

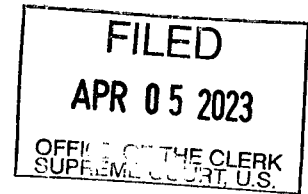
No. 22-7283

ORIGINAL

IN THE SUPREME COURT

OF THE UNITED STATES

Ronald O. LaTray pro se  
Petitioner



vs.

Pete Bludworth, Warden  
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Ronald O. LaTray pro se  
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## Question Presented

The three holdings of *Stone v. Powell*, 428 U.S. 465 (1976), have remained the source of speculation and debate and caused divergent, conflicting opinions in the lower Courts for over 45 years.

Legal authorities who have recognized and documented the problem are presented to demonstrate this fact.

The Court was asked to grant certiorari and clarify *Stone* in 1982 but declined to do so at that time, and as such, the conflict continues.

May this case serve as the vehicle necessary for the Court to address and resolve the conflict for the benefit of the nation's judiciary and the public.

The question is:

What constitutes a full and fair opportunity to litigate a United States Constitutional Fourth Amendment violation complaint invoking the exclusionary rule in States Courts?

## Lower Court Proceedings

Ronald O. LaTray v. Pete Bludworth, Warden: Atty. Gen. for the State of Montana  
Cause No.: 22-35562

United States Court of Appeals for the Ninth Circuit

Order entered: November 21, 2022 (direct appeal for Certificate of Appealability)

Order entered: January 30, 2023 (petition for reconsideration denial)

Ronald O. LaTray v. Warden Pete Bludworth; Atty. Gen. for the State of Montana  
Cause No.: CV 21-67-BLG-KLD

United States District Court for the District of Montana

Order entered: June 30, 2020

LaTray v. State

2021 MT 62N

Montana Supreme Court (appellate)

Opinion entered: March 9, 2021 (PCRP)

LaTray v. McTighe

2019 Mont. LEXIS 930

Montana Supreme Court (appellate State - habeas)

Order entered: November 19, 2019

State of Montana v. Ronald O. LaTray

Cause No.: DA 17-0417

Montana Supreme Court (appellate)

Order entered: December 11, 2018

LaTray v. Montana

2017 U.S. Dist. LEXIS 157695

United States District Court for the District of Montana

Ordered entered: September 25, 2017

LaTray v. Montana

2017 U.S. Dist. LEXIS 158079

United States District Court for the District of Montana

Order entered: August 9, 2017

LaTray v. State

383 Mont. 544

Montana State Supreme Court (appellate)

Order entered: February 9, 2016

State of Montana v. Ronald Orville LaTray

Cause No.: DC 15-0333

Montana Thirteenth Judicial District District Court (trial) Billings Montana

Order entered: October 21, 2015

## Orders and Opinion Entered in this Case

The November 21,2022 and January 30,2023 Orders of the United States Court of Appeals for the Ninth Circuit, San Francisco Division, denying the petition for a certificate of appealability and re-hearing en banc are reported at 2022 U.S. App. LEXIS 32095 and are attached to this petition as Appendix Document A. (App. Doc.)

The June 13,2020 Order of the United States District Court for the District of Montana, Billings Division, denying all Issues of the 28 U.S.C. § 2254 petition for writ of habeas corpus and a certificate of appealability is reported at 2022 U.S. Dist. LEXIS 106062 and is attached (in pertinent part) as App. Doc. B.

The December 11,2018 Opinion of the Montana Supreme Court (appellate) affirming the denial of a motion to suppress is reported at 2018 MT 305N and attached as App. Doc. C.

The October 27,2015 Order of the Montana Thirteenth Judicial District District Court (trial), Billings Montana, is unreported but is attached as App. Doc. D.

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## Basis for the Court's Jurisdiction

Pursuant 28 U.S.C. § 2254(a), Mr. LaTray submitted an application for writ of habeas corpus with supporting memorandum in the United States District Court (U.S. Dist. Ct.) for the District of Montana to complain of the violation of his U.S. Constitutional (Const.) Rights by government agents. Appendix I: (e) (App.)

A U.S. Dist. Ct. has jurisdiction to review and adjudicate 28 U.S.C. § 2254 applications under 28 U.S.C. § 2241(a). App. I: (d).

After review of the § 2254 application, U.S. Magistrate Judge Kathleen L. DeSoto issued a final Order denying both the application and a certificate of appealability (COA) in the matter.

Mr. LaTray's appeal to the U.S. Ct. of Appeals for a COA under USCS Ct App 9th Cir., Circuit Rule R 22-1(d) [App. I: (f)], was denied November 21, 2022.

The appellate Ct. has jurisdiction over appeals from all final decisions of the U.S. Dist. Cts. under 28 U.S.C. § 1291. App. I: (b).

His petition for re-hearing en banc, USCS Ct App 9th Cir., Circuit R 35-1, [App. I: (g)] was denied January 30, 2023.

This Court "hold(s) [it has] jurisdiction under [28 U.S.C.] § 1254(1) to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals. *Hohn v. United States*, 524 U.S. 236 at 238-239, 253 (1998)." App. I: (a).

See also *Ayestas v. Davis*, 138 S. Ct. 1080, 1088 fn.1 (2018) "We may review the denial of a COA by the lower courts." See e.g., *Miller-el v. Cockrell*, 537 U.S. 322, 326-327 (2003). "When the lower courts deny a COA and we conclude that their reason for doing so was flawed, we may reverse and remand so that the correct legal standard may be applied." *Slack v. McDaniel*, 529 U.S. 473, 485-486, 489-490 (2000).

Federal Habeas Corpus Practice and Procedure § 35.4

"The Certificate of Appealability [b][ii], fn. 69.

## Cases:

## United States Supreme Court

Mincey v. Arizona  
437 U.S. 385\*,[\*404] n.2 (1978): \_\_\_\_\_ 3 A(a)

Shoemaker v. Riley  
459 U.S. 948\*,[\*948-949] (1982): \_\_\_\_\_ 1,3 A(b)

## United States Appellate Courts

Gamble v. Oklahoma  
1978 U.S. App. LEXIS 8910\*\*,[\*8] (10th Cir.): \_\_\_\_\_ 4 B(b)

O'Berry v. Wainwright  
1977 U.S. App. LEXIS 10063\*\*,[\*16] (5th Cir.): \_\_\_\_\_ 4 B(a)

United States v. Lee Vang Lor  
2013 U.S. App. LEXIS 2521\*\*,[\*12,13] (10th Cir.): \_\_\_\_\_ 4 B(c)

## United States District Courts

Bravo v. Hedgepeth  
2011 U.S. Dist. LEXIS 24259\*,[\*16] (9th Cir.): \_\_\_\_\_ 4 C(a)(i)

Mirabal v. United States  
2022 U.S. Dist. LEXIS 72507\*,[\*15] (10th Cir.): \_\_\_\_\_ 5 C(d)

Montes v. Harrington  
2015 U.S. Dist. LEXIS 144408\*,[\*47] (9th Cir.): \_\_\_\_\_ 4 C(a)(ii)

Pitts v. Armstead  
2018 U.S. Dist. LEXIS 37025\*,[\*16] (4th Cir.): \_\_\_\_\_ 5 C(c)

Townsend v. Gilmore  
2016 U.S. Dist. LEXIS 137391\*,[\*20] (3rd Cir.): \_\_\_\_\_ 4 C(b)

## Statutes and Rules

28 U.S.C.S.

§ 1254(1): Courts of Appeals; certiorari; certified questions: \_\_\_\_\_ (iv)

§ 1291: Final decisions of district courts: \_\_\_\_\_ (iv), 3

§ 1915: Proceedings in forma pauperis: \_\_\_\_\_ (attached as motion)

§ 2241: Power to Grant Writ: \_\_\_\_\_ (iv)

§ 2254: State custody, remedies in state courts: \_\_\_\_\_ (iv), 1,2,3

## **I. Introduction**

This case seeks to exemplify and alert the Court to the 45 year conflict in the lower Courts in interpreting and applying the three holdings of *Stone v. Powell*, 428 U.S. 465 (1976).

Stone's multiple holdings cause confusion and result in divergent, conflicting opinions in lower Court adjudications of United States Constitutional Fourth Amendment complaint cases controlled by Stone.

In 1982, the Court denied certiorari to address the problem. Justice White's dissenting opinion in *Shoemaker v. Riley*, 459 U.S. 948 (1982) (citing and quoting 3rd, 5th, 6th and 10th Circuit Courts) laments: "The issue is obviously important and recurring. I would grant certiorari to settle it."

May this case be the impetus for the Court to now do so.

## **II. Statement of the Case**

### **Factual Background**

A Montana State police vehicle unlawfully created an unsafe traffic condition with Mr. LaTray's vehicle whereupon the police vehicle's operator's then alleged he had committed a traffic code violation establishing probable cause for their warrantless search and seizure of his person. Appendix G,H. (App.)

Mr. LaTray was subsequently arrested and charged with DUI and no insurance.

## **III. Procedural History**

### **A. State District Court**

Due to the police misconduct, defense counsel filed a motion to suppress evidence complaining Mr. LaTray's seizure was a violation of his United States Constitutional Fourth Amendment Rights (U.S. Const. Fourth Amend.) and that all evidence in his case must be suppressed as "fruit of the poisonous tree". App. H: p.9, LL 4-9.

The State, exempting the malfeasance, opposed the motion.



The trial Court (Ct.), after conducting an evidentiary hearing, issued an Order denying the motion that declared the police vehicle's unlawful operation wasn't "erratic[]" or "reckless[]" and that the troopers "should have" obeyed the law. App. G: p.5, L 23; p.6, LL 3,4: See also App. D: p.4, ¶5.

Mr. LaTray, coerced into a plea agreement, was advised to plead nolo contendere to the DUI and no insurance charges in exchange for reserving the right to appeal the denial of the motion to suppress. App. E: p.3, ¶1.

The plea was entered and he was later sentenced to and sent to prison.

#### **B. State Supreme Court**

Appellate counsel's complaint of the seizure of Mr. LaTray in violation of his Fourth Amend. Rights based upon police misconduct requested all evidence be suppressed under the exclusionary rule. App. G: p.9, ¶3; p.10, ¶1.

The appellate Cts.' decision affirming the trial Cts.' Order denying the suppression motion contends: "The fact that the troopers were driving above the speed limit had no bearing ...". App. C: p.5, ¶8.

Exhausting all available State remedies, App. E: p.2, ¶4, Mr. LaTray filed a 28 U.S.C. § 2254 habeas corpus petition alleging the State had violated three of his U.S. Const. Rights. App. E: p.1, ¶2. (in pertinent part)

Issue One, presented this petition, affects the nation's judiciary.

#### **C. United States District Court**

Issue One of the § 2254 petition argued State trial and appellate Cts. failed to fully and fairly litigate his counsel's complaints of the violation of his U.S. Const. Fourth Amendment Rights. App. F: pp. 2-5.

Responding to the State's Ct. Ordered Answer Brief, Mr. LaTray asserted "Stone, 428 U.S. at 494 & n.37" governed adjudication of the Fourth Amend. claim because the State Cts. had not applied the exclusionary rule at trial or on appellate review. App. E: pp.3-5.

Denying relief, the Ct. cited Stone "481-482" and "494": "...so long as the state has provided opportunity for full and fair litigation of a Fourth Amend. claim."; "LaTray's Fourth Amendment claim was fully litigated in the state courts."; "All Stone v. Powell requires is the initial opportunity for a fair hearing." and denied a certificate of appealability (COA) for the issue. App. B: p.12, ¶13; p.13, ¶¶2,3; p.24, "IV", ¶2.

Stone's three holdings were thus known to the Ct..

#### D. United States Court of Appeals for the Ninth Circuit

Mr. LaTray's appeal, pursuant 28 U.S.C. § 1291 (granting jurisdiction) for a COA was denied November 21,2022. His motion for reconsideration was denied January 30,2023. App. A.

#### IV. Summary

Stone's multiple holdings have caused confusion in the lower Cts. for over 45 years. Legal authorities examining the issue illustrate it's effect on the nation's judiciary and the need for clarification by the Court.

#### V. Reason Certiorari is Warranted

Legal authorities confronted with Stone reflect the question presented:

##### A. United States Supreme Court

a) In 1978, two years after Stone's decision, Justices of the Court noted:

"... lower federal courts ... have had to struggle over what this Court meant by 'an opportunity for full and fair litigation' of a Fourth Amendment claim, ...". (citations omitted)

Mincey v. Arizona, 437 U.S. 385\*,[\*404] See n.2 (1978)  
Justice's Marshall and Brennan's concurring opinion.

b) In 1982, Justice White's dissenting opinion remarks:

"... the Courts of Appeals have divided as to the meaning of the phrase 'an opportunity for full and fair litigation'." (citing and quoting 3rd, 5th, 6th and 10th Circuit Cts.)

"The issue is obviously important and recurring. I would grant certiorari to settle it."

Shoemaker v. Riley, 459 U.S. 948, [\*948-949] (1982)

## B. United States Appellate Courts

- a) In 1977, eight months after Stone was decided, a Fifth Circuit Ct. stated:

"[\*\*16] Our analysis must begin with the determination of what the Supreme Court meant by 'an opportunity for full and fair consideration' of Fourth Amendment claims by state courts - a task not made easier by the Court's failure to define the term in Stone."

O'Berry v. Wainwright, 1977 U.S. App. LEXIS 10063\*\*, [\*\*16]

- b) In 1978, 10th Circuit Ct. complaints began:

"Although Stone announced a verbal standard, it failed to clothe the words 'opportunity for full and fair litigation' with any precise meaning."

"The only hint is a single, oblique footnote signalling the reader to consult Townsend v. Sain, 372 U.S. 293 ... (1963)."

Gamble v. Oklahoma, 1978 U.S. App. LEXIS 8910\*\*, [\*\*8]

- c) In 2013, 35 years later, a 10th Circuit Ct. opined:

"The Stone Court did not define a 'full and fair opportunity to litigate' ...". (citing Townsend)

"Because Stone's 'single, oblique footnote' referencing Townsend is not very helpful, we have concluded ...". (citing Gamble, supra)

United States v. Lee Vang Lor, 2013 U.S. App. LEXIS 2521\*\*, [\*\*12,13]

## C. United States District Courts

- a) In 2011, a Ninth Circuit District Ct., in frustration:

- i) "Under none of the conflicting standards proposed by various circuit courts, ...". (citing and quoting 1st, 2nd, 5th, 7th, 8th and 10th Circuit Cts.)

Bravo v. Hedgepeth, 2011 U.S. Dist. LEXIS 24259\*, [\*16-18]

- ii) In 2015, after diligent research:

"... and the court is unaware of, any Supreme Court or Ninth Circuit authority clearly defining what constitutes a 'fair' opportunity to litigate a Fourth Amendment claim, ...". (citing Shoemaker, ibid)

Montes v. Harrington, 2015 U.S. Dist. LEXIS 144408\*, [\*47]

- b) In 2016, a Third Circuit Ct. assured litigants:

"Although the Stone Court left 'fully and fairly litigated' undefined, our Court of Appeals has identified certain [\*20] instances ...". (citations and quotations omitted)

Townsend v. Gilmore, 2016 U.S. Dist. LEXIS 137391\*, [\*20] fn.4

c) In 2018, a Fourth Circuit Ct. announced:

"Although the Stone Court did not define the phrase 'full and fair opportunity to litigate,' this circuit had concluded:"

Pitts v. Armstead, 2018 U.S. Dist. LEXIS 37025\*,[\*16]

d) In 2022, a Tenth Circuit Ct. searched for an answer:

"The Stone Court did not define the parameters of what it means to have a 'full and fair opportunity to litigate' a Fourth Amendment claim." (citation omitted)

Mirabal v. United States, 2022 U.S. Dist. LEXIS 72507\*,[\*15]

#### D. Law Reviews and Journals

a) "Precisely what is meant by [an] 'opportunity' for 'full and fair litigation' in state courts has consumed the time and energy of more than a few courts and commentators. (citation omitted)

68 Iowa L. Rev. 609\*,[\*623] fn. 78 (May 1983)

b) "A. THE OPPORTUNITY FOR FULL AND FAIR LITIGATION EXCEPTION."

"The Stone Court recognized that federal habeas corpus jurisdiction would still lie if a state had not 'provided an opportunity for full and fair litigation of [the] Fourth Amendment claim'. [] The Court provided scant elaboration on this exception. fn. 157. Just what this language means has been the subject of considerable debate in the lower federal [\*278] courts."

fn. 157: "Only a cryptic reference to Townsend is provided." (citation omitted)

77 Geo. L. J. 251\*,[\*277] fn. 157 (December 01,1988)

c) "It is not entirely clear what constitutes the 'full and fair opportunity to litigate the fourth amendment claim in state court' that would preclude habeas corpus review." (citations quotations of 8th, 9th and 11th Circuit Cts. omitted)

78 Geo. L.J. 1347\*,[\*1410] See fn. 3337 (April 01,1990)

d) "The Supreme Court has never clarified precisely what constitutes a 'full and fair opportunity,' and the federal courts of appeals take divergent approaches to the meaning of the phrase."

29 Champion 16\*,[\*18] fn. 76 (June 01,2005)

e) "A. Two Interpretations of 'Opportunity for Full and Fair Litigation'."

"The federal courts [] generally focus their attention of defining Stone's language. In Stone, the Supreme Court did not elaborate the meaning of the phrase 'an opportunity for full and fair litigation,' and the lower courts have interpreted the phrase differently. fn. 63."

106 Va. L. Rev. 523\*,[\*537] (April 01,2020)

## E. Treatise and Guides

- a) "The lower courts disagree over the 'full and fair opportunity' standard. Stone invites confusion by addressing the issue exclusively in a footnote containing only an unexplained 'cf.' citation to the Court's earlier decision in *Townsend v. Sain*. fn. 3".

Federal Habeas Corpus Practice and Procedure § 27.3  
"Full and Fair Opportunity to litigate" [a] In general

- b) "The Court never defined the meaning of 'full and fair litigation' in the context of Fourth Amendment claims, fn. 12 but instead has made only a brief elliptical reference in a footnote in *Stone to Townsend v. Sain*, ...".

"Given this vacuum, the courts of appeals have divided on exactly what constitutes an opportunity for a full and fair hearing, ...".

28 Moore's Federal Practice -- Criminal Procedure § 671.05  
[2][b] "Meaning of 'Full and Fair Litigation'."

## Conclusion

The consensus' of the testimonials present sound reasoning for the Court to exercise it's discretionary review power, grant certiorari to review the U.S. District Cts.' Order in this case and clarify *Stone* for the benefit of and to instruct the nations's judiciary:

"The principal purpose of the United States Supreme Court's exercise of it's certiorari jurisdiction is to clarify the law. fn. 107".

"Thus, the Supreme Court has consistently used certiorari jurisdiction for the purpose of resolving conflicts among the circuit courts of appeals regarding the meaning of provisions of federal law."

fn 107: *Cash v. Maxwell*, 565 U.S. 1138\*, [\*1141] (2012)  
(Justice Sotomayors concurring opinion)

Moore's Manual -- Federal Practice and Procedure § 29.01  
[3][b][ii] "Writ of Certiorari"  
See also: USCS Supreme Ct R 10 Note 3, ¶2

No party may argue any of *Stone*'s three holdings regarding Fourth Amendment claims (i.e., "*Stone*, 465 U.S. at 481-482, 494" vs. "494 & n.37" as the divergent, conflicting opinions of the lower Cts. prevent accurate, consistent assessments of the issue.

May the Court now answer the question to resolve the conflict.

by: Ronald O. LaTray  
Ronald O. LaTray