

No. _____

FILED

AUG 13 2024

OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL SCALES -- PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT for the EASTERN DISTRICT OF ARKANSAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Scales # 47442-509
(Your Name)

USP Pollock
Address)

P.O. Box 2099

Pollock, LA 71477

QUESTION(S) PRESENTED

1. Whether Trevino v. Thaler, 133 S.Ct. 1911 (2013) and Martinez v. Ryan, 132 S.Ct. 1309 (2012) apply equally to federal prisoners because federal collateral proceeding was the first place to challenge conviction on a ground of ineffective assistance of trial counsel.

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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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A 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☐ is unpublished.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 B 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☐ is unpublished.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 _____ 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☐ is unpublished.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 _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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☐ is unpublished.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 May 15, 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

This case involves a federal prisoner's constitutional rights under the Fifth and Sixth Amendments, and is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified in relevant part at 28 U.S.C. § 2255.

The Fifth Amendment to the United States Constitution provides:

No person shall be ~~***~~ deprived of life, liberty, or property, without due process of law.

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to ~~***~~ have the Assistance of Counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c), which states:

- (1) Unless a circuit justice or judge issues a Certificate of Appealability, an appeal may not be taken to the court of appeals from—
- (B) the final order in a proceeding under Section 2255.

STATEMENT OF THE CASE

In May of 2022, Mr. Scales pled guilty to being a felon in possession of a firearm. See Change of Plea Hearing (D. Ct. Doc. 52); Plea Agreement (D. Ct. Doc. 53). Mr. Scales was determined to be an Armed Career Criminal and given a prison term of 210-months. See Judgment (D. Ct. Doc. 62). Through counsel, Mr. Scales acknowledged, in his plea agreement, that his past convictions made him an Armed Career Criminal under 18 U.S.C. § 924(e). See Plea Agreement (D. Ct. Doc. 53, at 4-5).

On March 30, 2023, pursuant to 28 U.S.C. § 2255, Mr. Scales filed a Motion to vacate, Set Aside, or Correct Sentence. As his sole ground for relief, Mr. Scales alleged that his "[+]rial counsel was constitutionally ineffective" because Mr. Scales received an ACCA enhancement "based in part on a conviction under [Arkansas's aggravated robbery statute], which did not qualify as a violent felony under United States v.

1 D. Ct. Doc. —, refers to Docket Entries in United States v. Scales, No. 4:21-CR-00133 (E.D. Ark.)

Eason, 829 F.3d 633, 642 (8th Cir. 2016)." See (D. Ct. Doc. 64). However, (United States v. Eason) was no longer good law, a fact made by the United States in its Response to the motion. Mr. Scales then filed a Reply (D. Ct. Doc. 67) and instead of addressing the United States' arguments concerning the aggravated robbery conviction, Mr. Scales's Reply focused on the other two Arkansas convictions that served as ACCA predicates here. See Reply (D. Ct. Doc. 67, at 2-4). Those convictions were both for possession with intent to deliver methamphetamine. Id., at 2-3. Mr. Scales argued that his lawyer should have known those convictions were not controlled substance offenses for purposes of ACCA. Id., at 3-4. In its Order denying Mr. Scales's § 2255 motion, the Court stated it, "will not address this argument. It is an entirely new allegation that was not presented in Mr. Scales's original Motion." (D. Ct. Doc. 68, at 2-3); (App. B, at [39-49]. The district court also denied a certificate of appealability ("COA"). Id., at 4; (App. B, at [49]).

Mr. Scales timely appealed. (D. Ct. Doc. 70) and on May 15, 2024 the United States Court of Appeals for the Eighth Circuit denied Mr. Scales's application for a COA. (App. A, at [19]).

REASONS FOR GRANTING THE PETITION

In Martínez v. Ryan, 132 S.Ct. 1309 (2012), this Court held that "a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial, if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Similarly, in Trevino v. Thaler, 133 S.Ct. 1911 (2013), this Court further extended Martínez's rule to cases where state law technically permits ineffective-trial-counsel claims on direct appeal but state procedures make it "virtually impossible" to actually raise ineffective-trial-counsel claims on direct appeal. See Trevino, 133 S.Ct., at 1915, 1918-21.

I. Whether Trevino v. Thaler, 133 S.Ct. 1911 (2013) and Martínez v. Ryan, 132 S.Ct. 1309 (2012) apply equally to federal prisoners because federal collateral proceeding was the first place to challenge conviction on a ground of ineffective assistance of trial counsel.

Everyone agrees the federal criminal court system requires that, ineffective assistance of counsel claims should be brought in collateral proceedings, and not

on direct appeal. Such claims brought on direct appeal are presumptively dismissible, and virtually all will be dismissed. see e.g., United States v. Isgar, 739 F.3d 829, 841 (5th Cir. 2014).

Because the judge made rule prevents criminal defendants from raising IAC claims on direct appeal - in the ordinary case - the protections of the Sixth Amendment's right to counsel on direct appeal should extend to petitioner's IAC claims, that trial counsel was ineffective, in first-28 U.S.C. § 2255 proceedings. See e.g., Ramirez v. United States, 799 F.3d 845, 848 (7th Cir. 2015) (citing Trevino, 133 S.Ct. 1911; and Martinez, 132 S.Ct. 1309); see also United States v. Lee, 811 F.3d 272, 273 (8th Cir. 2015) ("If Martinez and Trevino have any animating principle, it is that a prisoner must have at least one opportunity to present a claim that trial counsel was ineffective - and to present it with the assistance of effective counsel.").

The reasons for applying the principle in Martinez and Trevino to federal prisoners is self-evident. A factual record must be developed in, and addressed by, the district court in the first instance for effective review. Even if evidence is not necessary, at the very least counsel accused of deficient performance can explain their reasonings and actions, and the district court can render its opinion on the merits of the claim. Otherwise, the constitutional right

to effective assistance of counsel on direct appeal of a criminal conviction as articulated in (Evitts v. Lucey, 469 U.S. 387, 396 (1985)) would be reduced to a right that excludes a right to appeal from Sixth Amendment IAC claims.

Mr. Scates claims that it is because he had no counsel during the claim preparation period in his collateral (§ 2255) proceeding that serves as cause for procedural default, if any, actually occurred. Although, he did make a claim of ineffective assistance of trial counsel in his § 2255; the argument in support of that claim was without merit, as the caselaw he relied on was no longer any good. In his Reply, Mr. Scates put forth a new argument in support of the same claim. It was this new argument that the district court refused to address. (cf. Yee v. City of Escondido, 503 U.S. 519, 534 (1992) ("[T]here is a difference between raising new issues and making new arguments on appeal. If an issue is properly presented, a party can make any new argument in support of that [issue]; parties are not limited to the precise arguments they made below."²²) Id. at 534.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael S. Scalet

Date: August 14, 2024