

No. _____

In The
Supreme Court of the United States

GARRETT A. ARROWOOD,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

DAVID W. COLLINS, ESQUIRE
COLLINS LAW FIRM
101 North Cherry Street
Monticello, Florida 32344
Collins.FL.Law@gmail.com
(850) 997-8111

*Counsel of Record for Petitioner
Garrett A. Arrowood*

QUESTIONS PRESENTED

- I. WHETHER THE RECORD SUPPORTS THE COURT'S CONCLUSION THAT THE STATE COURT HEARING REGARDING THE INADMISSIBLE HEARSAY (CRAWFORD VIOLATION) DID NOT VIOLATE ANY FEDERAL LAWS.
- II. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS EMPLOYS A PROCESS FOR THE ISSUANCE OR DENIAL OF CERTIFICATES OF APPEALABILITY (COA) THAT VIOLATES FUNDAMENTAL DUE PROCESS.

RELATED CASES

1. U.S. District Court; Northern District of Florida (Tallahassee); *Arrowood v. Dixon*, 4:20-cv-00151-MW-MJF (Adopting Magistrate Report). Judgment entered June 7, 2022.
2. United States Court of Appeals for the Eleventh Circuit; *Garrett A. Arrowood v. Secretary, Florida Department of Corrections*, 22-12630 (Denying Certificate of Appealability). Judgment entered August 24, 2023.

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Petitioner, Garret Arrowood respectfully asks for a writ of certiorari to issue to review the Judgment and opinion of the Eleventh Circuit Court of Appeals of the United States filed on August 24, 2023.

Said opinion upheld/affirmed the District Court of the Northern District of Florida's opinion adopting the Magistrate's report denying the Petitioner relief.



OPINION BELOW

The opinion of the Eleventh Circuit Court of Appeals was unpublished and is attached and included in the appendix.



JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1). The decision of the Eleventh Circuit Court of Appeals for which the petitioner seeks review was issued on August 24, 2023. This petition is filed within 90 days under the appropriate rules of this court.



CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment Six guarantees the right that all criminal defendants "are guaranteed effective assistance of counsel." Inherent, in such a guarantee, is that said counsel's assistance

provides competent representation that ensures a fair trial. *Strickland v. Washington*, 466 U.S. 688, 686 (1984). Further, the Fifth Amendment of the Constitution and Sixth Amendment of the Constitution guarantees a criminal defendant’s “rights of due process” which includes a fair trial. The Fifth Amendment informs the federal government that “no one shall be deprived of life, liberty or property without due process of law.”

These words have as their central promise an assurance that all levels of American government must operate within the law and provide fair procedures.

STATEMENT OF THE CASE

The Petitioner was convicted by a jury of first degree murder in Case No. 2015-CF-918 in Taylor County in the 3rd Circuit Court of Florida on April 22, 2016. The Petitioner was sentenced to life in prison on April 27, 2016.

Petitioner filed a notice of appeal on May 4, 2016 subsequently, said appeal was withdrawn and/or dismissed on July 18, 2016.

On January 23, 2017 a motion for post conviction relief was filed, alleging ineffective assistance of counsel. On August 10, 2017 an amended motion for post conviction relief was filed claiming, *inter alia*, Baya Harrison, petitioner’s counsel, was ineffective for eliciting inadmissible hearsay that violated the

Petitioner's right to confront his accuser pursuant to *Crawford v. Washington*, 541 U.S. 36 (2014).

An evidentiary hearing was held on the aforestated amended motion on August 22, and 23, 2018.

On November 29, 2018 the Trial Court denied the Petitioner's amended motion for post conviction relief.

Petitioner filed an appeal of the denial of his amended motion for post conviction relief on January 31, 2019, Case No. 1D19-384 was assigned.

On January 13, 2020 the First District Court of Appeals issued a per curiam affirmance, without opinion of the trial courts denial of the Petitioner's amended motion for post conviction relief.

On January 23, 2020 Petitioner filed a motion for rehearing, rehearing en banc, request for written opinion and request to certify questions presented for review by the Florida Supreme Court. On February 13, 2020 the appellate court denied such and the Mandate was issued on March 5, 2020.

Thereafter, Petitioner filed a timely petition for a Writ of Habeas Corpus in the Northern District of Florida, making the same federal constitutional argument that he was denied effective assistance of counsel.

Said District Court adopted the Magistrate's report and denied the Petitioner relief and denied the issuance of a certificate of appealability. (See App. 6).

REASONS FOR GRANTING THE PETITION

This case presents important issues as to how citizens convicted of crimes are required to (demonstrate) that reasonable jurists would find the district court's assessment of the constitutional claims of ineffective assistance of counsel debatable or wrong or that such issues deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In order to succeed on an appeal a certificate of appealability (COA) must be issued.

In the instant case one judge of the Eleventh Circuit Court of Appeals concluded that reasonable jurists would not debate the district court's denial of Arrowood's § 2254 Petition. So, the COA was denied.

Further and equally important in this case, is the issue of whether the Eleventh Circuit Court of Appeals process that allows a single judge to determine (speculate) what "reasonable jurist(s)" would decide or debate in issues of attorney strategy, that include alleged intentional admission of otherwise inadmissible evidence, is allowed as strategy, or determined to be negligent conduct.

In the order of the Court entered by the Eleventh Circuit Court of Appeals denying the Petitioner a COA, the Court held that the Petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. . . . (See App. 2).

This Court is asked in this Petition to issue a writ of certiorari to the Eleventh Circuit Court of Appeals that answers the following questions.

- I. How can a federal court make a decision regarding the issuance or denial of a COA based upon a record that clearly does not support the Court's findings?
- II. How can the Eleventh Circuit Court of Appeals employ a process that allows the issuance or denials of certificates of appealability (COA) that violate due process?

In answering question I., it is submitted the Court reasoned that the State post conviction court did not unreasonably apply nor reach a decision contrary to federal law. (See App. 2).

Illustrating an example of such compliance with federal law, curiously, the Court determined the State Court confirmed that the hearsay that violated *Crawford* could be considered sound strategy from a competent attorney. (See App. 3). The Court then reiterated that the State Court did not misapply federal law in concluding that counsel made a sound strategy in eliciting the challenged hearsay. (See App. 3). However, it should be noted no evidence of record or any other type of evidence indicates the State Court considered *Crawford* at all in making its decision to admit the inadmissible hearsay.

Thereafter, Petitioner sought a certificate of appealability from the Eleventh Circuit Court of Appeals and was denied such. (See App. 1). In answering

question II., it is submitted: that in *St. Hubert v. United States*, 590 U.S. ____ (2020), Justice Sonia Sotomayor observed serious concerns about the practices of the Eleventh Circuit and the rights and due process of the litigants before said court. (*St. Hubert* at 1728).

While the courts of appeals have significant authority to fashion its own rules, *Cardinal Chemical Co. v. Morton Int'l Inc.*, 508 U.S. 83, 89 (1993), the Eleventh Circuit is significantly out of step with other courts in how it approaches habeas petitioners. *Id.* at 1730. It has been stated in regard to COA procedures at the Eleventh Circuit that it is tough, perhaps tougher than anywhere in the nation for a prisoner to obtain a COA. Adam Liptak, *New York Times* (6-15-2020).

Further in the context of application for COAs the Eleventh Circuit has put in place the worst and lowest due process protections anywhere in the country. *Tomlin v. Patterson*, United States Supreme Court Case No. 19-7127 p. 4.

Especially troubling, as in the instant case is that at the Eleventh Circuit it only employs a single judge to determine what “reasonable jurist(s) may find debatable.” *Id.* at 4.

As the record reflects the denial(s) of the application of a COA by the Petitioner in this case has been summarily determined by a single judge at each stage of the proceeding. There is no record evidence that in the Petitioner’s case any reasonable debate took place as to the merits of whether a COA should issue or not.

The troubling procedures at the Eleventh Circuit for COA reviews as well as other habeas corpus processes has become arbitrary and capricious and violates fundamental fairness and due process.

CONCLUSION

Only this court has the ability to correct such. For the foregoing reasons it is requested the petition for Certiorari be granted.

Respectfully submitted,

DAVID W. COLLINS, ESQUIRE
COLLINS LAW FIRM
101 North Cherry Street
Monticello, Florida 32344
Collins.FL.Law@gmail.com
(850) 997-8111
Counsel of Record for Petitioner
Garrett A. Arrowood