

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BILLY FRANK LARKIN — PETITIONER
(Your Name)

vs.

JOHNNY HAWKINS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BILLY FRANK LARKIN
(Your Name)
NASH CORRECTIONAL
2869 U.S. HWY 64-A
(Address)

NASHVILLE, NC 27856
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE STATE TRIAL COURT AND STATE COURT OF APPEALS DECISIONS DENYING PETITIONER'S MOTION TO SUPPRESS, GREATLY EXPANDS THE SCOPE OF *MIX V. WILLIAMS*, 467 U.S. 431, 444 (1984) BY DISPENSING WITH THE REQUIREMENT THAT THERE EXIST OTHER LAWFUL LAW ENFORCEMENT PROCEDURES WHICH 'INEVITABLY' WOULD HAVE DISCOVERED THE EVIDENCE.
2. WHETHER THE STATE PROSECUTOR'S KNOWING USE OF PERJURED TESTIMONY TO MANIPULATE THE STATE TRIAL COURT'S DECISION ON PETITIONER'S MOTION TO SUPPRESS AMOUNTS TO DENIAL OF DUE PROCESS REQUIRING REVERSAL OF CONVICTION
3. WHETHER THE STATE TRIAL COURT HAS AUTHORITY TO ADD A THIRD PART TO THE TWO PART TEST IN *STRICKLAND V. WASHINGTON*, THAT REQUIRES PETITIONER, AN INDIGENT PRO SE PRISONER, TO HAVE TO OBTAIN AN AFFIDAVIT, OR TESTIMONY OF OTHER ATTORNEYS - WHO HAD CONSIDERED HIS COUNSEL'S CONDUCT AT THE TIME OF THE ALLEGED DEFICIENT PERFORMANCE - IN ORDER TO PROVE THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF 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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STATUTES AND RULES

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☒ is unpublished.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☒ is unpublished.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 F to the petition and is

☐ reported at 237 A.L.C. App. 335, 764 S.E.2d 681 (2014); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the STATE TRIAL COURT court 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCTOBER 3, 2017.

☐ 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: NOVEMBER 14, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

FOURTH 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 PERSON OR THINGS TO BE SEIZED.

SIXTH 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.

FOURTEENTH AMENDMENT

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 ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

STATEMENT OF THE CASE

PRIOR TO TRIAL PETITIONER FILED A MOTION TO SUPPRESS EVIDENCE THAT HE BELIEVED WAS OBTAINED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS. ON OCTOBER 4, 2013, THE STATE TRIAL COURT DENIED PETITIONER'S MOTION TO SUPPRESS. ON NOVEMBER 18, 2014, THE STATE COURT OF APPEALS FILED ITS DECISION AFFIRMING THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTION TO SUPPRESS. ON MARCH 5, 2015, THE STATE SUPREME COURT ENTERED AN ORDER DENYING DISCRETIONARY REVIEW. ON SEPTEMBER 23, 2015, PETITIONER FILED A STATE POST-CONVICTION MOTION FOR RELIEF, ALLEGING THAT HE WAS DENIED DUE PROCESS, DUE TO THE STATE PROSECUTOR'S KNOWING USE OF PERJURED TESTIMONY TO HAVE HIS MOTION TO SUPPRESS DENIED. PETITIONER'S CLAIM WAS SUPPORTED BY DOCUMENTARY EVIDENCE THAT WAS NOT MADE AVAILABLE TO PETITIONER UNTIL AFTER HIS TRIAL. PETITIONER ALSO ALLEGED THAT HE WAS DENIED OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DUE TO COUNSEL'S FAILURE TO CHALLENGE THE VALIDITY OF THE SEARCH WARRANT THAT WAS INCOMPLETE AND INVALID ON ITS FACE, AND THAT HE WAS DENIED OF HIS RIGHT TO CONFLICT FREE REPRESENTATION. ON OCTOBER 16, 2015, THE STATE TRIAL COURT ENTERED AN ORDER DENYING THE POST-CONVICTION MOTION WITHOUT AN EVIDENTIARY HEARING, ON ISSUES OF FACT, OR MIXED QUESTIONS OF LAW AND FACT, AND

THE STATE COURT OF APPEALS DENIED REVIEW. ON FEBRUARY 16, 2016, PETITIONER FILED HIS HABEAS CORPUS PETITION PURSUANT TO 28 U.S.C. 2254, IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NORTH CAROLINA. ON MAY 5, 2017, AN ORDER WAS FILED BY CHIEF UNITED STATES DISTRICT COURT JUDGE, JAMES L. DEVER, GRANTING RESPONDENT SUMMARY JUDGMENT, WHEREIN THE DISTRICT JUDGE MISCHARACTERIZED AND MISIDENTIFIED BOTH OF PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, AND FAILED TO GRANT AN EVIDENTIARY HEARING ON PETITIONER'S PROSECUTOR MISCONDUCT CLAIM, AND FAILED TO DETERMINE WHETHER THE STATE COURT DECISIONS ON PETITIONER'S MOTIONS TO SUPPRESS WERE CONTRARY TO, OR AN UNREASONABLE APPLICATION OF ALEX V. WILLIAMS. ON OCTOBER 3, 2017, THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED AN UNPUBLISHED OPINION AND DENIED CERTIFICATE OF APPEALABILITY, AND ON NOVEMBER 14, 2017, ENTERED AN ORDER DENYING PETITIONER'S PETITION FOR REHEARING AND REHEARING EN BANC, WHICH PLACES PETITIONER'S WRIT OF CERTIORARI PROPERLY BEFORE THIS COURT.

REASONS FOR GRANTING THE PETITION

- 1) This Court should review the State Court of Appeals decision greatly expanding the application of the doctrine of inevitable discovery as determined by this Court in Nix v. Williams, 467 U.S. 431 (1984), where there was no evidence the police would have inevitably found petitioner's Georgia registered vehicle that had already been unlawfully seized and impounded by another city's police department, but where the court made its decision based on an officer's testimony that they would have kept looking for the vehicle even if "the vehicle was in Timbuktu." The record is complete before this Court to review this matter in that the state trial court's decision, state court of appeals decision, petition for discretionary review filed by the petitioner in the state supreme court, and the order denying review are all attached to this petition at Appendix E, F, G and H. Neither the United States District Judge, nor the Fourth Circuit Court of Appeals would address, as required, whether the state court decisions were contrary to the precedent of

THIS COURT. SEE FOURTH CIRCUIT COURT OF APPEALS ORDER AT APPENDIX-A, AND U.S. DISTRICT COURT'S ORDER AT APPENDIX-B, SPECIFICALLY, AT PAGE-14, SECTION-D. IF THIS STATE COURT DECISION IS LEFT STANDING, IT COULD HAVE A WIDE RANGING AND DEVASTATING EFFECT AND ITS USE FOR MANY YEARS TO ALLOW LAW ENFORCEMENT OFFICERS TO VIOLATE THE FOURTH AMENDMENT RIGHTS OF INDIVIDUALS AND TO BE A CATALYST FOR OBTAINING CONVICTIONS UNLAWFULLY. BECAUSE THE STATE COURT DECISION IS CONTRARY TO PRECEDENT OF THIS COURT, AND CONTRARY TO THE PROTECTIONS OF THE FOURTH AMENDMENT, THIS COURT SHOULD GRANT THIS PETITION TO REVIEW THE DECISION OF THE STATE COURT.

2) THIS COURT SHOULD REVIEW THE UNITED STATES DISTRICT COURT'S DECISION ON PETITIONER'S CLAIM THAT - THE PROSECUTOR KNOWINGLY USED PERJURED TESTIMONY TO HAVE HIS MOTION TO SUPPRESS DENIED, BECAUSE THE U.S. DISTRICT COURT ERRONEOUSLY DETERMINES THAT THE PROSECUTOR'S MISCONDUCT AT THE PRETRIAL SUPPRESSION HEARING, DOES NOT AMOUNT TO A VIOLATION OF DUE PROCESS REQUIRING

REVERSAL OF CONVICTION, BECAUSE THE PERJURED TESTIMONY WAS NOT MATERIAL TO THE JURY'S VERDICT, WHEN, IN FACT, IT WAS, BECAUSE HAD THE PERJURED TESTIMONY NOT BEEN PRESENTED, PETITIONER'S MOTION TO SUPPRESS WOULD HAVE BEEN GRANTED, AND BEING GRANTED, THE EXCLUSIONARY RULE PROHIBITS INTRODUCTION AND EVIDENCE, ANY TANGIBLE MATERIALS SEIZED DURING AN UNLAWFUL SEARCH. THIS BEING THE ONLY EVIDENCE PRESENTED BY THE STATE TO SUPPORT THE INDICTMENTS OBTAINED AGAINST PETITIONER, THE CHARGES AGAINST PETITIONER WOULD HAVE THEREFORE BEEN DISMISSED. THIS PERJURED TESTIMONY USED BY THE PROSECUTOR IS THE "COMMON THREAD" AND THAT THE STATE TRIAL COURT'S DECISION, THE STATE COURT OF APPEALS DECISION, AND THE U.S. DISTRICT COURT'S DECISION ALL ALLEGE THAT - "BASED UPON INFORMATION RECEIVED FROM OFFICER MOBLEY... DETECTIVE HUMPHRIES APPLIED FOR AND RECEIVED A SEARCH WARRANT." HOWEVER, WHAT WAS CONCEALED FROM THE STATE TRIAL COURT THROUGH DETECTIVE HUMPHRIES PERJURED TESTIMONY IS THAT OFFICER MOBLEY PERSONALLY RETRIEVED THE KEY FROM DETECTIVE HUMPHRIES OF THE CAROLINA BEACH POLICE DEPARTMENT, AND WENT TO THE WRIGHTSVILLE BEACH POLICE DEPARTMENT,

who had unlawfully seized petitioner's vehicle, and made a "behind the scenes" match with the key in their custody, and then, based on the information of this "match" detective

Humphries received his search warrant. See statement of Officer James Mobley at Appendix-I, specifically, paragraph 2. Also, see paragraph 7, of the conclusion of law in the state trial court's order denying petitioner's motion to suppress at Appendix-E, which reads:

"Detective Humphries did not rely on any evidence, if any, gathered by the Wrightsville Beach Police Department as a result of their illegal seizure, to procure his search warrant."

This information contained in Officer Mobley's statement had to purposely be kept out of the search warrant, and out of the knowledge of the judge presiding over the hearing of petitioner's motion to suppress, because it shows the search warrant was tainted, and the absence of lawful, and independent means, that would have inevitably discovered the evidence sought to be suppressed. Petitioner and his trial counsel were not made knowledgeable

OF OFFICER JAMES MOBLEY'S STATEMENT PRIOR TO THE PETITIONER'S SUPPRESSION HEARING, OR PETITIONER'S TRIAL. PETITIONER BECAME KNOWLEDGEABLE OF OFFICER MOBLEY'S STATEMENT ONLY AFTER RECEIVING A COMPLETE COPY OF HIS TRANSCRIPT AND DISCOVERY MATERIALS FROM HIS APPELLATE COUNSEL, WHEN HIS CASE WAS ON APPEAL. HOWEVER, THE PROSECUTOR KNEW OF THE PERJURED TESTIMONY, AND OFFICER MOBLEY'S STATEMENT, BEFORE, DURING, AND AFTERWARDS. THE FIFTH AND FOURTEENTH AMENDMENTS DUE PROCESS CLAUSE PROHIBITS A STATE FROM KNOWINGLY USING FALSE EVIDENCE AT A CRIMINAL TRIAL, OR ALLOWING UNTRUE TESTIMONY TO GO UNCORRECTED. GIGLIO V. UNITED STATES, 405 U.S. 150, 153 (1972); NAPUE V. ILLINOIS, 360 U.S. 264, 269 (1959). A HEARING ON A MOTION TO SUPPRESS IS A CRIMINAL TRIAL PROCEEDING, WHEREIN THE SAME PROTECTIONS OF DUE PROCESS SHOULD BE AFFORDED. SEE THE DISTRICT COURT'S DECISION AT APPENDIX-B, SPECIFICALLY, AT PAGE-7. NEITHER THE STATE TRIAL COURT, NOR THE U.S. DISTRICT COURT ALLOWED PETITIONER AN EVIDENTIARY HEARING ON THIS MOST SIGNIFICANT CLAIM THAT WAS SUPPORTED BY UNDISPUTABLE

DOCUMENTARY EVIDENCE AND PETITIONER'S AFFIDAVIT. THIS COURT SHOULD GRANT THIS PETITION TO DETERMINE THE QUESTIONS PRESENTED, OR TO REMAND TO THE U.S. DISTRICT COURT FOR AN EVIDENTIARY HEARING.

3) THIS COURT SHOULD REVIEW THE STATE TRIAL COURT'S DECISION THAT GREATLY EXPANDS THE TWO PART TEST FOR PROVIDING INEFFECTIVE ASSISTANCE OF COUNSEL. IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). BY REQUIRING THE PETITIONER, A PRO-SE INDIAN PRISONER, TO OBTAIN AN AFFIDAVIT, OR TESTIMONY OF OTHER ATTORNEYS - WHO HAD CONSIDERED HIS COUNSEL'S CONDUCT AT THE TIME OF THE ALLEGED DEFICIENT PERFORMANCE - IN ORDER TO PROVE THAT HIS COUNSEL'S PERFORMANCE WAS DEFICIENT. SEE - STATE TRIAL COURT'S DECISION DENYING PETITIONER'S POST-CONVICTION MOTIONS FOR APPROPRIATE RELIEF AT APPENDIX-C, SPECIFICALLY, AT PARAGRAPH 16.10, OF THE FINDINGS OF FACTS, AND THE CONCLUSIONS OF LAW WHEREIN THE COURT CONCLUDES THAT BECAUSE PETITIONER

COULD NOT OFFER THE TESTIMONY OF OTHER ATTORNEYS WHO HAD CONSIDERED HIS COUNSEL'S CONDUCT TO BE DEFICIENT, PETITIONER HAS NOT: (1) ESTABLISHED THE NECESSARY FACTS BY A PREPARED-ERANCE OF THE EVIDENCE, (2) SHOW THE EXIST-ENCE OF THE ASSERTED GROUND, (3) SET FORTH THE PREJUDICE REQUIRED, (4) FILED A MOTION (MAR) THAT IS MERITORIOUS, GENUINE AND MAT-ERIAL, AND (5) SHOW THAT HIS COUNSEL'S PERFORMANCE WAS DEFICIENT, AND THAT HIS DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE. THE PETITIONER BY CERTIORARI PETITION BROUGHT THIS MATTER TO THE STATE COURT OF APPEALS. HOWEVER, REVIEW WAS DENIED. SEE-APPENDIX-D. PETITIONER ALSO BROUGHT THIS MATTER TO THE ATTENTION OF THE U.S. DISTRICT COURT. HOWEVER, THE U.S. DISTRICT COURT MISCHARACTERIZED PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, AND DID NOT DETERMINE WHETHER THE STATE TRIAL COURT'S DECISION WAS CONTRARY TO, OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DECIDED BY THIS COURT. SEE U.S. DISTRICT COURT'S DECISION AT APPENDIX-B, SPECIFICALLY, AT PAGE-12,

SECTION - C. THE PETITIONER IN HIS STATE POST-CONVICTION MOTION FOR RELIEF, AND IN HIS STATE CERTIORARI PETITION CLAIMED THAT HIS TRIAL COUNSEL'S FAILURE TO CHALLENGE THE VALIDITY OF THE SEARCH WARRANT CONSTITUTED AN EFFECTIVE ASSISTANCE OF COUNSEL, AND THAT THE SEARCH WARRANT WAS INVALID ON ITS FACE, BECAUSE IT WAS INCOMPLETE, AND DID NOT ESTABLISH PROBABLE CAUSE. SEE-SEARCH WARRANT AT APPENDIX-J. HAD PETITIONER'S COUNSEL CHALLENGED THAT THE SEARCH WARRANT WAS INVALID, DETECTIVE HUMPHRIES AFFIDAVIT WOULD HAVE BEEN FOUND TO BE INSUFFICIENT TO ESTABLISH PROBABLE CAUSE, AND WOULD HAVE RESULTED IN THE EXCLUSION OF ANY EVIDENCE OBTAINED UPON THE INVALID SEARCH WARRANT, AND ULTIMATELY A DISMISSAL OF THE CHARGES AGAINST PETITIONER. PETITIONER IN HIS AN EFFECTIVE ASSISTANCE OF COUNSEL CLAIM FULLY SATISFIED THE TWO PART STRICKLAND TEST AND WAS ENTITLED TO RELIEF FROM HIS CONVICTIONS HAD THE STATE TRIAL COURT NOT ADDED ADDITIONAL REQUIREMENTS FOR PROVING AN EFFECTIVE ASSISTANCE OF COUNSEL. HOWEVER, IN ADDITION TO THESE ADDITIONAL REQUIREMENTS, THE STATE COURT DID NOT APPLY STRICKLAND TO ASSESS PETITIONER'S AN EFFECTIVE

ASSISTANCE OF COUNSEL CLAIM. THEREFORE, THE STATE COURT'S
ADJUDICATION WAS CONTRARY TO CLEARLY ESTABLISHED
FEDERAL LAW.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bryce F. Jankin.

Date: Jan. 1, 2018