

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. _____

IN RE: MICHAEL MARTIN

PETITIONER

VS.

ROBERT C. TANNER, WARDEN B.B. RAYBURN CORRECTIONAL CENTER

RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)**

PETITION FOR WRIT OF CERTIORARI



MICHAEL MARTIN #83471
RAYBURN CORRECTIONAL CENTER
27268 HIGHWAY 21
ANGIE, LOUISIANA 70426-3030

QUESTIONS PRESENTED

1. Whether Petitioner was deprived of a right to fair trial as a result of ineffective assistance of trial counsel when counsel failed to object to the erroneous reasonable doubt instruction?
2. Whether Petitioner was deprived of a fair and impartial trial as a result of ineffective assistance of counsel, where counsel failed to request for an independent evaluation of the petitioner's daily drug usage?

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

PETITION FOR WRIT OF CERTIORARI.....	1
QUESTIONS PRESENTED	2
LIST OF PARTIES	2
INDEX TO APPENDICES	4
TABLE OF AUTHORITIES CITED	5
PETITION FOR WRIT OF CERTIORARI.....	6
OPINIONS BELOW	6
JURISDICTION	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	8
STATEMENT OF THE CASE	9
REASON FOR GRANTING THIS WRIT	14-19
CONCLUSION	19
PROOF OF SERVICE.....	20

INDEX TO APPENDICES

APPENDIX "A"	24 TH JUDICIAL DISTRICT COURT – STATE OF LOUISIANA SENTENCE
APPENDIX "B"	REPORT AND RECOMMENDATION FILED BY MAGISTRATE
APPENDIX "C"	DECISION RENDERED BY US COURT OF APPEAL FIFTH CIRCUIT NO. 17-30224

TABLE OF AUTHORITIES CITED

<u>Lindsey v. Cain</u> , 2012, WL 1366040, (5 Cir. Apr. 19, 2012)	9
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984)	9, 13,14
<u>Coleman v. Thompson</u> , 111 S.Ct. 2546 (1991)	11
<u>Martinez v. Ryan</u> , 132 S.Ct. 1309 (U.S. 2012)	9,11,12,13
<u>Trevino v. Thaler</u> , 133 S.Ct. 1911 (U.S. 2013)	11
<u>State v. Truitt</u> , 500 So. 2d 355, 359 (La. 1987)	11
<u>Evitts v. Lucey</u> , 105 S.Ct. 830 (1985)	11
<u>Douglas</u> , supra, at 357-358, 83 S.Ct. 814	11
<u>Halbert</u> , 125 S.Ct. 2582	12
<u>Gideon v. Wainwright</u> , 83 S.Ct. 792, (1963)	12
<u>State v. Howard</u> , 751 So. 2d 783, 98-0064 La. 4/23/99, (La. 1999)	13
<u>State v. Bertrand</u> , 891 So. 2d 752, (La. App. 4 Cir. 2004)	13
<u>Powell v. Alabama</u> , 278 U.S. 45 (1932)	14
<u>Johnson v. Zerbot</u> 304 U.S. 458 (1938)	14
<u>Cage v. Louisiana</u> , 489 U.S. 39, 111 S.Ct. 328, 112 L. Ed. 2d 339 (1990)..	14
<u>In re Winship</u> , 397 U. S. 358, 90 S. Ct. 1068, 25 L. Ed 2d 368 (1970)	15
<u>Hept v. Utah</u> , 120 U.S. 430, 440-441, 7 S. Ct. 614, 618-20, 30 L. Ed. 708 (1887) ..	15
<u>Jackson v. Virginia</u> , 443 U.S. 307, 320 n 14, 99 S.Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979) ..	15
<u>Taylor v. Kentucky</u> , 436 U.S. 478, 485-486, 98 S.Ct. 1930	15
<u>Hollard v. U.S.</u> , 348 U.S. 121, 140, 75 S.Ct. 127, 137, 99 L. Ed. 2d 150 (1954)..	15
<u>Estelle v. McGuire</u> , 112 S.Ct. 457, 482, n. 4 (1991).....	15
<u>State v. Harrison</u> , 609 So. 2d 789, 709 (La. 1992).....	16

**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued 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 this petition and is:

☒ reported at 17-30224 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 this 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 Fifth Circuit Court of Appeals decided my case was 12/14/17.

☐ 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 the 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

Conviction and sentence obtained in violation of the United States Constitution Amendment V,
VI, XIV.

STATEMENT OF THE CASE

On May 26, 2011, Mr. Martin was convicted on a violation of Louisiana Revised Statute 40:967 A, Possession of Cocaine with the Intent to Distribute. Mr. Martin was sentenced to fifteen (15) years at hard labor with the D.P.S.C. without benefit of parole, probation, or suspension of sentence.

The United States Supreme Court recently addressed the standard for overcoming procedurally defaulted ineffective assistance of counsel claims, See Martinez v. Ryan, 132 S.Ct. 1309, (2012).

The United States Fifth Circuit Court of Appeal handled Martinez in an unpublished opinion of Lindsey v. Cain, 2012, WL 1366040, (5 Cir. Apr. 19, 2012). In Lindsey, the U.S. Fifth Circuit granted COA and remanded for further proceedings in light of Martinez, saying:

“When a State, like Louisiana, requires that a prisoner raise an ineffective assistance of counsel claim on collateral review, can demonstrate cause for the default in two circumstances:

- 1.) Counsel failed to Conduct Substantial Investigation into the one plausible line of defense in the case. Where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standard of Strickland v. Washington, 466 U.S. 668 (1984).” Further, the petitioner must also show that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one.
- 2.) Mr. Martin did not possess the requisite intent prescribed to substantiate a conviction for criminal conduct charged.

STATEMENT OF THE FACTS

Petitioner, Mr. Martin, acknowledges that the State Court's denial of his Application for Post-Conviction Relief rest on well-established State procedural rules (*La. C. Cr. P. Arts. 930.8; 930.4 (A)*), which, under the doctrine of procedural default, would prohibit a Court from reading the merits of the claims. However, Petitioner has cause for the default: Petitioner was not able to properly and effectively present this substantial claim of ineffective assistance of trial counsel before the court because the State did not appoint an attorney for his initial review collateral proceeding-Petitioner's first and only means for review of his conviction and sentence. The absence of counsel in his initial collateral proceedings is sufficient to "show cause" to overcome the procedural default.

The District Court did not reach the merits of the claims in Petitioner's APCR and instead elected to deny relief pursuant to La. C.Cr.P. Art. 930.8. On Appeal from the Criminal District Court, Parish of Jefferson, No.11-1192 , the attorney for Petitioner, OIOP only requested a review of the record for errors patent.

Petitioner filed an APCR claiming that he was denied the effective assistance of counsel on direct appeal. This Court granted Petitioner an Appeal. Represented by counsel, the following claims were raised: 1.) 2.) The Trial Court erroneous considered the charges for which he was acquitted; 3.) Insufficient bases that Petitioner; Petitioner acknowledges that the State Court's denial of his Application for Post-Conviction Relief rest on well-established State procedural rule, which under the doctrine of procedural default, would prohibit a Court from reading the merits of the claim. However, Petitioner has cause for the default: Petitioner was not able to properly and effectively present this substantial claim of ineffective assistance of trial counsel before the Court because of the errors committed by State appointed attorney's on direct review

and the out of time appeal.

The United States Supreme Court recognized an exception to Coleman v. Thompson, 111 S.Ct. 2546 (1991), in Martinez v. Ryan, 132 S.Ct. 1309 (U.S. 2012), that “A procedural default will not bar a Federal Habeas Court from hearing a substantial claim of ineffective assistance at trial if, in the [State’s] initial-review collateral proceeding there was no counsel or counsel in that proceeding was ineffective.” Id. 1320

In deciding whether Martinez’s exception to Coleman applied to Texas, the United States Supreme Court held in Trevino v. Thaler, 133 S.Ct. 1911 (U.S. 2013), that “where a State’s procedural framework by reason of its design and operation, make it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise an ineffective-assistance-of-trial counsel claim on direct appeal, the exception in Martinez applies.” Id. at 1921.

Like Texas, Louisiana allows a prisoner to raise ineffective assistance of counsel on direct appeal in some circumstances [but], “Generally, claims of ineffective assistance of counsel is most appropriately addressed through an Application for Post-Conviction Relief rather than direct appeal, so to afford the parties and adequate record for review.” See State v. Truitt, 500 So. 2d 355, 359 (La. 1987).

As Coleman recognized, an attorney’s errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State’s procedures and obtain an adjudication on the merits of his claims. See 111 S.Ct. 2546; Evitts v. Lucey, 105 S.Ct. 830 (1985); Douglas, supra, at 357-358, 83 S.Ct. 814. Without the help of an adequate attorney, a prisoner will have similar difficulties

vindicating a substantial ineffective-assistance –of-trial-counsel claim. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. **Halbert**, 125 S.Ct. 2582. To present a claim of ineffective assistance at trial in accordance with the State’s procedures, then, a prisoner likely needs an effective attorney. The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. The prisoner, unlearned in the law, may not comply with the State’s procedural rules or may misapprehend the substantive details of Federal Constitutional Law. Cf., e.g., *id.*, at 620-621, 125 S.Ct. 2582 (describing the educational background of the prison population). While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record.

A prisoner’s inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an “obvious truth” the ideal that “any person haled into court, which is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” **Gideon v. Wainwright**, 83 S.Ct. 792, (1963). Indeed, the right to counsel is the foundation for our adversary system. Defense counsel tests the prosecution’s case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged.

The Court found it “...necessary to modify the unqualified statement in Coleman, that an Attorney’s ignorance or inadvertence in post-conviction proceedings does not qualify as cause to excuse a procedural default.” **Martinez v. Ryan**, 132 S.Ct. 1309, at 1315 (U.S. 2012). The Court did this “...to protect prisoners with a potentially legitimate claim of ineffective assistance of trial counsel.” State law claims of ineffective assistance of trial counsel must be raised I initial review collateral proceedings. A procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial, if an initial review collateral proceedings, there was no counsel or counsel in the proceeding was ineffective.” **Martinez v. Ryan**, 132 S.Ct. 1309, at 1320 (U.S. 2012).

Accordingly, Louisiana directs ineffective assistance of counsel claims be brought on Post-Conviction Review so that a full evidentiary hearing may be conducted if warranted, **State v. Howard**, 751 So. 2d 783, 98-0064 La. 4/23/99, (La. 1999), **State v. Bertrand**, 891 So. 2d 752, (La. App. 4 Cir. 2004). “Thus, there are sound reasons for deferring consideration of ineffective-assistance-of-trial-counsel claims until the collateral-review stage, but this decision is not without consequences for the State’s ability to assert a procedural default in later proceedings. By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners’ ability to file such claims. It is within the context of this State procedural framework that counsel’s ineffectiveness (or absence), in an initial-review collateral proceeding qualifies as cause for a procedural default”, **Martinez v. Ryan**, 132 S.Ct. 1309, at 1318 (U.S. 2012). (Emphasis added

REASON FOR GRANTING THIS PETITION

Mr. Martin was not provided adequate representation during trial, there is reasonable probability that, but for this inadequate representation, the outcome would have been different and therefore he is entitled to a new trial.

Mr. Martin's trial counsel was ineffective for failure to object to erroneous reasonable doubt instruction.

The Sixth Amendment guarantees those accused of crimes the assistance of effective counsel for their defense. U.S. Const. Amend. 6th. The purpose of this Sixth Amendment right to counsel is to protect the fundamental right to a fair trial, Powell v. Alabama, 278 U.S. 45 (1932); Johnson v. Zerbot 304 U.S. 458 (1938); Strickland v. Washington, 466 U.S. 668 (1984). The skill and knowledge counsel is intended to afford a defendant "Ample opportunity to meet the case of the prosecution". Strickland, 466 U.S. at 685.

In petitioner's case the trial court erroneously instructed the jury on the standard of reasonable doubt, Cage v. Louisiana, 489 U.S. 39, 111 S.Ct. 328, 112 L. Ed. 2d 339 (1990).

The instruction given is as follows.

"If you entertain a reasonable doubt as to any fact or element necessary to constitute the defendant's guilt, it is your duty to give him the benefit of that doubt and return a verdict of not guilty. Even where the evidence demonstrates a probability of guilt, if it does not establish such guilt beyond a reasonable doubt, you must acquit the accused. This doubt, however, must be a reasonable one; that is one that is founded upon a real tangible substantial basis and not upon mere caprice and conjecture. It must be such doubt as would give rise to grave uncertainty, raised in your mind by reason of the unsatisfactory character of the evidence.

[See Exhibit "B"]

Those above instructions on reasonable doubt have led a reasonable juror to base “finding of guilt....on a degree of proof below that required by the Due Process Clause”. Cage. Supra. The reasonable doubt standard is a requirement of due process, see In re Winship, 397 U. S. 358, 90 S. Ct. 1068, 25 L. Ed 2d 368 (1970), but the constitution neither prohibits Trial Courts from defining reasonable doubt or requires them to do so as a matter of course cf. Hept v. Utah, 120 U.S. 430, 440-441, 7 S. Ct. 614, 618-20, 30 L. Ed. 708 (1887). Indeed, so long as the court instructs the jury on the necessity that the defendant’s guilt be proven beyond a reasonable doubt, See Jackson v. Virginia, 443 U.S. 307, 320 n 14, 99 S.Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979), the constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof. Taylor v. Kentucky, 436 U.S. 478, 485-486, 98 S.Ct. 1930, 1934-1935, 56 L. Ed. 2d 468 (1978). Rather, “Taken as a whole, the instruction must convey correctly, the concept of reasonable doubt to the jury”. Holland v. U.S., 348 U.S. 121, 140, 75 S.Ct. 127, 137, 99 L. Ed. 2d 150 (1954). Also see Estelle v. McGuire, 112 S.Ct. 457, 482, n. 4 (1991). The constitutional issue is that a reasonable likelihood exist that the jury understood instructions which allows a conviction based on insufficient proof to meet Winship standard. See Victor v. Nebraska, 114 S.Ct. 1239 (1994).

Courts have long struggled with the task of instruction juries regarding, “reasonable doubt”. Efforts often collapse into tautological restatements such as that reasonable doubt is a doubt based on reason.

To insist, as the trial, judge did in petitioner’s case, lightens the State’s burden and removes a substantial protection assured defendants...Under this sort of pressure, inarticulate and undecided jurors are less likely to give defendants the benefit of their doubt. Requiring articulation of good reason, then, skews the deliberation process in favor of the State by

suggesting that those with doubts must perform certain actions in the jury room...actions that many individuals find different or intimidation...before they may vote to acquit.

Moreover, instruction essentially the same were found to be non harmless error and requires that a petitioner's conviction and sentence be reversed, State v. Harrison, 609 So. 2d 789, 709 (La. 1992). However, in State v. Cage, supra, requested the benefits of his own decision in Cage v. Louisiana, now that Sullivan v. Louisiana, supra., has made clear that the error committed in his case is of such a fundamental, structural nature that harmless-error analysis does not apply. The determination of whether interest of justice require re-litigation any question resolved on direct appeal of a criminal conviction and sentence lies, however, in the first instance with the District Courts of this State, which posses exclusive on direct appeal of the State, which processes exclusive original jurisdiction over "All...criminal matters". La Const. 1974, Art. 5 § 16 (A); La. C.Cr. P. Art. 925.

The focus in petitioner, Michael Martin's case is that his trial attorney OIDP failed to object to the erroneous reasonable doubt instructions. It is clear that counsel's performance prejudice Mr. Martin and deprived him of a fair trial.

CLAIM #1

PETITIONER MR. MARTIN WAS DEPRIVED OF A RIGHT TO FAIR TRIAL AS A RESULT OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO OBJECT TO THE ERRONEOUS REASONABLE DOUBT INSTRUCTION.

When instructing the jury on reasonable doubt in Mr. Martin's case the Honorable Court Judge provided erroneous instruction, redefining reasonable doubt as being founded upon "a real tangible substantial basis and not upon a mere caprice and conjecture: It must be such a doubt as would give rise to a **"Grave Uncertainty"** raised in your mind by reason of the unsatisfactory character of evidence", In petitioner's, Mr. Martin's case, he is entitled to the benefits of erroneous reasonable doubt jury instruction because his case was not finalized when Cage v. Louisiana, 498 U.S. 39, 11 S.Ct. 328, 112 L. Ed. 2d 182 (1993) was denied. Out-of-abundance of caution petitioner, Mr. Berry, refers to the following except from State v. Cage, 639 So. 2d 89 (La. 1994):

Louisiana Law governing Post-Conviction Relief, La. C.Cr.P.art. 924 et seq., tempers this rule of finality by providing a forum in which prisoners in State custody may attack their final convictions on constitutional grounds. When required to do so "in the interest of justice," the district [87-2778 La. 3] court may consider a claim for post-conviction relief although it was "fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence..." The Official Revision Comment to this article observes that "[t]he trial court has the discretion to make allowances for the unique case in which justice requires that the same ground be relitigated."

Id. at 90.

CLAIM #2

PETITIONER WAS DEPRIVED OF A FAIR AND IMPARTIAL TRIAL AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE COUNSEL FAILED TO REQUEST FOR AN INDEPENDENT DAILEY DRUG USAGE EVALUATION OF THE PETITIONER, WHERE THE STATE'S CASE WITH RELIANCE ON UNSUBSTANTIAL PERSONAL USAGE EVIDENCE.

As a counsel review of the record would reflect, the petitioner's counsel However, the record additionally reflects that counsel never properly argued or requested for the appointment of an independent expert on personal Daily drug usage, even after the petitioner had informed counsel of the fact that the drugs found in his possession were in fact his daily dose of narcotics.

Instead, counsel took it for granted that the State's claim of Intent to Distribute were true, even in light of the fact that the State's case held no merit as far as personal usage went It is extremely important in this case to note that the State's case did in fact rest on the individual packages evidence, and it is very important to mention again, the fact that, the petitioner was in fact a very heavy drug user. It is the contention of the petitioner that an evaluation of his personal usage evidence would have discovered that the State's case of Intent to Distribute Cocaine would not have held no merit.. Even if the trial court would have allowed the State's Police expert witness testimony to enter the trial, with another defense expert witness' testimony/opinion concerning the significant irregularities being heard by the jury, after being introduced as good impeachment evidence, there is no telling what rational trier of fact would have done when considering this evidence, and there is grave probability that the petitioner would have acquitted on the current criminal offense. In light of the fact that defense counsel did not investigate to the extent of requesting an independent daily usage by petitioner evaluation witch would have

acknowledged the fact that the State's case rested upon this evidence in great part, the petitioner contends that he was deprived of his Sixth Amendment right to the effective assistance of trial counsel.

CONCLUSION

Petitioner meets the Strickland standard in his claims. The underlying ineffective assistance of counsel claims are "substantial," which is to say the claim has some merit. The Petitioner's criminal conviction and sentence should be reversed and the case remanded for a new trial or an evidentiary hearing ordered. The Petitioner has exhausted this claim before the Trial Court and The State Appellate Court and had the Louisiana Supreme Court has issued a ruling stating that the Claim is dealing with a successive application, and this per curium has nothing to do with the Claim that was presented before the State Courts, therefore the Federal Question before the this Honorable Court is whether the Petitioner's Constitutional Rights under the VI, XIV, and V Amendment were violated.

WHEREFORE, the petition for writ of certiorari should be granted.

SIGNED ON THIS 4th DAY OF March 2018.

Respectfully Submitted,



Michael Martin
Rayburn Correctional Center
27268 Highway 21
Angie, Louisiana 70426-3030