

No.

IN THE
Supreme Court of the United States

MICAH SHERIF MATTHEWS,
PETITIONER,

v.

CHRIS TRIP,
RESPONDENT.

**On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eighth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the United States District Court For the District of Iowa erred in denying Petitioner Matthews a Certificate of Appealability when it found that that Petitioner Matthews's ineffective assistance of counsel claims lacked merit?

Whether the Court of Appeals for the Eighth Circuit erred in denying Petitioner Matthews a Certificate of Appealability when it affirmed the District Court's recommendation?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Micah Matthews.

Chris Trip.

LIST OF RELATED PROCEEDINGS

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

Case No. 4:22-CV-00220-JEG

MICAH MATTHEWS V. CHRIS TRIPP

Petition DENIED 04/12/2023

IOWA DISTRICT COURT FOR JOHNSON
COUNTY, IOWA CITY

Case No. FECR082288

SENTENCED 04/01/2009

IOWA SUPREME COURT

Case No. 09-07-43

Lower Court AFFIRMED 12/10/2010

IOWA DISTRICT COURT FOR JOHNSON
COUNTY, IOWA CITY

Case No. PCCV073030

PCR APPLICATION DENIED 11/12/2015

UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

Case No. 23-1877

MICAH MATTHEWS V. CHRIS TRIPP

Judgment Dated 05/09/2023 Application for
Certificate of Appealability DENIED.

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PETITION FOR A WRIT OF CERTIORARI

The parties to the proceedings before this court are as follows:

Micah Matthews. Chris Trip.

OPINIONS BELOW

The Judgment in the United States Court of Appeals for the Eighth Circuit on May 9, 2023, which is reproduced at App. 1. The Order Granting Motion to Dismiss in the United States District Court for the Southern District of Iowa on April 11, 2023, which is reproduced at App. 3;12. And the Order Denying Petition for Panel Rehearing in the United States Court of Appeals for the Eighth Circuit dated June 28, 2023, which is reproduced at App. 13.

BASIS FOR JURISDICTION IN THIS COURT

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. §2253(c)(1)-(3) provides:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Title 28 U.S.C. §2254(d)(1)-(2) provides:

- (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-- 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 proceedings.

STATEMENT OF THE CASE

Defendant-Appellant Micah Matthews, (“**Mr. Matthews**”) brought the above-captioned Petition for Writ of Habeas Corpus and subsequent appeal following the denial of a Certificate of Appealability (hereinafter “COA”) stemming from a conviction of first-degree kidnaping, second-degree kidnaping, and first-degree burglary.

Mr. Matthews’s COA should have been issued because the lower court’s refusal to grant was based on procedural reasons on which reasonable jurists could find debatable, and second, the lower court refused to grant the petition without even considering or reaching the constitutional issues.

This Petition raises questions involving constitutional violations in a criminal conviction and unwarranted dismissal of habeas relief in light of established jurisprudence. Mr. Matthews followed all the necessary procedures and exhausted all state remedies before promptly filing for federal relief.

In 2009, Mr. Matthews was convicted of first-degree kidnapping, second-degree kidnapping, first-degree burglary (with a charge of first-degree sexual abuse merging into his conviction of first-degree kidnapping). *State v. Matthews*, No. 09-0743, 2010 Iowa App. LEXIS 1158, at *1 (Iowa Ct. App. Oct. 6, 2010). As described by Respondent and the lower court's Order, the procedural posture is as follows:

- 12/06/2010. *Direct review*: Order denying further review.
- 02/17/2011. *Postconviction one*: Postconviction relief action filed.
- 03/06/2011 *Direct review*: Expiration of 90-day period for filing SCOTUS certiorari petition.
- 10/10/2017. *Postconviction one*: Procedendo issued.
- 10/27/2017. *Federal habeas one*: Petition postmarked.
- 08/17/2018. *Postconviction two*: Second postconviction relief application filed.
- 07/23/2019. *Federal habeas one*: Voluntary dismissal by stipulation.
- 06/22/2022. *Postconviction two*: Procedendo issued.

- 06/29/2022 *Federal habeas two*: Petition signed.

Notably, the lower court held:

Matthews requested a stay of his federal habeas petition until the conclusion of his second postconviction relief action. Motion to Stay, Matthews, 4:17-cv-00386, ECF No. 50. The motion was denied. Order, *id.*, ECF No. 63. Matthews then voluntarily dismissed his § 2254 petition in July 2019. Notice of Voluntary Dismissal, *id.*, ECF No. 64. The dismissal stipulated that if Matthews wanted to pursue federal relief after exhausting his state court remedies, he would “follow proper procedures to pursue a second and successive petition for habeas corpus relief in this Court under 28 U.S.C. § 2244.” *Id.* at 2; see also Respondent’s Exhibit, ECF No. 8-6 at 2. Matthews’s second postconviction relief action was denied as untimely by the state district court and affirmed by the court of appeals. See *Matthews v. State*, No. 20-1317, 2022 Iowa App. LEXIS 278, at *3, 10 (Iowa Ct. App. March 30, 2022). The Iowa Supreme Court denied further review, and procedendo was issued June 20, 2022. Respondent’s Exhibit, ECF No. 8-8 at 1. Matthews initiated this second petition for federal habeas corpus relief pursuant to 28 U.S.C. § 2254 by placing his petition in the prison mail on June 30,

2022. District Court ECF No. 1 at 17
(noting postmark).

See Lower Court's Order at Doc. 21.

Mr. Matthews brought an appeal in the Eighth Circuit after a denial of a Certificate of Appealability on the grounds that his Petition for Habeas Corpus Relief was untimely, and he did not satisfy the requirements for equitable tolling. Mr. Matthews now brings this Petition.

REASONS TO GRANT THIS PETITION

The Supreme Court should grant this Petition because of Mr. Matthews' denial of a constitutional right. Courts should grant a certificate of appealability ("COA") should when: (1) the petition was denied on procedural grounds without (2) reaching the underlying constitutional claim. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000). To meet this standard, the Petitioner need only show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

I. Mr. Matthews Has Not Had His Claims Adequately Heard By a Competent Court.

Throughout Mr. Matthews's journey in attempting to have his post-conviction issues heard, there has been no true adjudication on the merits of his case. This is true for both State and Federal Courts. If jurists of reason could conclude that the court's dismissal on procedural grounds was

debatable, the court must review the underlying constitutional issues. *See id.* at 475. Moreover, this Court should hear the issues raised by Mr. Matthews, so as to avoid a fundamental miscarriage of justice.

As detailed below, Mr. Matthews exhausted all State remedies and diligently pursued justice.

A. *Reasonable jurists could find the procedure ruling debatable.*

In *Slack*, the defendant-appellant exhausted all state postconviction remedies and then filed for federal relief, and the court dismissed the petition based on the procedural grounds of second or successive petition. *See id.* In *Slack*, the procedural issue centered around when a law became effective and, if the law was effective, the petition was not successive, and therefore there were not sufficient grounds to dismiss for procedural issues. *See id.*

Here, like in *Slack*, there is law in Iowa that specifically allowed Mr. Matthews to file a second state petition and allows the second petition to relate back to the filing of the first for timing purposes. *See Allison v. State*, 914 N.W.2d 866 (Iowa 2018) (finding that if a successive PCR petition is filed promptly after the conclusion of the first PCR and the first PCR petition as timely filed, the statutes of limitations is met if the PCR is filed promptly after the conclusion of the first PCR); *Wilkins v. State*, 522 N.W.2d 822 (Iowa 1994) (finding that waiting nine years to file a second PCR application with three opportunities to raise new issues was too long because defendant knew or should have known of counsel's failure to raise an issue); *Windey v. N. Star Farmers Mut. Ins. Co.*, 231 Minn.

279, 284, 43 N.W.2d 99, 102 (1950) (discussing how the legal fiction of relation back is critical to preserve and protect rights deemed to have been done at an antecedent time in order to preserve the rights as of the earlier date and to avoid injustice).

Mr. Matthews filed his second state petition promptly after he filed a timely federal Petition for Writ of Habeas Corpus. As such, his timely filed federal habeas was dismissed without prejudice. Because of this case law and the timing, reasonable jurists could find it debatable whether Petitioner's claim should be dismissed on procedural grounds. Because reasonable jurists could find the promptness of the motion filed debatable, the first prong is met. Importantly, *Allison*, became effective eight months after the conclusion of Petitioner's first petition for postconviction relief. Thereafter, Petitioner filed his second petition for postconviction relief six months after *Allison* became effective. Therefore, because the procedural vehicle in which Petitioner bases his claim was not available, and he promptly exhausted his remedies, reasonable jurists could find it debatable whether the filing of Petitioner's second petition for postconviction relief satisfies *Slack*, given that Petitioner filed his second PCR in the promptest time allowed by the state of Iowa.

The only standard Mr. Matthews must meet to circumvent the harsh statutes of limitations cut off is to "promptly" file a second petition after the conclusion of the first.¹ See *Allison*, 914 N.W.2d at 866. Here,

¹ Notably, the "promptly filed" jurisprudence in the state court is often left to the discretion of the trial courts; however, for purposes of this Petition – Petitioner contends that the "promptly

unlike *Windey*, Mr. Matthews did not wait years but rather filed a prompt, and therefore timely, second petition. Moreover, it is clear from the timeline above that Petitioner has been diligently pursuing his constitutional rights and has attempted, *pro se*, to follow the muddled state and federal habeas corpus procedure and their relationship to each other. This Court should therefore allow the promptness requirement to serve its purpose: preserving rights as of the earlier date to avoid injustice.

Additionally, the Supreme Court views writs of habeas corpus to be such a vital part of protecting constitutional rights that Congress, when determining what is necessary for issuance of a COA, “expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal.” *Slack*, 529 U.S. at 483 (2000). Here, the trial court drastically erred failing to notify Mr. Matthews that he filed the second petition in the wrong court. This procedural error affected the timing because Mr. Matthews did not know of the wrong filing. Because of the timing associated with this

filed” jurisprudence should be considered holistically and in consideration of the totality of circumstances, much like in *Slack*. For instance, there is a conflict between *Allison* and relevant Iowa code sec. 822.8. This creates a question of fact and law that would allow reasonable jurists to inquire into the veracity of the lower court’s dismissal.

Here the aforementioned Iowa code allows for filing outside of the statute of limitation when there are grounds of fact or law that were previously unavailable. In this case, there was “sufficient reason” to file the second PCR. The District Court’s dismissal of Petitioner’s federal habeas was unwarranted, as Iowa carves out an avenue for relief in which Petitioner exhausted.

procedural error, the prompt filing upon conclusion of a petition as required by *Allison*, could be debatable to reasonable jurists.

To wit – this procedure is akin to the procedure wrestled by Indiana state courts and the Seventh Circuit, where Indiana’s procedure for raising ineffective assistance of counsel runs against traditional procedural notions in §2254s and prevents litigants from fully exhausting their claims. Here, *Allison*, state case law, authorizes second and successive state habeas and postconviction petitions and seemingly does not afford the leniency to pro se filers that the federal courts do.

The District Court’s decision to dismiss Mr. Matthews’s second petition on the ground for the procedural reason of untimeliness was therefore unwarranted because state case law directly allows for the prompt filing after the conclusion of the timely filed PCR.

II. Mr. Matthew’s Postconviction Relief Action was Denied Without Reaching the Underlying Constitutional Claims.

This Court should grant a COA because the Court denied Mr. Matthews’s PCR without addressing the underlying constitutional claims which a reasonable jurist could find debatable. When reasonable jurists could find it debatable whether the petition states a valid claim of the denial of a constitutional right, the court should grant a COA. *See Slack*, 29 U.S. at 478. *see e.g. Miller-El v. Cockrell*, 537 U.S. 322, 323–24 (2003) (stating that for a court to grant a COA the petitioner “need not convince a judge,

or, for that matter, three judges, that he will prevail, but must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable.”).

Mr. Matthews underlying constitutional claims arise from ineffective counsel that resulted in the unconstitutional violation of due process and the Sixth Amendment by stripping Mr. Matthews of his right to a fair trial. The constitutional requirements for a fair trial stem from the Due Process Clauses and the Sixth Amendment and these rights must be preserved. *See Strickland v. Washington*, 466 U.S. 668, 685 (1984); *In re Oliver*, 333 U.S. 257, 273 (1948) (stating that “a fair trial. . . is a basic requirement of due process.”).

In *Miller-El*, the defendant claimed to have suffered from a constitutional right's violation during trial in the lower court. *See Miller-El*, 537 U.S. at 326. Yet, the lower court and the court of appeals failed to recognize the constitutional violations, and therefore the defendant failed to gain a COA. *See id.* at 326-27. To answer the question of whether to grant a COA, the Supreme Court conducted the analysis of the underlying constitutional claim. *See id.* at 338. While emphasizing that deference to the trial court does not imply abandonment of judicial review, the court concluded that the constitutional issue was debatable amongst jurists of reason. *See id.* at 340. Because the constitutional issue was debatable amongst jurists of reason, the Supreme Court remanded the case, demanded the lower court conduct the same review and grant a COA. Here, the violation of Mr. Matthews's constitutional rights is debatable amongst jurists of reasons and the Supreme Court should

follow their standing precedent and grant Mr. Matthews a COA.

A. *Deprivation of a right to a fair Trial: Due Process violation and Violation of Sixth Amendment Right to Effective Assistance of Counsel.*

Mr. Matthews's deprivation of a fair trial is a Due Process violation. Due Process requires a fair trial. *See Strickland*, 466 U.S. at 685; *See also State v. Graves*, 668 N.W.2d 860, 882 (Iowa 2003)²; *Oliver*, 333 U.S. at 273.

Both trial counsel and appellate counsel were ineffective because they failed to present or investigate potentially exculpatory evidence, subjecting Mr. Matthews to a Sixth Amendment violation. The Sixth Amendment demands defendants have the right to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 669 (1984). Counsel is ineffective and results in a Sixth Amendment violation when (1) the counsel's performance was deficient and (2) that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *See id.* at 670.

² In *State v. Graves*, the Iowa Supreme Court found that the defense attorney in a criminal trial deprived his client of due process because the attorney failed to object to evidence that should have been inadmissible. *See* 668 N.W.2d at 882. Here, like in *Graves*, Mr. Matthews's defense counsel failed to object to evidence that should not have been admitted and likewise deprived Mr. Matthews of his right to a fair trial.

The Supreme Court in *Strickland* recognized that just showing up is not enough. That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. *Strickland*, 466 U.S. at 692. ³

In *Williams v. Taylor*, the Supreme Court found counsel to be deficient, depriving the defendant of his constitutionally guaranteed right to effective assistance of counsel, because counsel failed to investigate and present mitigating evidence. See *Williams v. Taylor*, 529 U.S. 362 (2000). Here, just like in *Williams*, Mr. Matthews's counsel failed to investigate and present the multitude of potentially mitigating evidence of an intoxication defense, medical experts' facts and opinions regarding the State's evidence showing serious injury, and his prior association with the complaining witness.

³ In *State v. Clay*, counsel was ineffective for failing to object to erroneous statements. *State v. Clay* 824 N.W.2d 488 (Iowa 2012). Here, like in *Clay*, Mr. Matthews's counsel improperly agreed to admit deposition testimony, but to the detriment of effectively waiving the right to confront the witness at trial. Therefore, here, like in *Clay*, Mr. Matthews's counsel's performance was deficient.

Counsel's deficient performance prejudices a defendant when the decision reached has a reasonable probability to have been different absent the counsel's error. *See Strickland*, 466 U.S. at 694. In *Strickland*, the alleged deficient counsel was not found by the Supreme Court to be deficient because the counsel's error was not to the magnitude that had the reasonable probability to change the outcome of the proceeding. *See id.* Here, there were a multitude of investigatory steps to take, defenses to raise, and evidence to argue about that Mr. Matthews's counsel simply paid no attention to. By ignoring potentially mitigating evidence and failing to investigate simple things, Mr. Matthews's counsel prejudiced Mr. Matthews's because the case could have been decided differently had the counsel done his job.

Additionally, Petitioner was denied counsel altogether. First, the sentencing court forced Petitioner to represent himself during a critical stage of the proceeding – i.e., sentencing. Second, appellant counsel failed to raise the significant jury instruction issue detailed below, which failed to preserve Petitioner's rights and as evident from below – prejudiced Petitioner. Likewise, Petitioner's original PCR counsel failed to file a brief, investigate exculpatory evidence or call important witnesses. Significantly, the jury instruction issue was once again left without a legitimate argument showing its constitutional default.

This court should issue the writ requested herein and forbid any further miscarriage of justice on the part of ineffective assistance of counsel.

B. Due Process violation: flawed jury instructions.

Due Process Clause requires the prosecution in criminal cases to prove guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). When jury instructions are not clear, definite, understandable and applicable to the facts under the totality-of-the-circumstances, there is a due process violation. *Fisher v. United States*, 328 U.S. 463, 470 (1946); *State v. Becker*, 818 N.W.2d 135, 161 (Iowa 2012).

“When a jury has not been properly instructed concerning an essential element of the offense that has been charged, the danger exists that the defendant has been deprived of his Sixth . . . Amendment right [to fair trial] to have the jury determine whether the [prosecution] has proved each element of the offense beyond a reasonable doubt.” *Rose v. Clark*, 478 U.S. 570, 595-96 (1986).

In *Fisher*, the Supreme Court found there to not be error in instructions left out of trial because the instructions set out would have allowed the jury to determine the difference between premeditation and deliberation because of how clear the instructions were set out and how definite and applicable to the facts the instructions were. *See id.* at 467. Here, unlike *Fisher*, the offenses differ drastically, require different mental states, and are not definitely applicable to the facts.

Significantly, the relevant jury instructions here omitted the essential elements of the crime including the terms “substantially” and “significantly”

under applicable Iowa law.⁴ The erroneous jury instructions amounted to a denial of Mr. Matthews's constitutional rights to due process, to indictment by a grand jury, and to a fair trial. See U.S. Const. amend. V ("No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury....") The jury instructions did not correctly break down the offense on which Petitioner-Appellant was being tried. The instructions further omitted essential elements the jury had to find beyond a reasonable doubt in order to find Petitioner-Appellant guilty as charged. Due to the erroneous instructions, Petitioner-Appellant was convicted of an offense other than the offense charged by the grand jury.⁵

III. Denying Mr. Matthews Postconviction Relief Would be a Miscarriage of Justice.

Even if this Court does not find that reasonable jurists could find the procedure issue debatable, this Court should grant the Petition herein in order to avoid miscarriage of justice as a way around unjust statutes of limitations. The Supreme Court refuses to enforce legal proceedings if enforcement would result

⁴ To prove more than incidental confinement, the three prongs of the test require a showing of confinement or removal that (1) "substantially increases the risk of harm to the victim," (2) "significantly lessens the risk of detection," or (3) "significantly facilitates escape of the perpetrator." *State v. Rich*, 305 N.W.2d 739 (Iowa 1981).

⁵ Upon Rehearing, Petitioner also aimed to show that the flawed jury instruction in this case deprived the trial court of jurisdiction as the essential elements omitted would have been prerequisites for establishing jurisdiction.

in a miscarriage of justice based on constitutionally impermissible factors, like claims of ineffective assistance of counsel. *See Sawyer v. Whitley*, 505 U.S. 333, 339 (1992) (emphasizing that a miscarriage of justice occurs when failure to admit evidence at

at trial of truthful inculpatory evidence that affects the reliability of the guilt determination); *See also United States v. Andis*, 333 F.3d 886, 891 (8th Cir. 2003); *see e.g. DeRoo v. United States*, 223 F.3d 919, 923 (8th Cir. 2000) (ineffective assistance of counsel sufficient to be a miscarriage of justice). Here, as laid above, there has been ineffective, deficient counsel, which has ultimately led to a deprivation of rights and an innocent man in prison.

CONCLUSION

The harm suffered by Mr. Matthews without the issuance of a COA goes against the essence of the Constitution and forces irreparable harm upon Mr. Matthews absent the relief requested here.

For the foregoing reasons this Court should grant the Petition herein.

Respectfully submitted,

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