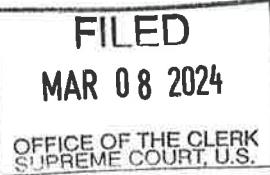


ORIGINAL

No. 23-6369

IN THE
SUPREME COURT OF THE UNITED STATES



JOSEPH R. CYR — PETITIONER

vs.

STEVEN HARPE — RESPONDENT

PETITION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI

JOSEPH R. CYR

Oklahoma State Reformatory

P.O. Box 514

Granite, Oklahoma 73547

Petitioner pro se

March 8, 2024

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH R. CYR,)
Petitioner,)
v.) Case No. 23-6369
STEVEN HARPE,)
Respondent,)

PETITION FOR REHEARING

The Petitioner, JOSEPH R. CYR, moves this Court to reconsider its decision of February 26-2024 denying Mr. Cyr's petition for writ of certiorari. Petitions for rehearing of denials for certiorari are permitted when limited to "other substantial grounds not previously presented." Rule 44.2 Rules of the Supreme Court.

The petition for certiorari previously filed herein presented the question:

3. Whether the State committed waiver of the Fourth Amendment claims as expressed in *Steagald v. United States*, 451 U.S. 205, 209 (1981) and confessed the claims under Fed. R. Civ. P., Rule 8(b)(6) by not answering the allegations in both State court and on habeas? Did the Tenth Circuit Court of Appeals err in denying a COA by not permitting review of claims under 2253(c) on claims of ineffective assistance of appellate counsel in part, on the basis ineffective assistance of trial counsel for failing to investigate and motion to suppress evidence obtained by multiple warrantless and illegal seizures in violation of the Petitioner's Fourth Amendment right to expectation of privacy that were not answered by the State? Did the Tenth Circuit Court err giving deference to the lower court's rulings when the State plainly misrepresented the underlying Fourth Amendment claims on post-conviction and on habeas causing the State courts and the U.S. District court to unreasonably apply *Franks v. Delaware*, 438 U.S. 154, 156 (1978) to the underlying merits of the ineffective assistance claims that are indeed not *Franks* claims; was the lowest state court's decision an 'adjudication on the merits' warranting deference under §2254(d)?

The petition for certiorari discussed the importance of the question presented by the petitioner and related to the decision of the Tenth Circuit and the reliance and deference of that Court given to the District Court and the lowest state court's decision towards the Petitioner's claims. Those claims involved the violation of the Petitioner's Fourth Amendment rights to be free from unreasonable search and seizure. The facts of the illegal seizures went undisputed in state court and on habeas.

The question presented herein was not previously presented. This question involves a substantial ground for relief.

Did the Tenth Circuit Court err and abuse its discretion departing from the principles of party presentation in denying review of the Petitioner's habeas claim that contained allegations that went unanswered by the state in Petitioner's habeas petition?

This Court has clarified and made itself clear in *Wood v. Milyard*, 556 U.S. 463, 184 L.Ed.2d 733 (2012): “We clarified, however, that a federal court does not have *carte blanche* to depart from the principle of party presentation basic to adversary system. See *Greenlaw v. United States*, 554 U.S. 237, 243-244, 128 S.Ct. 2559, 171 L.Ed2d 399 (2008)” and “it would be an abuse of discretion to override a state’s deliberate waiver of a limitations defense.” *Day v. McDonough*, 547 U.S. 198, 202, 126 S.Ct. 1675, 164 L.Ed2d 376 (2006).

This Court agreed in *Bland v. California Dept. of Correction*, 20 F.3d 1469, 1474, (9th Cir. 1994), cert. denied, 513 U.S. 947, 115 S.Ct. 357, 130 L.Ed.2d 311 (1994) “When the State’s return fails to dispute the factual allegations contained in the petition and traverse, it essentially admits those allegations”. Also recently in an examination of the

application of the exclusionary rule this Court agreed with the Eleventh Circuit in: *United States v. Campbell*, 26 F.4th 860, 872 (11th. Cir. 2022) (en banc), cert. denied, 143 S.Ct. 95 (2022) (Waiver directly implicates the power of the parties to control the course of litigation; if a party affirmatively and intentionally relinquishes an issue, then courts must respect that decision). *See also United States v. Sineneng-Smith*, 590 U.S. ___, 140 S.Ct. 1575, 1579, 206 L.Ed.2d 866 (2020).

As in *Bland*, here in this case the state court's decisions are reflected in the decisions rendered by the W.D. Okla. Federal District Court and the 10th Circuit court order and directly drawn from the declarations. What was not considered at any level and is of most importance, as raised and asserted by Mr. Cyr, is the undisputed facts that the State of Oklahoma did not dispute the factual allegations regarding Mr. Cyr's **Subclaims 3, 4 and 5** made in his habeas petition nor at the lowest level in the state courts on post-conviction. Nor did the state request an evidentiary hearing to dispute the allegations made regarding the instances of illegal seizures, but opposed such an evidentiary hearing.

Given the responses made by the State at every level it is clear beyond a reasonable doubt that they made no direct attempt to address the allegations made in Mr. Cyr's **Subclaims 3, 4 and 5** nor did they attempt to address the asserted waiver Mr. Cyr raised and asserted.

Indeed Mr. Cyr argued at every level that the state was required to show the effectiveness of the seizures and yet the record is devoid of any such showing. The state in its responses on both post-conviction and on habeas do not answer the allegations but

instead mislead the lowest state court and the habeas court to wrongfully include and analyze Mr. Cyr's **Subclaims 3, 4 and 5** in an analysis that pertained to Mr. Cyr's **Subclaim 1**. That analysis related to a claims involving deliberate falsehoods and reckless disregard for the truth in a search warrant affidavit under *Franks v. Delaware*, 438 U.S. 154, 156 (1978). It is clear beyond a reasonable doubt that the *Franks* analysis used towards Mr. Cyr's **Subclaims 3, 4 and 5** does not relate to those claims in any fashion and was an unreasonable application of Supreme Court law. The State plainly failed to answer the allegations made by Mr. Cyr in **Subclaims 3, 4 and 5**. This issue was raised at every level by Mr. Cyr and ignored by every court up through the 10th Circuit.

In this case the 10th circuit stands directly in contrary to the holdings of this Court above and contrary to the holdings as applied throughout the Circuits across this nation: See *Stokes v. Stirling*, 64 F.4th 131, 137 (4th Cir. 2023) (It is well established that "[a] party's failure to raise or discuss an issue in [its appellate] brief is to be deemed an abandonment of that issue and enforcing waiver and forfeiture rules against appellees reflects the principle that we "apply [these] rules on a consistent basis" so they "provide a substantial measure of fairness and certainty to the litigants who appear before us.")

See also; S.C. v. Metropolitan Government of Nashville, 86 F4th 707, 718 (6th Cir. 2023) (discussing the forfeiture rule when the respondent failed to raise arguments before the district court quoting *Stokes v. Stirling*, 64 F.4th 131, 137 (4th Cir. 2023))

See also; Maalouf v. Islamic Republic of Iran, 923 F.3d 1095, 1112-1115 (D.C. Cir. 2019) (discussing party presentation principles in analysis of *Wood*, 556 U.S. at 472, 132 S.Ct. 1826)

See also; In re Rosado, 7 F.4th 152, 157 (3rd Cir. 2021). (And, usually appellate courts should not consider issues that were not developed below)

See also; Burgess v. United States, 874 F.3d 1292, 1296 (11th Cir. 2017) (Discussing in a §2255 where the government failed to assert a defense and that if a party fails to in its answer or amended answer to assert an affirmative defense identified in Rule 8(c), the party forfeits the defense and the “principles of party presentation [is] basic to our adversarial system,” *Wood v. Milyard*, 566 U.S. 463, 472, 132 S. Ct. 1826, 1833, 182 L.Ed2d 733 (2012).)

See also; United States v. James, 955 F.3d 336, 345 (3rd Cir. 2020) (Thus, when a party clearly chooses a particular path, it will be respected and generally not further reviewed. Not only does this approach respect the adversarial system, in which the parties choose their arguments, but it also promotes finality. It encourages parties to present all relevant arguments to the trial court and binds them to their strategic choices. ““quoting *Wood*, 566 U.S. 463, 473 (reminding appellate courts “not to overlook” the “process and time investment” of the trial courts.))

See also; Arreola-Castillo v. United States, 889 F.3d 378, 383 (7th Cir. 2018) (Discussing application of principles of party presentation under *Wood v. Milyard*, 566 U.S. 463, 471, 473 against the government when they failed to assert a defense.)

Here in this case, as applied in the 10th Circuit, there has been a different standard of law regarding the application of the principles of party presentation and waiver asserted against the State of Oklahoma that differs than throughout the rest of the country, from other circuits and the law as announced by this Court. The Court of Appeals ruled and reiterated the rulings of the District Court departing from the principles of party presentation basic to adversary system and abused its discretion to override a state's deliberate waiver regarding the unanswered allegations contained in Mr. Cyr's **Subclaims 3, 4 and 5** as announced in *Wood, supra*.

Accordingly, and in keeping with *Bland, supra.*, the Tenth Circuit should have found the State waived and admitted the issues and allegations contained in Mr. Cyr's **Subclaims 3, 4 and 5** regarding the underlying merits of Mr. Cyr's ineffective assistance of trial counsel claims for failing to motion suppression of the illegally obtained evidence and then grant the writ. In the least, keeping with the principles of party presentation, the state should have been ordered to file a response to the assertion of waiver and admittance against them for failing to answer the allegation in **Subclaims 3, 4 and 5** and why the writ should not issue.

CONCLUSION

To promote fairness and uniformity across the circuits, this Petitioner begs this Court to consider the Petitioner's claims on this issue and that expressed in his petition for certiorari. Mr. Cyr has maintained his innocence and recognizes that the Fourth Amendment of the Constitution guarantees the protection from an overreaching

government and state actors. Plain on the face of the undisputed facts of this case, the evidence outlined in Mr. Cyr's **Subclaims 3, 4 and 5** regarding the underlying merits of his ineffective claims and expressed in his habeas petition, was illegally seized by the Oklahoma City Police Department without due process and used to convict him in State court. Furthermore, defense counsel had a duty to investigate and challenge the illegally obtained evidence and failed to do so. Additionally, appellate counsel failed to investigate trial counsel's actions and bring forth claims of ineffective assistance of counsel. The facts of this case are and remain undisputed by the State of Oklahoma.

This Petitioner, JOSEPH R. CYR, has been deprived of his property without due process in violation of the Fourth Amendment and convicted utilizing the illegally obtained property; this warrants this Court's attention as the Court of last resort. For the foregoing reason and the reasons set forth in the original petition, Petitioner prays this Court will reconsider his application for the issuance of a writ of certiorari or in the least remand this case back to the Tenth Circuit Court of Appeals and order the State to respond or answer as to why the aforementioned waiver and admittance should not apply against them before the issuance of the writ of habeas corpus on Petitioner's **Subclaims 3, 4 and 5** as it relates to ineffective assistance of appellate counsel for failing to raise instances of ineffective assistance of trial counsel.

SUBMITTED ON THIS 8 day of March 2024.



Petitioner, pro se

Joseph R. Cyr #753094

Oklahoma State Reformatory
P.O. Box 514
Granite, Oklahoma 73547

CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



PROOF OF SERVICE

I, Joseph R. Cyr, do swear that on this date, March 8, 2024, as required by the Supreme Court Rule 29 I have served and enclosed the above PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other persons required to be served, by depositing an envelope containing the above documents into the prison legal mail system at the Oklahoma State Reformatory to be mailed in the United states mail properly addressed to each of them with first-class postage prepaid.

Gentner Drummond
Office of Attorney General
313 N.E. 21st
Oklahoma City, OK 73105

I declare under penalty of perjury the foregoing is true and correct.

Executed on March 8, 2024



Joseph R. Cyr #753094
Oklahoma State Reformatory
P.O. Box 514
Granite, OK 73547

March 8, 2024

Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: Petition for Rehearing, Case No. 23-6369

Dear Clerk,

I am addressing this Petition for Rehearing to Justice Gorsuch under Rule 22; whom has authority to grant relief sought over the State of Oklahoma in the Tenth Circuit. Please docket this Petition in the above case number and send me confirmation of the docketing. Thank you for your assistance in these matters.

Sincerely,

