

23-6147 ORIGINAL
No.

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
SEP 25 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Brett Alexander Jones

Petitioner,

v.

United States Court of Appeals for the Fifth Circuit

Respondent,

On Petition for Habeas Corpus to the
Northern District of Mississippi

PETITION FOR A WRIT OF CERTIORARI

Brett Jones-111796

Wilkinson County Correctional Facility

2999 U.S. Highway 61 North

Woodville, Mississippi 39669

601-888-3199

Pro Se

Question Presented

Whether the Fifth Circuit Court of Appeals is required to issue a COA if a state high court has found a substantial showing of a denial of a constitutional right even if a U.S. district court has denied relief on the merits and denied the issuance of a COA.

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

Jones v. Cain, No. 1:22-CV-62-MPM-JMV-NDM, U S. District Court for the Northern District of Mississippi. Judgment entered Feb. 14, 2023

Jones v. State 122 So. 3d 698, Mississippi Supreme Court. Judgment entered July 18, 2013.

Jones v. State 122 So. 3d 698, Mississippi Court of Appeals. Judgment entered Aug. 23, 2011.

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APPENDIX C Rehearing Order, *Jones v. Cain* No. 23-60119 (5th Cir. June 27, 2023)

STATE COURT

APPENDIX D Order, *Jones* No. 2007-M-02219-SCT (Miss. Apr. 30, 2008)

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APPENDIX G Opinion, *Jones v. State* 122 So.3d 725 (Miss. Ct. App. 2011), reh'g denied (Apr. 3, 2012)

APPENDIX H Opinion and Order Denying Post Conviction Relief, SCR, *Jones II*, Vol. 2 at 80-86. (Nov. 19, 2009).

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OTHER

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

 For cases from **federal courts**:

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

reported at PACER No. 23-60119; or,
[] 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[] is unpublished.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 PACER No. 1:22-CV-62-MPM; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

 For cases from **state courts**:

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

reported at Miss. Sup. Ct.-2007-M-02219 SCT; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Miss. Sup. Ct. (2013); Miss. Ct. App. (2011) court appears at Appendix F,G to the petition and is

reported at 122 So. 3d 698 (Miss 2013); 122 So. 3d 725 (Miss. Ct. App 2011), or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION**[X] For cases from **federal courts**:**

The date on which the United States Court of Appeals decided my case was May 24, 2023.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 27, 2023, and a copy of the order denying rehearing appears at Appendix C.

[] 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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was July 31, 2008.
A copy of that decision appears at Appendix D.E.F. July 18, 2013.

[X] A timely petition for rehearing was thereafter denied on the following date: Sept. 26, 2013, and a copy of the order denying rehearing appears at Appendix F.

[] 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

The Fifth Amendment to U.S. Constitution states: “No person shall be deprived of life, liberty, or property, without due process of law”.

The Sixth Amendment to the U.S. Constitution states: “In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor.”

The Sixth Amendment to the U.S. Constitution states: “In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense”.

The Sixth Amendment to the U.S. Constitution states: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial **jury** of the state and district wherein the crime shall have been committed”.

The Fourteenth Amendment to the U.S. Constitution states: “No state shall deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

When Brett was a fifteen-year-old eighth grader he was attacked by his mentally ill grandfather in a rage in their tiny kitchen in Shannon, Mississippi. He defended himself with a kitchen knife fatally wounding his grandfather, Bertis Jones. He saved his own life and tried to save his grandfather's life, in vain. He was ultimately convicted of murder and given life without parole at age fifteen years old.

In a court order dated April 30, 2008, on newly discovered evidence never presented at trial, the Mississippi Supreme Court granted Brett post-conviction relief in the form of summary judgment. The new exonerating evidence was affidavits from powerful corroborating witnesses that backed up Brett's claim of self-defense and that would have likely changed the outcome of the trial. The witnesses were Madge Jones, the wife of forty plus years of the deceased and Tony Jones, son of the deceased. Madge and Tony's lengthy affidavits and hearing testimony explained the deceased's unpredictable violent outbursts, PTSD from service in Vietnam, and fear he may hurt someone during a PTSD episode and declining mental health in the months before the attack.

The trial judge rejected the court order. A clarification was sought. An altered panel denied summary judgment but again granted Brett post-conviction relief sending him back to the trial court to ask for a new trial. The trial judge ultimately denied the relief the Mississippi Supreme Court granted, claiming without explanation the two corroborating witnesses were not credible. The Mississippi Court of Appeals affirmed. The Mississippi Supreme Court granted Brett's Writ of Certiorari, but only reviewed the Eighth Amendment claim of cruel and unusual punishment of a juvenile life without parole sentence.

A jury has never heard this exonerating evidence. The trial judge kept this substantial information from a jury and the Mississippi COA affirmed. The Mississippi Supreme Court on a Writ of Cert stated clearly, they did not review the conviction issues, choosing to review only the sentencing issue. Brett timely filed Habeas Corpus pro se. The Mississippi District Court denied Brett's Habeas Corpus on the merits, and also denied a Certificate of Appealability. The Fifth

Circuit Court of Appeals denied a Certificate of Appealability stating he did not make a substantial showing of the denial of a constitutional right under 28 U.S.C. 2253(c) (2) and no reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong.

REASONS FOR GRANTING THE PETITION

Brett Jones was denied a Certificate of Appealability from the Fifth Circuit Court of Appeals. The Order states Brett did not make "a substantial showing of the denial of a constitutional right" under U.S.C. 2253(c)(2) ; *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). The Order further states the district court rightly denied relief on the merits due to Brett's failure to show that a reasonable jurists would find the district court's assessment of his constitutional claims debatable or wrong citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Brett argues the Fifth Circuit's finding that he did not make a "substantial showing of the denial of a constitutional right" is wrong and debatable. The Mississippi Post Conviction Collateral Relief Statute 99-39-27(5) requires a substantial showing of the denial of a federal right before relief can be granted on a post-conviction petition.

99-39-27 (5) Unless it appears from the face of the application, motion, exhibits and the prior record that the claims presented by those documents are not procedurally barred under Section 99-39-21 **and that they further present a substantial showing of the denial of a state or federal right**, the court shall by appropriate order deny the application. The court may, in its discretion, require the Attorney General upon sufficient notice to respond to the application.

A three-judge panel on April 30, 2008 of the Mississippi Supreme Court decided and ruled that Brett made a substantial showing of the denial of a federal right when he was granted post-conviction relief. See, Appendix E. The three-judge panel granted Brett summary judgment after

he presented new evidence not discoverable at the time of trial and not heard by a jury. On a clarification order dated July 31, 2008, a three-judge panel (with one member replaced) decided

and ruled Brett made a substantial showing of the denial of a federal right when they granted him leave to ask the circuit court for a new trial. See, Appendix D. That is a total of four reasonable jurists that found Brett made a

substantial showing of the right to affective assistance of counsel under the Sixth Amendment see *Strickland v. Washington*, 466 U.S (1984), due process under the Fifth Amendment, and a right to a jury trial and compulsory process under the Sixth Amendment.

The Mississippi Supreme Court under its own statute requires a substantial showing of the denial of a federal right in order to grant post-conviction relief. Brett met that requirement twice, (Appendix D and E). Therefore, reasonable jurists could and did debate the district court's assessment that there was no substantial showing of the denial of a federal right. The fact is the Mississippi Supreme Court found twice that Brett made a substantial showing of a denial of a federal right. The federal district court found Brett did not make the required showing and therefore did not meet the standard for relief. The Fifth Circuit is required to grant a COA when the district court's assessment is debatable by reasonable jurists. Mississippi Supreme Court twice found that there was a substantial showing of the denial of a constitutional right. The Fifth Circuit Court of Appeals was wrong in not issuing Brett a COA. There was a finding of a substantial showing of a denial of a federal right by four reasonable jurists. One jurist on the district court found the opposite. Therefore, it is debatable and open to discussion and a COA should have been issued in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett Jones", is written over a horizontal line.

Date: September 25, 2023