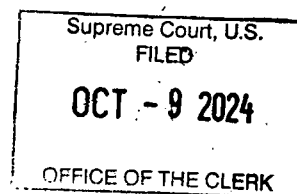


24-5815 **ORIGINAL**
No. 1

IN THE
SUPREME COURT OF THE UNITED STATES



JOSEPH S. ADDISON — PETITIONER
(Your Name)

vs.

TIM SHOOP, WARDEN, C.C.I. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph S. Addison
(Your Name)

15802 St. Rt. 104 N
(Address)

Chillicothe, Ohio 45601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. What bright line indicates whether a defendant has clearly and unequivocally invoked their right to conduct their own defense?
2. Can a trial-court refuse to allow a defendant to conduct their own defense, when a defendant has clearly and unequivocally invoked their right to do so?
3. Has a defendant lost his right to self-representation, if appellate court claimed that he acquiesced to counsel, even though trial-court forced him to have counsel in violation of his Sixth Amendment right to represent himself?
4. Must a defendant persist in a request to represent himself, once he has clearly and unequivocally invoked his right to self-representation?

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

ADDISON v. SHOOP, WARDEN, No. 24-3027 (6th Cir. 2024);

ADDISON v. WARDEN, CHILLICOTHE CORRECTIONAL INSTITUTION, No. 1:21-cv-553 (SD OH, WD 2023);

STATE v. ADDISON, No. 2020-0941 (Ohio 2020);

STATE v. ADDISON, Nos. CA2019-07-058/9 (OH 12th Dist. COA);

STATE v. ADDISON, Nos. 2011 CR 748; 2017 CR 00823; 2018 CR 73; 2018 CR 721 (Court of Common Pleas, Clermont County).

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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 cases from federal courts:

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

☒ reported at ADDISON v. SHOOP, 2021 US App LEXIS 214135; 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 ADDISON v. WARDEN, 2023 US Dist LEXIS 138522; 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 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 Ohio 12th Dist. Court of Appeals court appears at Appendix E to the petition and is

☒ reported at STATE v. ADDISON, 2020 Ohio 3500; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 12, 2024.

☒ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Oct 13, 2020.
A copy of that decision appears at Appendix D.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5

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.

Amendment 6

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 defense.

Amendment 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 14

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.

Statement of the Case

Joseph S. Addison was indicted on December 21, 2017, in Case No. 2017-CR-00083 with seven-counts of rape under section 2907.05(A)(1)(b), and one-count of gross-sexual-imposition (GSI) under section 2907.05(A)(4), by a Clermont County Grand-Jury. Five of the counts of rape alleged that the victim was less-than ten-years of age at the time of the offense.

On August 16, 2018, Petitioner was indicted by a Clermont County Grand-Jury in Case No. 2018-CR-000721 with three-counts of gross-sexual-imposition, two in violation of section 2907.05(A)(4), and one in violation of section 2907.05(A)(1), and two-counts of rape under section 2907.02(A)(1)(b).

On January 9, 2019, the State moved to consolidate cases for trial. Petitioner objected to the consolidation and also moved to sever counts 4 and 5 involving A.A. However, the trial-court granted the State's motion to join the cases, and denied Addison's motion to sever.

Petitioner entered a not-guilty-plea.

On January 18, 2019, Addison petitioned the court to dismiss the second indictment because of a speedy-trial-violation. On January 25, 2019, the State opposed Petitioner's motion. On March 20, 2019, the trial-court denied Petitioner's speedy-trial rights motion.

On May 13, 2019, and before trial commenced, Addison petitioned the court for jury-unanimity-instructions, which the trial-court declined.

Petitioner's jury-trial took place on May 6, 2019, and lasted six-days. Addison was sentenced to prison.

Addison filed a timely appeal from his convictions and sentence, including the following still-live errors:

- 1) The trial-court erred by refusing to consider Addison's request to represent himself in the proceedings;
- 2) The trial-court erred as a matter of law not giving a jury-unanimity instruction when requested by counsel when the victim was thirteen-years-old while testifying;

Addison's conviction and sentence were affirmed on June 29, 2020, by the Ohio Court of Appeals, Twelfth Appellate District, 2020-Ohio-3500.

On August 3, 2020, Addison filed a timely, pro se, Notice-of-Appeal and Memorandum-in-Support to the Ohio Supreme Court raising the following still-live errors:

- 1) The trial-court erred by refusing to consider Addison's request to represent himself in the proceedings;
- 2) The trial-court erred as a matter of law not giving a jury-unanimity instruction when requested by counsel when the victim was thirteen-years-old while testifying;

On October 13, 2020, the Ohio Supreme Court declined to accept jurisdiction. 2020 Ohio LEXIS 2317, 2020-Ohio-4811, 154 N.E.3d 106.

On August 31, 2020, Addison filed a timely, pro se, 26(B)-Application-for-Reopening in the Ohio Court of Appeals, Twelfth Appellate District, Clermont County, Ohio, raising the following still-live errors:

- 1) Petitioner was prejudicially deprived of his right to effective-assistance-of-counsel on direct-appeal as secured by the Sixth-Amendment to the United States Constitution and Article I section 10 of the Ohio Constitution where ineffective-assistance offered by appellate-counsel plagued Petitioner's appeal with prejudice;
- 2) The trial-court erred by denying Petitioner's request to include a lesser-included-offense in the instructions to the jury, violating Petitioner's Sixth, Eighth, and Fourteenth Amendment rights;
- 3) Petitioner's right to due process were violated under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution because prejudicial evidence was introduced at trial;

- 4) The State interjected irrelevant and prejudicial evidence about the victim into the trial phase, in violation of the rules of evidence and the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution;
- 5) Petitioner was denied his right to a fair trial by an impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution because the trial court failed to excuse for cause several biased jurors;
- 6) The procedure and instructions of the trial court, during voir dire, skewed the entire case in favor of guilty verdicts, in violation of the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution;
- 7) Petitioner was convicted and sentenced on insufficient evidence in violation of his rights under the Eighth and Fourteenth Amendments to the U.S. Constitution;
- 8) The trial court failed to permit the defense to call its investigator to the stand and failed to permit Kim Beverly, a CPS (Child Protective Services) Investigator, to the stand. The trial court's denial of the expert witness denied Petitioner his rights to due process, equal protection, and effective assistance of counsel in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

On October 26, 2020, the Ohio Court of Appeals, Twelfth Appellate District, Clermont County, Ohio, denied Addison's application-to-reopen.

On July 15, 2021, Petitioner filed pro se Notice of appeal and a notice of delayed-appeal to the Ohio Supreme Court. On October 13, 2020, the Ohio Supreme Court denied jurisdiction.

On August 20, 2021, Petitioner filed a timely Writ of Habeas Corpus to the United States District Court for the Southern District of Ohio, Western Division, Cincinnati. On December 1, 2023, The court denied the petition.

Addison filed a timely application for COA with the United States Court of Appeals for the Sixth Circuit. On July 12, 2024 the court denied the application.

Addison now files this timely petition for certiorari due on or before October 10, 2024.

GROUND ONE: The trial court erred by refusing to consider Petitioner's request to represent himself in the proceedings. According to the Sixth Amendment, a criminal has a right of self-representation and may defend himself or herself without counsel when he or she voluntarily, knowingly, and intelligently elects to do so.

Supporting Facts: This issue was preserved by Petitioner's request to terminate representation by way of motion filed on September 25, 2018 and by Petitioner's verbal request to represent himself at the motion hearing. The trial court conducted a hearing to determine whether counsel should be removed. Petitioner explained to the court that his counsel was not representing him in the manner expected and wanted him removed. The trial court indicated that "its not for you to decide what [your attorneys] do."

Petitioner went on to explain to the court that he wanted to represent himself and wanted to appoint himself as counsel. The trial court simply responded with: "Denied."

Petitioner reaffirmed his request to represent himself and the trial court responded with "You've been denied."

Petitioner's request was timely and Petitioner was never afforded the opportunity to represent himself.

The Ohio Court of Appeals stated that "after a review of the record, we find that Addison's right to self-representation was not violated because he did not unequivocally and explicitly invoke his right. Rather, a review of the entire record reveals that Addison's reference to self-representation was the result of frustration and was an emotional response to the statements made at the hearing."

The state appellate court's finding is objectively unreasonable and conflicts with federal and state standards pursuant to the Sixth Amendment, as an accused has a right to self-representation.

GROUND TWO: The trial court erred as a matter-of-law not giving a jury-unanimity-instruction, as required by the Sixth Amendment of the U.S. Constitution, when requested by counsel and when the victim was thirteen-years-old while testifying.

Supporting Facts: Counsel specifically requested an instruction specifying that the jurors may not use alternate acts to justify a guilty finding, but that all jurors must agree which act constituted which offense. But, in the case at bar, a general unanimity instruction allowed jurors to reach compromise verdicts or stacked guilty findings from separate counts into piecemeal convictions, which was done in the case at bar, violating 21 USCS 848 which requires jury unanimity in respect to each individual violation.

GROUND SIX: Petitioner was prejudicially deprived of his right to effective assistance of counsel on direct appeal as secured by the Sixth Amendment of the U.S. Constitution.

Supporting Facts: Appellate counsel was ineffective on appeal for multiple reasons, including failing to argue that:

1. Trial counsel failed to request a lesser-included offense;
2. Trial counsel did not close vigorously, during closing argument;
3. Trial counsel allowed the admission of misleading and prejudicial evidence at trial, without objecting;
4. Trial counsel permitted the State to interject prejudicial evidence about the victim;
5. Trial counsel failed to request the trial-court for not excusing for cause biased jurors;
6. Trial counsel consenting to the procedure and instructions of the trial court, during voir dire, which skewed the entire trial in favor of a guilty verdict; and
7. Trial counsel tolerating the trial court's dismissing the defense request to call its investigator to the stand and not letting the Child Protective Services Investigator, Kim Beverly, to testify.

REASONS FOR GRANTING THE PETITION
SUMMARY: RIGHT TO SELF-REPRESENTATION

At issue in this case is whether Addison clearly and unequivocally invoked his right to conduct his own defense.

The trial court erred, and the Sixth Circuit erred in upholding, by refusing to consider Petitioner's request to represent himself in the proceedings.

Addison asserts he moved to represent himself multiple times, because his appointed counsel would not call witnesses to prove his innocence, hired a private investigator but would not put them on the stand, and that he would not call the DNA expert to the stand.

Defendant's right to self-representation was violated because he unequivocally and explicitly invoked his right, however the trial court danced around his demand declaring he would not be allowed to represent himself, only giving him the alternative of counsel while denying his right and request. (EXHIBIT H, PAGE ID 777)

According to the rules of court and cited authorities the trial court's decision is contrary to law, because the trial court did not make sufficient inquiry to determine whether Addison fully understood whether Addison fully understood and intelligently relinquished his rights.

This issue was preserved by Addison's verbal request to represent himself at the motion hearing and reaffirmed his request to represent himself before trial.

This Honorable Court is called upon to vacate the Sixth Circuit's decision, and remand this case back to the lower courts for further proceedings consistent with this Court's decision.

ARGUMENT

GROUND ONE: THE RIGHT TO SELF-REPRESENTATION

At issue in this case is whether Addison clearly and unequivocally invoked his right to conduct his own defense.

The trial court erred, and the Sixth Circuit erred in upholding, by refusing to consider Petitioner's request to represent himself in the proceedings. According to the Sixth Amendment, a criminal has a right of self-representation and may defend himself or herself without counsel when he or she voluntarily, knowingly, and intelligently elects to do so.

The state court's adjudication of the claim resulted in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

The state cannot constitutionally force a lawyer upon petitioner when he is a literate, competent, understanding, and voluntarily exercised his informed free will in waiving his right to the assistance of counsel just like in the aggrieved in Faretta v. California, 422 U.S. 806, Syllabus (1975). While the right to effective assistance of counsel of Amendment VI was part of the due process of law guaranteed by Amendment XIV defendants in state criminal courts, counsel thrust upon petitioner would not be an assistant, but a master, "representing" petitioner only a through legal fiction.

In Faretta the Supreme Court held that: "*an accused*, in the exercise of a free and intelligent choice, and with the considered approval of the court, may waive trial by jury, and so

likewise may he *competently and intelligently waive his Constitutional right to assistance of counsel.*" *Id.*, at 814 (citation omitted, emphasis added). Under circumstances of the present case, the accused was deprived of his constitutional right to conduct his own defense.

Additionally, "The Sixth Amendment, as made applicable to the states by the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so. *State v. Gibson*, 5 Ohio St.2d 66, Syllabus (Ohio 1976) citing *Faretta*. See also *State v. Doyle*, 2005-Ohio-4072, 4th Dist. Pickaway No. 04CA23, ¶ 9.

"To establish an effective waiver of the right to counsel 'the trial court must make sufficient inquiry to determine whether [the] defendant fully understands and intelligently relinquishes that right.'" *State v. Cassano*, 96 Ohio St. 3d 94, ¶ 32, quoting *Gibson*. Further, "assertion of the right of self-representation 'must be * * * clear and unequivocal'" *Cassano*, at ¶ 38, quoting *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000).

There were facts from which the trial court could reasonably conclude that Petitioner was dissatisfied with his attorney, therefore, his request was a genuine request to represent himself.

Defendant's right to self-representation was violated because he unequivocally and explicitly invoked his right, however the trial court danced around his demand declaring he would not be allowed to represent himself, only giving him the alternative of counsel while denying his right and request.

Addison asserts he moved to represent himself multiple times, orally and in writing, because his appointed counsel would not call witnesses to prove his innocence, hired a private

investigator but would not put them on the stand, and that he would not call the DNA expert to the stand.

Since Addison sought to represent himself, the trial court should have engaged in a colloquy with the Petitioner to ensure that he has been "made aware of the dangers and disadvantages of self-representation." State v. Obermiller, 147 Ohio St. 3d 175, 184 (Ohio 2016) citing Faretta.

Here, the only conversation that took place between the trial court and Petitioner was:

Petitioner: "Your Honor, I request to appoint myself as my own attorney."

Trial Court: "Denied."

(APPENDIX H, PAGE ID 777)

Later in the hearing, Petitioner reaffirmed his request to represent himself, stating:

Petitioner: "I've asked to appoint myself. You've already seen I'm competent to do it, you've denied me."

Trial Court: "Yeah, he's just angry."

(APPENDIX H, PAGE ID 781-2)

In its decision the Sixth Circuit said:

Applying Faretta, the Ohio Court of Appeals held that "Addison's right to self-representation was not violated because he did not unequivocally and explicitly invoke his right." The court found that Addison's request to represent himself, which came immediately after expressing his gripes with defense counsel, "was the result of frustration and an emotional response to the statements made at the hearing."

...

Addison explained to the court that, in addition to not meeting with him, his attorney had not instructed the investigator to interview certain witnesses and had "sent [his] DNA expert to do something [he] never asked for." **He then asked that he be permitted to represent himself. The court denied the request and proceeded to discuss with Addison which attorney should be appointed.** Addison stated, "I've asked [the court] to appoint myself. You've already seen I'm competent enough to do it. You've denied me." The court responded, "*Yeah. He's just angry. So you don't want me to go over the list?*" Addison expressed concern that he would not have a meaningful say in the appointment but reiterated that he would "like to bring [Goldberg] back." When the court explained that it could not reappoint Goldberg when Addison had previously asked for his withdrawal, Addison asked the court whether it would consider two other attorneys, stating, "If you can give me one of those two . . . I'll be happy with them."

This record supports the state appellate court's finding that Addison asked to represent himself out of frustration with the perceived shortcomings of defense counsel. **And when that request was denied, he did not persist in his request.** When the court asked him whether he should continue to review the list of available attorneys, Addison expressed concern that the court would not appoint who he wanted but ultimately reiterated his request for Goldberg. And when the court explained why that would not be possible, Addison requested that one of two other attorneys be appointed. Thus, as the district court determined, Addison's decision to change his mind and participate in the selection of new counsel "superseded" his prior request to represent himself." This claim does not deserve encouragement to proceed further.

Addison v. Shoop, 2024 U.S. App. LEXIS 17173, 4-5, 6-8 (APPENDIX A) (internal citations omitted, emphasis added).

However, Addison's request was not born out of anger or frustration and was timely made. Petitioner was never afforded the opportunity to represent himself. His rights under the United States and Ohio Constitutions were violated. Petitioner moved for withdrawal of his court appointed counsels asserting that his counsels were unprepared, and that he had lost confidence in them, first Brian Goldberg, and then Teresa Gosset. (APPENDIX H)

As this Honorable Court can see, this issue was preserved by Addison's quest to terminate representation by way of motion filed and by his verbal request to represent himself at the motion hearing. Clearly, Addison asserted his right to self-representation clearly,

unequivocally, and in a timely manner, evident by motions filed prior to trial. Addison's request was made in good-faith and not out of frustration or for any other reasons as the state suggests.

See Obermiller, 147 Ohio St. 3d at 180:

The Sixth Amendment right to counsel 'implicitly embodies a 'correlative right to dispense with a lawyer's help.' This right is thwarted when counsel is forced upon an unwilling defendant, who alone bears the risks of a potential conviction.

(internal citations omitted)

"Since the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless."

McKaskle v. Wiggins, 465 U.S. 168, 177, n.8 (1984).

Because the trial court denied Addison the right to self-representation, and it was properly invoked, that denial is per se reversible error. See State v. Cassano, 96 Ohio St. 3d 94, 99 (Ohio 2002).

The Sixth Amendment guarantees a criminal defendant the right to counsel, as well as the corollary right to waive counsel and proceed pro se even when the court believes that it would not be advisable. See Faretta, 422 U.S. at 807, 819-20. Addison's waiver of the right to counsel was made knowingly, intelligently, and voluntarily. Iowa v. Tovar, 541 U.S. 77, 87-88 (2004); United States v. Martin, 25 F.3d 293, 295 (6th Cir. 1994). As a result, before defendant may be deemed to have validly waived the right to counsel, he must be warned specifically of the dangers and disadvantages of self-representation Faretta, 422 U.S. at 835; Hill v. Curtin, 792 F.3d 670, 677-78 (6th Cir.) (en banc), cert. denied, 136 S.Ct. 593, 193 L.Ed.2d 470 (2015), which the trial court failed to do. Nor did the trial court inquire into the circumstances of

Addison's request. There is no dispute that the discussion made by the trial court complied in any way with Faretta, and was inconsistent with the model inquiry required by Federal courts.

Addison's lack of legal skill or knowledge should not have prevented him from competently or intelligently waiving his right to counsel. Faretta, 422 U.S. at 835; Godinez v. Moran, 509 U.S. 389, 400 (1993).

According to the rules of court and cited authorities the trial court's decision is contrary to law, because the trial court did not make sufficient inquiry to determine whether Addison fully understood whether Addison fully understood and intelligently relinquished his rights.

This issue was preserved by Addison's verbal request to represent himself at the motion hearing and reaffirmed his request to represent himself before trial.

As such, the United States Court of Appeals for the Sixth Circuit's decision is was debatable amongst jurists of reason." Miller-El, 537 U.S. at 336.

This Honorable Court is called upon to vacate the Sixth Circuit's decision, and remand this case back to the lower courts for further proceedings consistent with this Court's decision.

GROUND TWO: UNANIMITY INSTRUCTION

The trial court erred as a matter of law in not giving a jury unanimity instruction, as required by the Sixth Amendment when requested by counsel and when the victim was thirteen-years-old while testifying.

Addison argues he was deprived of a fair trial by judge Haddad's failure to give his criminal jury an unanimity instruction. This failure violated his Sixth and Fourteenth Amendment rights to unanimous verdicts in a criminal trial. In their dissent, Supreme Court Justices

Stewart, J., joined by Brennan and Marshall, JJ., dissented, expressing the views that (1) the Fourteenth Amendment required that if a state purported to accord the right of jury trial in a criminal case, then only a unanimous jury could return a constitutionally valid verdict, and (2) the Fourteenth Amendment requirements of unanimous verdicts and of an impartial system of jury selection in state criminal trials complemented each other, the unanimity requirement preventing a majority of jurors from simply ignoring the views of their fellow panel members of a minority race or class.

Johnson v. La., 406 U.S. 356, 397-99 (1972); Apodaca v. Oregon, 406 U.S. 404 (1972).

In its decision the Sixth Circuit said:

Addison's second claim asserted that the trial court erred by refusing to give the jury a unanimity instruction "specifying that the jurors may not use alternate acts to justify a guilty finding, but that all jurors must agree which act constituted which offense." The Ohio Court of Appeals rejected this claim, explaining that under state law, "juror unanimity is not a concern when a case involves sexual abuse perpetrated against a minor and the jury believes that a pattern of conduct of sexual abuse occurred." K.K. had testified to numerous instances of sexual abuse that occurred over the course of several years. *Id.*

Reasonable jurists could not disagree with the district court's determination that Addison was not entitled to habeas relief on this claim. As the Ohio Court of Appeals explained, Addison received a unanimous verdict that complied with state law—a determination to which a federal habeas court must defer. Moreover, although the Supreme Court has held that jury verdicts in state criminal trials must be unanimous and not decided by majority vote, there is no Supreme Court precedent requiring juror unanimity on the factual basis or theory of guilt underlying a verdict. This claim does not deserve encouragement to proceed further.

Addison v. Shoop, 2024 U.S. App. LEXIS 17173, 4-5, 6-8 (APPENDIX A) (internal citations omitted, emphasis added).

However, according to established law, "With respect to jury instructions, a trial court is required to provide the jury a plain, distinct, and unambiguous statement of the law applicable to the evidence presented by the parties to the trier of fact." State v. Lewis, 2012-Ohio-3684, ¶ 14 (8th Dist. COA). This includes "complete and accurate jury instructions on all the issues raised by the evidence." State v. Sneed, 63 Ohio St. 3d 3, 9 (Ohio 1992).

In the cases cited, Federal courts have presumed that unanimous verdicts are essential in Federal jury-trials, not because unanimity is necessarily fundamental to the function performed by the jury, but because that result is mandated by history. The reasoning runs throughout this Court's Sixth Amendment precedents is that, in amending the Constitution to guarantee the right to a jury-trial, the framers desired to preserve the jury safeguard as it was known to them at common law. At the time the Bill-of-Rights was adopted, unanimity had long been established as one of the attributes of a jury conviction at common law. It therefore seems to me, in accord both with history and precedent, that the Sixth Amendment requires a unanimous jury verdict in a criminal trial.

In fact, in Ramos v. Louisiana, 590 U.S. 83, Syllabus (2020) the Supreme Court held that, "the Sixth Amendment right to a jury trial--as incorporated against the States by way of the Fourteenth Amendment--requires a unanimous verdict to convict a defendant of a serious offense." Therefore, to deny Addison his right to exercise his constitutional right to have a unanimity instruction is contrary to law as it created a perfect storm for a piecemeal verdict. This is especially true given the fact that some guilty and some not-guilty verdicts were returned for the same charges and the same victim.

Wherever we might look to determine what the term "trial by an impartial jury trial" meant at the time of the Sixth Amendment's adoption—whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict. Ramos, 590 U.S., at 90.

"[A]t the time of the Sixth Amendment's adoption, the right to trial by jury *included* a right to a unanimous verdict." Ramos, 590 U.S., at 101.

The issue raised by Addison, whereby counsel specifically requested an instruction specifying that the jurors may not use alternate acts to justify aa guilty finding, but that all jurors must agree which act constituted which offense. (Jury Trial, day 6, Doc. #7, PAGEID #:2191-2194). There is a strong likelihood that the jury applied the challenged instructions in a way that violate the constitution.

A general unanimity instruction will ensure that the jury is unanimous on the factual basis for a conviction, even where an indigent alleges numerous factual bases for criminal liability.”

"[A] general unanimity instruction will ensure that the jury is unanimous on the factual basis for a conviction, even where an indictment alleges numerous factual bases for criminal liability." State v. Johnson, 46 Ohio St. 3d 96, 104 (Ohio 1989) (citations omitted), and it may allow jurors to reach compromise verdicts or stack guilty findings from separate counsel into piecemeal convictions, State v. Guenther, 2006-Ohio-767 , ¶ 34-35, 52 (Ohio 9th Dist. COA), which was done in the case at bar.

A. CAUSE

Whether a jury unanimity instruction is required, was effectively addressed through by the United States Supreme Court decision in Ramos, which held “that state juries must be unanimous in order to convict a criminal defendant.” Ramos, 590 U.S., at 115 (SOTOMAYOR; KAVANAUGH; and THOMAS Concurring).

B. PREJUDICE

The question whether Addison has shown actual prejudice is an emphatic yes, because the ailing instruction by itself so infected the entire trial, that the resulting conviction violated Addison’s due process rights.

The burden of demonstrating that an erroneous instruction was so prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment is even greater than the showing required to establish plain error on direct appeal. ^[13] The question in such a collateral proceeding is "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process," *Cupp v. Naughten*, 414 U.S., at 147, not merely whether "the instruction is undesirable, erroneous, or even 'universally condemned,'" *id.*, at 146.

Henderson v. Kibbe, 431 U.S. 145, 154 (1977)

As counsel for Addison was to eliminate the possibility of jurors being confused whereas Addison was charged with multiple distinct incidents. Addison was prejudiced as a result of the trial court not giving unanimity instructions.

Because jurors were not given the option to consider a lesser included offense, Addison was left with a higher degree of conviction and a lengthier sentence, and as such, it worked towards Addison's actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.

C. RELIEF

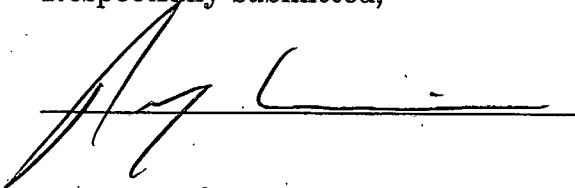
The question remains however: what Addison's relief should be? Given that jury deliberations are private, the only adequate remedy is for the verdicts to be vacated and the matter remanded to the state trial court.

The trial court's failure to give an unanimity instruction as requested by counsel, resulted in insufficient general instructions rendering the entire trial fundamentally unfair, and Joseph S. Addison's conviction and sentence must be vacated as it had a substantial and injurious effect or influence in determining the jury's verdict.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "A. L.", is written over a horizontal line.

Date: 9-8-24