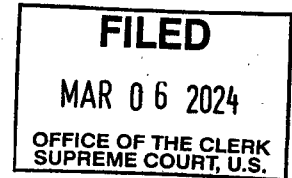


No. _____

23-7442 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael P. Farley — PETITIONER
(Your Name)

vs.

Anthony Wills — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US District Court Southern District Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael P. Farley
(Your Name)

2500 Rt. 99 South
(Address)

Mt. Sterling IL 62353
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) Was it error, for the habeas court to ignore the 95 due process claims in which petitioner properly raised within his habeas petition (even after having fairly presented them in a full round of pre-selections to both state courts during post conviction proceedings in the Illinois state courts) all because the attorney general within the states response had mischaracterized all 95 of petitioners due process claims as being claims of ineffective assistance of post conviction counsel claims which bars relief, instead of looking at the substance of each claim which clearly states in violation of defendants due process and constitutional amendment 14 within each claim raised?

2) Was it error, for the court to ignore petitioners "timely filed reply" to the states response even after petitioner had alerted the court that the attorney general had lied all throughout its response. And the court had granted petitioner permission to file a reply and a due date to have it filed by, in which petitioner complied to?

3) Was it error, for the court to ignore all of petitioners other claims in which he stated within his habeas petition and reply both, were contrary to U.S. Supreme Court rulings?

4) Was it error, for the court to deny petitioners request for appointment of counsel, for Discovery, and for an Evidentiary Hearing, even after telling the court that he is innocent and had been wrongfully convicted and had raised many colorable claims of actual innocence within his habeas petition, and to ignore his 95 claims would result in a miscarriage of justice?

5) Was it error, for the Court of Appeals to deny petitioner a C.O.A., even after his Rule 59(e), and Rule 60(b) motions had also been denied?

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:

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- (N) 14.) ORDER GRANTING PETITIONERS REPLY/TRAVERS, TO THE STATES RESPONSE, THEN STRIKING IT WITHOUT CONSIDERATION.

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STATUTES AND RULES

28 USC § 1254
 28 USC § 2254
 US Const. Amend. VI
 US Const. Amend. XIV

Statutory And Constitutional Provisions Involved

The following Statutory and Constitutional Provisions are involved in this case.

US CONST., AMEND. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

US CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2254

(A)

(b) (1), (A), (B)(i), (ii)

(2), (3), (4), (d), (1), (2).

(e)(1), (2), (A), (i), (ii),

(B), (F), (g), (h), and (i),

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**:

Note: my due process claims were ignored and not ruled upon because of mischaracterization of claim by the respondent to the District Court.
N/A (?)

The opinion of the United States court of appeals appears at Appendix L-12 to the petition and is

☐ reported at _____; 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 H-8 to the petition and is

☐ reported at _____; 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 G-7 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Appellate Court court appears at Appendix A-1 & D-4 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

1.

JURISDICTION

☒ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was ~~September 22, 2023~~ ~~December 02, 2023~~

~~2:21-cv-00756-SPM~~

September 22nd 2023

Exhibit 12

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 17th 2023, and a copy of the order denying rehearing appears at Appendix 8. M-13

☐ 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).

☐ For cases from **state courts:**

N/A (?)

The date on which the highest state court decided my case was MAR 24th 2021.
A copy of that decision appears at Appendix 6-7.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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).

STATEMENT OF THE CASE

On November 24th 2008, defendant was tried and convicted on three separate counts of Predatory Criminal Sexual Assault of A child under the age of thirteen. Following trial defendant was sentenced to 20 years at 85% on each of the 3 charges totalling 60 years at 85 %.

An appellate attorney filed defendants Direct appeal.

Defendant then proceeded to post conviction stage where his post conviction attorney would not file any of defendants claims of due process violations so defendant filed A pro se motion containing 95 due process claims in the appellate court and again in the Illinois Supreme Court. Where both times the courts ignored defendants claims. Defendant then filed A habeas motion in Federal Court where his 95 due process claims were ignored again. He then filed Rule 59 & Rule 60 motions both were denied, He appealed to the 7th Circuit for A COA was denied, He then filed for rehearing it to was denied. Defendant now files his Writ of Certiorari with this court.

Note: Defendant has raised many claims of colorable claims of actual innocence. And defendant still claims that he is 100% innocent and ask for his claims to be heard by this court.

REASONS FOR GRANTING THE PETITION

Lynch V. Chandler, 2013 US Dist Lexis 5690

The respondent mischaracterized habeas petitioners claim.

Yates V. Aiken, 484 US 211 (1988)

State Post Conviction proceedings are subject to due process protections.

Lewis V. Sternes, 390 F.3d 1019, 1026 (7th Cir. 2004)

An assertion that one's counsel was ineffective for failing to pursue particular Constitutional issues is a claim separate and independent of those issues.

Moore V. Caperson, 345 F.3d 474, 482 (7th Cir. 2003)

All issues were preserved for Federal review by citing the due process clause of the U.S. Constitution.

Ambrose V. Roekeman, 749 F.3d 615, 618 (7th Cir. 2014)

A petitioner is not required to articulate the claims with lawyerly precision because we construe pro se petitions liberally.

Murray V. Carrier, 477 US 478, 488, 106 S. Ct. 2639 (1986)

When government interference impedes the presentation of a claim. The procedural default rule will also be excused when doing otherwise would result in a miscarriage of justice.

Thomas V. McLaughtry, 201 F.3d 995, 999 (7th Cir. 2000)

A fundamental miscarriage of justice occurs when a constitutional violation had probably led to the conviction of an individual who is actually innocent.

Arrowood V. Clusen, 732 F.2d 1364, 1367-68 (7th Cir. 1984)

No procedural default occurs if state courts had notice and opportunity to rule on the Federal issues.

Goeke v. Branch, 514 US 115, 117-20 (1995)

There is no doubt from the record that the claims were presented in the state courts and those courts were apprised of the nature or substance of the Federal claim, (quoting - Webb v. Webb, 451 US 493, 501 (1981)).

Duncan, 513 US at 366-67 (Souter J. Concurring in the judgment, joined by Ginsburg and Breyer, J.J.) See id. at 367-369 Stevens J. dissenting) endorsing the prior rule "that the prisoner need not place the correct label on his claim, or even cite the Federal Constitution, as long as the substance of the Federal claim has been fairly presented" and criticizing as "hypertechnical and unwise" any exacting pleading requirement "that might prolong litigation without serving any valid purpose".

Davis v. Silva, 511 F.3d 1005, 1010-11 (9th Cir. 2008)

(Rejecting states argument that Federal claim is not fairly presented) The Court recognized that state courts are expected to refer to sources cited by the petitioner,

Shinn v. Ramirez, 142 S. Ct. at 1746 (Sotomayor J. dissenting)

All agree that A habeas petitioner is not at fault when the responsibility for an error is properly imputed to the state (who appointed counsel) or to some other external factor. But because of the nature of the Martinez rule, it will often be the case that omission of facts essential for relief on an ineffective assistance claim is due to the ineffectiveness of state post conviction counsel in failing to raise the claim... To hold A petitioner at fault because of post conviction counsel's ineffectiveness... would be to eliminate altogether such evidentiary development and doom many meritorious claims that satisfy Martinez.

Canaan v. McBride, 395 F.3d 367, 381-82 (7th Cir. 2005)

State waived or forfeited procedural default defense by Mischaracterizing claim and failing to assert default of actual claim. Despite three opportunities to assert procedural default, the state has never done so. The state's silence is significant because by failing to object to Canaan's claim on procedural default grounds, the state has waived (or more properly forfeited) this argument, ... We move to the merits of Canaan's claim.

"A short list of "some" of the 95 due process claims that have been ignored"

- 1) Denial of A Competency hearing before trial.
- 2) Denial of Counsel of Choice
- 3) Denial of A One day Continuance
- 4) Improper closed circuit testimony which resulted in defendant and his attorney being in separate rooms with no way to communicate with each other during cross examination.
- 5) Court made defendant testify before defense witnesses testified.
- 6) VSI's were shown outside the general populace and defendants family.
- 7) Defendant was tried in Orange Prison Garb with words Prisoner on back.
- 8) Defendant was shackled throughout entire trial.
- 9) involuntary Confession used to convict.
- 10) Judge Found defendant guilty of Count where alleged victim didn't accuse from witness stand.
- 11) Trial Counsel Failed to file motion to suppress statements.
- 12) Trial Counsel who was Court appointed put lien on defendants home and garnished his Fathers wages with CSX rail road saying it was Court ordered when it wasn't.
- 13) States witnesses testified about alleged victims statements before she testified herself.
- 14) VSI's shown after alleged victim testified making them unavailable for cross.
- 15) 5 state witnesses vouched to the truthfulness of the alleged victim.
- 16) Prosecutor called defendant A liar during closing argument.
- 17) Prosecutor forced defendant to comment on the truthfulness of the states witnesses.
- 18) Vindictive Prosecution where Prosecutor added new charge 4 days before trial as A punishment because defendant insisted on going to trial.
- 19) State use Multiple Counts of perjured testimony to convict.
- 20) Court showed recanted victims VSI tape during trial even though all counts on her were dismissed and she wasn't available for cross, and she was mentioned more than 70 times during trial.
- 21) Court allowed alleged victims Mother to act as expert during closed circuit hearing.
- 22) Judge allowed alleged victims Mother to complain about Multiple Counts of rape and abuse from the defendant even though defendant was never charged for that.
- 23) defendant was deprived due process right to trial by Judge free from actual bias.

"This is less than one/Fourth of the 95 due process claims that have been ignored"

"Many that which are Structural Errors and Require Automatic Reversal"

“Cases in support of the Due Process violations which are listed above”

United States V. Davila, 569 US 597, 611 (2013)

Structural Errors, trigger automatic reversal because they undermine the fairness of a criminal proceeding as a whole, including denial of competency hearing, denial of counsel of choice and denial to the right to have a public trial.

Rose V. Clark, 478 US 570, 577-78 (1986)

Some constitutional errors require automatic reversal without regard to the evidence in the particular case because they render a trial fundamentally unfair.

Randolph V. Secretary, 5 F. 4th 362 (3d Cir. 2021) Cert. denied, 142 S. Ct. 1461 (2022)

“Trial Court committed, structural error not subject to harmless error analysis, by refusing, minimal accommodation, necessary to enable accused’s counsel of choice to handle trial and instead commencing trial with court appointed counsel.”

Medina V. California, 505 US 437, 439, 112 S. Ct. 2572 (1992)

(“It is well established that the due process clause of the Fourteenth amendment prohibits the criminal conviction of a defendant who is not competent to stand trial.

U.S. V. Gonzalez-Lopez, 548 US 140, 148-50 (2006)

Deprivation of defendant’s right to choice of counsel was structural error, not subject to harmless error because effect of error impossible to quantify.

U.S. V. Sellers, 645 F.3d 830, 840 (7th Cir. 2011)

Denial of motion for continuance to substitute new counsel was structural error not subject to harmless error review.

United States V. Rodgers, 755 F. 2d 533, 540 (7th Cir. 1985)

The denial of a continuance can sometimes be tantamount to the denial of counsel of choice.

Hall V. Warden, 686 Fed. Appx. 671, 673, 683 (11th Cir. 2017)

Trial courts erroneous application of an inapplicable statute, For Closed-Circuit testimony by A child witness, which resulted in defense Counsel and the defendant being in separate rooms with no way to Communicate with each other, during Counsel's Cross-examination of witness constituted Structural error. Attorney-Client Communication during cross examination allows tactical decisions to be made and strategies to be reviewed.

Wilson V. Mintzes, 761 F.2d 275 (6th Cir. 1985)

(Right to Counsel of choice abridged, Court violated defendant's sixth Amendment right to choose Counsel by refusing to grant Continuance.

Brooks V. Tennessee, 406 US 605 (1972)

Structural Error For Court to direct defendant to testify as first defense witness.

Waller V. G.A., 467 US 39, 49 (1984)

The defendant should not be required to prove specific prejudice in order to obtain relief for violation of the public trial guarantee.

Fulminate, 499 U.S. at 309-10

Structural Error to conduct trial with A Judge who is not impartial.

Walberg V. Israel, 766 F.2d 1071, 1078 (7th Cir. 1985)

Judge denied defendant effective assistance of Counsel and Fair trial where it was clear judge made up his mind at the start that the defendant was guilty and who proceeded to intimidate the defendant's lawyer so the proceeding could be got over with.

Wilber V. Hepp, 16 F. 4th 1232, 1235, 1260 (7th Cir. 2021) Cert. denied, 142 S.Ct. 1443 (2022)

Shackling of defendant during closing arguments at trial, without articulation by either trial judge or appellate Court of A reason why Wilber, had to be visibly restrained in the jury's presence, Violated, Deck V. Missouri, 544 US 622 (2005).

Sharp V. Rohling, 793 F.3d 1216, 1219, 1240 (10th Cir. 2015)

Improper admission of involuntary confession, which was extracted with promises of leniency and no jail time... and defendant would not have testified had her involuntary confession been suppressed.

Offer V. Scott, 72 F.3d 30 (5th Cir. 1995)

Introduction of video taped interview of child complainant violated Confrontation Clause.

Harvey V. Portuondo, 2002 US Dist. Lexis 16322 at *15

Even if A claim is not raised at trial or on direct appeal, A claim pursued throughout A full round of state post conviction proceedings is exhausted. [Citing FHCPP],

Sessoms V. Grounds, 776 F.3d 615, 629 (9th Cir.) cert. denied, 577 US 913 (2015)

We have little difficulty concluding that the admission of Sessoms's illegally obtained confession was not harmless, given that, Supreme Court emphasized, that A defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. Prosecutors drove home the point, in closing arguments by returning to Sessoms's confession again and again, and other evidence against Sessoms pales in comparison.

Smiley V. Thurmer, 542 F.3d 574, 579, 587-88 (7th Cir. 2008)

"Improper admission of confession could not be deemed harmless, because petitioner's criminal conviction hinged on his credibility, and confession was instrumental in undermining that credibility, because prosecutor used confession to depict Mr. Smiley as a liar."

Jackson V. Conway, 763 F.3d 115, 141 (2d Cir. 2014) cert. denied, 575 US 919 (2015)

We are convinced that Jackson's statement which should have been suppressed, influenced the jury.

Hendrix V. Palmer, 893 F.3d 906, 920 (6th Cir. 2018)

Admission of unconstitutionally obtained statements could not be deemed harmless because prosecutors' heavy reliance upon statements throughout entire trial and including closing argument.

Cage V. Louisiana, 493 US 39 (1990) and, Sullivan V. Louisiana, 508 US 275, 282 (1993)
Structural errors violate due process and can not be harmless regardless overwhelming evidence.

United States V. Sturdivant, 796 F.3d 690, 695 (7th Cir. 2015)

Coercive police activity is A necessary predicate to the finding that A confession is not voluntary within the meaning of the due process clause of the fourteenth amendment.

Carrion V. Butler, 835 F.3d 764, 775 (7th Cir. 2016)

[Citing] Schneckloth V. Bustamonte, 412 US 218, 223-26 (1973)

A foundational principle of due process law is that the state can not procure A criminal conviction through the use of an involuntary confession.

Coleman V. Hardy, 628 F.3d 314, 320, 322-23 (7th Cir. 2010)

Remanding for Evidentiary hearing on petitioners' "actual innocence" defense to procedural default, to see if claims could support procedural actual innocence.

United States V. Cieslowski, 410 F.3d 353, 360 (7th Cir. 2005)

Trial Counsel failed to file motion to suppress.

Gardner V. United States, 680 F.3d 1006, 1013 (7th Cir. 2012) (Same as above).

Brown V. Johnson, 224 F.3d 461, 465 (5th Cir. 2000)

Where no findings of fact have been made by the state courts with respect to A particular habeas claim... A federal habeas petitioner is entitled to some form of evidentiary hearing, so long as his claims and allegations, if proved would establish the right to habeas relief.

Hines V. Enomoto, 658 F.2d 667, 672 (9th Cir. 1981)

Affirming that A claim of error based upon A right not specifically guaranteed by the Constitution may none the less form A ground for federal habeas relief, Where its impact so infects the entire trial that the resulting conviction violates the defendants due process.

Taylor V. Grounds, 721 F.3d 809, 824 (7th Cir. 2013)

Case remanded for Evidentiary hearing to determine whether conflict of interest, affected Counsel's representation such that defendant's sixth amendment right to Counsel was violated.

Blake V. United States, 723 F.3d 870, 880 (7th Cir. 2013)

A petitioner may show an adverse effect by demonstrating there is a reasonable likelihood Counsel's performance would have been different had there not been a conflict of interest.

US V. Alcantra-Castillo, 788 F.3d 1186, 1192-94 (9th Cir. 2015)

Plain error because prosecutor permitted to ask question that required defendant to comment on truthfulness of prosecution witnesses testimony.

Rushdan V. Schriro, 2010 US Dist. Lexis 143766

Prosecutor committed, vindictive prosecution.

US V. Hernandez-Herrera, 273 F.3d 1213, 1217 (9th Cir. 2001)

Prosecutor violates due process, when he or she seeks additional charges to punish a defendant for exercising a Constitutional or Statutory right.

Barnabei V. Angelone, 214 F.3d 463 (4th Cir. 2000) ~~and~~rogated by, Bell V. Jarvis, 236 F.3d 149 (4th Cir. 2000).

Claims without objection goes to Fundamental Fairness.

Thompson V. Missouri Bd. of Parole, 929 F.2d 396, 399 n.3 (8th Cir. 1991)

Petitioner properly preserved claims by raising them for first time in traverse.

Lowery V. Young, 887 F.2d 1309, 1311 (7th Cir. 1989)

Permitting amendment made via traverse asserting new claim.

Jones V. United States Bur. of Prisons, 903 F.2d 1178, 1181 n.10 (8th Cir. 1990)

Suggesting that traverse was proper method of alleging prejudice caused by respondent for the state.

United States V. Williams, 919 F.2d 266, 270-71 (5th Cir. 1990)

Matters that require fact finding and turn on credibility judgments are not appropriate for referral to Magistrate judges for final disposition.

Jackson V. Crosby, 437 F.3d 1290, 1295-96 (11th Cir. 2006)

A COA is required to appeal the denial of A motion under rule 60 (b) where state prisoner petitions for A writ of habeas corpus.

Wood V. Milyard, 132 S. Ct. 1826 (2012)

Where facts are in dispute, the Federal Court in A habeas action must hold Evidentiary Hearing.

McQuiggin V. Perkins, 133 S. Ct. 1924, 1932 (2013)

Actual innocence claims may overcome procedural default and AEDPA's Statute of Limitations.

Slack V. McDaniel, 529 US 473, 484-85, 120 S. Ct. 1595 (2000)

When the District Court denies A habeas petition on procedural grounds without ever reaching the prisoner's underlying claims, A COA should issue.

HENCE, accordingly to Supreme Court rulings defendant's habeas claims deserve to be decided upon the merits of his claims in Federal Courts,

FURTHERMORE, defendant has raised claims that if proven would require automatic reversal and double jeopardy bars retrial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael P. Fordry

Date: 02-22-2024