

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALTY ADAMSON — PETITIONER
(Your Name)

vs.

THOMAS GRIFFIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

ALTY ADAMSON 11-A-5221

(Your Name)

**GREEN HAVEN CORRECTIONAL FACILITY
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(Address)

STORMVILLE, NEW YORK 12582-4000

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.

DID THE SECOND CIRCUIT COURT OF APPEALS GIVE A BOILERPLATE RESPONSE TO PETITIONER'S APPLICATION FOR A CERTIFICATE OF APPEALABILITY, ADOPTING THE ERRONEOUS AND UNREASONABLE APPLICATION OF REVIEW RELIED UPON BY THE DISTRICT COURT, IN VIOLATION OF CONGRESSIONAL MANDATE FOR A FAIR REVIEW FOR THE UNREASONABLE STANDARD OF REVIEW BY STATE COURT.

2.

SHOULD THE SECOND CIRCUIT COURT OF APPEALS REMANDED PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM TO THE DISTRICT COURT FOR AN EVIDENTIARY HEARING FOR FACTUAL DETERMINATIONS DUE TO THE SWORN ALLEGATIONS BY BOTH PARTIES.

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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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☒ is unpublished.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 **2016 WL 6780011**; 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☐ is unpublished.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 **C** to the petition and is

☒ reported at **26 N.Y.3d 1006 (2015)**; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the **New York State Appellate** court appears at Appendix **D** to the petition and is

☒ reported at **127 A.D.3d 566 (2015)**; 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 June 21, 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: _____, 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 November 20, 2017 (date) on September 20, 2017 (date) in Application No. 17 A 315.

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 7/13/2015.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: October 27, 2015, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including November 20, 2017 (date) on September 20, 2017 (date) in Application No. 17 A 315.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court has jurisdiction of this case, based upon the decision made on June 21, 2017, by the Second Circuit Court of appeals.

An extension of time was granted to petitioner to file the Writ of Certiorari in this court by November 20, 2017, by the Honorable Justice Ginsburg.

The application number is 17A315, which was filed in this Court on September 20, 2017.

The constitutional provisions under the Sixth Amendment to the effective assistance of counsel, and the statutory provisions of New York State Penal Law section 10[9], serves as the basis for which this petition for a writ of certiorari is being made.

Under 28 U.S.C. § 2254 (d)(2), petitioner believes that the state courts holdings were based upon an "unreasonable application and determination of state law."

The Second Circuit Court of Appeals as also the Southern District Court of New York's Judicial review, extended the wrong deference to the factual findings of the state court - without conducting an evidentiary hearing. Therefore, abdicating a fair and impartial judicial review. Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

Petitioner did not get a fair due process review of the facts from the Second Circuit Court of Appeals under the Fourteenth Amendment, which constitutes a violation under the United States Constitution.

STATEMENT OF THE CASE

Petitioner was convicted of assault in the second degree for striking James French in the head with a bench, based upon the testimony of other witnesses, wherein, Mr. French said that he flipped the bench over his head, and in doing so. Mr. French received a one inch gash in his head that required four staples to close at the hospital.

James French testified that he had no "pain or physical impairment", and did not suffer any debilitating effects that caused him to miss work and needed no pain medication.

On direct appeal to the Appellate Division First Department, the court rejected petitioner's sufficiency of the evidence argument relying on their objective views, and disregarding the subjective testimony that the witness had no pain or physical impairment. see appendix D.

Petitioner filed a state CPL 440.10 motion for ineffective assistance of counsel, based upon counsel's refusal to allow petitioner the opportunity to testify by misleading the court, failure to conduct a proper investigation, and extortion of further funds from petitioner's family, and failure to make crucial objections.

The trial court rejected petitioner's 440.10 motion. Leave to appeal was denied in the appellate court as also the state court of appeals.

On direct appeal, the appellate division considered and rejected petitioner's pro se claims of ineffective assistance of counsel arguments. Petitioner was never given an evidentiary hearing. see appendix D.

On habeas review the District Court gave deference to the objective correctness of the appellate court's ruling, totally disregarding the sworn testimony of the subjective feelings of the witness who stated he had no pain or impairment.

The District Court also concluded that petitioner's claim of the various charges of ineffective assistance of counsel was not supported by the record, and newly appointed counsel stated that it was a strategic choice for petitioner not to testify. Which contradicts the extortion claims by petitioner.

The District Court's decision to believe the statements made in trial counsel's affidavit challenging petitioner's claim of the ineffective assistance of counsel charges; without an evidentiary hearing is an abuse of discretion by the District Court.

The determination by the District Court and the Second Circuit Court asking for a substantial showing that a constitutional violation took place in the lower courts is erroneous.

At a minimum, a hearing should have been granted to the petitioner on the ineffective assistance of counsel claim, and the unqualified medical determination of the appellate court [w]hen the court determined that "an injury caused in that manner would normally be expected to bring with it more than a little pain." Citing People v. Chiddick, 8 NY3d 445, 447 (2007).

The unreasonable application of Chiddick to petitioner's case deprived a fair and impartial review by the lower courts. Adding pain where there was never any testimony of experiencing any pain is a substitution of the facts, which has prejudiced the petitioner under 28 U.S.C. § 2254 (d)(2).

REASONS FOR GRANTING THE PETITION

The antiterrorism and effective death penalty Act of 1996 requires that federal habeas courts extend deference to the factual findings of state courts. But "deference does not imply abandonment or abdication of Judicial Review." Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). Congress stated in no uncertain terms that federal habeas relief remains available when a state court's ruling is "biased on an unreasonable determination of the facts." 28 U.S.C. § 2254 (d)(2).

Concededly, a 'fair trial in a fair tribunal is a basic requirement of due process'. This applies to administrative agencies which adjudicate as well as to courts. Not only is a biased decision maker constitutionally unacceptable, but, 'our system of law has always endeavored to prevent even the probability of unfairness.' Tumey v. Ohio, 273 U.S. 510, 532 (1927). In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.

This petition for certiorari should be granted based upon the erroneous fact found by the state appellate court and adopted by the District Court, along with no opinion by the Second Circuit of the factual determinations of the lower courts.

On habeas corpus review, mixed questions of fact and law, like legal conclusions are not accorded the presumption of correctness. The presumption of correctness is accorded to factual findings of

state trial and appellate courts, following hearing on factual issue and adequate written indicia of factual determination, unless one of eight enumerated exceptions applies under 28 U.S.C. § 2254. Stokes v. Singletary, 952 F.2d 1567 (4th Cir. 1992).

There were no supporting facts that "pain or physical impairment" was proven by the state for the appellate division First Department to reach the determination that there was any.

The New York State Court of Appeals decided what kind of evidence is required as a matter of law to establish substantial pain for assault in the second degree; People v. Chiddick, 8 NY3d 445, 447 (2007). the Court of Appeals in New York State specified which "factual aspects of a case" to examine in order to decide whether the evidence is sufficient to establish substantial pain. The victim's subjective description of what he experienced is also important.

Conspicuously, the New York State Court of Appeals did not suggest in the alternative that testimony about the victim's subjective experience, without an objective account of the injury, would be enough under any circumstance to establish substantial pain.

Conversely, the New York State Court of Appeals ruled that the incidental reference to a blackened eye without any development of its appearance, seriousness, accompanying swelling, or suggestion of pain was insufficient to establish substantial pain. People v. McDowell, 28 NY2d 373, 375 (1971), as was evidence that the victim suffered a one centimeter cut above her lip, People v. Jimenez, 55 NY2d 895, 896 (1982).

In each case where the court of Appeals of New York State has

upheld a finding of substantial pain, some objective evidence supports a suggestion of pain. The objective views solely relied upon by the appellate court and the District Court is an unreasonable determination of state law. The Second Circuit decision without any comment of this erroneous factual allegations has also denied the petitioner of a fair review.

A finding of fact is clearly erroneous when the record demonstrates convincingly to the reviewing court that "a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

The New York State Appellate Division Second Department by comparisson ruled in People v. Ferrer, 84 AD3d 1396 (2nd Dept 2011) "cut to the nose, bruising and swelling of the cheek, two scraped knees, with no missing days of work did not support second degree assault", this case was reversed on the facts pursuant to Penal Law § 10.00[9] and indictment dismissed, also - People v. Baksh, 43 AD3d 1072 (2nd Dept. 2007) "dismissed and reversed on the facts not supporting second degree assault."

The "primary purpose" of the state appellate courts decision was to create evidence to support petitioner's conviction, and the District Court and Second Circuit Courts adoption of this lower court ruling is a constitutional violation under the 14th Amendment for a fair due process review.

Appellate Courts should not substitute [its] judgment for that of the evidence produced in the trial court, an abuse of descretion occurs if this is permitted. Which violates a defendant's rights under the United States Constitution 14th Amendment.

On a national level, the ability of state appellate courts to substitute their own opinion for direct trial testimony would lead to a state of total chaos in the judicial system. In Sumner v. Mata, 449 U.S. 539 (1981). This court noted that section 2254(d) applies to any written finding, written opinion, or other reliable and adequate written indicia. There was no factual evidence found to support any physical impairment or pain in petitioner's case.

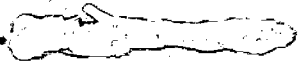
A federal court is "bound by [the] presumption of correctness standard enunciated in Sumner, under 28 U.S.C. § 2254(d)(8) to over turn a state court finding of fact when the finding is not fairly supported in the record. As noted in Sumner at *549 the court stated, "

Obviously, if the Court of Appeals in this case or any2 other court of appeals had simply inserted a boilerplate paragraph in its opinion that it had considered the state record as a whole and concluded that the state appellate court's factual determinations were not fairly supported by the record, this objection to the judgment of the Court of Appeals could not be easily made..... it is a matter of common knowledge that on some occasions a district judge will simply take findings of fact and conclusions of law prepared by the party whom the judge has indicated at the close of trial shall prevail and without alteration adopt them as his own."

In this instant case the finding of fact by the state appellate court should have been over turned by the District Court as also be given a fair review by the Second Circuit court. Yet, both these federal courts chose to dispense their sworn allegiance to the United States Constitution, under performing the discharge of their office.

See, McAllister v. U.S., 75 S.ct. 6 (1954), Dickerson v. Alabama, 667 F.2d 1364, 1368 (11th Cir. 1982).

On the federal level of appeal dealing with bodily injury or significant bodily injury. The appellate federal courts decisions can be seen in stark contrast to the state appellate courts. In Jackson v. U.S., 970 A.2d 277 (D.C. 2009) "superficial lacerations that were closed with staples" did not rise to the level of assault charged, nor, did the reviewing court ignore the evidence presented.

In Belt v. U.S., 149 A.3d 1048 (D.C. 2016), the issue of significant bodily injury was also addressed by the court, and the factual allegations could be compared with this instant case [p]roving there is a deficient reviewing erroneous flaw of law in the lower courts. 

When the lower courts are directed to give judgment after examination of the entire record, without regard to technical errors, defects or exceptions not affecting substantial rights of parties, an error relating, not to merely formal or technical matters, but to substantial rights of parties, is ground for reversal, unless it appears from the whole record that it was harmless, and did not prejudice the rights of the complaining party.

Petitioner was never informed by the Second Circuit Court of Appeals in their decision, whether there was a finding of any facts to support the conclusion reached in denying the certificate of appealability. The conclusion of the Court of Appeals mirrors that of the district court, and the precedent this may set for other federal appeals courts will greatly diminish societies confidence in a fair system of judicial review under the U.S. Constitution.

INEFFECTIVE ASSISTANCE OF COUNSEL

The decision of the Court of Appeals Second Circuit did not make any reference to the ineffective assistance of counsel claim by petitioner. The mirrored response to the Southern District Court's conclusion on this issue is woefully deficient. see Appendix A.

The reliance of the District Court on trial counsels affidavit rebutting petitioner's claim in his 440.10 state motion should have at least merited an evidentiary hearing to see if there was any prejudice or conflict of interest.

Counsel's failure to conduct a proper investigation and submit petitioner's own medical records to rebutt the testimony of prosecution witnesses, or obtain the crime scene photographs, and misleading the trial court that the petitioner did not want to testify needed to have had an evidentiary hearing for factual determinations. see - Wiggins v. Smith, 539 U.S. 510 (2003).

There were sworn affidavits that the District and Second Circuit Appeals court overlooked in regards to trial counsel's attempt to extort further funds from petitioner's family with the promise to let petitioner testify. Yet, these federal courts ignored petitioner's Sixth Amendment right under Strickland v. Washington, 466 U.S. 668 (1984).

The Sixth Amendment right to confrontation and the right to present a defense by calling witnesses on his own behalf. This right is firmly established under Supreme Court Law. see Cotto v. Herbert, 331 F.3d 217, 248 (2d Cir. 2003). This right also includes cross examination of witnesses for impeachment purposes and discrediting the states witnesses. see Olden v. Kentucky, 488 U.S. 227, 231 (1988).

For instance, Counsel claimed that he went to Filiene's Basement and conducted a "rudimentary" investigation and did not speak to any witnesses. Trial counsel never reviewed petitioner's medical records nor, did trial counsel make any purposeful objections during trial to secure petitioner's constitutional rights to a fair trial.

The trial court did not hold an evidentiary hearing to resolve the conflict of interest between petitioner and trial counsel about the attempt to extort more money from petitioner's family.

In denying this petitioner's claim of conflict, the New York State supreme court necessarily overlooked Strickland's clearly established admonition that prejudice must be investigated when a defendant makes the allegation. The trial court also ignored the admonition that "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations." Strickland 466 U.S. at 690-691.

In light of the information available to petitioner's counsel, it is plain that "reasonable professional judgments" could not have supported counsels woefully inadequate investigation. Accordingly the New York State supreme court could not reasonably concluded that petitioner failed to show that his counsel's lack of investigation was inadequate under Strickland, 466 U.S. 668 (1984).

The district court's decision on the ineffective claim was erroneous (see Appendix B at F), the determination was made without an evidentiary hearing to determine the truth of the factual allegations under a fair review, nor, did the Second Circuit Court make a ruling whether reasonable jurists could find the issue debatable. see Appendix A.

"The function of proof, as that concept is embodied in the Due process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.' In re Winship, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."

The Second Circuit Court of Appeals has disregarded the intention of Congress, meaning that a state finding should not be overturned on the usual "preponderance of the evidence" standard. Whether granting or denying a writ, the U.S. Supreme Court has held that a habeas court should include in its opinion the reasoning used to reach their conclusions, thus, eliminating and preventing "boilerplate language" to which the Supreme Court has previously adverted.

The congressional mandate under § 2254(d), was not satisfied when the Second Circuit Court of Appeals gave this petitioner the "boilerplate" response that mirrored the district court response.

No court reviewing the denial of an application for habeas corpus should be left to guess as to the habeas court's reasons for denying relief notwithstanding the provisions of section 2254(d).

Merely stating that a petitioner has not shown a substantial violation of a substantial right without more of an explanation, is not what congress had in mind. The Supreme Court of the United States believe there is no burden to any federal appeals court to uphold the mandate of congress eliminating generalities to particular facts of a cases.

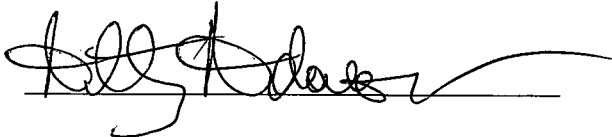
This court has previously noted over the years that there will always be friction between the state and federal courts when a writ overturns a conviction from the factual or legal conclusions reached by the state court. Petitioner believes that an evidentiary hearing should be given to determine if the conclusions reached by the New York State Appellate Division, and adopted by the District Court on the sufficiency of the evidence or the ineffective assistance of counsel claim should be granted.

Wherefore, the United States Supreme Court should grant this petition for a Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bill Adams", written over a horizontal line.

Date: November 14, 2017