No. 24A458

24-6661

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

COREY DEQUAN BROOME
— PETITIONER
(Your Name)

vs.

JAMES R. SCHIEBNER, WARDEN
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE 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

Corey Dequan Broome
(Your Name)

2400 S. Sheridan Drive
(Address)

Muskegon, Michigan 49442
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER THE SIXTH CIRCUIT'S DENIAL OF PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY REFLECTS A DEVIATION FOR THE DIRECTIVE SET FORTH BY THE COURTS PRECEDENT, NECESSITATING THE COURT EMPLOY ITS POWER AND GRANT CERTIORARI, VACATE AND REMAND UNDER TITLE 28 U.S.C. §2106?

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

- People v. Broome, No. 328310, 2017 WL 461260 (Mich. Ct. App. Feb. 2, 2017) (per curiam), Michigan Court of Appeals Order
- People v. Broome, 901 N.W. 2d 103 (Mich. 2017) (mem), Michigan Supreme Court Order
- Oakland Circuit Court Order, August 16, 2019
- People v. Broome, 951 N.W. 2d 892 (Mich. 2020) (mem), Michigan Supreme Court.

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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

[X] 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,
[X] is unpublished.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,
[X] is unpublished.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[ ] is unpublished.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.

STATEMENT OF JURISDICTION

Petitioner seeks review of the August 08, 2024 Order of the Sixth Circuit Court of Appeals. This Court has jurisdiction pursuant to 28 U.S.C. §1257. On November 12, 2024, this Court granted Mr. Broome's Motion to Extend Time for Filing Petition for Writ of Certiorari, extending the due date to and including December 16, 2024.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense. U.S. Const. amend VI.

STATEMENT OF THE CASE

Proceedings:

Petitioners convictions arose from an encounter between Herbert Pippen and Petitioner; after their vehicles collided, a verbal argument ensued, and Petitioner shot Mr. Pippen. Petitioner stood trial in Oakland County Circuit Court on one count of Assault with Intent to Murder (AWIM), one count of Felony Firearm (in connection with the FIP charge) and one count of Carrying a Concealed Weapon (CCW). The prosecution sought to enhance Petitioner's sentence with a 25-year mandatory minimum by filing a Habitual Notice under MCL 739.12(1)(a). Petitioner was convicted on all charges, with the exception that the jury convicted him of only a lesser included offense of AWIM - that being Assault with Intent to do Great Bodily Harm less than Murder.

On January 29, 2015 at about 10:30 in the evening, Herbert Pippen got in his vehicle to go home. He had spent the day at his friends house where he had been sitting around smoking marijuana, and that evening had a marijuana container in his truck.

Mr. Pippen approached a traffic light that was red but turned green as he approached the light. Mr. Pippen's car collided with Petitioner's gold car. After both cars came to a stop Mr. Pippen determined that Petitioner was okay, Mr. Pippen suggested that they move their cars out of the intersection so that they could talk. Petitioner moved his car to an area nearby, between Terry Tires and a Salvation Army. This concerned Mr. Pippen because the area was a "darkened area".

Mr. Pippen parked his truck, leaving his cell phone in the car. Mr.

Pippen had his .40 caliber on him that night. While he normally carried his gun in a holster on his hip, he testified he had put his gun in the pocket of his hoodie. Shortly after, Mr. Pippen testified that he had indicated to Petitioner that they could handle this without police and asked for Petitioner's phone number. According to Mr. Pippen he had to stop Petitioner in the middle of giving out the number because he realized he forgot his phone in his car. Mr. Pippen testified that he went to the driver's side of his truck when he heard two gun shots. After he heard gun shots, Mr. Pippen begain running toward a nearby church.

As he was running away, Mr. Pippen felt something hit him, noticed that he had blood on his arm. He decided to return to his car at this point because Petitioner left. The doctor that treated Mr. Pippen at the hospital testified that Mr. Pippen had a gunshot wound to his arm and to his chest. But, the doctor testified based on looking at the gunshot wound that the bullet must have hit Mr. Pippen from behind. Doctors performed a drug screen on Mr. Pippen while he was in the hospital. His doctor testified that she believed he had been administered medications in the emergency room. He also testified positive for THC.

Petitioner had his own defense at trial. Petitioner admitted that he had been in an accident with Mr. Pippen on January 29, 2015 and that he had shot him. However, Petitioner never intended to kill or cause great bodily harm to Mr. Pippen

Petitioner testified that he had gone into the intersection because the light had been green and he believed he had the right away. After he and Mr. Pippen got into the accident, he moved his vehicle to a Terry Tires

underneath a street light. Petitioner did not see where Mr. Pippen came from but saw him park his car in front of him with his car directly facing Petitioner's. When both men exited their cars, Mr. Pippen came towards Petitioner "enraged" asking him things like what was wrong with him and if he could not drive. Mr. Pippen pulled his gun out on Petitioner, Petitioner put his hands up and asked Mr. Pippen not to shoot him. They heard people begin talking at a nearby as station, and Petitioner testified Mr. Pippen "put the gun back down a little bit. Petitioner testified that Mr. Pippen then grabbed him by his neck and was choking him on the hood of his car. Petitioner kicked Mr. Pippen and was able to get loose. Petitioner said that he saw Mr. Pippen make a grabbing motion towards his pocket and so Petitioner grabbed his own gun and shot Mr. Pippen in his arm. Petitioner got into his car and drove home because he had panicked. He did not tell anyone what happened.

REASONS FOR GRANTING THE PETITION

Where the Court commonly employes the power to grant certiorari, vacate, and remand, this option is not limited to such situations. Tile U.S.C. §2106 appears on its face to confer upon this Court a broad power to do just this.

When the Petitioner's counsel raised the affirmative defense of self defense to a charge of attempted murder, can counsel constitutionally allow the jury to deliberate without being instructed that self-defense also applied to the lesser included offense? The District Court here, denied habeas relief, and the Court of Appeals for the Sixth Circuit declined to issue a COA on all issues.

In the last 25 years since Slack v. McDaniel, 529 U.S. 473, 484 (2000), the Court has had to grant certiorari at least over a dozens times to get the lower courts to actually follow it, the last one being in 2017, Buck v. Davis, __ U.S. __, at , 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017). Seven years have passed since then and federal courts continue to overlook an applicant's certificate of appealability simply asks whether the issue could be debated, and instead unduly restrict this pathway to appellate review, as in Thape v. Sellers, 583 U.S. ___, 138 S. Ct. 545, 199 L. Ed. 2d 424 (2018), and Buck. It will require a grant of certiorari and a summary reversal to remind the lower courts that this Court's ruling in Buck and other cases is to be taken seriously and the AEDPA's certificate of appealability requirement is surrounding only the requirement of differential treatment for those appeals deserving of attention from those that plainly do not.

ARGUMENT

ISSUE I: THE SIXTH CIRCUIT'S DENIAL OF PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY REFLECTS A DEVIATION FROM THE DIRECTIVE SET FORTH BY THE COURTS PRECEDENTS, NECESSITATING THE COURT EMPLOYS ITS POWER, AND GRANT CERTIORARI, VACATE AND REMAND, AS TILE 28 U.S.C. §2106 CONFER'S THIS COURT BROAD POWER TO DO JUST THIS.

This issue presented the question once again of how the lower courts are to properly analyze the threshold question when reviewing a applicants motion for Certificate of Appealability. This Courts precedent has long established to be entitle to COA, the applicant must demonstrate that reasonable jurist could debate whether "the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." Buck v. Davis, __ U.S. __, 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017), quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner is serving a significant sentence in a Michigan state prison, having been convicted of Assault with Intent to Do Great Bodily Harm after the jury found him not guilty of the principle offense of Assault With Intent to Murder - Michigan's equivalent of attempted murder. The defense at trail was that Mr. Pippen who after colliding with Petitioner at a nearby intersection moved his vehicle to a nearby Terry Tires parking lot underneath a street light where he met with Petitioner, came at Petitioner "enraged" and proceeded to pull his gun out on Petitioner and grabbed Petitioner by his neck and started choking him, Petitioner said he shot Mr. Pippen in self-defense. Testimony revealed that after people were heard

talking at a nearby gas station, Mr. Pippen concealed the gun back into his pocket, Mr. Pippen then grabbed Petitioner by his neck and started choking him on the hood of his car. Petitioner testified that he kicked Mr. Pippen and was able to get loose. Petitioner testified he saw that Mr. Pippen made a grabbing motion towards his pocket and so Petitioner grabbed his own gun and shot Mr. Pippen in the arm one time. Petitioner testified that he drove home because he had panicked and that he did not tell anyone what had happened. Petitioner testified on direct examination when he shot Mr. Pippen, his intent was not to kill him or to cause great bodily harm. Petitioner testified the reason that he shot Mr. Pippen was "[I]n self defense."

During the jury instruction phase, the trial court instructed the jury "as to count one by telling the jury that" Defendant is charged with the crime of assault with intent to murder.

> "The Defendant claims he acted in lawful self-defense. A person has the the right to use force or even take a life to defend himself under certain circumstances. If a person acts in lawful self-defense, that person's actions are justified, **and he is not guilty of assault with intent to murder.**"

The jury was also instructed as to the lesser included offense of assault with intent to do great bodily harm less than murder.

Every criminal defendant has the right under the Federal Constitution to the effective assistance of counsel. Strickland v Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Defense counsel in a criminal case has a "Duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland v.

Washington, id.

This would include ensuring that the jury was properly instructed as to the application of the primary defense of self-defense and to the lesser included offense of assault with intent to do great bodily harm less that murder. Withholding from the jury that the defense of self-defense applied to the lesser included offense like it applied to the principle offense could be a classical violation of counsel's duty to ensure the right to a properly instructed jury. Schmuck v. United States, 498 U.S. 705 (1989); Crane v. Kentucky, 476 U.S. 683 (1986); Strickland v. Washington. id

Trial counsel unequivocally said in a affidavit alleging his own incompetence, demonstrating his own deficient performance. Deficient performance is established, especially so, where it is theoretically understood jurors are not experts in legal principles and to function effectively and justly they must be accurately instructed in the law, as noted by the Supreme Court in Carter v. Kentucky, 450 U.S. 288, 302 (1981). The main question throughout the history of Petitioner's case has been whether Petitioner was deprived of his right to properly instructed jury due to his attorney's failure to ensure that the "Use of Deadly Force in Self-Defense" instruction (M Crim L 7.15) covered the lesser included offense of count one of assault with intent to do great bodily harm less than murder and not just the principle offense of assault with intent to murder. That is, trial counsel failed to ensure that the trial courts instruction to the jury concerning self-defense to the lesser included offense and to acquit to the lesser included offense it they believe he acted in lawful self-defense.

To establish that counsel was "deficient" (and this to prevail in the

state court), Petitioner had to show only that counsel acted "outside the wide range of professionally competence assistance". This means that counsel's performance fell below an objective standard of reasonableness. ibid. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Petitioner also must show on federal habeas review that the state court's adjudication of his Strickland claim was (1) "contrary to, or involved an unreasonable application of clearly established Federal law, as determined, by the Supreme Court," or (2) "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).

Because the Sixth Circuit placed a standard on Petitioner that was too demanding, the Sixth Circuit failed to grant a COA to allow review of the District Court's conclusion that the ineffective assistance of counsel claim failed under the AEDPA standard, because Petitioner has at least made a "substantial showing of the denial of a constitutional right." §2253(c)(2). Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Surely there are indications that the Strickland claim "deserved encouragement to proceed further" Miller-El, 537 U.S. at 327. First, trial counsel's affidavit shows counsel's own incompetence, conceding to Petitioner's allegations of ineffective assistance of counsel is highly unusual. Petitioner's attorney believed himself had no reasonable strategic basis for his failed to ensure that the jury was accurately instructed in the law. Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), Carter v. Kentucky, 450 U.S. 288, 302 (1981); see also United States v. Span, 75 F.3d 1383, 1385 (9th Cir. 1996).

Second, the federal court decision reviewing Petitioner's ineffective

assistance of counsel claim was thinly reasoned, while the District Court reasonably assessed Petitioner's subsequent habeas claims. The District Court gave little explanation beyond reciting the state court's reasoning, describing the relevant legal standards, and stating that counsel "vigorously argued that [Broome] was not guilty of either the principle or less-included offense based on his right to act in lawful self-defense and correctly applied the standards. The District Court did add "Thus," [] "the jury was more likely to assume that the defense of self-defense applied to both the greater and lesser offense, not merely one of them", but denied COA anyway. The Sixth Circuit deferred to the state post conviction court's statement and reasoned "that the jury could logically infer that self-defense applied to the greater charged offense and lesser-included offense." Yet, as noted, the post conviction court's conclusion appears to have been unreasonable ibid. The District Court does not offer any reasoning other than a conclusory statement the instruction was not "erroneous". This missed the point of the claim. Petitioner was denied of his right to a properly instructed jury due to his attorney's failure to ensure that the "Use of Deadly Force in Self-Defense instruction covered the lesser included offense of counsel one of assault with intent to do great bodily harm less than murder. That is, neither the state court and District Court meaningfully addressed the claim under the standards of Strickland, instead allowing a factual determination to stand that was never made regarding the lesser included offense of assault with intent to commit great bodily harm.

The Sixth Circuit did not follow its own directive set by this Court's precedent, a matter that calls for grant of certiorari. In the 25 years

since Slack v. McDaniel, 529 U.S. 473, 484 (2000), the Court has had to grant certiorari at least over a dozen times to get the lower court's to actually follow it, the last one being in 2017, Buck v. Davis, 580 U.S. __ , 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017). Seven years have passes since then and federal court's continue to overlook an applicant's COA simply asks whether the issue could be debatable, and instead unduly restrict this pathway to appellate review, as in Tharpe v. Sellers, 583 U.S. __ , 138 S. Ct. 545, 199 L. Ed. 2d 424 (2018), and Buck. It will require a grant of certiorari and a summary reversal to remind the lower courts that the AEDPA's COA requirement is surrounding only the requirement of differential treatment for those appeals deserving of attention from those that plainly do not.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Coley Broore

Date: 12/16/24