

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

AARON WILSON,

Petitioner-Applicant,

v.

DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY

Respondent.

**On Petition for A Writ of Certiorari to
The United States Court of Appeals For the Fifth Circuit**

**UNOPPOSED APPLICATION FOR A 45-DAY EXTENSION OF
TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Blythe Taplin
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PROMISE OF JUSTICE INITIATIVE
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Attorney for Petitioner-Applicant

**UNOPPOSED APPLICATION FOR A 45-DAY EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

For the specific reasons set forth below, Petitioner-Applicant Aaron Wilson respectfully requests, under Supreme Court Rules 13.5, 22, 30.2, and 30.3, a forty-five (45) day extension of time within which to file a petition for writ of certiorari. If this Application is granted, then the certiorari petition will be due on Monday, February 26, 2018. In support of this Application, Mr. Wilson provides the supporting information in the following paragraphs.

1. This is a habeas corpus proceeding. On September 8, 2017, a panel of the Fifth Circuit issued a Panel Opinion affirming the district court and denying relief to Mr. Wilson. *Wilson v. Vannoy*, No. 16-30332, 2017 U.S. App. LEXIS 17384 (5th Cir. Sept. 8, 2017). (The Panel Opinion is attached to this Application as Exhibit 1). Mr. Wilson filed a petition for rehearing, which was denied on October 12, 2017. *Wilson v. Vannoy*, No. 16-30332 (5th Cir. Oct. 12, 2017) (Exhibit 2).

2. At present, Mr. Wilson has until Wednesday, January 10, 2018, to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

3. Under Rules 13.5 and 30.3, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. We ask Your Honor to grant an extension of forty-five (45) days under the circumstances, up to and including

Monday, February 26, 2018. Counsel seeks the extension requested herein for good cause and seeks no more time than is necessary to accommodate the circumstances described below.

4. Undersigned counsel has contacted counsel for Warden Vannoy, who does not oppose the requested extension.

5. Attorney Blythe Taplin represented Mr. Wilson *pro bono* in state post-conviction proceedings, in the federal district court, and in the Fifth Circuit. Ms. Taplin is currently the only enrolled attorney in Mr. Wilson's case.

6. Ms. Taplin currently has multiple filing deadlines and court proceedings scheduled for January 2018 that would make the current deadline for Mr. Wilson's petition for writ of certiorari extremely difficult to meet. She is counsel on a capital direct appeal which is scheduled for oral argument at the Louisiana Supreme Court on January 23, 2018, with additional briefing due in advance. She is also counsel on a non-capital state post-conviction case that is scheduled for oral argument before the Louisiana Supreme Court on that same day, with additional briefing to be filed in advance.

7. In addition, Ms. Taplin has two hearings in capital cases at the 24th Judicial District Court, Jefferson Parish, Louisiana, scheduled for January 11 and January 17, 2018 respectively.

8. Accordingly, Mr. Wilson asks that the deadline for filing a petition for writ of certiorari be extended for forty-five (45) days, up to and including Monday, February 26, 2018.

Respectfully submitted,



Blythe Taplin
The Promise of Justice Initiative
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955

December 19, 2017

Attorney for Petitioner-Applicant

CERTIFICATE OF SERVICE

I, Blythe Taplin, counsel for Petitioner-Applicant Aaron Wilson and a member of the Bar of this Court, certify that on December 19, 2017, a copy of the Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit in *Wilson v. Vannoy*, was mailed to counsel for respondent:

Suzanne M. Williams
Assistant District Attorney
Caddo Parish District Attorney's Office
501 Texas Street, 5th Floor
Shreveport, LA 71101
Email: smwilliams@caddoda.com

I further certify that all parties required to be served have been served

/s Blythe Taplin
Counsel of Record
The Promise of Justice Initiative
636 Baronne Street
New Orleans, LA 70113
(504) 529-5955

Attorney for Applicant-Petitioner

EXHIBIT 1

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-30332

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2017

Lyle W. Cayce
Clerk

AARON WILSON,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:12-CV-310

Before REAVLEY, SOUTHWICK, and HAYNES, Circuit Judges.

PER CURIAM:*

Appellant, convicted of first degree murder, now appeals only the state court's ruling on racial discrimination in the jury selection,¹ specifically, a *Batson* challenge as to certain potential jurors, primarily potential jurors

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

¹ Neither side challenges the district court's conclusion that Wilson, a juvenile at the time of the offense in question, is entitled to a resentencing under *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), after having received a sentence of life without possibility of parole. However, Wilson's *Batson* challenge, if successful, would result in a new trial as to guilt or innocence, so it is not mooted by the *Montgomery* determination.

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Maxile and Mitchell.² *Batson v. Kentucky*, 476 U.S. 79 (1986). The underlying facts and somewhat tortured procedural background of this case are well-stated in the Magistrate Judge's Report and Recommendations, *Wilson v. Cain*, 2016 U.S. Dist. LEXIS 47904 (W.D. La. 2016) and in the Louisiana state appellate decision, *State v. Wilson*, 938 So. 2d 1111 (La. Ct. App. 2006) ("*Wilson*"), *writ denied*, 954 So. 2d 159 (La. 2007), *cert. denied*, 552 U.S. 917 (2007), so we will not recount them in detail here.

As demonstrated by *Wilson*, 938 So. 2d at 1122-36, the *Batson* challenges were exhausted on direct appeal to the state intermediate appellate court; the writ was denied by the Louisiana Supreme Court, and the United States Supreme Court denied certiorari. Thus, we are constrained by well-settled law requiring great deference to state court determinations. 28 U.S.C. § 2254(d); *Harrington v. Richter*, 562 U.S. 86 (2011); *see also Thaler v. Haynes*, 559 U.S. 43, 47-48 (2010) (reversing appellate court's grant of habeas relief based solely upon a "general requirement" rather than a specific clearly established rule). To grant relief here, we must conclude that the state court's adjudication:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

² *Wilson* also challenges the denial of relief with respect to several other jurors. We affirm the district court's ruling as to those jurors as well. We also conclude that the district court did not err in failing to permit an expansion of the record.

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We agree with the district court that the state appellate court's decision was neither an unreasonable application of clearly established federal law as determined by the Supreme Court nor an unreasonable determination of the facts. As the Supreme Court has explained, our deferential review is different from simply analyzing the *Batson* challenge as valid or not as if we were the state appellate court. *Richter*, 562 U.S. at 101. "Unreasonable" requires more than merely "incorrect." *Id.*; see also *White v. Woodall*, 134 S. Ct. 1697, 1703 (2014) ("We need not decide here . . . whether the conclusion . . . would be correct in a case not reviewed through the lens of § 2254(d)(1)."). Here, the prosecutor explained the state's race neutral reason for preemptory strikes of these women. Specifically as to Maxile, the reason given was that she was a volunteer teacher at the very school that Wilson had attended, and as to Mitchell, the proffered reason was that she was married to a minister, matters the prosecutor argued bore upon the potential legal penalty (at that time, the death penalty was being sought).

The problem lies in the confusing decision of the state trial court which alternately seemed to find pretextual reasons for strikes by both the prosecutor and the defense counsel while at the same time denying any relief. The state trial judge orally stated that he was troubled by these strikes by the prosecutor (of African-American women) and the defense (of women, particularly Caucasian women), but then ultimately stated that "the exclusion of certain jurors by peremptory challenges in this particular case does not raise [sic] to a level to constitute a violation." The state trial court's analysis seemed focused on what it perceived as a pattern as well as examining the stated reasons themselves; no finding was made regarding credibility or demeanor of any of the individual attorneys. The state trial court's written opinion concluded that the "pretextual" [quotation marks in the original] explanations given by the

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Defendant and State, **especially the State**” were not “significantly faulty . . . to constitute a violation.”

The state appellate court addressed this problem of inconsistencies in the state trial court ruling head-on and at length, applying appropriate Supreme Court authority. *Wilson*, 938 So. 2d at 1122-36. *Wilson* faults the state appellate court for failing to give deference to the state court’s fact findings, but the state appellate court carefully analyzed that very issue. *Id.* at 1132-34. In so doing, it concluded that the prosecutor’s proffered reasons for striking these prospective jurors was facially race neutral.³ *Id.* at 1132-33.⁴

³ The state appellate court also considered whether the prosecutor applied the state’s proffered reasons for striking Mitchell and Maxile to white prospective jurors. *See Miller-El v. Dretke*, 545 U.S. 231, 241 (2005). As to Mitchell, where the proffered reason was that she was married to a minister, the state appellate court noted that the prosecutor struck a white prospective juror because he was a minister. *Wilson*, 938 So. 2d at 1128, 1130. *Wilson* argues that this reason was shown to be pretextual because a deacon and a ministry graduate (who was not employed as a minister) were not struck, but we conclude that lay members of a church are not the same as ministers and spouses of ministers. At the very least, this argument does not demonstrate that the state appellate court unreasonably applied Supreme Court precedent. As to Maxile, where the proffered reason was that she was a volunteer teacher at the very school that *Wilson* had attended, the state appellate court noted that the prosecutor challenged a white female teacher. *Id.* at 1134. *Wilson* mentions a coach that was not struck, but, among other things, he had a relative who had been murdered, so he is not a true comparator.

⁴ Specifically as to these two jurors, the state appellate court stated:

Although we are mindful of the great deference owed by an appellate court to the trial court’s findings of fact, this record leads us to the conclusion that the trial court, largely due to the manner in which it held the hearing and allocated the burden of persuasion, confounded the racially disproportionate effect of the prosecutor’s race-neutral reasons for the strikes with an invidious intent to discriminate on the basis of race. The record demonstrates, however, that the prosecutor struck those jurors whom it believed would be less inclined to impose the death penalty. It supported its beliefs as to each juror based on both *voir dire* and other reasons that were facially race-neutral, including the common sense concerns of the circumstances of Ms. Mitchell’s marriage to a minister and Ms. Maxile’s relationship with the school for troubled youths in which the appellant had attended. The end result of the prosecutor’s jury selection strategy was to excuse perhaps one more African-American juror than one might expect through an entirely random selection process.

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After carefully examining the state court record, the state appellate court determined that, even granting deference to the state trial court, the factual determinations (though not the ultimate legal conclusion) were clearly erroneous. This conclusion was neither an unreasonable determination of the facts nor an unreasonable application of clearly established federal law. *See Splawn v. Thaler*, 494 F. App'x 448, 452-53 (5th Cir. 2012) (deferring to state appellate court's determination of factual underpinnings in a *Batson* challenge case). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101. Many jurists have reviewed this record and not disturbed the ultimate state trial court holding of no *Batson* violation. We have independently reviewed the relevant portions of the record and conclude that, under the great deference owed to the state appellate court's determination, the district court's judgment must be affirmed.

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

September 08, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 16-30332 Aaron Wilson v. Darrel Vannoy, Warden
USDC No. 5:12-CV-310

Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

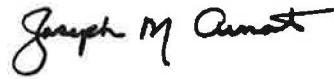
Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "Joseph M. Armato". The signature is fluid and cursive, with a long horizontal stroke at the end.

By: _____
Joseph M. Armato, Deputy Clerk

Enclosure(s)

Ms. Blythe Taplin
Ms. Suzanne Morelock Williams

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-30332

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2017

Lyle W. Cayce
Clerk

D.C. Docket No. 5:12-CV-310

AARON WILSON,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court for the
Western District of Louisiana, Shreveport

Before REAVLEY, SOUTHWICK, and HAYNES, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

EXHIBIT 2

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 12, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 16-30332 Aaron Wilson v. Darrel Vannoy, Warden
USDC No. 5:12-CV-310

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

Ms. Blythe Taplin
Ms. Suzanne Morelock Williams

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-80332

AARON WILSON,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court for the
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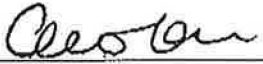
ON PETITION FOR REHEARING

Before REAVLEY, SOUTHWICK, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is *Denied*.

ENTERED FOR THE COURT: 10-12-2017


UNITED STATES CIRCUIT JUDGE