

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher D. Griffith — PETITIONER
(Your Name)

vs.

Randy Blades, (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

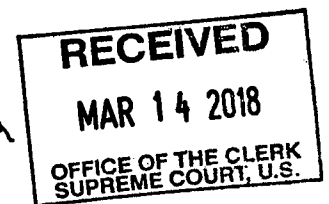
PETITION FOR WRIT OF CERTIORARI

Christopher D. Griffith, #52664
(Your Name)

ICIO 381 W. HOSPITAL DR. UNIT A1-203-A
(Address)

Orofino, Idaho
(City, State, Zip Code)

1-208-476-3655
(Phone Number)



QUESTION(S) PRESENTED

1. Is a Certificate of Appealability required to appeal to a Court of Appeals from a procedural ruling ?
2. Is a Certificate of Appealability required to appeal to a Court of Appeals if there has been no ruling on the merits ?
3. If a State Court holds a case is procedurally defaulted, i.e. "time barred", yet holds no evidentiary hearing or does not allow the Petitioner to present evidence, can a Federal District Court rely upon that ruling to dismiss a Petition for a Writ of Habeas Corpus as "procedurally Defaulted"?
4. Is the Ninth Circuit Court of Appeals obligated or mandated to follow case precedent from this Court?
5. Is the United States District Court, in and for the District of Idaho obligated or mandated to follow case precedent from this Court?
6. Is a criminal Defendant entitled to have the merits of his claims heard, under Martinez V. Ryan, 132 S.Ct. 1309, (2012), by a federal Court, if these claims were defaulted in State Court due to ineffective assistance of Post Conviction Counsel, or no counsel in such a proceeding?
7. Is the State of Idaho denying to all criminal Defendants the right to the effective assistance of counsel, during the first direct appeal, "as of right", when the State of Idaho will not allow claims of ineffective assistance of counsel to be brought in the first direct appeal, thereby forcing those claims to be brought in a Post Conviction Proceeding, and in that proceeding there is no right to counsel, and there is no right to the effective assistance of counsel? (Does this action deny to criminal defendants the right to counsel during part of the direct appeal)?
8. When an attorney admits error, by and through an affidavit, and such error has caused the Petitioner to be unconstitutionally incarcerated, should not a reviewing Court hold an evidentiary hearing to allow this claim to be developed under the case of Lafler V. Cooper, 132 S.Ct. 1376, (2012)? (If a plea was not accepted by a Defendant due to attorney error, and the Defendant then received a more severe sentence)?

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:** (Habeas Corpus from State Court).

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:** (Went to Federal Court on Habeas Corpus).

The opinion of the highest state court to review the merits 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.

The opinion of the ~~Idaho State Court of Appeals~~ ~~XXXX~~ appears at Appendix D 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**: (Writ of Habeas Corpus from State Court).

• The date on which the United States Court of Appeals decided my case was 08/16/2017.

☐ 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: 12/15/2017, and a copy of the order denying rehearing appears at Appendix E.

☐ 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**: (A writ of habeas Corpus was filed in (federal Court under 2254.

• The date on which the highest state court decided my case was 09/30/2013. A copy of that decision appears at Appendix C.

• ☒ A timely petition for rehearing was thereafter denied on the following date: 08/07/2015, and a copy of the order denying rehearing appears at Appendix F.

☐ 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

The Sixth Amendment to the United States Constitution, and the right to have Counsel appointed during all critical stages of a criminal prosecution.

The Fourteenth Amendment to the United States Constitution, and the right to have Counsel appointed during the first direct appeal as of right.

The United States Code, Title 28, Section 2254, (d), (1) and (2).

STATEMENT OF THE CASE

The Petitioner was charged in the Seventh Judicial District Court, in and for Bonneville County Idaho, with the charge of First Degree Homicide.

During the course of the State Court Proceedings, the Prosecution made a plea offer. That Offer was that if the Petitioner would enter into a plea of guilty, then the State of Idaho would dismiss the charge of First Degree Homicide, and refile the charge as a charge of involuntary Manslaughter, which carries a maximum sentence of 10 years. The State also offered that the sentence of 10 years would be recommended to be served as 7 years fixed or determinate, to be followed by 3 years indeterminate.

Counsel, during the State Court proceedings, Mr. John Stosich, informed the Petitioner that he should not accept the plea bargain because he, (Counsel Stosich), believed that the Petitioner would win at a jury Trial, based upon the fact that a witness, (Mr. Scott Hill), was going to testify that the version of events as was put forward by the Petitioner was correct, and that the witness, (Mr. Hill), would provide testimony to support that version of events.

Furthermore, Counsel informed the Petitioner that he, (the Petitioner), would also take the stand to give to the Jury his version of events, and based upon these facts, Counsel informed the Petitioner that he should turn down the plea bargain that was offered. (10 year sentence and a reduced charge of involuntary manslaughter).

STATEMENT OF THE CASE (Con't)

Under advise from Counsel, the Petitioner turned down the plea bargain offered, and the Petitioner proceeded to a Jury Trial.

However, at the time of the Trial, Counsel for the Petitioner, (Mr. John Stosich), did not call Mr. Scott Hill as a witness, and Counsel also advised the Petitioner not to testify in his own behalf.

The Petitioner was found guilty of the charge of First Degree Homicide and was sentenced to a term of LIFE, with 22 years to be served as "Fixed" or determinate.

An Appeal was filed as to the case, and the Petitioner was informed that he could not raise a claim of ineffective assistance of counsel during trial at the time of the direct appeal; the Petitioner was informed that these claims must be raised in a Post Conviction Petition.

During the Post Conviction process, the Petitioner was informed that Mr. Hill's testimony was not going to be helpful to the case during the time of trial, and that was why he was not called as a witness.

Several years later the Petitioner seen Mr. Hill in the Idaho State Prison system, and obtained an affidavit from Mr. Hill. The affidavit of Mr. Hill clearly disputed the fact that his testimony was not relevant to the case.

The Petitioner tried to file a successive Post Conviction Petition, which the District Court, (State), denied as untimely, finding that the Petitioner could have gotten the information from

STATEMENT OF THE CASE (Con't)

Mr. Hill prior to when the Petitioner did in fact obtain the affidavit of Mr. Hill.

The State District Court did not allow the Petitioner to have an evidentiary hearing to develop this claim.

The Petitioner did litigate to the Court, that this Court, in the case of Lafler V. Cooper, 132 S.Ct. 1376, (2012), had ruled that the exact type of conduct as was litigated to the Court, as to the rejection of the offered plea agreement was considered to be a valid claim of ineffective assistance of counsel, and that the case of Martinez V. Ryan, 132 S.Ct 1309, (2012), provided a "gateway" for the Court to hear the claim.

The Petitioner filed an appeal from the denial of the Post Conviction Petition, and as part of that appeal, the Petitioner did litigate to the Idaho Court of Appeals that the denial of the ability to raise claims of ineffective assistance of counsel during the direct appeal was in effect denying to him the right to counsel for part of the direct appeal process because in Idaho there is no right to have the effective assistance of counsel during a Post Conviction process.

The Court of Appeals simply affirmed the District Court and did not reach the merits of any of the issues contained within the appeal.

The Idaho State Supreme Court affirmed the decision of the Court of Appeals.

At no time has any Court ruled on the merits of the issues as litigated.

STATEMENT OF THE CASE (Con't)

At no time has any Court allowed the Petitioner the ability to develop his claim.

The Petitioner filed for the issuance of a Writ of Habeas Corpus under Title 28 of the United States Code, Section 2254.

After several different attempts, the Petitioner was able to secure an affidavit from his former counsel whereas counsel admitted that he in fact violated the counsel provisions in the case of Lafler V. Cooper, 132 S.Ct. 1376, (2012), as it relates to claims of plea agreements and counsel's duties therein.

The United States District Court, in and for the District of Idaho, in violation of the United States Supreme Court precedent, in the case of Buck V. Davis, 137 S.Ct. 759, (2017), refused to use the standard established in Buck, *Supra*, and refused to issue a COA based upon that standard.

Furthermore, the United States District Court, in and for the District of Idaho, in violation of the rulings of the Ninth Circuit Court of Appeals, in the case of Williams V. Woodford, 859 F.Supp. 2d 1154, (2012), (where that court held as follows, "...where a State Court makes evidentiary findings without holding an evidentiary hearing or other opportunity for a Petitioner to develop his claim, then a federal court may not rely upon those findings as they are fundamentally flawed." See 28 U.S.C. §2254, (d). Taylor V. Maddox, 366 F.3d 992, at 1001, (9th Cir. 2004); Hurles V. Ryan, 650 F.3d 1301, at 1312, (9th Cir. 2011)), relied upon the State Court findings,

STATEMENT OF THE CASE (Con't)

even though there had been no type of hearing in the state Court to allow the Petitioner the ability to develop his claim.

This type of affirmation by the United States District Court, (Relying upon a State Court determination of facts without the ability of the Petitioner to be present or to present facts), is considered to be an, "...unreasonable determination of the facts in light of the evidence presented in the State Court proceeding". §2254, (d), (2).

The United States District Court refused to allow the claim of ineffective assistance of counsel to be heard under the "Gateway" of Martinez V. Ryan, 132 S.Ct. 1309, (2012), even though the claim was proven by the affidavit of former Counsel John Stosich whereas Counsel admitted to the constitutional violation under Lafler V. Cooper, 132 S.Ct. 1376, (2012).

The United States District Court refused to issue a Certificate of Appealability, even though it was clear that the claim was debateable and was substantial under Martinez Supra.

The Petitioner filed a Notice of Appeal, and sought a Certificate of Appealability from the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals, denied the Issuance of a Certificate of Appealability, and the Petitioner filed for rehearing which was also denied.

Because the substantial Constitutional rights of the Petitioner have been violated, and because the United States District Court is not following precedent from this Court as to the standard for the issuance of a COA, this Petition should be granted.

REASONS FOR GRANTING THE PETITION

The Petitioner has been denied the right to have the effective assistance of counsel for his defense. He has been denied the right to have Counsel assist him during the Plea process. In short, Counsel during the State Court process, advised the Petitioner to reject a plea agreement that would have allowed the charges to be reduced from a charge of First Degree Homicide to a charge of Involuntary Manslaughter. This same plea agreement would have placed a maximum sentence of ten,(10), years on the crime charged.

Under advise from Counsel, the Petitioner rejected this offered plea, proceeded to trial and was subsequently sentenced to a term of LIFE, with 22 years determinate.

The Petitioner filed for a Writ of Habeas Corpus in the United States District Court, and that Court refused to hold an evidentiary hearing; instead relied upon the State Court findings, which were also conducted without granting to the Petitioner the ability to be present or to present evidence.

The United States District Court also refused to issue a Certificate of Appealability, even though former Counsel had submitted an affidavit whereas he admitted to violating the United States Supreme Court's holding in Lafler V. Cooper, 132 S.Ct. 1367, (2012).

This refusal to issue a COA violates the standards for such issuance under Buck V. Davis, 137 S.Ct. 759, (2017); and, Harbison V. Bell, 173 L.Ed. 2d 347, (2009).

REASONS TO GRANT THE PETITION, (Con't)

Under Buck V. Davis, 137 S. Ct. 759, (2017), the United States Supreme Court clearly held that the Court, when making a decision as to issuing a Certificate of Appealability, should not conduct a "Merits" review of any claim, but should instead simply look at the issue involved and make a decision as to whether or not a Constitutional right has been violated, whether or not reasonable jurist would debate the issue, and if so, then an Appeal should go forward in the normal manner.

The United States District Court did not follow this clear and commanding precedent from this Court, and by not following this precedent, has violated the rights of the Petitioner.

Also, under the case of Harbison V. Bell, 173 L.Ed.2d 347, (2009), the United States Supreme Court has held that if an appeal is taken from a "procedural ruling" then there is no necessity for a Certificate of Appealability.

The United States District Court also violated the provisions of the Anti-terrorism and Effective Death Penalty Act, codified as Title 28, of the United States Code, Section 2254, specifically the provisions of section (d), which in part hold, "...resulted in a decision that was based upon an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding". §2254, (d).

The United states District Court, when it dismissed the Petition, did so, and relied upon the order of the State District Court. The problem is that the Order of the State District Court dismissing the claim, was entered without any fact finding process, (No evidentiary hearing), and without any type of evidence or the presence of the Petitioner.

REASONS TO GRANT THE PETITION, (Con't)

This is clearly a situation whereas the United States District Court made a decision that was, "...based upon an unreasonable determination of facts...." because there was no facts presented in the State Court for the Federal Court to rely upon.

Finally, in the State of Idaho, the first direct appeal, as of right, is bi-furcated into two separate parts. In the first part are the claims that the Office of the State Appellate Defender will argue, most of which are called, "Dead-Bang Losers", such as a sentence being excessive.

The second part of the direct appeal, are the more serious claims, such as claims of ineffective assistance of counsel during the District Court proceedings.

The Office of the State Appellate Defender, and the State Supreme Court, has mandated that these claims be brought, not on direct appeal, but in a Post Conviction Petition.

This action is denying to the Petitioner, and ALL CRIMINAL DEFENDANTS in the State of Idaho, the right to the effective assistance of Counsel for the entirety of the direct appeal, in violation of the Fourteenth Amendment to the United States Constitution, because in the State of Idaho, there is no right to Counsel in a Post Conviction Proceeding, and if Counsel is appointed, that Counsel is under no obligation to act in an effective manner.

Also, a Post Conviction Proceeding is a Civil process, and is not part of the criminal appeal process, so to mandate that claims that arise from the criminal process be brought forward in a Civil action, and then hold that counsel is not necessary and does not have

REASONS TO GRANT THE PRITITION, (Con't)

to be effective, violates the right to counsel at all critical stages of the proceedings precedent, and moreover, violates this Court's holding in the case of Evitts V. Lucey, 105 S.Ct. 830, (1985), as well as the Fourteenth Amendments guarantee to equal protection and equal application of the laws of these United States.

The action of Bi-Furicating the Appeal process is in effect denying to criminal Defndants the right to have Counsel during 1/2 of the criminal appeal, and this action is violative of Due Process of Law under both the Six and Fourteenth Amendments to the United States Constitution.

CONCLUSION

Counsel for the Petitioner, Mr. John Stosich has come forward and admitted his errors. The Petitioner should not be punished for those errors. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 5, 2018