

FILED

JAN 18 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 22 - 6912

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL WRIGHT,
Petitioner-Appellant

v.

RON BROOMFIELD
Respondent-Appellee

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

MICHAEL WRIGHT
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San Quentin, CA 94974

QUESTION PRESENTED

1. Can the Federal court deny a Certificate of Appealability on the issue of ineffective assistance of counsel for his failure to raise a constitutional challenge to the sufficiency of the evidence

2. Can the Federal court deny a request for a Certificate of Appealability on the issue of ineffective assistance of counsel for his failure to raise a challenge to the omission of an essential element of the offenses

PARTIES TO THE PROCEEDING

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

Petitioner Michael Wright is a California state prisoner, who was sentenced to life following a jury trial in Contra Costa County.

Respondent Ron Broomfield is the warden at the prison where Wright is being incarcerated at the relevant time.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Wright respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the Ninth Circuit, denying Petitioner's appeal from the denial of his petition for writ of habeas corpus by the District Court for the Northern District of California.

OPINIONS BELOW

The order of the United States Court of Appeals appears at Appendix A, and is unpublished.

The order of the District Court appears at Appendix B, and is unpublished.

The order of rehearing of the United States Court of Appeals appears at Appendix C, and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided the instant case was September 29, 2022. Petition for rehearing was denied on October 27, 2022. This petition is filed within 90 days of the latter date.

Prior to the denial by the Court of Appeals, Petitioner filed a timely petition for writ of federal habeas corpus in the United States District Court for the Northern District of California, which summarily denied. The Ninth Circuit and the District Court denied a certificate of appealability (hereafter COA) .

The jurisdiction of this Court is invoked under 28 USC §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

° Fair trial, right to counsel, confrontation, and due process the 5th, 6th, and 14th Amendment to the U.S. Constitution.

Jackson v. Virginia, 443 U.S. 307, (sufficiency of evidence 14th Amend). Strickland v. Washington, 466 U.S. 688 (1984), (IAC 6th Amend). United States v. Gaudin, 515 U.S. 506 (1995), (omitted element 6th Amend). Crawford v. Washington, 541 U.S. 36 (2004), (testimonial hearsay 6th). Miller-El v. Cockrell, 537 U.S. 322 (2003), (standard for COA).

° Cal P.C. 261 (a)(2) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, where it is accomplished with a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily on the person or another. Cal P.C. 288 (b)(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. Cal P.C. 288 (c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child 14 or 15 years, and that person is at least 10 years older than the child. Cal P.C. 269 (a)(1) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault: A rape, in violation of paragraph (2) or (6) of subdivision (a) of 261.

° Cal Evid. Code, § 1200 (a), Hearsay is evidence of a statement that was made other than by the witness while testifying at the

hearing and that is offered to prove the truth of the matter. Cal Evid. Code, § 1101 (b), allows evidence of a person's uncharged misconduct when relevant to prove some fact such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident...other than his or her disposition to commit such an act. Cal Evid. Code, § 702 (a), Subject to section 801, the testimony of a witness concerning a particular matter is inadmissible unless he or she has personal knowledge of the matter. Against the objection of the party, such personal knowledge must be shown before the witness may testify concerning the matter. Cal Evid. Code, § 411, The testimony of on witness, if believed, may be sufficient to prove any fact.

STATEMENT OF THE CASE

In the instant case, trial counsel failed to object to prejudicial bad character evidence, inadmissible testimonial hearsay, and the omission of an essential element of the offenses, which led to a judgment based on less-than beyond a reasonable doubt. Additionally, on direct appeal counsel failed to assign the above forementioned issues. Futhermore, there has been no reasoned opinion with analysis addressing the merits of the claims.

On federal habeas corpus, the Attorney General contened that bad charater evidence and testimonial hearsay provided substantial evidence. In addition, the AG conceded that the omission of the element was plain error, and the AG provied no citatin to authority in support of its contentions.

The District Court denied the petition without a reasoned

opinion, supplying no analysis on how it came to that determination. Even though, the AG conceded the instructional error and set forth a harmless-error determination on that issue, the District Court failed to do so, among other things.

The Circuit Court denied stating Petitioner failed to make a "substantial showing of the denial of a constitutional right".

REASON FOR GRANTING THE PETITION

First, the Circuit Court's order denying the COA request conflict with Court's standard for issuing a COA. This Court in *Buck v. Davis*, 137 S.Ct. 759 (2017), reaffirmed the principle for issuing a COA by reversing the 5th Circuit's denial of a COA after the denial of an ineffective assistance of counsel claim. The Court emphasized that the initial determination for whether a COA should be granted is simply "whether a claim is reasonably debatable, and if so, an appeal is the normal course". Here Petitioner alleged his counsel was ineffective at trial for failure to object to inadmissible evidence, and on appeal counsel failed to assign crucial error of insufficient evidence among other things.

Next, the Federal Courts' order conflict with this Court's decisions in *Strickland v. Washington*, 446 U.S. 688 (1984), and *Smith v. Robbins*, 528 U.S. 259 (2000). The petition was premised on trial counsel's failure to object to inadmissible testimonial hearsay, bad character evidence dissimilar to the charged offenses, and an omission of an essential element of the offenses. Appellate counsel failed to assign trial counsel's inadequacies, hence, inadmissible evidence was used to sustain the convictions. The

District court's decision simply stated Petitioner [did not receive constitutionally ineffective assistance of counsel]. However, the Court failed to supply any rationale, explanation, or analysis of how it arrived at its conclusion.

Additionally, the Federal Courts' order conflict with this Court's decision in reviewing a sufficiency of the evidence challenge. This Court in Jackson v. Virginia, 443 U.S. 307 (1979), held the relevant question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. On this issue, the District's Courtt order merely said, Petitioner [did not receive IAC for failure to challenge the sufficiency of the evidence]. Again, the Court failed to give a reasoned opinion of how it arrived at that conclusion.

Lastly, the Federal Courts' order conflict with this Court's holding in United States v. Gaudin, 515 U.S. 506 (1995), here the Court said a defendant has a constitutional right to demand that a jury determine every element essential to the offense. In the instant case, the jury's verdict was rendered in the absence of proper instructions on every element of the charged offenses. Further, on Federal habeas corpus, the AG conceded the omission of the element was error. However, the District Court opined that it was no "instructional error". The Court failed to give an analysis with meaningful citation to authority on how it determined the issue.

Certiorari should be granted for the foregoing reasons stated above. Also, there was insufficient evidence when excluding the error.

CONCLUSION

MICHAEL WRIGHT submit the petition on the date of January 4, 2023.