

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2017

GLENN GROSE
Petitioner

V

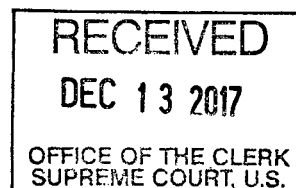
UNITED STATES OF AMERICA
RESPONDENT

Petition for a writ of CERTIORARI
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT
OF CERTIORARI

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QUESTIONS PRESENTED

1. Where the district court denied COA as, 'not well taken in good faith, frivolous and no possibility of success

2. Where the Fifth Circuit Court of Appeals denied COA as not making a substantial showing of the denial of a constitutional right

3. Where petitioner was denied his right to confront witnesses against him when the court allowed a defendant to step down and called an untested witness to defendants attorney to testify.

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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The opinion and denial of the district court, unreported is attached in Appendix A(A-I). The Court of Appeals opinion and denial unreported is attached in Appendix A(A-II).

JURISDICTION

The judgment of the District Court was entered September 19, 2016, Appendix A(A-I). The judgment of the Court of Appeals was denied September 29, 2017, Appendix A(A-II). An extension to file for rehearing was denied October 18, 2017, Appendix A, (A-III).

Jurisdiction is invoked under 28 USC 1254(1). This petition is timely filed under

CONSTITUTIONAL AND
STATUTORY PROVISIONS
INVOLVED

The Fourteenth Amendment to the UNITED STATES Constitution gives all persons the right to due process of law.

The district court denied petitioner's libels

Corpus AS, not in good faith, favors and no

possibility of success. Claim is only legally

frivolous if it fails to raise an arguable question

of law. Appendix A (A-1). Dismissal due to unsuccess-

ful is not proper grounds.

The Court of Appeals decision is in conflict

with other decisions.

The Sixth Amendment to the UNITED

STATES Constitution states in part

the accused shall enjoy... to be informed of the nature and cause against him. And to be confronted with witnesses against him.

These Amendments are granted by the UNITED STATES Constitution, federal law as well as state statute.

STATEMENT

The Northern District Court, Western Division for MISSISSIPPI, denied petitioner's habeas corpus, Appendix A(4-1) under 28 USC 2253(1) and (2). It

was a violation of petitioner's due process to deny the COA because the Court found it frivolous

and no possibility of success.

The Court of Appeals for the Fifth Circuit denied COA as it stated the petitioner failed

to make a substantial showing of the denial

of a Constitutional Right.

REASONS FOR GRANTING THE PETITION

SUPREME COURT, RULE 10 STATES

(A) A UNITED STATES COURT OF APPEALS

HAS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME

IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A DECISION BY A

STATE COURT OF LAST RESORT; OR HAS

SO FAR DEPARTED FROM THE USUAL

COURSE OF JUDICIAL PROCEEDINGS, OR

SANCTIONED SUCH A DEPARTURE BY A

LOCAL COURT, AS TO CALL FOR AN EXERCISE

OF THIS COURT'S SUPERVISORY POWER.

(B) A STATE COURT OF LAST RESORT HAS

DECIDED AN IMPORTANT FEDERAL

QUESTION IN A WAY THAT CONFLICTS

WITH THE DECISION OF ANOTHER STATE

COURT OF LAST RESORT OR OF A UNITED

STATES COURT OF APPEALS.

1. THE DISTRICT COURTS REASONING

IS flawed AND IN CONFLICT WITH

OTHER COURTS REASONING

THE NORTHERN DISTRICT COURT FOR THE

WESTERN DIVISION DERIVED PETITIONER COA

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as not being in good faith, frivolous and
with out a chance of success. This denied
petitioner due process as the violation was of
a constitutional nature and the court should
have held an evidentiary hearing. A legally
frivolous petition is one that fails to raise an
"arguable question of law" *Neitzke v Williams*
490 US 319.

The question presented in the petitioners
Hobens corpus was the right to confront witnesses.
In the State Supreme Court's decision, two justice
objected to the order and stated a new trial was
warranted. Appendix B(B-1). This objection
shows that petitioners right to confront
witnesses violated his 6th Amendment right.
That there was an arguable question of law.

The chance of success is strong in other

Scenarios. Confession and cross examination

is an essential and fundamental requirement for

the kind of fair trial which is this country's

Constitutional goal. 7 E v 22. 476 US 530. 9/50

Boerner v Texas 380 US 400.

The video tape interview violated due process

As the person who conducted the interview was

not present, did not authenticate or certify

the tape. A forensic expert in interviewing

was the state's witnesses who "studied" the tape

at the state request. Petitioner did confront

the expert and found she had never discussed

the interview and critical of the techniques

used by the original interview. Appendix B.

(B-11).

Absent stipulation, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the statements made in the report. *Bullcoming v New Mexico* 131 S. Ct. 2705. Surrogate testimony of that order does not meet the Constitutional Requirement

The Report and testimony of the Forensic Expert was testimonial in nature and as such should not have been introduced against the accused in violation of the Confrontation Clause. As in *Crawford v Washington* 541 US 36 and *Meendez-Diaz* 129 S. Ct. 2527.

The Reasoning of the Fifth Circuit is Flawed under the Sixth Amendment.

The Petitioner showed where he was

denied his right to confront witnesses and by the testimony of the co-defendant's attorney. By improperly restricting defense counsel's cross-examination designed to show bias on the prosecution witness' part violated respondents rights under the confrontation clause.

Attorney for the co-defendant did not flesh out the details of the plea agreement but in fact bolstered co-defendant's testimony as to what she had been told by the co-defendant

"The exposure of a witness motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *Davis v Alaska* 415 US 308.

The test for improper vouching is whether the jury could reasonably believe that the

prosecutor was indicating a personal belief in the witness's credibility. United States v Ellis 547 F.2d 1863. State expert witness's had already testified as to the co-defendant's mental state. Even though one stated he felt that the co-defendant was able to give testimony. No hearing was held to certify the defendant's mental state or competency. This permitting of the attorney's testimony to rebut shifted to out of court statements that inflamed and had improper influence on the jury, denying the petitioner due process. Did the testimony of the co-defendant bolster the testimony? Did it in fact inflame or prejudice the jury? This error was not harmless.

The ruling in Petitioner's case is in

Conflict with Lowery v Collins 988 F2d 1364 (5th
Circuit), see also Grose v Epps 2014 U.S. Dist Lexis 8985
Appendix B (B-111)

CONCLUSION

The petition for a writ of CERTIORARI should
be granted.

Respectfully Submitted
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