

No. 24-7407

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 08 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ANDREW McGRAW — PETITIONER
(Your Name)

vs.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDREW mc GRAW # 226514
(Your Name)

S.M.C.I. Unit: B-1
P.O. Box 1419
(Address)

LEAKESVILLE, MISSISSIPPI 39451
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE TRIAL COUNSEL ERRORS RESULTED IN THE CONVICTION AND SENTENCE OF A INNOCENT PERSON
2. WHETHER COUNSEL FAILURE TO INVESTIGATE POSSIBLE DEFENSES CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL
3. WHETHER COUNSEL FAILURE TO OBJECT TO DNA EVIDENCE AT TRIAL CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL
4. WHETHER COUNSEL ERRORS AT SENTENCING HEARING CONSTITUTE PREJUDICE BECAUSE PETITIONER RECEIVED A INCREASE SENTENCES

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

MC GRAW DIRECT APPEAL WAS DENIED BY THE MISSISSIPPI SUPREME COURT. SEE EXHIBIT - "A"

MC GRAW FIRST POST-CONVICTION WAS DENIED BY THE MISSISSIPPI SUPREME COURT. SEE EXHIBIT - "B"

MC GRAW SECOND POST-CONVICTION PETITION WAS DENIED BY MISSISSIPPI SUPREME COURT. SEE EXHIBIT - "C"

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-15
REASONS FOR GRANTING THE WRIT	16-22
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A	ORDER dated December 10, 2020 denying direct appeal to Mississippi Supreme Court
APPENDIX B	Mississippi Supreme Court decision dated June 27, 2024 denying First post-conviction
APPENDIX C	Mississippi Supreme Court decision dated August 21, 2024 denying second post-conviction
* APPENDIX D	Mississippi Supreme Court decision dated November 25, 2024 denying third post-conviction
APPENDIX E	
APPENDIX F	

* MC GRAW seeks Supreme Court Review of Mississippi Supreme Court decision dated November 25, 2024 denying third post conviction.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BALDASAR V ILLINOIS 446 U.S. 222, 225 (1980) - - - - -	17
DUGESS V COPLAN 428 F.3d 317, 332 (1st Cir. 2005) - - - - -	20
ELMORE V OZMINT 661 F.3d 783, 869-70 (4th Cir. 2011) - - - - -	22
GIDEON V WAINWRIGHT 372 U.S. 335, 342 (1963) - - - - -	17

STATUTES AND RULES

OTHER

97-3-65 MISS. CODE (REV. 2014) - - - - -	13
97-29-5 MISS. CODE (REV. 2014) - - - - -	13

TABLE OF AUTHORITIES CITED (CONTINUE)

PAGE NUMBER

CASES

GLOVER V U.S. 531 U.S. 198, 203-04 (2011) -----	22
KIMMELMAN V MORRISON 447 U.S. 365 385 (1986) -----	21
LAFLEUR V COOPER 132 S.Ct. 1376 (2012) -----	18
STRICKLAND V WASHINGTON 466 U.S. 668, 688 (1984) -----	17

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**: N/A

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 reported; 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 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 N/A 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:**

N/A

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 11-25-24.
A copy of that decision appears at Appendix "D". *

☐ A timely petition for rehearing was thereafter denied on the following date: NONE FILED, 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).

* Mc Graw is seeking review of this cert from Mississippi Supreme Court order dated November 25, 2024 denying third post-conviction petition

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution provides that in all CRIMINAL PROSECUTIONS the ACCUSED SHALL ENJOY the RIGHT to HAVE ASSISTANCE OF COUNSEL FOR his DEFENSE

I. STATEMENT OF THE CASE

THE KEMPER COUNTY, MISSISSIPPI
GRAND JURY indicted PETITIONER
ANDREW MC GRAW (HEREIN REFERRED
TO AS "MC GRAW"), FOR FORCIBLE
SEXUAL INTERCOURSE ON COUNT I AND
INCEST ON COUNT II. MC GRAW PROCEEDED TO
TRIAL ON OCTOBER 28, 2019, ON BOTH
CHARGES. AT THE CONCLUSION OF THE
STATE'S CASE IN CHIEF, MC GRAW'S

THE STATEMENT OF THE CASE WILL BE
DIVIDED INTO FOUR (4) SEPARATE CATEGORIES
TO INCLUDE: I STATEMENT OF THE CASE, II
FACTS OF THE CASE, III STATE APPEAL
COURT REVIEW AND IV STATE POST-
CONVICTION PROCEEDINGS.

DEFENSE COUNSEL MOTIONED FOR A DIRECT VERDICT WHICH WAS DENIED BY THE STATE TRIAL COURT. THE JURY SUBSEQUENTLY FOUND MC GRAW GUILTY AS CHARGED. MC GRAW MOVED TO RENEW HIS MOTION FOR A DIRECTED VERDICT, WHICH WAS DENIED BY THE STATE TRIAL COURT.

THE STATE TRIAL COURT SENTENCED MC GRAW TO TWENTY-FIVE YEARS AS TO COUNT ONE AND TO PAY ALL COURT COSTS, WITH A CONSECUTIVE TEN YEARS TO SERVE ON COUNT II IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS.

ON NOVEMBER 5, 2019 MC GRAW
MOVED FOR A DIRECT VERDICT. THE
STATE TRIAL JUDGE DENIED THE
MOTION AND MC GRAW APPEALED TO
THE MISSISSIPPI SUPREME COURT.

II FACTS OF THE CASE

MARY AND ANDREW MC GRAW HAVE AN
ADULT DAUGHTER, SR²; WHEN SR WAS
AROUND TWO YEARS OLD, SHE SUFFERED
BACTERIAL MENINGITIS RESULTING IN
WHAT WAS DESCRIBED AS "NEUROLOGIC
DEVASTATION". SR'S GROWTH AND

MUSCLE DEVELOPMENT WAS SIGNIFICANTLY
TO CONCEAL AND PROTECT VULNERABLE ADULT,
THE STATE RECORDS OPTED TO REFER TO THE
PERSON IN THE MC GRAW CASE BY HER INITIALS,
"SR".

shutted. Her left arm and wrist remain bent. She cannot walk or

speak and requires constant care.

In January of 2018, when SR was
thirty-three years old, it was

learned that she was nine ten weeks

pregnant. Due to her condition, the

pregnancy was terminated by

in ducted labor at a Jackson, Mississippi.

The two obstetricians who testified

at trial estimated the time of

SR's conception, and by necessity

the alleged rape, to have occurred

around the end of August or the

FIRST PART OF SEPTEMBER.

SINCE SHE WAS CONSIDERED A VULNERABLE ADULT, THE KEMPER COUNTY SHERIFF'S OFFICE BECAME INVOLVED AND COMMENCED A CRIMINAL INVESTIGATION WITH THE ASSISTANCE OF THE MISSISSIPPI ATTORNEY GENERAL'S OFFICE. THE JACKSON, MISSISSIPPI HOSPITAL COLLECTED PLACENTA WITH UMBILICAL CORD BLOOD AND SUBMITTED THESE TO LAW ENFORCEMENT WITH CHAIN OF CUSTODY, FOR DNA ANALYSIS.

SR RESIDED WITH HER PARENTS ALONG

WITH SEVERAL SIBLINGS IN KEMPER
COUNTY, MISSISSIPPI. ANDREW, ALONG
WITH AN ADULT SON AND A MAN WHO
WORKED AROUND THE MCGRAW'S HOME,
ALL VOLUNTARILY SUBMITTED A
BUCCAL SWABBING FOR DNA SAMPLES.
THE STATE PRESENTED EXPERT OPINION
TESTIMONY THAT DNA COMPARISONS LED
TO A FINDING OF OVER A NINETY-NINE
PERCENT PROBABILITY THAT ANDREW WAS
THE FATHER OF SR'S UNBORN FETUS AND,
WITHIN THE SAME DEGREE OF
PROBABILITY, THAT ANDREW WAS
SR'S BIOLOGICAL FATHER.

MARY MC GRAW TESTIFIED AT TRIAL THAT THERE WAS NEVER A TIME DURING AUGUST AND SEPTEMBER OF 2017 THAT ANDREW HAD THE OPPORTUNITY TO RAPE SR. ACCORDING TO MARY, ANDREW WAS NEVER ALONE WITH SR, BECAUSE, HE ALWAYS LEFT FOR WORK BEFORE 5 A.M. AND DID NOT RETURN HOME FROM HIS JOB AT NISSAN, AND HIS PERSONAL FARM AFTER THAT, UNTIL AFTER MARY WAS HOME FROM HER JOB. WHILE MARY WAS AT WORK, MARY'S SISTER CAME AND CARED FOR SR. ON WEEKENDS, MARY SAID THAT SHE WAS ALWAYS WITH SR. SR SHARED A BED WITH

HER FIFTEEN YEAR OLD SISTER AT NIGHT.

MARY CONFIRMED THAT SR CANNOT WALK, BUT SAID SHE COULD MOVE AROUND THE HOUSE BY ROCKING AND SLIDING WHERE SHE WANTS TO GO. MARY ALSO TESTIFIED THAT EVEN THOUGH SR CANNOT SPEAK, SHE CAN MAKE VERBAL SOUNDS AND "CAN SCREAM AND HOLLER", WHICH SHE DOES TO EXPRESS DISAPPROVAL AND CAN SAY "HUH-UH" IF SHE DOES NOT WANT SOMETHING.

MARY SAID THAT SR NEVER GAVE ANY INDICATION TO HER OF BEING SEXUALLY ASSAULTED. MARY TESTIFIED THAT FROM

• AUGUST OF 2017 TO JANUARY OF 2018, SR
DID NOT ACT AND DIFFERENTLY TOWARDS
ANDREW.

III STATE APPEALS COURT REVIEW

MC GRAW RAISED THE FOLLOWING
ISSUE ON DIRECT APPEAL: (1) WHETHER
THE EVIDENCE WAS SUFFICIENT IN COUNT I
ON THE ELEMENT OF LACK OF CONSENT
AND FORCE OR WHETHER THE VERDICT IN
COUNT ONE WAS CONTRARY TO THE WEIGHT
OF THE EVIDENCE ON THAT ELEMENT.

ON DECEMBER 10, 2020 THE MISSISSIPPI
SUPREME COURT AFFIRMED MC GRAW
CONVICTIONS AND SENTENCES FOR

ONE COUNT OF RAPE UNDER MISSISSIPPI
CODE SECTION 97-3-65 (REV. 2014).
AND ONE COUNT OF INCEST UNDER
MISSISSIPPI CODE SECTION 97-29-5
(REV. 2014). (SEE STATE SUPREME COURT
DECISION, EXHIBIT - "A")

IV STATE POST-CONVICTION PROCEEDINGS

MC GRAW FILED HIS FIRST POST-CONVICTION
PETITION RAISING THE FOLLOWING CLAIMS:
(1) INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL (2) DENIAL OF DUE PROCESS
AT SENTENCING (3) THE TRIAL COURT
ERRED IN REFUSING TO GRANT EACH
INSTRUCTION SUBMITTED BY THE

defendant and the court erred in admitting the DNA evidence offered by the state.

The state supreme court denied mc Graw post-conviction relief on June 27, 2024 (see exhibit "B")

The state supreme court denied mc Graw relief on a successive post-conviction petition on August 21, 2024 based on ineffective assistance of counsel claims. (see exhibit "C")

mc Graw filed another successive post-conviction with the supreme

Court claiming the following: (1)

Ineffective Assistance of Counsel for not properly preparing for trial, not talking with me about the case and not presenting any defense (2) the state erred in admitting DNA evidence and (3) denial of due process at sentencing.

The state supreme court denied McGraw post-conviction relief on November 25, 2024.³ See Exhibit "D"

3 After the last state post-conviction petition was denied by the state supreme court, McGraw filed a petition for writ of certiorari with this court. Attached is a letter dated April 22, 2025 in which the clerk of the court informed McGraw to make corrected changes. See: Exhibit "E". McGraw has made the necessary changes.

REASONS FOR GRANTING THE PETITION

Mc Graw will establish that
counsel errors resulted in the
conviction and sentence of a
innocent person.

The Sixth Amendment to the
United States Constitution provides
that "in all criminal prosecutions
the accused shall enjoy the
right to have the assistance of
counsel for his defense." The Sixth
Amendment Right to Counsel
Applies to all Federal and State

CRIMINAL PROSECUTIONS IN WHICH
THE DEFENDANT IS ACCUSED OF A
FELONY. SEE GIDEON V WAINWRIGHT,
372 U.S. 335, 342 (1963):

BALDASAR V ILLINOIS 446 U.S.
222, 225 (1980).

TO OBTAIN REVERSAL OF A
CONVICTION, THE DEFENDANT MUST
PROVE THAT COUNSEL'S PERFORMANCE
"FELL BELOW AN OBJECTIVE
STANDARD OF REASONABLENESS". SEE
STRICKLAND V WASHINGTON 466 U.S.
668, 688 (1984). ALSO, DEFENDANT
MUST SHOW THAT COUNSEL'S

DEFICIENCY PERFORMANCE PREJUDICED THE DEFENDANT, RESULTING IN AN UNRELIABLE OR FUNDAMENTALLY UNFAIR OUTCOME IN THE PROCEEDING. SEE STEICKLAND, 466 U.S. AT 687, 691-92. SEE ALSO LAFLEUR V COOPER 132 S. CT. 1376 (2012).

IN DECIDING WHETHER COUNSEL'S PERFORMANCE WAS INEFFECTIVE, THE COURT MUST CONSIDER THE TOTALITY OF THE CIRCUMSTANCES. SEE STEICKLAND, 466 U.S. AT 690.

• MCGRAW WAS FOUND GUILTY OF FORCEIBLE RAPE AND INCEST. THE PERSON IN THIS CASE WAS VULNERABLE AND MCGRAW DAUGHTER.

ATTACHED AS EXHIBIT-"A" IS THE STATE SUPREME COURT DECISION DENYING MCGRAW DIRECT APPEAL ON THE CLAIM OF INSUFFICIENT EVIDENCE.

THE STATE SUPREME COURT DECISION RELY ON SEVERAL STATE WITNESSES TO SUPPORT MCGRAW CONVICTION AND SENTENCE. IT SHOULD BE NOTED THAT NO WITNESSES TESTIFIED THAT THEY SAW MCGRAW COMMIT THE CRIME.

• AFTER Mc GRAW direct APPEAL WAS AFFIRMED by THE STATE SUPREME COURT, Mc GRAW FILED THREE (3) SEPARATE POST-CONVICTIONS SEEKING RELIEF UNDER INEFFECTIVE ASSISTANCE OF COUNSEL, FAILURE TO OBJECT TO DNA EVIDENCE AND INCREASED SENTENCES DUE TO COUNSEL ERRORS. 4

COUNSEL FAILURE TO INVESTIGATE POSSIBLE DEFENSES WAS INEFFECTIVE ASSISTANCE OF COUNSEL. SEE: Dugess v Coplan 428 F.3d 317, 332 (1st Cir 2005)

4 Mc GRAW RAISED THESE SAME ISSUES IN HIS THIRD POST-CONVICTION PETITIONS WHICH WAS DENIED BY THE STATE SUPREME COURT ON NOVEMBER 25, 2024. Mc GRAW IS ASKING THIS COURT TO REVIEW THE NOVEMBER 25, 2024 DECISION.

ALSO, COUNSEL FAILURE TO CONDUCT ANY PRE TRIAL DISCOVERY COULD CONSTITUTE PRE JUDICE. SEE

KIMMELMAN V MORRISON 477 U.S.

365, 385 (1986)

MC GRAW BARELY SAW COUNSEL PRIOR TO TRIAL AND COUNSEL DID NOT DISCUSS ANY TRIAL STRATEGIES WITH MC GRAW. COUNSEL COULD HAVE PRESENTED CONCRETE EVIDENCE THAT NO ONE SAW MC GRAW COMMIT ANY CRIMES.

THE STATE WAS ALLOWED TO ADMIT DNA EVIDENCE AT MC GRAW TRIAL WITHOUT OBJECTION. COUNSEL FAILURE

to investigate prosecutor's forensic evidence was ineffective assistance of counsel. See: ELMORE v OZMINT 661 F.3d 783, 869-870 (4th Cir. 2011).

Finally, counsel error at trial resulting in increase sentence could be prejudicial.⁵

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew McQuinn

Date: MAY 14, 2025

⁵ See GLAVER v U.S. 531 U.S. 198, 203-04 (2001). Counsel failed to produce mitigating evidence at sentence hearing to support minimum sentences.