

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

RENEE KING-PETITIONER

VS.

SHAWN BREWER-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

INMATE NO. 833902
WOMEN'S HURON VALLEY CORRECTIONAL FACILITY
3201 BEMIS ROAD
YPSILANTI, MICHIGAN 48197-0911

NO PHONE

QUESTION(S) PRESENTED

Whether Petitioner's constitutional rights have been violated under the United States Constitution V, VI, and XIV Amendments where Petitioner was denied due process to an impartial jury trial?

Whether the trial court violated appellant's due process rights by allowing the prosecutor to introduce unfairly prejudicial evidence of an alleged incident involving the decedent, not tending to show motive, intent, or absence of accident?

Whether the police violated appellant's due process rights by failing to scrupulously honor appellant's demand for a lawyer and to stop the custodial interrogation at the hospital; alternately, defense trial counsel was constitutionally ineffective in failing to call one of appellant's treating doctors to establish that appellant was in custody and not free to leave the hospital at the time of questioning?

Whether the trial court was required to score and consider the sentencing guidelines for first-degree criminal sexual conduct and first-degree child abuse, which were the highest crime class felony convictions because there is no crime class for first-degree felony murder?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	10
CONCLUSION	12

INDEX TO APPENDICES

APPENDIX A

King v Stewart, No. 17-1486 (6th Cir. 2017) Order Denying COA.

APPENDIX B

King v Stewart, No. 15-cv-13876 (2000) United States District Court Eastern District of Michigan Order Denying Certificate Of Appealability and IFP.

APPENDIX C

People v King, No. 149345 (2014) Michigan Supreme Court.

APPENDIX D

People v King, No. 309974 (2014) Michigan Court of Appeals

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Arizona v Fulminante</i> , 499 US 279; 111 S Ct 246; 113 L Ed 2d 302, 322 (1991).....	7
<i>Conrad v. Rofin-Sinar, Inc.</i> , 762 f. Supp. 167, 172 (E.D. Mich. 1978).....	6
<i>Lisenba v California</i> , 314 US 219; 62 S Ct 280; 86 L Ed 166 (1941).....	6
<i>Miranda v Arizona</i> , 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)	10
<i>Northrop v Trippett</i> , 265 F3d 372 (CA 6, 2001), cert den 535 US 955; 122 S Ct 1358; 152 L Ed 2d 354 (2002).....	11
<i>People v Carbin</i> , 463 Mich 590; 623 NW2d 884 (2001)	10, 11
<i>People v Pickens</i> , 446 Mich 298, 302-303; 521 NW2d 797 (1994)	11
<i>People v Hoag</i> , 460 Mich 1, 6; 594 NW2d 57 (1999).....	11
<i>Strickland v Washington</i> , 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).....	11
<i>Timmreck v. United States</i> , 577 F 2d 372, 374 n. 6 (6 th Cir. 1978)	6
<i>Townsend v Burke</i> , 334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948)	8
 STATUTES AND RULES	
28 U.S.C. § 1254 (1).....	2
28 U.S.C. § 2254.....	5, 9
 OTHER	
US Const. Amend V	3,6,7,9
US Const. Amend VI	3,6,7,9
US Const. Amend XIV	3,6,7,8,9

IN THE
SUPREME COURT OF THE UNITED STATES

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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 as 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 court**:

The opinion of the highest state court to review the merits appears at Appendix C 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 Michigan Court of Appeals court appears as Appendix D 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

☒ 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 November 25, 2014. 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

UNITED STATES CONSTITUTION IV AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION V AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on 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.

UNITED STATES CONSTITUTION VI AMENDMENT

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.

UNITED STATES CONSTITUTION XIV AMENDMENT § I

Section 1. 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

Petitioner was convicted by jury of on April 12, 2012. Petitioner was sentenced to a Mandatory Life (non-parolable) term of imprisonment for Felony Murder and 86 months to 180 months first-degree child abuse, and 30 years – 50 years for first-degree criminal sexual conduct, in the Macomb County Circuit Court, by Judge Diane M. Druzinski.

Petitioner filed an appeal of right to the Michigan Court of Appeals presenting the following issues:

ISSUE I

THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY ALLOWING THE PROSECUTOR TO INTRODUCE UNFAIRLY PREJUDICIAL EVIDENCE OF AN ALLEGED INCIDENT INVOLVING THE DECEDENT, NOT TENDING TO SHOW MOTIVE, INTENT, OR ABSENCE OF ACCIDENT

ISSUE II

THE POLICE VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY FAILING TO SCRUPULOUSLY HONOR APPELLANT'S DEMAND FOR A LAWYER AND TO STOP THE CUSTODIAL INTERROGATION AT THE HOSPITAL; ALTERNATIVELY, DEFENSE TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE IN FAILING TO CALL ONE OF APPELLANT'S TREATING DOCTORS TO ESTABLISH THAT APPELLANT WAS IN CUSTODY AND NOT FREE TO LEAVE THE HOSPITAL AT THE TIME OF QUESTIONING

ISSUE III

THE TRIAL COURT WAS REQUIRED TO SCORE AND CONSIDER THE SENTENCING GUIDELINES FOR FIRST-DEGREE CRIMINAL SEXUAL CONDUCT AND FIRST-DEGREE CHILD ABUSE, WHICH WERE THE HIGHEST CRIME CLASS FELONY CONVICTIONS BECAUSE THERE IS NO CRIME CLASS FOR FIRST-DEGREE FELONY MURDER.

On April 1, 2014, the Michigan Court of Appeal affirmed Petitioner's convictions and sentence.

Petitioner filed Leave to Appeal to the Michigan Supreme Court raising the above issues. On November 25, 2014, the Michigan Supreme Court denied Petitioner's Application For Leave To Appeal in a standard order.

Petitioner filed a Petition under 28 USC § 2254 for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan and presented the following grounds:

- A. Ground one:** **THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY ALLOWING THE PROSECUTOR TO INTRODUCE UNFAIRLY PREJUDICIAL EVIDENCE OF AN ALLEGED INCIDENT INVOLVING THE DECEDENT, NOT TENDING TO SHOW MOTIVE, INTENT, OR ABSENCE OF ACCIDENT.**

- B. Ground two:** **THE POLICE VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY FAILING TO SCRUPULOUSLY HONOR APPELLANT'S DEMAND FOR A LAWYER AND TO STOP THE CUSTODIAL INTERROGATION AT THE HOSPITAL; ALTERNATIVELY, DEFENSE TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE IN FAILING TO CALL ONE OF APPELLANT'S TREATING DOCTORS TO ESTABLISH THAT APPELLANT WAS IN CUSTODY AND NOT FREE TO LEAVE THE HOSPITAL AT THE TIME OF QUESTIONING.**

- C. Ground three:** **THE TRIAL COURT WAS REQUIRED TO SCORE AND CONSIDER THE SENTENCING GUIDELINES FOR FIRST-DEGREE CRIMINAL SEXUAL CONDUCT AND FIRST-DEGREE CHILD ABUSE, WHICH WERE THE HIGHEST CRIME CLASS FELONY CONVICTIONS BECAUSE THERE IS NO CRIME CLASS FOR FIRST-DEGREE FELONY MURDER.**

On March 20, 2017, United States District Judge Gershwin A. Drain issued a Judgment denying Petitioner's Petition for Habeas Corpus relief, denying Certificate of Appealability and *in forma pauperis*, the petition for a writ of habeas corpus is DENIED WITH PREJUDICE.

On April 13, 2017, Petitioner filed Notice Of Appeal in the United States District Court Eastern District of Michigan and Moving For Certificate of Appealability motion.

On May 18, 2017 Petitioner filed *in forma pauperis*, for the U.S. Sixth Circuit.

On October 2, 2017, the United States Court Of Appeals For The Sixth Circuit issued an Order denying Petitioner's COA.

Petitioner asserts that her United States Constitutional IV, V, VI, and XIV Amendment rights as a citizen of the United States have been violated.

Petitioner was not afforded the right to an impartial jury required by the United States Constitution V Amendment where the jury was prejudiced by admission of "other bad acts". Both the due process guarantees of the Michigan and United States constitutions require fundamental fairness in the use of evidence against a criminal defendant. Const 1963, art 1, § 17; US Const, Am XIV. See generally, *Lisenba v California*, 314 US 219; 62 S Ct 280; 86 L Ed 166 (1941). To not apply the same standard addressing objection by defense counsel to the prosecutor's prior bad acts to the instant case impedes Petitioner's right to Equal Protection under the United States Constitution XIV Amendment and Due Process under the VI Amendment. *The State Court's decision was contrary to or an unreasonable application of "clearly established federal law as determined by the Supreme court."* *Timmreck v. United States*, 577 F 2d 372, 374 n. 6 (6th Cir. 1978); *Conrad v. Rofin-Sinar, Inc*, 762 f. Supp. 167, 172 (E.D. Mich. 1978).

The Court ruled that Petitioner has not established the state court adjudication either “resulted in a decision that was contrary to, or involved and unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” Concluding that Petitioner did not show either.

Petitioner’s states that her Constitutional rights were violated under the VI Amendment where the court erred in holding that Petitioner was not in custody, and further erred in holding that Detective Yax was not required to cease interrogation at the hospital where Petitioner had already told officer Reed that she wanted a lawyer. Alternatively, defense trial counsel’s failure to subpoena Dr. Lata to support the motion to suppress was objectively unreasonable.

Furthermore, the trial court’s decision (or, alternatively, defense trial counsel’s deficient performance) resulted in prejudice. As the United States Supreme Court observed in *Arizona v Fulminante*, 499 US 279; 111 S Ct 246; 113 L Ed 2d 302, 322 (1991):

A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him....[T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct [internal quotation marks omitted].

Petitioner’s rights were violated under the VI Amendment where petitioner was not provided with a fair trial by an impartial jury and her XIV Amendment rights to due process of law were violated where the prosecutor was permitted to introduce prejudicial, bad acts evidence at trial.

This case was a “battle of the experts”; and there is a real likelihood that the improperly obtained statement made all the difference. Due process requires a new trial, or at least a remand for an evidentiary hearing. Const 1963, art 1, § 17, 20; US Const, Ams VI, XIV.

The Due Process Clause of US Const, Am XIV requires that a court impose a sentence based on accurate information. *Townsend v Burke*, 334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948).

In the present case, the jury found Petitioner guilty as charged of first-degree felony murder, first-degree child abuse, and first-degree criminal sexual conduct. At sentencing, the prosecutor and defense trial counsel agreed that, had the trial court scored the sentencing guidelines for first-degree child abuse and first-degree criminal sexual conduct, the ranges would have been 43-86 months, and 135-225 months, respectively.

The trial court sentenced Petitioner to concurrent prison terms of life without parole for first-degree felony murder; 86-180 months for first-degree child abuse; and 30-50 years for first-degree criminal sexual conduct. Defense trial counsel objected to the minimum sentence for first-degree criminal sexual conduct being an upward departure from the guideline range, and the trial court overruled the objection on the grounds that the guidelines were not scored because of the first-degree murder charge, and that the sentence was reasonable considering the mandatory 25-year minimum required by statute.

The trial court was required to score and consider the sentencing guidelines for first-degree criminal sexual conduct, a Class A felony, and first-degree child abuse, also a Class A felony, since first-degree murder is not classified in the sentencing guidelines at all, leaving the remaining convictions as the “crime having the highest crime class.” While it is true that, at present, Ms. King’s mandatory life sentence renders the sentences for first-degree criminal sexual conduct and first-

degree child abuse moot, there is always the potential that the remaining sentences could influence a future commutation decision; or could influence a resentencing in the event that Petitioner obtains appellate relief from her murder conviction.

For all of these reasons, in addition to any other relief, due process requires resentencing. Const 1963, art 1, § 17; US Const, Am XIV.

REASONS FOR GRANTING THE WRIT

This petition should be granted because the United States District Court for the Eastern District of Michigan issued an Order denying Ms. King's petition under 28§ 2254 for Writ of Habeas Corpus which was in error. The Petitioner has shown that her United States Constitutional rights have been violated and the decisions of the state courts resulted in a decision that was contrary to clearly established Federal law, as determined by the Supreme Court of the United States in their interpretation of the United States Constitution for fair and impartial, due process and equal protection in criminal trials.

Petitioner's conviction resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings where the prosecution was permitted to bad acts and Petitioner was not given her due process opportunity to defend. The admission of similar acts evidence; and whether a defendant is in custody for *Miranda*¹ purposes; which are areas of the law that are constitutional questions.

Petitioner's due process right and right to an impartial jury was violated when the Court repeatedly compromised the jurors civil duty by offering them statements that was prejudicial which distorted the jury's interpretation of the facts.

Petitioner's trial counsel was ineffective where counsel did not represent Petitioner effectively failing to call one of Petitioner's treating doctors to establish that Petitioner was in custody and not free to leave the hospital at the time of questioning by police.

In *People v Carbin*, 463 Mich 590; 623 NW2d 884 (2001), our Supreme Court restated the test for ineffective assistance of counsel:

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

A defendant seeking a new trial on the ground that trial counsel was ineffective bears a heavy burden. To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). “First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the ‘counsel’ guaranteed by the Sixth Amendment.” *Strickland, supra*, at 687. In so doing, the defendant must overcome a strong presumption that counsel’s performance constituted sound trial strategy. *Id* at 690. “Second, the defendant must show that the deficient performance prejudiced the defense.” *Id* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different. *Id* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id*. Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999) [*People v Carbin, supra*, p 599-600; footnote omitted].

More particularly, the failure of defense counsel to effectively move for suppression of inadmissible evidence may amount to ineffective assistance of counsel, where defense counsel’s failure affected the outcome of the trial. See generally *Northrop v Trippett*, 265 F3d 372 (CA 6, 2001), cert den 535 US 955; 122 S Ct 1358; 152 L Ed 2d 354 (2002) (Fourth Amendment violation).

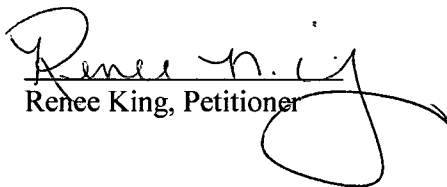
Petitioner cannot be procedurally barred where from the onset she asserted that this was a tragic accident, involving a slip and fall in the shower while holding the decedent.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner Ms. King, moves that this Honorable Court vacate her convictions and remand this case to the Macomb County Circuit Court for an evidentiary hearing or a new trial; and, in any event, vacate her sentences for first-degree criminal sexual conduct and first-degree child abuse, and remand this case for resentencing with scoring and consideration of the sentencing guideline ranges for those offenses.

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Renee King, Petitioner

Date:

Nov. 9, 17