appeal claim of Ineffective Assistance of counsel by predetermining the use of A 404(b) prior bad Act usage by circumventing the trial Judge decision making authority, in Administering judgement whether to allow or disallow the use of practitioners 30 year old prior bad acts, and for what purpose these priors were to be used. would it be considered a separation of power in doing so.
3. did the Sixth Circuit err in adopting and confirming the mich Attorney Generals Argument supporting the opinion and judgement of the (MCA\$) denial of Appeales claim of Ineff. Assis. of counsel based on an Erroneous inclusion of the prosecutions assumption of warnings supposedly contained in the Labels. without a thread of evidence.

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:

RELATED CASES

MCR 6.500 motion for relief

People v. Loukas No 2012 3522 FH, Macomb Co. CIR. Ct (April 13, 2017) denied

People v. Loukas No 340051 (MCA's), Order Feb. 20, 2018 Denied

people v. Loukas, 917 N.W. 2d 377, (Sep. 12, 2018 (M.S.C. Denied)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
California v. Trombetta, 476 U.S 479-485 (1994)	1
Crane v. Kentucky, 476 U.S. 683,690 (1986)	1
people v. Loukas # 3178572, 215 WL 4378733, At (MCA's) (2005)	1
Strickland v. Washington, 466 U.S. 668,694 (1984)	2
Walker v. Hoffner, 534 F.ed Appx 406 (2013)	2

STATUTES AND RULES

404 (b) 403
28 U.S.C 2254 (e)(1)
U.S.C.S 201 (c)(2)

OTHER

6th and 14th Amendment to the United states Constitution

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A	U.S. Court of Appeals (6Th Cir) U.S. APP. Lexis 24059 2022
APPENDIX B	U.S. Dist. Court (E.MI) LOukas V. Trierweiler NO. 2:13-CV-12967 U.S. Dist. Lexis 84650 WL 1750119 (5/4 2021)
APPENDIX C	(MCA's) People V. Loukas NO. 318572, 2015 MI. APP. Lexis 1420 July 16, 2015 WL 4379733
APPENDIX D	Mocomb CO. Cir. CT. People V. Loukas NO. 2012-3522 FH (Dec. 29, 2014)
APPENDIX E	MI. S.C. People V. Loukas, 876 N.W. 2d818 (April 6, 2016 MI. Lexis 648.
APPENDIX F	

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

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[x] reported at Loukas v. Schroeder, 2022 U.S. App Lexis 24059
[] 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 Loukas v. Trierweiler, 2:18-CV-12987 Fed. Dist. Lexis 84650, or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[x] For cases from state courts:

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

[x] reported at MI (MCA's) People V. Loukas MI. APP. Lexis 1420, or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the MI. Cir. Ct. People V. Loukas 2012-3522 FH court appears at Appendix D 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 courts**:

The date on which the United States Court of Appeals decided my case was August 25th, 2022.

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 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**:

The date on which the highest state court decided my case was July, 21, 2015. A copy of that decision appears at Appendix C.

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

Involuntary Intoxication Affirmative Defense Under MCL 768.37(2)

Infringement upon the 14th and 6th Amendment to the United States Constitution involving the protections guarding the effective assistance of counsel clause guaranteeing a fair trial. Failure to uphold the requirements set forth in Strickland V. Washington (at 466) two prong test, applying an improper standard of showing prejudice.

Conflicting opinions of the 6th Circuit in it's decisions in Walker V. Hoffner, 534 Fed. Appx. 406 overturning and denying Michael J. Loukas V. Sarah Schroeder, No. 21-2592, Aug 25, 2022. Both involving Ineffective Assistance of Trial Counsel Claims.

Statement Of The Case

In 2013, a jury in the Macomb County Circuit Court found Loukas guilty of First degree home invasion. See Mich.Comp.Laws § 750.110a(2)(b). The court determined that he was a habitual offfender, see id § 769.12 and imposed a term of 20 to 40 years imprisonment.

Appeallee's case involves a violation of the due process clause of the 14th amendment and the confrontation clause of the 6th amendment which guarentee's "a meaningful opportunity to present a complete defense". Crane V Kentucky, 476 U.S. 683,690 (1986)(equating California V. Trombetta, 476 U.S. 479,485 (1984)). Defendant suffered prejudice when his trial attorney deprived him of "substantial defense" by her deficient performance as his counsel. Depriving a criminal defendant of his only viable defense, certainly renders the resultant trial "fundamentally unfair and unreliable" as determined by Lockhart V. Fretwell, 506 U.S. 369 (1993). The (MCA's) found that the trial court ruled the defense failed to lay a foundation to present evidence of [Loukas's] use of his prescribed medications or teh proposed evidence necessary to support the involuntary intoxication defense, the (MCA's) also having found counsel's performance to be deficient. Thus, satisfying Strickland's First prong. Accordingly, the trial court erred when it determined that defendant did not present evidence to establish the elements of the involuntary intoxication defense. Nonetheless, (MCA's) found defendant could not establish the requisite prejudice. Stating, as plaintiff argues, had defendant taken the stand to testify about his alleged intoxication he would have opened the door to evidence about his prior conviction for B&E under MCR 404(b). (MCA's) does not ever state any opinion on whether defendant prescription medication labels warned of Intoxication or Impairment, People V. Loukas, No. 3178572, 2015 W.L. 4378733, at 3 (Mich. Ct. App. July 16, 2015), and a state court;s factual find are presumed correct on habeas review 28 U.S.C. 2254(e)(1),

Unless appellant could rebut that presumption with clear and convincing evidence. Here appellant had no reason to rebut the court opinion concerning trial counsel's incompetency in failing to lay a foundation for his defense, when it unquestionable fell directly in line with and supported appellees subsequent ineffective assistance of counsel claim: showing trial counsel's performance " even prior to trial" (please

see exhibit C letter counsel sent to head prosecution Mr. Benjamin Lester) was deficient that "fell below the objective standard of reasonableness" and that deficient performance resulted in prejudice to defense, such that there is a "reasonable probability that, but for counsel's unprofessional Errors the result of the proceedings would have been different or produced a better out come for the defendant, Strickland V. Washington, 466 U.S. 668,688,694 (1984).

Appellee was also denied under the protection of the Sixth, and 14th amendment to include the guarantee to adequate effective representation in providing a viable defense. (Please See: Exhibit B Trial Counsel's Affidavit) where she admitting have not research the defense and had no strategic reason not to. Counsel testified she was in the red in this case, and failing to build a foundation for hire an expert witness and assuming the defendant could not afford the necessary finances to pay for one himself. Admitting she never even discussed this highly crucial matter with the defendant. Defendant's attorney also testified to these facts on record, also stated she believed she may have committed malpractice in doing so. (12/11/14 43-47). A defendant suffers prejudice when he is deprived a "substantial Defense" by the deficient performance of his counsel. The 6th circuit decision in affirming the lower courts judgment in this case is contrary to the holding made by a panel of the 6th Circuit itself in regard to Walker V. Hoffner, 534 Fed. Appx 406 (2013). However, the pertinet question with respect to the determination of prejudice is not one of sufficiency. The prejudice prong of Strickland requires a judicial assessment of the fairness of the proceedings under the Sixth Amendment. Walker spura. at HNS found that the (MCA's) imporoperly applied the prejudice prong of Strickland spura. at 687.

The presents of guilt or innocence are not up for debate or distinguished by any appellate court judge. The proper arbiter of guilt or innocence must be decided by a jury when a defendant has invoked his/her constitutional right to a jury trial. Especially in regard to a jury decision, excluding hearing a defendant's only viable defense. Applying any other reasoning is a direct failure in upholding and absolute right to a jury trial. Here the courts opinion and denial are based on a purposed notification of possible intoxication or impairment by way of petitioners

prescription medication warning labels. This being a prerequisite in the application of elements necessary to meet Michigan affirmative defense statute MCL 768.37(2) of involuntary intoxication. The statute contains elements and is necessary for the defense to apply but it is not simply inherent to a defendant reading a warning label that may or may not satisfy this element. When in fact the warning labels in question do not include any admonishment of impairment or intoxication. The absence of this particular warning satisfies the second prong and no admonition of such can be found anywhere in the body of appellee's medication warning labels. Making the (MCA's) claim that the trial attorney was not ineffective for failing to raise a meritless defense erroneous, without validity. Please take judicial notice under U.S.C.S. 201(c)(2) (See Exhibit: A prescription warning label) please clarify whether these labels do, or do not warn of intoxication or impairment. If not, this case should be reversed and remanded.

The Sixth Circuit failed to adequately explain why that admission of defendant prescription's by stipulation, raised the question on the cross examination to show defendant admitted reading these warnings, where by suggesting defendant has been informed prior to taking these prescribed medications that he may become intoxicated or impaired. This did become the outcome determinative in denying the defendant's motion to retrial on the ineffective assistance of counsel claim.

This simply was not true. To date, no appellant court giving raise to decision in this case has provided a thread of evidence to maintain their claim that the content of the warning labels in question advise or warned against intoxication or impairment. It is quite obviously that throughout this appeal not one single appellate court judge has ever taken the time to proofread and redress the validity of the states claim whether there were any such warning labels. Considering Appellee has attached these labels with each and every appellate court this case has reached a docket. If they had, they would easily have found they do not include such warning. The prosecutor not being a witness in this matter and, having no expertise in this area made a hollow claim of misconception, alluding to the contents of these warning labels to contain an admonition of intoxication or impairment. The state and federal courts since then using this reasoning to deny Appellee's appeal. They have used it to their

advantage to claim defense counsel was not ineffective for not raising a meritless defense. This simply was not a truthful showing of the facts. Appellee has attached a copy (Please See: Exhibit A) of the prescription warning labels to provide this court with the necessary evidence in support of appellee's claim that the state was not being truthful in this matter and the denial of the ineffective assistance of counsel based on this information was erroneous and should be held suspect. The state's second reason in it's denial on appeal in this case is truly reaching. Here, by attempting to use appellee's 30 year old prior bad acts as character traits acting in conformity with those character commonly associated with a violation of MRE 404(b) < 403. (MCA's) opinion here is that even if the defense had been allowed, and appellee would have testified it would open the door for the prosecution to impeach his testimony through his prior bad acts. Prejudicing his jury against him and finding him guilty anyway. It is appellee's contention that this is a tactical approach the state has utilized to develop it's opinion, however, carrying no legal precedence to decide over an ineffective assistance of counsel case. As if to suggest that any person having prior convictions are not subject to the right of a jury trial as every other American citizen.

REASONS FOR GRANTING THE PETITION

- 1) The State prosecutor made claims outside the record using Petitioners prescription warning labels to show trial counsel was not ineffective for not raising a meritless defense. The state never offered any proof on record warning the labels contained any such admonition of intoxication or impairment. Prejudicing petitioner's claim of ineffective assistance of counsel claim on direct appeal. Ensuing an erroneous denial unreasonably determined this facts in light of the evidence.
- 2) (MCA's) opinion was in err by reasoning that if Petitioner were to testify it would open the door to raise his prior bad acts under 404(b) adding the assumption that the jury would become prejudiced and finding him guilty anyway. A reasonable probability sufficient to undermine confidence of acquittal is not a requirement to be shown by a defendant seeking to demonstrate prejudice resulting from his counsel's deficient performance; rather a defendant is required to demonstrate a reasonable probability of a different outcome or a better outcome - A somewhat lower burden of proof for a defendant.
- 3) The (MCA) in the case before you denied this appeal on the question of prejudice contrary to the 6th Circuit's decision in Walker V. Hoffner, 534 Fed. Appx 406 which has a mirrored set of facts to the case before you arguing Ineffective Assistance. The standard of review of prejudice in an ineffective assistance claim was an unreasonable application of Federal Law and Improperly applied the prejudice prong of Strickland, 466 U.S. At 687 as did the (MCA's) decision in the instant case.

4) This case will impact cases in every circuit in the U.S. in dealing with mental health questions, concerning the enormous population of prisoners already serving sentences who are afflicted with mental health issues. A highly ignored and most vulnerable and unrepresented portion in society today. People are simply thrown into prison due to the lack of mental health facilities, held with no mental health treatment and abused by the inmate population because they are helpless.

5) The Certiorari should be granted due to Petitioner showing a blatant violation of this 6th and 14th Amendment rights against Ineffective Assistance of Counsel where even trial counsel herself testified how appalled with her own conduct she was, admitting her misapprehension in this case, and feeling so guilty of her actions she felt she may be accountable for malpractice.

The Sixth Circuit Court of Appeals affirmed petitioners conviction in case No # 21-2592 the opinions printed in the Appendix to this prtion at page Petitioner Michael Joseph Loukas respectfully that this writ of certiorari Issue in review of the judgement and opinion of the Sixth Circuit Court of Appeals rendered on

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Joseph Loukas". The signature is fluid and cursive, with "Michael" and "Loukas" being the most distinct parts.

Date: November 23, 2022