No. 23-7740

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM H. BAKER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITIONER FOR WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Pro Se.-Petitioner

QUESTION PRESENTED

Whether the procedural default creates a miscarriage of justice that denies Petitioner his fundamental rights to due process as guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution where the purported evidence of trial was both prejudicial and tainted; and denies Petitioner both equal protection, and effective assistance of counsel.

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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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 case from **federal Court:**

The opinions of the United States Court of Appeal appears at Appendices A-B to the petition and is reported at 2023 U.S. App. LEXIS 23461 and 2023 U.S. App. LEXIS 31430.

The opinion of the United States District Court appears at Appendix C to the petition and is reported at 2023 U.S. Dist. LEXIS 36282.

For cases from **state court:**

The opinions of the highest state court to review the merits appears at Appendix D to the petition and is reported at ***State v Baker*** 158 Ohio St. 3d 1449, 141 N.E. 3d 983 (2020).

JURISDICTION

For cases from **federal court:**

The date on which the United States Court of Appeals decided my case, September 1, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on November 27, 2023 and a copy of both orders denying appeal and rehearing appear at Appendices A-B.

An extension of time to file the petition for writ of certiorari was granted to April 25, 2024 on February 5, 2024 in Application No. 23A721.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

For cases from **state courts:**

The date on which the highest state court denied my case was March 31, 2020. A copy of that decision appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Fifth Amendment of the United States Constitution* states "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The *Sixth Amendment of the United States 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, 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The *Fourteenth Amendment of the United States Constitution* states "**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of 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 State custody: remedies in Federal Court. (Appendix E)

STATE OF THE CASE

In the case sub judice the questions of whether Petitioner was denied his conditional rights pursuant to the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution through a procedural default which created a miscarriage of justice where the purported evidence of trial was prejudicial, and mis-categorized by the court denying Petitioner the fundamental fairness of trial and the due process; and effective assistance of counsel.

Petitioner was indicted in May 2017 by an Allen County Grand Jury on multiple counts of Rape, Sexual Battery, Unlawful Sexual Conduct with a minor, and Gross Sexual Imposition.

On October 17, 2017 Petitioner commenced trial as charged and was subsequently adjudicated guilty on all charges and sentenced to an aggregate term of twenty (20) consecutive years of imprisonment to be served in the Ohio Department of Rehabilitation and Correction.

Petitioner appealed his conviction to the Ohio Third Appellate District Court of Appeals contending that he, in fact, was denied the fundamental fairness of trial and the due process rights guaranteed by United States Constitution where the State allowed a verdict of guilt to stand based on insufficient evidence; and where counsel was wholly ineffective for having made prejudicial and inflammatory comments before the jury implying Petitioner's guilt, all in violation of his Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The Court of Appeals on August 27, 2018 disagreed and instead held there was no indication in the record that the jury lost its way and returned a verdict against the manifest weight of the evidence; and while trial counsel's comments admitted that Petitioner had previously made incriminating statements, the closing arguments made by trial counsel did not incriminate Petitioner.

Petitioner, due to appellate counsel's failure to inform him according court rules that the Third Appellate District Court of Appeals had in fact affirmed his appeal on August 27, 2018, filed *Pro Se.* a Notice of Appeal and Motion for Delayed

Appeal with the Supreme Court of Ohio on January 27, 2020. Absent any response by the State, the Supreme Court of Ohio subsequently declined to Grant the Delayed Appeal or jurisdiction pursuant to S. Ct. Prac. P. 7.08(B)(4) on March 31, 2020.

Prior to, on May 31, 2019 Petitioner prematurely filed with the Federal District Court a Writ of Habeas Corpus by a Person in State Custody 28 U.S.C. §2254 that was determined unexhausted and, subsequently dismissed on June 28, 2019 in order to complete exhaustion which in turn culminated into the August 20, 2019 filing of a Motion to Correct and Modify Sentence before the Court of Common Pleas in Allen County as well as an October 16, 2019 filing of an Application to Reopen App. R. 26(B) that resulted in a November 13, 2019 denial.

On October 2, 2020 Petitioner filed pursuant to 28 U.S.C. §2254 a Habeas Corpus petition seeking relief from his adjudication in the Allen County, Ohio Common Pleas Court and subsequent State appellate court decisions which are contrary to or an objectively unreasonable application of clearly established precedence of the United States Supreme Court. 28 U.S.C. §2254(d)(1), ***Harrington v Richter*** 562 U.S. 86, 100 (2011), ***Brown v Payton*** 544 U.S. 133, 140 (2005), ***Bell v Cone*** 535 U.S. 685, 693-694 (2002), ***Williams v Taylor*** 529 U.S. 362, 379 (2000).

On December 10, 2021 Respondent filed an Answer/Return of Writ asserting that "there is sufficient evidence to decide this case from the record and has not established that he is entitled to an evidentiary hearing under 28 U.S.C. §2254(e)(2). The Court should deny and dismiss Petitioner's 2254 petition with prejudice because Petitioner's habeas petition is time-barred, Petitioner's state law claims are not cognizable, Petitioner unexcusably procedurally defaulted any potential federal constitutional claims, and Petitioner has not established a federal constitutional violation. Reasonable jurist would not disagree."

On December 14, 2022 the District Court recommended that Petitioner's habeas corpus be dismissed based on procedural default of his claims, and that his petition was barred by the statute of limitations and not entitled to tolling principles to excuse the time bar. Subsequently on March 3, 2023 the District Court

accepted the Magistrates Report and Recommendation and dismissed the habeas petition and declined to issue a certificate of appeal and *Forma Pauperis* status.

On March 17, 2023 Petitioner filed with the District Court a Notice of Appeal, and on August 25, 2023 submitted a request for Certificate of Appealability which was subsequently denied. On September 14, 2023 Petitioner filed a Request for Rehearing that was subsequently denied on November 27, 2023.

Petitioner contends that the federal district and appellate court abused its discretion and perpetuates a miscarriage of justice.

Petitioner asks this Court to review District Court's judgment and GRANT Petitioner's Writ of Certiorari.

REASON FOR GRANTING THE PETITION

The Court should Grant Certiorari to Clarify Procedural Default in Relation to Pro Se. filing and a Fundamental Miscarriage of Justice.

I. Procedural Default and *Pro Se.* Filing

This court should grant review in this case to provide guidance on how to apply the procedural default doctrine, an issue that has confounded, the lower courts.

The United States Supreme Court has emphasized that "as a general matter, the burden is on the petitioner to raise his federal claim in the State courts at a time when State procedural law permits its consideration on the merits, even if the State court could have identified and addressed the federal question without it having been raised." ***Bell v Cone***, at 451 n.3 (2005).

Normally, a federal habeas court will consider default in the State courts to have occurred if the last "reasonable State judgment rejecting a federal claim" makes a plain statement of such State procedural default. ***Ylst v Nunnmaker*** 501 U.S. 797, 803 (1991). No such statement is necessary if the relevant issues were presented at all to the State court(s). ***Harris v Reed*** 489 U.S. 255, 263 n.9 (1989).

This Court in ***Gray v Netherland*** 518 U.S. 152, 162 (1996) held that "failure to properly present the federal grounds to the State courts constitutes procedural default or waiver barring federal habeas review. And when the habeas petitioner has failed to fairly present to the State courts the claim on which he seeks relief in federal court, and the opportunity to raise that claim in State court has passed, the petitioner has procedurally defaulted that claim". ***O'Sullivan v Boerckel*** 526 U.S. 838, 853-854 (1991).

In the case sub judice Petitioner was not made aware of the August 27, 2018 Court of Appeals decision-making until May 13, 2019, and had no understanding of how to prosecute an appeal until receiving adequate assistance on January 27, 2020. Such qualifying as "soon as possible". Petitioner sought relief to the Ohio

Supreme Court pursuant to S. Ct. Prac. R 7.01(A)(4) and instructions of the Court Rules and Practice which reads:

> **(4) Motion for a delayed appeal in felony cases.**
> **(a)** In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may file a delayed appeal by filing a notice of appeal and a motion for delayed appeal that complies with the following requirements:
> **(i)** The motion shall state the date of entry of the judgment being appealed and the reasons for the delay;
> **(ii)** Facts supporting the motion shall be set forth in an affidavit;
> **(iii)** A date-stamped copy of the court of appeals' opinion and the judgment entry being appealed shall be attached to the motion.
> **(b)** A memorandum in support of jurisdiction shall not be filed at the time a motion for delayed appeal is filed. If the Supreme Court grants a motion for delayed appeal, the appellant shall file a memorandum in support of jurisdiction within thirty days after the motion for delayed appeal is granted. If a memorandum in support of jurisdiction is not timely filed after a motion for delayed appeal has been granted, the Supreme Court will dismiss the appeal.
> **(c)** The provision for delayed appeal does not apply to appeals involving postconviction relief or appeals brought pursuant to App.R. 26(B). The Clerk shall refuse to file motions for delayed appeal involving postconviction relief or App.R. 26(B).

Further through assistance of the institution law library services and instruction of the Office of the Ohio Public Defender Pro Se. Packet which reads in part under specific headings:

> **What should I?** "Since you did not file within the time limit you must ask the Ohio Supreme Court to permit you to file late. To do that, you must file a Motion for Leave to File a Delayed Appeal explaining why you did not file within the 45 days."
> **When should I file?** "You should file this motion as soon as possible. If you file as soon as you can, the Court may be more inclined to grant it. The Ohio Supreme Court is more likely to grant a motion if it is filed soon after the missed deadline."

Petitioner having absolutely no legal astute, legal training, attorney, or able to acquire assistance through the institutional law library, prior to being transferred to another facility where he received assistance on filing properly, was left with no option other than to file according to his meager ability in order to preserve an appeal for federal review.

This Court held that pleadings "however artfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers..." ***Huges v Rowe*** 449 U.S. 5, 10 (1980) citing ***Haines v Kerner*** 404 U.S. 519, 520-521 (1972) where

this Court also held "such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. citing ***Erikson v Pardus*** 551 U.S. 89, 94 (2007) quoting ***Estelle v Gamble*** 429 U.S.97, 106 (1976) where this Court again held "*pro se.* document is to be liberally construed".

The lower courts are intentionally holding Petitioner to the exact standards it renders for an attorney, paralegal, or pundit vested with some degree of legal knowledge.

Petitioner posits that procedural default may be excused upon a showing of "cause" for the procedural default and "actual prejudice" from the alleged error. Demonstrating cause requires showing that an 'objective factor external to the defense impeded...efforts to comply with the state procedural rule. ***Murray v Carrier*** 477 U.S. 478, 488 (1986).

As shown Petitioner sought a delayed appeal to the Ohio Supreme following the information on the *Pro Se.* application provided by the Ohio Public Defenders Office and according to the applicable rules to the best of his comprehension. Petitioner contends that the State procedural rule on which the State relies and lower courts relies to establish a procedural default is inadequate to bar federal relief. The State court did not dismiss or reject Petitioner's claims based on any failure to comply with the procedural rules. Whereas this Court in ***Cone v Bell***, at 463-469 held that "when a State court declines to find that a claim has been waived by a petitioner's alleged failure to comply with State procedural rules, our respect for the State court judgment counsels us to do the same. Although we have an independent duty to scrutinize the application of State rules that bar our review of federal claims...we have no concomitant duty to apply State procedural bars where State courts have themselves decline to do so", thus the lower courts cannot claim that the Petitioner's default deprived the State courts of a fair opportunity to dispose of the claim. And that Plaintiff can prove beyond a doubt that his claims entitles him to relief.

II. Constitutional Arguments

Both the Fifth and Fourteenth forbid the denial of life, liberty, or property "without due process of law". And under the Sixth Amendment, criminal defendants have a right to trial by an impartial jury drawn from the State and district where the crime allegedly occurred and effective assistance of counsel. Petitioner was sentenced to an aggregate term of twenty (20) consecutive years of imprisonment of which eighteen years were mandatory to be served in the Ohio Department of Rehabilitation and Correction. The constitutionality of Petitioner's argument lie in having been denied a fair and impartial trial and effective assistance of counsel.

Petitioner set before the lower court the following two meritorious arguments,

1. Petitioner was denied the fundamental fairness of trial and the due process right guaranteed by the Fourteenth Amendment of the United States Constitution when the trial court abused its discretion and denied his motion for Rule 29 acquittal for insufficient evidence.
2. Petitioner was denied his fundamental right to due process and a fair trial and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution.

that announced to the lower court a shrewd deprivation of Petitioner's constitutional rights. The due process clause requires the State in criminal prosecutions to prove guilt beyond a reasonable doubt. ***In re Winship*** 397 U.S. 358 (1970). This Court has likewise determined the *Fourteen Amendment* is to be construed liberally, to carry out purposes of its framers. ***Strauder v West Virginia*** 100 U.S. 303 (1980). Further, that no hard fast rule can be laid down as to what is, or is not, due process, pattern of due process is picked out in facts and circumstances of each case. ***Brock v North Carolina*** 349 U.S. 424 (1953), and that protection of individual from arbitrary action is the very essence of due process of law. ***Slochower v Board of Higher Education*** 350 U.S. 551 (1956).

In respect to the miscarriage of justice the jury was presented with evidence of the victim's untruthful character along with the inconclusiveness of DNA evidence. These errors lie in violation of Petitioner's right to due process and to

receive a fair and impartial trial according to the *Fourteenth Amendment.* ***Cupp v Naugthen*** 414 U.S. 141, 144, 94 S. Ct. 396 (1973). The alleged victim's testimony had no probative value in juxtaposition with the testimony substantiating overwhelming reasons why victim would fabricate the allegations along with testimony indicating DNA evidence collected by S.A.N.E. nurse having been contaminated during its collecting process.

This Court has been adamant regarding the due process clause of the *Fourteenth Amendment* and its protecting of a defendant against a conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". ***In re Winship***, at 364. This Court's decision-making emphatically determined that the congruency of the *Fourteenth Amendment* included that no person shall be made to suffer the onus of a conviction except upon sufficient proof – defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense. ***Jackson v Virginia*** 443 U.S. 307, 313-316 (1979). Such actions thereby constitute a cause and prejudice that excused procedural default.

II. Ineffective Assistance of Counsel

This Court has keenly held that in order to establish ineffective assistance of counsel pursuant to the Sixth Amendment, Petitioner must demonstrate that his counsel's performance was deficient and that he suffered prejudice as a result of. ***Strickland v Washington*** 466 U.S. 688, 687 (1984), ***Yarborugh v Gentry*** 540 U.S. 1, 5 (2003), ***Padilla v Ky.*** 559 U.S. 356, 371 (2010). To make this showing Petitioner must overcome the "strong presumption" that his counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. ***Strickland***, at 687-689. "Strategic choices made after thorough investigation of law and fact relevant to plausible options are virtually unchallengeable". *Id.*, at 690, and where Petitioner fails to overcome the

presumption that the challenged actions might be considered sound trial strategy a court may not find ineffective assistance. *Id.*, at 689.[1]

In order to establish prejudice, Petitioner must prove that a reasonable probability exist that, but for counsel's errors, the result of the criminal proceedings would have been different. ***Strickland***, at 694-695. This means Petitioner must show a substantial, not just "some conceivable" effect, on the outcome of the proceedings. ***Id.***, at 693, ***Harrington***, supra, at791.

Petitioner contends trial counsel was ineffective when during closing arguments he made prejudicial and overly inflammatory comments before the jury which implied Petitioner's guilt, and of which couldn't be cured through any instructive or curative statements.

Counsel's inflammatory colloquy regarding Petitioner as to what he may have said, or how he may have responded entailed, "It's pretty awful", "He makes some statements that, to be perfectly honest are very incriminating", "he believes his daughter", "He believes what he's being relayed. He feels awful because it's like, well, no reason to doubt her", "I didn't do it and you need to get her to change her story". "Did he say some terrible things? Absolutely". "He said some pretty awful things", and "they went to far. Absolutely. One hundred percent. A lot of what they said, well, just wrong". All of which left an indelible impression upon the jury that the possibility of something nefarious or insidious existed about the Petitioner. These actions of counsel denied Petitioner his right to effective assistance of counsel, and absence counsel's ineffective behavior the results of the trial would have produced a not guilty verdict, not just conceivable but substantial. ***Harrington***, supra, at 112. Trial counsel's actions during closing argument was wholly deficient and fell below an objective standard of reasonableness.

Petitioner contends that his counsel's conduct was objectively unreasonable based on the totality of circumstances so as to constitute ineffective assistance. ***Strickland***, at 690, ***Brower v Wolfe*** 2008 U.S. Dist. LEXIS 35688 (Apr. 29, 2008),

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[1] Quoting ***Michel v Louisiana*** 350 U.S. 91, 101 (1955).

and that his actions produced prejudice to a level of warranting a "case by case" examination of the totality of circumstances, and that in determining whether an attorney's conduct is deficient, the court stressed that "the proper standard for attorney performance is that of reasonable effective assistance", ***Strickland***, "viewed as of the time of counsel's conduct", and considered "in light of all the circumstances". *Id.*, at 690, which in itself shows that Petitioner can show that an objection by counsel would have in fact been successful. ***Coley v Bagley*** 706 F.3d 741, 752 (6th Cir. 2013). And that reasonable jurist would debate the lower courts determination that the State appellate court did unreasonably apply ***Strickland*** or make an unreasonable determination of the facts when it denied Petitioner's claim.

Because the lower courts are not applying the correct standards, this Court's review is warranted.

CONCLUSION

Petitioner Baker respectfully request this Court issue a writ of certiorari.

Respectfully Submitted,

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Date Submitted April 20, 2024