

NO. 23-5386

RKB

IN THE SUPREME COURT OF THE
UNITED STATES

ORIGINAL

BRYANT MATTHEW PARKER
PETITIONER

Supreme Court, U.S. FILED
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OFFICE OF THE CLERK

vs.

DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS
RESPONDENT

PETITION FOR REHEARING

BRYANT MATTHEW PARKER
DOC # 1465528
VADOC CENTRALIZED
DIST CTR
STATE FARM, VA. 23160

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PETITION FOR REHEARING

REASON FOR REHEARING AND SUGGESTIONS IN SUPPORT

CONCLUSION

CERTIFICATE OF GOOD FAITH

APPENDIX

ORDERING DENYING CERTIORARI

OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS

EXHIBITS

Table of Authorities

1. *Coleman vs Thompson*, 501 U.S. 722, 752 (1991)
2. *Gideon vs Wainwright*, 372 U.S. 335, 344 (1963)
3. *Holland vs Florida*, 560 U.S. 130 8.Ct. 2549 1177 L F2 (2010)
4. *Maples vs Thomas*, 132 S.Ct. 972 (2012)
5. *Martinez vs Ryan* 566 U.S. (2012)
6. *Steinland vs Washington*, 466 U.S. 668-88 (1984)
7. *U.S. vs Cronic*, 466, 1642, Ct (1984)
8. *Wriker vs Marton*, 562 U.S. 1315, Ct
9. *Williams (Terry) vs Taylor*, 529 U.S. 362, 397-398 (2000)

Petition For Rehearing and Suggestions in Support.

Comes Now: Petitioner, BRYANT MATTHEW PARKER. PRO SE. AND prays to this Honorable Court to Grant Rehearing pursuant to Rule 44. And therefore grant him a writ of Certiorari to review the opinion of the Fourth Circuit Court of Appeals.

In support of this Petition he states the following:

Statement of the Facts

1. On July 30, 2014, Petitioner filed PRO SE. A state papers in the Circuit Court of Loudoun County Virginia. (Record # 89290).
2. On August 20, 2014, Petitioner filed PRO SE, an amendment to his papers. Ground 7a of this amendment changed. Attorney Michael Harrington who represented Petitioner during the penalty phase of his trial as follows:

GROUND 7a

INEFFECTIVE ASSISTANCE OF COUNSEL FOR
ABANDONING HIS CLIENT AND FAILING TO
FILE A REQUESTED DIRECT APPEAL.

3. ON FEBRUARY 24, 2015, THE STATE HABEAS
COURT GRANTED PETITIONER LEAVE TO AMEND
HIS HABEAS PETITION. THE COURT ORDERED AN
EVIDENTIARY HEARING AS TO PETITIONER'S 7(a)
CLAIM AND APPOINTED, ATTORNEY JARID B.
HARRETT, TO ASSIST PETITIONER WITH HIS
HABEAS. (EX1)

4. ON MARCH 17, 2015, PETITIONER RECEIVED A
LETTER FROM MR. HARRETT CONFIRMING HIS
APPOINTMENT, THE LETTER ALSO CONFIRMED THE
GRANTING OF THE EVIDENTIARY HEARING TO
RESOLVE THE ISSUE OF ATTORNEY'S HARRINGTON'S
ABANDONMENT FOLLOWING HIS SENTENCING
HEARING, AND THE FAILURE TO FILE A DIRECT
APPEAL.

(EX2)

5. PETITIONER DID NOT HEAR FROM MR. HARGRETT AGAIN UNTIL A YEAR LATER. ON JANUARY 14, 2016, PETITIONER RECEIVED A LETTER FROM MR. HARGRETT, NOTIFYING PETITIONER THAT THE EVIDENTIARY HEARING WAS SCHEDULED FOR APRIL 12, 2016. (EV 3)

6. ON MARCH 29, 2016, PETITIONER RECEIVED A LETTER FROM MR. HARGRETT INFORMING HIM THAT ATTORNEY HARRINGTON HAD DECLINED TO CHALLENGE PETITIONER'S GROUND 7(a).

DURING THE PERIOD OF TIME FROM HIS APPOINTMENT IN FEBRUARY 2015 TO THE LETTER DATED MARCH 29, 2016, PETITIONER HAD NO DIRECT CONTACT WITH MR. HARGRETT. BASED ON MR. HARRINGTON'S CONCESSIONS, THE ATTORNEY GENERAL CONCEDED TO THE GRANTING OF A DIRECT APPEAL AND MR. HARGRETT AND THE ATTORNEY GENERAL AGREED TO A CANCELLATION OF THE EVIDENTIARY HEARING.

IT IS OF PARTICULAR IMPORTANCE TO NOTE THAT THE CANCELLATION OF THE HEARING WAS NOT DISCUSSED WITH PETITIONER NOR WOULD PETITIONER HAVE AGREED TO THE HEARING BEING CANCELED. THE GRANTING OF THE DIRECT APPEAL RESOLVED THE ISSUE OF MR. HARRINGTON'S FAILURE TO FILE FOR THE APPEAL, BUT THE ISSUE OF MR. HARRINGTON'S

ABANDONMENT FOLLOWING HIS SENTENCING HEARING WAS STILL UNRESOLVED.

IN PETITIONER'S ORIGINAL WRIT OF HABEAS CORPUS, HE DOCUMENTED THAT AN ORDER OF RESTITUTION BY THE SENTENCING COURT WAS UNDISCLOSED AND VIOLATED PETITIONER'S RIGHTS UNDER RULE 32.

MR. HARRINGTON HAD FAILED TO ADDRESS THIS ISSUE WITH THE SENTENCING COURT DESPITE A 90 DAY STAY GRANTED BY THE COURT TO DO SO.

HAD MR. HARCETE FULFILLED HIS OBLIGATION TO CONSULT WITH HIS CLIENT HE WOULD HAVE LEARNED OF MR. HARRINGTON'S ABANDONMENT, AND MORE IMPORTANTLY THAT PETITIONER DID NOT AGREE TO THE CANCELLATION OF THE EVIDENTIARY HEARING. MR. HARCETE'S ACTIONS WERE A CLEAR DERELICTION OF HIS DUTY TO ASSIST HIS CLIENT. MR. HARCETE WAS A WELL KNOWN PROBATION ATTORNEY AND CLEARLY KNEW THE VALUE OF AN EVIDENTIARY HEARING TO PETITIONER'S STATE PROBATION, YET HE FORFEITED PETITIONER'S OPPORTUNITY TO FIGHT HIS SENTENCING COUNSEL MR. HARRINGTON, RESPONSIBLE FOR HIS ABANDONMENT, AND DEPRIVED PETITIONER HIS RIGHT TO DUE PROCESS.

9. Over the course of the next 2 years, Petitioner's direct appeal made its way through the Circuit Court of Appeals and was rejected by the court on July 18, 2018. During this time period, Petitioner had no contact with Mr. Narcette. Although the remaining claims of his state orders were still pending in the Circuit Court. On May 29, 2018, Petitioner filed a Fourth Amendment to his orders, Pro SE, because Mr. Narcette should not respond to Petitioner's request for assistance (Ex 5, 6, 7)

It should be noted that despite the claim by the U.S. District Court that Petitioner filed this claim, Pro SE while being represented by counsel. (Ex 8) The court ordered that the respondent file a brief in response, and actually designated Petitioner Pro SE, on July 24, 2018. (Ex 9)

10. Finally Petitioner receiving a response from Mr. Narcette on September 13, 2018. This letter confirms that Mr. Narcette considered his representation for the evidentiary hearing had ended with its cancellation. Accompanying this letter is a motion for clarification and/or motion to withdraw as counsel of record. (Ex 10, 11)

It should be noted that Mr. Hargett in his motion requested that his withdrawal be entered nunc pro tunc on April 12, 2016 a plain indication that he failed his duty to notify the court of his withdrawal on April 12, 2016. Not only did Mr. Hargett fail to formally notify the court, he failed to constructively notify his client.

To further document the confusion concerning Mr. Hargett's representation, the Assistant Attorney General Christopher Schandever, Counsel for the Respondent, memorialized the confusion surrounding Mr. Hargett's representation in two letters received by Petitioner on January 15, 2019 and January 31, 2019 respectively. (Ex 12, 13)

15. On March 13, 2019, the Circuit Court of Loudoun County issued its final ruling on Petitioner's state papers, dismissing all claims. Incredulously, the court found that Mr. Hargett's representation was not just for the evidentiary hearing, but to Petitioner's state papers in general. (Ex 14)

This ruling confirmed that Mr. Hargett was counsel of record for Petitioner during the time frame of February 24, 2015 to March 13, 2019, and the court did not grant Mr. Hargett's

REQUEST NUNC PRO TUNC to April 12, 2016.

The court further ruled that Petitioner's request for leave to amend his papers for fourth and fifth time were denied. Haunting Petitioner for filing these amendment pro se. While being represented by Mr. Hargett, and the court faults Petitioner for delaying his petition for 4 years.

Petitioner proffers the following defense to the court's findings.

First as the evidence shows Mr. Hargett gave no assistance to Petitioner as the court had ordered. During the period from 2015 to 2019 Mr. Hargett never spoke directly with his client, he never gave any advice to his client as to the merits of his state papers, nor did he file any documents, petitions, or amendments to the papers court on behalf of his client. Due to Mr. Hargett's unprofessional withdrawal from Petitioner's state papers, and his refusal to respond to numerous requests for assistance Petitioner was left with no choice but to pursue his state papers, pro se.

IN A SUMMARY JUDGEMENT THE SUPREME COURT OF VIRGINIA DISMISSED PETITIONER'S APPEAL ON APRIL 24, 2020. (RECORD NO. 190771)

IN MAKING THIS SUMMARY JUDGEMENT THE COURT DID NOT REVIEW ANY OF THE EVIDENCE IN THE FORM OF EXHIBITS THAT PETITIONER SUBMITTED WITH HIS PETITION. THE COURT SIMPLY DEFERRED TO THE JUDGEMENT OF THE STATE HADERS COURT.

17. ON JULY 15, 2020, PETITIONER TIMELY FILED HIS FEDERAL HADERS PETITION IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION (CASE NO. 1:20CV807 (AJT/MSN)).

GROUND VII RECLAS FOLLOWS.

"TRIAL COUNSEL" DAVID HARGETT ASSIGNED TO ASSIST MR. PARKER WITH HIS HADERS PETITION. CHALLENGING INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL'S VERNAIL AND HARRINGTON (SIC).

RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE PROVIDED NO ASSISTANCE DURING AN INITIAL REVIEW COLLATERAL PROCEEDING IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES."

representation, and failed to consider the over-
whelming evidence of Mr. Hargett's No Assistance.

18. In claim II (b), The District Court
introduced procedural default and the
doctrine of "an independent and adequate
state law ground to procedurally bar the
court's review.

In an effort to overcome the default,
petitioner invokes Martinez v. Ryan, 566 U.S. 1
(2012) contending that he received ineffective
assistance of counsel from attorney Jerald
Hargett. Therefore, petitioner has overcome his
default.

19 Ground VII claim:

The District Court States:

"Hargett's final ground for relief claims that
his lawyer appointed to represent him in
state habeas proceedings, Jerald Hargett,
provided ineffective assistance."

This is not a correct interpretation of
petitioner's Ground VII claim. Petitioner's
Actual claim is one of No Assistance

supported by an abundance of evidence in
(#19)

the form of over 18 exhibits.

The District's claim suggests that petitioner cannot bring a [§]2254 claim arguing that state habeas counsel provided ineffective assistance. The court quoted *Coleman vs. Thompson*, 501 U.S. 722, 752 (1991) - "The Constitution does not provide a right to counsel in state habeas proceedings and rejects petitioner's claim on the merits. The court denies a certificate of appealability."

20. On January 31, 2023, petitioner filed a motion for a certificate of appealability with the Fourth Circuit Court of Appeals.

On February 16, 2023, the Fourth Circuit dismissed petitioner's claim by unpublished *per curiam* opinion. (EX) No 21-7436

A certificate of appealability will not issue absent²¹ a substantial showing of the denial of a constitutional right. 28 U.S.C. [§]2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's

ASSESSMENT OF THE CONSTITUTIONAL CLAIM ADAPTABLE
OR WRONG. WHEN THE DISTRICT COURT DENIES RELIEF
ON PROCEDURAL GROUNDS, THE PRISONER MUST
DEMONSTRATE BOTH THAT THE DISPOSITIVE
PROCEDURAL RULING IS ADAPTABLE AND THAT THE
PETITION STATES A ADAPTABLE CLAIM OF DENIAL OF
A CONSTITUTIONAL RIGHT. SLACK VS. Mc DANIEL
529 U.S. 473, 484 (2000)

21. CERTIORARI WAS DENIED ON OCTOBER 10, 2023,
No. 23-5386

REASONS FOR GRANTING REHEARING

I. THE FOURTH CIRCUIT COURT OF APPEALS' MISINTERPRETATIONS AND INAPPROPRIATE APPLICATION OF THE STANDARDS OF STRICKLAND VS. WASHINGTON REQUIRES THIS COURT TO RECONSIDER ITS DENIAL OF A WRIT OF CERTIORARI ON OCTOBER 10, 2023

A. THE CENTRAL ARGUMENT OF PETITIONER'S STATE AND FEDERAL HABEAS IS FOUND IN GROUND VII OF HIS PETITIONS, CHARGING HIS APPOINTED STATE HABEAS COUNSEL, DAVID B. HARGETT WITH ABANDONMENT DURING AN INITIAL REVIEW COLLATERAL PROCEEDING.

1. PETITIONER SUBMITTED 18 EXHIBITS TO THE DISTRICT AND FOURTH CIRCUIT COURT DOCUMENTING THE CLAIM OF NO ASSISTANCE BY MR. HARGETT OVER A FOUR (4) YEAR PERIOD FROM FEBRUARY, 2015 TO MARCH 2019, WHILE PETITIONER'S STATE HABEAS WAS PENDING IN THE STATE COURT.

THE DISTRICT AND THE FOURTH CIRCUIT FAILED TO PROPERLY ANALYZE PETITIONER'S EVIDENCE OF MR. HARGETT'S NO ASSISTANCE IN ITS PREJUDICE REVIEW UNDER THE STANDARDS OF STRICKLAND.

This Court must grant a rehearing and issue a writ of certiorari because the failure to do so would allow the Fourth Circuit to continue to ignore evidence, misinterpret reasoning, and apply the wrong standards in deciding the performance and prejudice prongs of ineffective assistance of counsel claims, and deny justice where justice is due.

The U.S. District Court merely examined the respondents' arguments in its motion to dismiss and blindly followed its reasoning. The Fourth Circuit failed its duty to perform its own due diligence of the evidence presented and blindly deferred to the district court.

Twice Petitioner was the victim of unethical lawyers, Michael Harrington at sentencing, and David Hargett in post-conviction proceedings. It is difficult to not believe, that somehow their behavior was not connected, even the Attorney General with drew from Petitioner's case. Was this a conspiracy, only time will tell. To allow these unscrupulous attorneys to continue to perpetrate their heinous acts upon indigent defenseless individuals would make a mockery of the due process clause of Constitution.

This Court has a moral and ethical duty by the Constitution to establish the law of the land and to assure the citizens of this United States that the lower courts apply that law. When they do not it is this Court's obligation to hold that court accountable and see to it that justice is administered fairly. This Court MUST hear this case and hold the Fourth Circuit accountable for failing to properly apply the law of this Court and grant relief where relief is due.

CONCLUSION

For the reasons stated, Petitioner prays to this Honorable Court to grant a rehearing of its judgment entered on October 10, 2023; and issue a writ of Certiorari to hold the Fourth Circuit Court of Appeals accountable to the law of this Court. To allow this travesty of justice to prevail and go unpunished would forever be a stain on the good name of this Court no doubt reverberate throughout of the halls of justice as an epic failure to hear the cry of the bereaved.

Respectfully submitted on this day of 1st
Nov., 2023.

Bryant Matthew Parker Pro Se

BRYANT MATTHEW PARKER 1465528

CERTIFICATE OF SERVICE

PETITIONER CERTIFIES THAT HE HAS SENT A TRUE AND
CORRECT COPY OF THIS PETITION TO:

ANDREW NATHAN FERGUSON, Esq.
VIRGINIA OFFICE OF THE
ATTORNEY GENERAL
202 NORTH 9th ST.
RICHMOND, VIRGINIA 23219

this day 1st OF NOVEMBER 2023

Bryant Matthew Parker Pro Se

BRYANT MATTHEW PARKER, 1465528