

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TURUK SAUNDERS, A/K/A TURICK FRAZIER,

(Your Name) — PETITIONER *pro se*

^{vs.}
WARDEN OF BROAD RIVER PRISON

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

TURUK SAUNDERS, #199803

(Your Name)

BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD

(Address)

COLUMBIA, SC 29210

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Was petitioner denied the right to effective assistance of counsel based on defense counsel failing to reasonably investigate and know the law as it apply to distinct and important facts of the case;
2. Where defense counsel employ the word "strategy" as justification for his conduct, as a result, is his handling of the case immunized from scrutiny or legal challenge;
3. Is the attorney-client relationship, in fact and function, a "principle - Agent" relationship; whereby a breach of a client's specific defense instructions infringes on the client's right;
4. In being represented by an attorney in a criminal case, are plausible defense options the attorney's to dictate or the clients to choose.

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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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 _____ 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☒ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 6, 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 _____ (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

Sixth AND FOURTEENTH Amendments of the
United States Constitution.

STATEMENT OF THE CASE

The petitioner was the defendant in the circuit court of the state of South Carolina and will be referred to by name or as the petitioner. The respondent, the warden of Broad River Prison. On February 23, 2007 Petitioner was arrested and later, on March 22, 2007, indicted in the state of South Carolina and charged with trafficking in crack cocaine between ten and twenty-eight grams, possession with the intent to distribute marijuana, possession with intent to distribute powder cocaine, possession with the intent to distribute ecstasy and use of a firearm during the commission of a violent felony. Petitioner's jury trial commenced on May 24, 2010. He was convicted on all of the drug counts, but was found not guilty of the use of a firearm during the commission of a violent crime. On May 26, 2010, he was sentenced to twenty years on the charges for possession with the intent to distribute marijuana and ecstasy, to run concurrent. He was also sentenced to twenty-seven years for possession with intent to distribute cocaine and for the charge of trafficking in crack cocaine, to run concurrent. He filed a notice of appeal on May 27, 2010 and a succession of appellate proceedings have since led to this petition for writ of certiorari before the court.

REASONS FOR GRANTING THE PETITION

Certainly the Court is aware of its own precedent and its power to exercise discretion when faced with individual circumstances that might warrant special treatment not governed by rules of law and precedent, but as law and justice requires.

Recognizing the Court's relatively infrequent grants of review and relief in petitioning for writ of certiorari, I have prepared my argument with sincerity of purpose and a desire to assist the Court to arrive at the just and proper result.

In stating that "[t]he law must be stable, and yet it cannot stand still." Dean Roscoe Pound highlighted two ideas that require reconciliation: stability and change. See Re Stare Decisis, 79 F.R.D. 509 (1979). As Chief Justice John Marshall reasoned:

"It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not control the judgment in subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 399, 5 L.Ed. 257 (1821).

No clearly established Supreme Court law exist with respect to petitioner's claim because no decisions by the Court applies to the specific facts of this case; the novelty of the particular claim.

The case sub judge reviews around the execution of a search warrant in a trailer in Beaufort County, South Carolina. At the trial of the matter petitioner was convicted there and then in state court of multiple criminal charges stemming from the warrant to search residence for drugs.

The cumulative weight of two difficulties in trial counsel's performance: failure to investigate the law and facts relevant to all plausible lines of defense, and failure to challenge the legality of the search warrant, present issue in need of the court to determine the adequacy - as a matter of federal law. The interest of justice require it.

It is because in preparing and presenting the case to the trial court trial counsel's investigation of the case consisted of reviewing the investigative files of the prosecuting attorney, fell short of what a reasonably competent attorney would have done, trial counsel entirely failed to subject the prosecution's case to meaningful adversarial testing. For example, Beck v. Steele,

249 f. Supp. 3d 991 (2017); Warren v. Bazurka, 712 f.3d 1090, 1100 (7th Cir. 2013) (quoting Burt v. Uchtmann, 422 f.3d 557, 566 (7th Cir. 2005);

Auderson v. Johnson, 338 f.3d 382, 392-393 (5th Cir. 2003).

Thus, Strickland, *infra*, prejudice resulting from trial counsel's failure to investigate denied petitioner the right to effective assistance of counsel - guaranteed by the Sixth and fourteenth Amendments of the United States Constitution, and opportunity for full and fair litigation of a fourth Amendment claim.

As the Supreme Court stated in Strickland v. Washington, 466 U.S. 668 (1984), criminal defense

attorneys owe their clients "a duty to make a reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary." Strickland, 466 U.S. at 691. An adequate investigation is imperative to properly evaluate a case where under Strickland, *id.*, standard for ineffective assistance claims - not governed by a single generic standard - counsel's

investigation must determine trial strategy, not the other way around. In *Wiggins v. Smith*, 539 U.S. 510 (2003), this Court explaining that in Strickland

"we defied the decreed and such strategic judgments in terms of the adequacy of the investigations supporting those judgments" and emphasizing the Court's focus in failure to investigate claims is

"whether the investigation supporting counsel's decision... was itself reasonable." *Id.*, at 521.

A markedly different situation arises, however, where counsel's failure to investigate prejudices plausible defense options.

Presumably, because there are a whole lot of other issues attached to the use to which the word is put, the law did not spell out the definitions of the word "strategy." Susceptible to debate among reasonable minds, the word strategy is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most strategies are qualified. And though the Court has stated that "representation is an art and an act or omissions that is unprofessional in one case may be sound or even brilliant in another," Strickland, 466 U.S. at 691, skepticism about the claims of strategy by trial counsel here in the case are warranted. The word has been applied more widely than its meaning literally justifies; is determined in the context of each case. TR. VOL. I 34:8 - 37:13.

Having concluded that "lawyers in criminal cases are necessities, not luxuries." Gideon v. Wainwright, 372 U.S. 335, 344 (1963). "The right to counsel is the right to effective assistance of counsel." McManis v. Richardson, 397 U.S. 759, 771, n. 14 (1970). A defendant in a criminal trial has the right to "a meaningful opportunity to present a complete defense." California v. Trombetta, 467 U.S. 479, 485 (1984) (additional citations omitted).

The court has stated that a meritorious ineffective assistance of counsel claim must show two things: first, counsel's performance was deficient and, second, that counsel's deficient performance "prejudiced" (emphasis mine) the defense. Strickland, 466 U.S. at 687-96. However, has rejected the proposition that the defendant must prove it is more likely than not that the outcome would have differed. Strickland, 466 U.S. at 693; see also Woodford v. Visciotti, 537 U.S. 19, 22 (2002).

Trial counsel's duty to investigate is particularly critical in this case. Where the prosecution relied heavily on evidence gathered and seized in execution of a search warrant to make its circumstantial case, in chief. Probable cause does not lend itself to a prescribed set of rules. Ill. v. Gates, 462 U.S. 213, 239 (1983). "Most cases are won or lost outside the courtroom - that is, by investigation and preparation." Hampton v. Leibach, 290 F. Supp. 2d 905, 923 (N.D. Ill. 2001).

We don't need to dwell on every transgression against technique of the attorney's performance committed during trial, as there were many. "The Sixth Amendment guarantees reasonable

competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough v. Gentry*, 541 U.S. 1, 8 (2003). And defects in attorney's assistance that have no probable effect on trial outcome do not establish a Sixth Amendment violation. *Mickens v. Taylor*, 535 U.S. 162 (2002).

Though the Sixth Amendment does not oblige defense counsel to pursue every line of defense, a lawyer has a duty to make reasonable efforts to investigate the various lines of defense in a given case. *United States v. Simpson*, 864 F.3d 830 (7th Cir. 2017). In a sense, the word strategy is giving substantive, particularized context to the legal principle involved by construing it in context to the specific facts before them. Counsel's investigation must determine trial strategy, not the other way around. *Strickland*, 466 U.S. at 691.

In this case under consideration it is fairly obvious from the trial transcript of record, based on the erroneous advice ruling of the trial judge - who is not a moderator, but is the governor of the trial for purpose of assuring its proper conduct and of determining questions of law, *Bollenbach v. U.S.*, 326 U.S. 607 (1946) (quoting *Quercia v. U.S.*, 289 U.S. 466, 469 (1933)) -

MADE AN ERRANT CONCLUSIONS OF LAW AND FACT; ARGUABLY MADE THE DETERMINATIVE DIFFERENCE IN TRIAL COUNSEL'S STRATEGIC DEFENSE CHOICE NOT TO CHALLENGE THE ISSUANCE OF THE SEARCH WARRANT IN THE CASE. TR. Vol. I 34:8-37:13.

As to the issue of "standing," trial counsel's method for determining shift of defense strategy was due to incompetence and ignorance of the law and facts rather than as part of a reasonable trial strategy.

"It is our belief, it is our position, that my client ~~neither owned, operated, stayed in, domiciled, spent the night, or in any other way had any control over the trailer in question.~~ That would lead me to the clear conclusion that he has no standing to challenge a search warrant because he's not the subject of the search. . . ." TR. Vol. I 34:12-18 (emphasis added)

Any skepticism about claims regarding standing, in that moment of trial the focal point of study and debate, could easily have been dispelled by, and are clearly contrary to, long established South Carolina state court ruling settled the matter in State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (holding all defendants against the state seeks to admit evidence have standing to challenge the legality of the search warrant).

The fact defense counsel could easily have obtained such readily available information based on turns beyond question and doubt regarding his client having the legal right to challenge the warrant in the case - information existing well before and at the time of trial - supports the conclusion counsel did not investigate the law as it apply to the facts of the case. "Strategic choices made after less than a complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigations." Strickland, 466 U.S. at 690-91. To expect that a reasonably competent attorney must know proper applications of law as it apply to the facts of the case, owe a duty to make a reasonable investigation, accords with prevailing practice. Strickland, id. Counsel's failure in this instance to hold the government to its burden of proof on this issue of the legality of the search warrant, reflects a failure to reasonably investigate the case, to give the court an opportunity to exercise its discretion, and [] denied petitioner the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution. Undermined the adversarial process.

BECAUSE COURT'S DECISIONS IN STRICKLAND, ID., LEFT SOME QUESTIONS UNANSWERED, FUNDAMENTAL ISSUES CONCERNING THE ROLE OF DEFENSE COUNSEL, IN CERTAIN CASES IT MAY BE APPROPRIATE TO CONSIDER THE DECISIONS OF INTERIOR FEDERAL COURTS AS HELPFUL AMPLIFICATIONS OF SUPREME COURT PRECEDENT. IN BROWNING V. BAKER, 875 F.3d 444 (9th Cir. 2017), THE COURT REASONED:

"IN CONTEXT OF INEFFECTIVE ASSISTANCE CLAIMS, COUNSEL CANNOT JUSTIFY A FAILURE TO INVESTIGATE SIMPLY BY INVOKING STRATEGY; UNDER STRICKLAND, COUNSEL'S INVESTIGATION MUST DETERMINE STRATEGY, NOT THE OTHER WAY AROUND... MERELY ARTICULATING A REASONABLE STRATEGY IN RESPONSE TO A DEFICIENCY ARGUMENT DOES NOT END THE INQUIRY WHEN THAT STRATEGY DOES NOT EXPLAIN A DECISION ITSELF." Id. AT 474. SEE WAYNE R. LAFAYE, ET AL., CRIMINAL PROCEDURE § 11.10 (c), AT 797 (6th Ed. 2016) ("OF COURSE, A DECISION APPARENTLY BASED ON FACTUAL JUDGMENT IS NOT THEREFORE RENDERED IMMUNE FROM AN INCOMPETENCY CHALLENGE.").

IN REFUTATION TO NO OPPOSITION PREVIOUSLY OFFERED. WHERE ON THE RECORD THE TRIAL COURT JUDGE WAS NOT, IN FACT, MAKING A "RULING ON THE MERITS," BUT SIMPLY RENDERED AN ADVISORY RULING IN SPEAKING TO THE MOMENT WITH THE INTENSITY NECESSARY TO BRING FORTH THE COURT'S VIEW OF THE MATTER OF STANDING, TR. VOL. I 34:8 - 37:13, GIVEN THE ENTIRE CASE BEING TRIED

REVOLVED AROUND THE EXECUTION OF A SEARCH WARRANT, THE FULCRUM OF THE PROSECUTING ATTORNEY'S, PURELY CIRCUMSTANTIAL, CASE-IN-CHIEF, IT WAS NEITHER IMPRACTICAL OR IMPOSSIBLE BUT A NECESSARY EXERCISE IN FULFILLMENT OF REASONABLE EXPECTATION OF NORMAL DEFENSE COUNSEL ROLE AND SKILL TO INVESTIGATE AND KNOW THE LAW AS IT APPLY TO THE CASE BEING TRIED.

IT WAS PROFESSIONALLY UNREASONABLE FOR TRIAL COUNSEL TO DISREGARD PETITIONER'S SPECIFIC AND REPEATED INSTRUCTIONS TO CHALLENGE ISSUANCE OF THE SEARCH WARRANT. IN WEEKS V. UNITED STATES, 232 U.S. 383 (1914), THE COURT STATED THAT "... THE EFFORTS OF COURTS AND THEIR OFFICIALS TO BRING THE GUILTY TO PUNISHMENT, PRAISEWORTHY AS THEY ARE, ARE NOT TO BE AIDED BY SACRIFICE OF THOSE GREAT PRINCIPLES ESTABLISHED BY YEARS OF ENDEAVOR AND SUFFERING WHICH HAVE RESULTED IN THEIR EMBODIMENT IN THE FUNDAMENTAL LAW OF THE LAND." Id AT 393.

IN THE CASE HERE UNDER CONSIDERATION THE LOWER COURTS APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW WAS OBJECTIVELY UNREASONABLE, NOT MERELY INCORRECT. CONTRADICTS THE GOVERNING LAW SET FORTH IN THOSE SUPREME COURT CASES CITED HEREIN.

EVEN WHERE THE COURT IS TO INDULGE A STRONG PRESUMPTION THAT COUNSEL'S CONDUCT FELL WITHIN THE

wide range of reasonable professional assistance, because it is all too easy to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight. Ineffective assistance of counsel claims though difficult to recognize at any given moment, is easier to see in retrospect.

Chief Justice Black of Pennsylvania remarked that "a palpable mistake, violating justice, reason and law, must be corrected, no matter by whom it may have been made." Quoted in Baldwin, The American Judiciary (1905).

In the instant case had trial counsel with due diligence researched the law and facts relevant to plausible options and decided not to challenge the issuance of the warrant, his decision reasonably could be chalked up as a strategic one. But a lawyer's blind default cannot reasonably be considered strategic. There was no evidence of any professional judgment, reasonable or otherwise. Careful advocacy to ensure that rights are not foregone and that substantial legal and factual arguments are not inadvertently passed over - guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution. Defense counsels' errors were both understandable and prejudicial.

It would be difficult to imagine any scenario of criminal proceeding in which sound defense strategy could be had without first having done great research of law and facts of the case and exhaustiveness of preparations as it relate to the contemplated transactions. It may not be practicable to give other than a general definition of what constitutes "strategy." A precise, technical definition, applicable to all cases, cannot be given, because of the varying circumstances upon which the decisions are based, on the one hand. On the other, even applying the most conceivably deferential standard to defense counsel's conduct and purposes in handling any given case, it does seem objectively unreasonable, allowed to reach an irrational characterization of the conduct in question, to call an attorney's performance not tailored to the needs and constraints of a particular case, strategy. To do so would not clarify a point to be settled, but would be unreason prevail over rationality and provide warrant by which the adverse effects of ignorance and damaging neglect of defense of client are licensed to forgo knowing the law insofar as it relates to the specific factual situations of the case; simply put, rhetoric, slogan and ceremony.

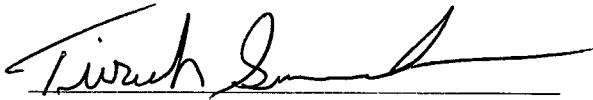
The rule carefully laid down in Strickland, supra, is quite clear, defense counsel must investigate the law and facts of the case beforehand. Thereby one's conclusory claim of strategy has factual support behind it.

THIS COURT HAS MADE CLEAR THAT ITS RELEVANT PRECEDENTS INCLUDE NOT ONLY BRIGHT-LINE RULES BUT ALSO THE LEGAL PRINCIPLES AND STANDARDS FLOWING FROM PRECEDENTS. THEREFORE, I WOULD ARGUE STRENUOUSLY THAT THE TRIAL TRANSCRIPT OF RECORD IN THE CASE CONSTITUTE SUFFICIENT PROOF DEFENSE COUNSEL DID NOT HAVE EVEN A BASELINE KNOWLEDGE OF THE LAW AS IT APPLY TO THE FACTS OF THE CASE. WHICH RENDERS THIS CASE A STRIGHTFORWARD ONE. WHY SHOULD NOT THE SAME RULE APPLY TO WHAT IS TANTAMOUNT, IN FACT, TO THE LEGAL PRINCIPLES AND LOGICAL DICTATES OF PRIOR CASES. THE GOVERNING PRINCIPLES ARE THE SAME.

CONCLUSION

FOR THE FORGOING REASONS THE PRESUMPTION OF STRICKLAND PREJUDICE MUST EXTEND TO THIS CASE. SATISFIES THE STANDARD OF HAVING MADE A SUBSTANTIAL SHOWING, IN FACT AND IN LAW, DEMONSTRATING THAT REASONABLE JURISTS WOULD FIND THE LOWER COURTS ASSESSMENT OF CONSTITUTIONAL CLAIMS IS DEBATABLE OR WRONG. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 6, 2018