

No: 24-6135

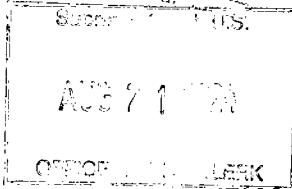
IN THE
SUPREME COURT OF THE UNITED STATES

Chad Malone

- Petitioner,

v.

United States Court of Appeals - Respondent;
For the Seventh Circuit "et al."



PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioner:

Chad Malone
DOC# 231283
Wabash Valley Correctional Facility
6908 S Old US HWY 41
Carlisle, IN 47838-1111

Petitioner / *pro se*

QUESTIONS PRESENTED

1. Whether Chad Malone received sub-standard legal assistance that Violated his right to a fair trial when trial Counsel, who had less than two weeks to prepare for two felony Counts and who was Carrying a criminal caseload of 75 to 100 cases plus Civil Cases,
2. Whether Trial Counsel failed to interview and present any witness, due to neglectful investigation and present exculpatory and mitigation evidence.

3. Whether Trial Counsel failed to proffer instructions for the lesser included offense of recklessness, and to object to the States late - filed amendment.

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:

Indiana Court of Appeals
Direct Appeal-89A01-1302-CR-71

Indiana Court of Appeals
Post Conviction-89C01-1404-PC-7

United States Court of Appeals
for The Seventh Circuit
Terre Haute-2:22-cv-00013-MPB-MG

TABLE OF CONTENTS

Opinions Below.....	1
Jurisdiction.....	6
Constitutional and Statutory Provisions Involved.....	4
Statement of the Case.....	8
Reasons for Granting the Writ.....	9
Conclusion.....	7

INDEX TO APPENDICES

Appendix A - Decision of State Courts of Appeal - July 23rd, 2020

Appendix B - Decision of State trial Court - August 20th, 2019

Appendix C - Decision of State Supreme Court Denying Review - August 21st, 2020

Appendix D - Order of State Supreme Court Denying Rehearing - November 12th, 2020

Appendix E -

Appendix F -

Table of Authorities Cited

Cases:

Cases:	Page Number
Tripp V. State, 729 N.E.2d 1061 (Ind. Ct. App. 2000)	23
Tunstall V. State, 568 N.E.2d 539 (Ind. 1991)	28
Wiggins V. Smith, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)	15
Williams V. State, 735 N.E. 2d 785 (Ind. 2000)	29

TABLE OF AUTHORITIES CITED

CASES:	PAGE NUMBER:
Autrey v. State, 700 N.E.2d 1140 (Ind. 1998)	25, 27
Bieghlet v. State, 690 N.E.2d 188 (Ind. 1997)	14
Branan v. State, 161 Ind. App. 443, 316 N.E.2d 406 (1974)	37
Canaan v. State, 683 N.E.2d 227 (Ind. 1997)	14
Conner v. State, 711 N.E.2d 1238 (Ind. 1999)	16
Dickerson v. State Bagley, 453 F.3d 690 (6th Cir. 2006)	15
Graham v. Florida, 130 S.Ct. 2011 (2010)	30
Johnson v. State, 675 N.E.2d 678 (Ind. 1996)	36-42
Kubisch v. State, 866 N.E.2d 726 (Ind. 2007)	40-42
Lewis v. State, 883 N.E.2d 847 (Ind. Ct. App. 2008)	24
Malone v. State, Cause No. 89A01-1302-CR-00071 (Ind. Ct. App. Oct. 29, 2013)	22
Miller v. Alabama, 567 U.S. 460 (2012)	30
Page v. State, 655 N.E.2d 894 (Ind. 1993)	26-27
Patton v. State, 837 N.E.2d 576 (Ind. Ct. App. 2005)	24
People v. Curry (1971), 1 Ill. App. 3d 87, 272 N.E.2d 669	27
Richeson v. State, 704 N.E.2d 1008 (Ind. 1998)	29
Ritchie v. State, 875 N.E.2d 706 (Ind. 2007)	15
Roper v. Simmons, 543 U.S. 551 (2005)	30
Smith v. State, 459 N.E.2d 355 (Ind. 1984)	29
Spradlin v. State, 569 N.E.2d 948 (Ind. 1991)	21
State ex. rel. Myers v. Tippecanoe County Court, 432 N.E.2d 1371 (Ind. 1982)	41
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)	13, 16, 30
Suding v. State, 945 N.E.2d 731 (Ind. Ct. App. 2011)	22

STATUTES & RULES:	PAGE NUMBER:
Ind. Code § 35-34-1-5(d)	22
2011 Burns Ind. Code Ann. § 35-42-2-a(d)	24
Ind. Code § 35-38-1-7.1 (b)(3)	27
Ind. Code § 35-38-1-7.1 (b)(5)	28
Ind. Post-Conviction, Rule 1 (5)	14
Ind. Post-Conviction, Rule 1 (6)	19
Ind. Professional Conduct Rule 1.7	33
Ind. Professional Conduct Rule 1.9	33, 34
Ind. Professional Conduct Rule 1.11	33, 35

OTHER:	PAGE NUMBER:
U.S. Const., Am. VI	13, 16, 25, 32, 38, 42
U.S. Const., Am. XI	32

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

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

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

The opinion of the United States district court appears at Appendix ____ to the petition and is-

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

JURISDICTION For cases from **federal courts**:

The date on which the United States court of appeals decided my case was May 8th, 2024.
A copy of that decision appears at Appendix ____.

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: July 16th, 2024, 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 _____, 20____, on _____, 20____, in Application No. ___, and a copy of the order granting said extension appears at Appendix ____.

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 July 23rd, 2024.
A copy of that decision appears at Appendix ____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied on the following date: November 1st, 2024, 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 _____, 20____, on _____, 20____, in Application No. ___, and a copy of the order granting said extension appears at Appendix ____.

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

STATEMENT OF THE CASE

~~REASONS FOR DENIAL~~

Trial Counsel's unprofessional mistakes, including failure to do any groundwork or research by not conducting an independent investigation. Failed to object to the state's late-filed amendment which changed the proof necessary for the scienter element of the offense, failure to proffer lesser included offense instructions for criminal recklessness by arguing "All or Nothing" defense, and failed to research and present mitigation evidence that prejudiced the outcome of this case. There is a reasonable probability of a different outcome but due to trial Counsel's mistakes Malone's 6th Amendment right was violated and Malone should receive a new and fair trial. Post-conviction Courts findings completely ignored Malone's Newly discovered evidence which included witness testimony, police reports, and medical records, as well as a no trespass order against Groce, and Caro's own testimony taken. According to post-conviction rules (Ind. P-C-R. 1 § 6. This rule is mandatory not precatory. And because the post-conviction court ignored the Newly discovered evidence Malone presented at the hearing its findings are incomplete and need addressed.

Reasons For Granting The Writ

On 11/29/2012 appeared my 4th Counsel David M. Jordan due for trial on 12/11/2012 12 days ahead. I had obtained him suddenly after having 3 public defenders in which 2 were temporary holding my case until my 3rd public defender filed a appearance. Throughout their time of holding my case they filed 6 continuances pushing my case ahead, until my 4th and paid Counsel filed his appearance and 1st Continuance 12 days prior to trial and was denied due to my Judges reasoning stating, "It would be a waste of the courts time and jury summons had already been delivered along with I had already had 3 public defenders prior and 6 continuances, as well it would have been a waste of money". Also on the same day of being denied the trial courts amended my charging information 11/29/2012 removing the word "knowingly" and correcting the attempted murder Statute. Trial Counsel ~~waived~~ the amendment, but should have rather objected and sought more time for that specific reasoning citing Case law and Statute to support the request see, Suling V. State, 945 N.E.2d 731, 735 (Ind. Ct App. 2011); see also Ind. Code § 35-34-1-5(d). The actus reas described in the jury instructions and in the amended charges was erroneous because it could easily prove up a crime lesser than of attempted Murder, such as Battery with a deadly weapon, Criminal Recklessness Resulting in Bodily Injury or Aggravated Battery. See Ind. Code § 35-42-2-1(g)(2); Ind. Code § 35-42-2-2; and Ind. Code § 35-42-2-1. Trial Counsel proffered neither preliminary nor final instructions on the lesser included offense of criminal recklessness TT Vol.2, pp. 276-286, TT Vol.3, pp. 744-750, TT Vol.4, pp. 751-756. The facts of this case support Criminal Recklessness instructions. See, e.g., Patton V. State, 837 N.E.2d 976, 578 (Ind. Ct App. 2005) This case involved a drive by shooting-by-shooting. The court finds it similar to Richardson V. State, 704 N.E.2d 1008 (Ind. 1998) a battery and criminal recklessness case. Also see State V. Lewis, 883 N.E.2d 847, 851 (Ind. Ct. App. 2008). Indiana case law holds a strategic reason for failing to proffer a lesser included offense instruction provides a solid bases for upholding the denial of post-conviction relief. See, e.g., Autrey V. State, 700 N.E.2

CONSTITUTIONAL PROVISIONS AND STATUTES**STATEMENT OF THE CASE**

[summary goes here]

REASONS FOR GRANTING THE WRIT

[argument goes here]

CONCLUSION

Executed on: August 18, 2024,

Respectfully submitted,

Mark Maher

Petitioner, *pro se*