

25-6249

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2025

Supreme Court, U.S.
FILED

NOV 18 2025

OFFICE OF THE CLERK

ROBERT BELL,
Petitioner

v.

STATE OF NEW JERSEY
Respondent

**PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES**

Robert Bell, Pro Se
975100/4-U-7-21
East Jersey State Prison
1100 Woodbridge Road
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Rahway, N.J. 07065

QUESTION PRESENTED

- I. IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL CLAUSE VIOLATED WHEN DEFENSE COUNSEL FAILS TO INVESTIGATE, AND SEEK TO OBTAIN AN EXPERT IN OBVIOUS DNA SEXUAL ASSUALT CASE, TO REBUT THE STATE'S EXPERT, WHERE, PETITIONER SPECIFICALLY REQUESTED THAT COUNSEL DO SO, AND DID NOT; WHETHER THIS FAILURE TO OBTAIN A DNA EXPERT WAS AN ERROR SO SERIOUS, PREJUDICED PETITIONER'S DEFENSE, AND SIXTH AMENDMENT RIGHT TO A FAIR TRIAL BECAUSE COUNSEL FAILED TO PROVIDE PETITIONER WITH A COMPLETE DEFENSE?

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The petitioner, Robert Bell, respectfully prays that a writ of certiorari issue to review the April 24, 2025 opinion and order of the United States District Court for the District of New Jersey – timely application for Certificate of Appealability which was denied August 21, 2025 – and the decision of the en banc panel which denied petitioner's request for Sur Rehearing on September 30, 2025.

OPINIONS BELOW

On May 21, 2015, petitioner Robert Bell was convicted, after a jury trial, of aggravated sexual assault, sexual assault, endangering the welfare of a child and distribution of opiates, and sentenced to an aggregate custodial term of 45-years, thirty years subject to N.E.R.A. (1a-3a) On January 10, 2018, a panel of the Superior Court Appellate Division affirmed petitioner's conviction, and sentence, with the exception the court vacated the first-degree conviction for endangering and ordered that petitioner be resentenced on that count as a second-degree offender(3a) The New Jersey Supreme Court affirmed the decision below, (add citation if possible)

On July 12, 2018, Petitioner filed a pro se petition seeking post-conviction relief, along with a certification in support of that action. On June 24, 2019 the PCR court denied petitioner's PCR action. On August 23, 2021, a panel of the Superior Court Appellate Division affirmed the lower court opinion and order denying post-conviction relief (3a-4a) On April 5, 2022, the Supreme Court of New Jersey, denied petitioner's action for discretionary review (6a)

On May 26, 2022, Petitioner filed a 28 U.S.C. 2254 Petition with the United States District Court District of New Jersey. On April 24, 2025 Hon. Julien Xavier Neals, U.S.D.J. denied the 2254 petition and declined to issue a certificate of Appealability. Robert Bell v. Patrick A. Nogan, et. al(7a-31a)The bulk of that Ground Fiveopinion is devoted to a rejection of the petitioner's point that he was denied his Sixth Amendment rights to effective assistance of counsel for failure to seek, obtain an expert to challenge DNA evidence in an obvious DNA case. (25a to 31a)On August 21, 2025, the Third Circuit Court of Appeals denied petitioner's application for certification.(32a)

On September 30, 2025 the full panel and en banc court denied the petitioner's Sur Petition for Rehearing Robert Bell v. Administrator, East Jersey State Prison, et. al., (33a to 34a)

JURISDICTION

This petition for a writ of certiorari has been filed within 90-days of the Third Circuit's September 30, 2025 order denying petitioner's timely-filed application for rehearing en banc (33-34a) This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1251 and 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment VI of the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed 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.

Amendment XIV, Section 1 of the United States Constitution:

....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE MATTER INVOLVED

In this case, petitioner's stepdaughter alleged that she was drugged and sexually assaulted in her home. Petitioner, Robert Bell was eventually convicted of that offense and related charges and sentenced to serve 45-years in prison, with 30-years of parole ineligibility. But in order to obtain that conviction, the State introduced DNA evidence, some of which could not be confronted and challenged by the petitioner because petitioner's trial attorney failed to investigate, to seek and obtain a DNA expert which petitioner had requested that trial counsel do so prior to the trial. (Petitioner's certification in support of Post-Conviction Relief; indicating PCR Counsel's brief filed on petitioner's behalf at pp. 14-15) When defense counsel failed to investigate, consult with or seek to obtain an expert on petitioner's behalf – defense counsel failed to provide petitioner with a complete defense of the allegations of sexual assault. A State DNA expert who did DNA testing in order to establish a DNA "profile" of the alleged sexual assault was unable to pinpoint petitioner's sperm cells on the alleged victim's vaginal slide; though found that petitioner was not excluded as the contributor.

As discussed in the Reasons for Granting the Writ, infra, defense counsels failure to make a timely -- formal request to the New Jersey Office of the Public Defender for a DNA expert in obvious sexual assault case, deprived petitioner of a fair trial. State v. Robert Bell, App. Div. Docket No. A-5301-18 (App. Div. 2021)(1a-5a). But, as argued infra, the notion of "strategically" is only stretched so far before its logic collapses. Here, defense counsel completely failed to pursue a DNA expert. Petitioner had been represented by several attorneys. One attorney who had been representing petitioner for two months did request "an adjournment

in order to be able to have the Public Defender provide expert opinions on the DNA report. (See, Colloquy 6T-18 to 19) However, since there had been at least four different attorneys assigned that were dismissed. Apparently, no one had actually made a “formal” request. (6T7-19 to 8-17)

Petitioner had no opportunity to rebut the State’s DNA expert on a variety of topics, discussed infra, in the Reasons for Granting the Writ, which could have called into question the State DNA expert results – an error of constitutional dimension which should not be tolerated, from a right to Fair Trial, and Effective Assistance of Counsel Clause perspective, in any context.

In order to fully understand the issue that this case presents, it is necessary to discuss briefly the steps that are undertaken by a forensic scientist in analyzing DNA. Forensic DNA testing is not a simple procedure where the sample is merely placed into a computer and data emerges from the machine. In other words, it is consistently different in that regard than a breathalyzer. Rather, there is a multi-step process to prepare the sample of DNA just to be able to get the computer to “read” it, and then to release a printout, which then must be interpreted by a scientist. The New Jersey Appellate Division opinion does not explain the process, State v. R.B. App. Div. Dkt. No. A-5301-18 (Aug. 24, 2021) Slip. op. at *5) but then reaches a conclusion that is not in the keeping with the protections of the Sixth Amendment Right to Counsel Clause.

In the first step of DNA testing, called “extraction,” the material that contains the DNA - - in this instance, a swabbing from the victim - - has to be treated with a chemical to isolate the genetic material away from both the swab itself and from any other non-DNA biological matter.

Then, the next step, “quantitation” (sometimes referred to as “quantification) is undertaken to determine just how much DNA is present. The third step, amplification, takes the tiny portion of isolated DNA and, in keeping with its quantified amount, multiples it billions of times so the fourth process, “detection” by the computer, can take place. At that point, the computer prints out a machine-generated graph with peaks and valleys that must be analyzed by the scientist to create a so-called “allele table” that describes 13 different aspects of the genetic makeup of the person (or persons) in the sample.

In other words, for a forensic DNA scientist to create a genetic description of someone via an allele table, he or she must actually physically manipulate the biological sample to get the machine to generate results which then are subject to interpretation by that scientist. The DNA has to be isolated from the other metal around it (“extraction”), its amount quantified (“quantitation”), and that amount replicated by billions of times (“amplified via polymerase chain reaction, a.k.a. “PCR”) before the machine can do its work (“detection”), which then has to be interpreted. One need not be a DNA scientist to understand that human error at any of the first three stages might distort the final result. In the most basic sense, if any of those steps is performed incorrectly, what is “amplified” in step three is simply the wrong thing. One would have billions of copies of an error, which, unsurprisingly, would yield an erroneous result when “detected.” The resulting allele table would then likely be incorrect. In other words, in a sexual assault case, if those mistakes were made, the DNA-based “description” of the perpetrator would be wrong.

REASONS FOR GRANTING THE WRIT

POINT I

**THE PARAMETERS OF THE SO-CALLED “STRATEGY”
EXCEPTION TO THE STRICKLAND V. WASHINGTON TWO
PART TEST REGARDING FAILURE TO INVESTIGATE AND
OBTAIN AN EXPERT IN OBVIOUS DNA SEXUAL ASSAULT
CASE RENDERS TRIAL COUNSEL CONSTITUTIONALLY
DEFICIENT, WHERE THE STATE PRESENTS ITS EXPERT AND
TRIAL COUNSEL PRESENTS NO DEFENSE FOR HIS CLIENT
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STATE OF NEW JERSEY VIOLATED THE RIGHT TO COUNSEL
CLAUSE WHEN IT DEEMED THAT TRIAL COUNSEL WAS NOT
INEFFECTIVE FOR FAILURE TO OBTAIN A DNA EXPERT TO
ASSIST IN PETITIONER’S DEFENSE OF THE SEXUAL ASSAULT
CHARGES**

Pursuant to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). To be entitled to a new trial based upon ineffective assistance of counsel, a defendant must make a two-part showing. 466 U.S., at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693. In this regard, a defendant must show that counsel’s performance was deficient. This requires that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. To satisfy the prejudice prong defendant “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the outcome.” Strickland, 466 U.S., at 694, 104 S.Ct., at 2068, 80 L.Ed. 2d at 698. In addition, at the same time, this Court found in United States v. Cronic, that counsel can be ineffective in a constructive and per se context. 466 U.S. 648, 659, 104 S.Ct. 2039, 2047, 80 L.Ed. 2d 657, 668 (1984).

In the realm of forensic evidence, the Court has addressed Defense Counsel's Failure to Consult with or Call a Medical and/or DNA Expert. Here, the prosecution offered its DNA expert testimony in order to bolster the alleged victim's credibility, primarily by explaining her failure to reveal the abuse earlier and her inability to provide a consistent and detailed account of the abuse.

In this regard, trial counsel's failure to object to continuance of trial so, that he could investigate and call an expert on petitioner's behalf, on the psychology of child sexual abuse, or to educate himself sufficiently on the scientific issues, he was unable to mount an effective cross-examination, and missed an opportunity to rebut the State's expert. The prosecution's entire case rested on the credibility of the alleged victim's statement testimony.

In this case, the record establishes it would appear that had counsel investigated the possibility of challenging the prosecution's expert, he would have discovered that exceptionally qualified experts could be found who would challenge the scientific validity of the prosecution expert's other theories about, for example, adolescence prompting disclosure of sexual abuse. Here, Defense counsel's lack of preparation and failure to challenge the credibility of the key prosecution witness could not be based on a sound trial strategy, and it was an unreasonable application of Strickland/Cronic for the PCR Court to deny petitioner without ever conducting an evidentiary hearing on the issues. Petitioner was prejudiced, because but for counsel's unprofessional errors, the result of the proceeding would have been different, "Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. In evaluating prejudice, we look to the cumulative effect of all counsel's

unprofessional errors. Lindstadt, 239 F.3d at 204. We must keep in mind that "a verdict or conclusion only weakly supported by the record is more likely to have been affected by [counsel's] errors." *Strickland*, 466 U.S. at 696. Conversely, where there is overwhelming evidence of guilt, even serious errors by counsel will not warrant granting a writ of habeas corpus. See Lindstadt, 239 F.3d at 204.

Additionally, this Court in United States v. Cronic, 466 U.S. 648, 659 (1984), established the constructive, or *per se* ineffectiveness. "Most obvious, of course, is the complete denial of counsel. The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial...Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." In the matter at bar, the record establishes that defense counsel failed petitioner in providing the effective assistance under the Supreme Court precedent in law Strickland and Cronic standard. The prosecution's entire case rested on the credibility of the alleged victim. All other evidence presented by the prosecution was indirect evidence offered to corroborate aspects of the alleged victim's story. Therefore, defense counsel's failure to investigate the prosecution's evidence led him to decide not to challenge what was clearly the most significant corroborative evidence-the medical expert testimony that the physical condition of the alleged victim supported a conclusion that penetration had taken place. Counsel's decision not to consult with or call an expert precluded counsel from offering a potentially persuasive affirmative argument that the alleged victim's condition was not indicative of or consistent with forced sexual penetration.

Counsel's failure also prevented him from challenging the expert evidence offered to explain the victim's delay in coming forward and failure to recall events in detail as the result of something other than a lack of credibility-which would as a general matter be a common inference to draw from such shortcomings.

CONCLUSION

For the reasons set forth, the Court should grant certiorari to review and define the scope of the effective assistance of counsel regarding the Sixth Amendment Right to Counsel Clause jurisprudence begun in Strickland and Cronic regarding counsel's failure to provide effective assistance during criminal proceedings and trial.

Respectfully submitted
x Robert Bell
Robert Bell
Petitioner

Dated: November 17, 2025
Rahway, N.J. 07065