No. 26-6001

FILED
JUL 14 2026
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES FICHER

PETITIONER

V.

WARDEN EDWARD BICKHAM

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE U.S. FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Was counsel's performance deficient when counsel failed to conduct an independent investigation and subpoena alibi to corroborate his story and did this deficient performance prejudice Petitioner?

Was counsel's performance deficient when counsel failed to examine the police and prosecutor files and conduct an independent investigation after a retained expert found exculpatory evidence in these files and did this deficient performance prejudice Petitioner?

LIST OF PARTIES

☐ All parties appear in the cation of the case on the cover page.

☒ All parties **do not** appear in the cation of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is subject of this petition is as follows:

District Attorney, Jason Williams
Orleans Criminal Judicial District
619 S. White St.
New Orleans, La. 70119

Warden Edward Bickham
Dixon Correctional Institute
5568 Hwy 68
Jackson, LA 707748

RELATED CASES

Ficher v. Bickham NO. 24-306602, U. S. Court of Appeals for the Fifth Circuit. Judgment. (April 17, 2025).

Ficher v. Kent NO. 14-CV-2281 Section "E" (5) (E.D. La., October 2, 2024).

Ficher v. Kent NO. 14-CV-2281 Section "E" (5) (E.D. La., October 24, 2023) (Magistrate Report and Recommendation. (USDC, E.D. La, April 16, 2024).

Ficher v. Kent NO. 19-30750, U. S. Court of Appeals for the Fifth Circuit. Judgment. (June 6, 2023). (Remand)

Ficher v. Kent, NO. 14-CV-2281 (USDC E.D. La., April 1, 2021)

Ficher v. Kent, NO. 14-CV-2281 (USDC E.D. La.,. (Magistrate Report and Recommendation). (March 17, 2021)

Ficher v. Kent, NO. 14-CV-2281 (USDC E.D. La., February 3, 2021)

Ficher v. Goodwin, NO. 14-CV-2281 (E.D. La., August 2, 2019)

Ficher v. Goodwin, NO. 17-30926, U.S. Court of Appeals for the Fifth Circuit. Judgment. (December 26, 2017.).

Ficher v. Goodwin, NO. 14-CV-2281 (E.D. La., November 8, 2017)

Ficher v. Goodwin, NO. 14-CV-2281 (E.D. La., September 2, 2017)

Ficher v. Cain, No, 05-6373, USDC E.D. La. (November 19, 2008).

Ficher v. Cain, No, No, 05-6373, USDC E.D. La, ((Magistrate Report and Recommendation. (USDC, E.D. La, October 20, 2008)

State v. Fisher, 359,855 Orleans Criminal District Court, 882 So.2d, 564 (La. No. 2003-KH-2071, (August 20, 2004).

State v. Fisher, 359,855 Orleans Criminal District Court, 655 So.2d, 341 (La. Supreme Court No. 95-KO-0476, (June 16, 1995).

State v. Fisher, 359,855 Orleans Criminal District Court, 648 So.2d, 52 (La. App. 4th Cir., No. 94-KH-0191, (January 19, 1995).

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APPENDIX A: The opinion of the U.S. Fifth Circuit Court of Appeals and denial of Certificate of Appealability is attached **as Appendix "A"** No. No. 24-30660. (April 17, 2025)

APPENDIX B: The Order of the United States Eastern District Court is attached **as Appendix "B".** No. 14-2281 Section "E" (5). (October 2, 2024)

APPENDIX C: The Report and Recommendation by the U. S. Magistrate Judge in the Eastern District of Louisiana is attached as **Appendix "C"** No. 14-2281 Section "E" (5). (October 24, 2023)

APPENDIX D: US. Fifth Circuit Court of Appeals opinion is attached **Appendix "D".** NO. 19-30750. (June 6, 2023)

APPENDIX E: Opinion of the United States Eastern District Court is attached as **Appendix "E".** No. 14-2281 Section "E" (5). (April 1, 2021)

APPENDIX F: The Report and Recommendation by the U. S. Magistrate Judge in the Eastern District of Louisiana is attached as **Appendix "C"** No. 14-2281 Section "E" (5).(March 17, 2021)

APPENDIX G: The Order of the United States Eastern District Court is attached as **Appendix "G".** NO. 14-CV-2281. (February 3, 2021.)

APPENDIX H: The Order of the United States Eastern District Court is attached as **Appendix "H".** NO. 14-CV-2281. (August 2, 2019.)

APPENDIX I: The U.S. Court of Appeals for the Fifth Circuit. Judgment **is attached as Appendix "I".** NO. 17-30926. (December 26, 2017.)

APPENDIX J: The Order of the United States Eastern District Court is attached as **Appendix "J".** NO. 14-CV-2281. (November 2, 2017.)

APPENDIX K: The Report and Recommendation by the U. S. Magistrate Judge in the Eastern District of Louisiana is attached as **Appendix "K"** No. 14-2281 Section "N" (5).(September, 8 2017)

APPENDIX L: The Order of the United States Eastern District Court is attached as **Appendix "L".** NO. 05-6373. (November 19, 2008.)

APPENDIX M: The Report and Recommendation by the U. S. Magistrate Judge in the Eastern District of Louisiana is attached as **Appendix "M"** No. 05-6373 Section "N" (5).(October, 20 2008)

APPENDIX N: The Louisiana Supreme Court Decision is attached as **Appendix "N"** (La. No. 2003-KH-2071, *.State ex rel. Ficher v. State of Louisiana*, 882 So.2d, 564 (August 20, 2004)

APPENDIX O: The Louisiana Supreme Court Decision is attached as **Appendix "O"** (La. No. No. 95-KO-0476, *State v. Ficher*, 655 So.2d, 341 (June 16, 1995).

APPENDIX P: The Louisiana Fourth Circuit Court of Appeals Decision is attached as **Appendix "P"** No. 94-KH-0191, *State v. Ficher*, 648 So.2d, 52 (January 19, 1995).

Appendix Q: Text of Constitutional and statutory Provisions Involved as required by Supreme Court Rule 14 (1)(f) is Attached as **Appendix "Q"**

TABLE OF AUTHORITIES CITED

CASES **PAGE**

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STATUTES AND RULES

LA. R.S 14:30.1

28 U.S.C. 2254 (a).

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Louisiana Constitution Art. I, § 16.

Louisiana Constitution Art. I, § 19.

OTHER:

VOLUMES:

ONE: Appendix

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:**

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

☒ not yet published or reported.

The opinion of the United States district court appears at Appendix "B" to the petition and is

☒ not yet published or reported.

☒ For cases from **state courts:**

Post-Conviction

☒ The opinion of the highest state court to review the merits appears at Appendix "N "to the petition and is

☒ Reported at *State ex rel. Ficher v. State of Louisiana*, 882 So.2d, 564 (August 20, 2004)

☒ The opinion of the Louisiana Fourth Circuit Court of Appeals appears at is unpublished.

Direct Review

☒ The Louisiana Supreme Court is the highest state court to review the issues and the opinion appears at Appendix "O" to the petition and is reported at *State v. Ficher*, 655 So.2d, 341 (June 16, 1995).

☒ The opinion of the Louisiana Fourth Circuit Court of Appeals appears at at Appendix "P" and is reported at *State v. Ficher*, 648 So.2d, 52 (January 19, 1995).

JURISDICTION

The date on which the United States Fifth Circuit Court of Appeals decided the case was April 17, 2025 and the jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

The date on which the Louisiana Fourth Circuit Court of Appeals decided the case was January 19, 1995, the Louisiana Supreme Court denied post-conviction relief on June 16, 1995 and the jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U. S. Constitutional Amendment VI. Rights of the accused.

U. S. Constitutional Amendment XIV. Sec. 1. [Citizens of the United States.].

Louisiana Constitution Art. I, § 2, Due Process of Law.

Louisiana Constitution Art. I, § 13. Rights of the Accused.

Louisiana Constitution Art. I, § 16. Right to a Fair Trial.

Louisiana Constitution Art. I, § 19. Right to Judicial Review.

28 U.S.C. 2254: (a).

Due to their length of the Constitutional provisions required by Rule 14 (1) (f), petitioner, cites the statutory and constitutional provisions and sets out the pertinent text in an Appendix as required by Rule 14 (1)(i).

The Constitutional provisions required by Rule 14 (1) (f) are cited in **Appendix "Q."**

STATEMENT OF PROCEEDINGS

On October 22, 1996, Petitioner file an application for post-conviction relief stating two claims of ineffective assistance of counsel. (1) Counsel was ineffective for failing to call Kimmie Alexander as a witness after Petitioner told counsel Ms. Alexander could support his claim of innocence. (2) Counsel was ineffective for failing to request a limiting jury instruction on the use of a witnesses prior inconsistent statement. The application was denied on March 9, 1988.

A second PCR Motion was filed on June 19.1998. After the district court failed to act, he filed a mandamus in the Fourth Circuit and, the Louisiana Supreme Court. Louisiana Supreme Court denied the mandamus application on August 20, 2004.

Petitioner filed a third Mandamus Application in the Louisiana Fourth Circuit on September 1, 2004, claiming the district court had not ruled on his second PCR. The Fourth Circuit denied the third mandamus as repetitive.

On October 6, 2005, Petitioner filed his first federal habeas corpus petition in the United States District Court for the Eastern District of Louisiana. The court held the petitioner contained both unexhausted and exhausted claims and dismissed without prejudice for failure to exhaust on November, 19, 2008. Petitioner claimed were based on prosecutorial misconduct on an unconstitutional empaneled jury.

On March 18, Petitioner file a third PCR, The District Court denied the Motion and, the Louisiana Fourth Circuit Court of Appeals and the Louisiana Supreme Court both found the application was time barred under Louisiana Code of Criminal Procedural Article 980.8.

On October 2, 2014, Petitioner filed the instant petition asserting the following grounds.

i. Prosecutorial misconduct

ii. Unconstitutional Empaneled Jury

iii. Insufficiency of Evidence

iv. Ineffective assistance of counsel for failing to present a witness

v. Ineffective assistance of counsel for failing to request a limiting instruction concerning proper use of inconsistent statements

vi. Ineffective assistance of counsel for failing to challenge the grand jury indictment

Without objection to the initial Report and Recommendation, the court dismissed the petition with prejudice. Petitioner notified the court he never received a copy of the Report and Recommendation. Petitioner was granted time to file objections and the court subsequently dismissed the petition.

Petitioner appealed the dismissal. The United States Fifth Circuit Court of Appeals vacated the district court's decision because Respondent abandoned its timeliness argument on appeal. The Fifth Circuit remanded for a merit analysis. Following remand, the Magistrate Judge determined this matter could be disposed of without an evidentiary hearing. The Magistrate issued Report and Recommendation on October 24, 2023, finding Petitioner's claims to be either unexhausted, procedurally barred, or meritless. On November 7, 2023, Petitioner filed objections to the Report and recommendation. The district court adopted the Report and Recommendation on October 2, 2024.

Petitioner filed notice to appeal and sought Certificate of Appealability in the United States Fifth Circuit Court of Appeals. The application was denied on April 17, 2025.

STATEMENT OF THE CASE

On May 13, 1992, the victim, Kevin Smith, was killed by gunshot. Witnesses identified the shooter as Petitioner, Charles Ficher. A warrant was issued for Petitioner's arrest. He was arrested on July 24, 1992 and extradited to Louisiana on October 24, 1992.

On November 12, 1992, an Orleans Parish Grand Jury indicted Petitioner on one count of second degree murder. A jury found Petitioner guilty on October 26, 1993. Petitioner moved for a new trial, but the court denied the motion on November 9, 1993. The same day the court sentence Petitioner to life in prison without benefit of probation, parole or suspension of sentence. The Louisiana Fourth Circuit Court of Appeals affirmed the conviction on January 19, 1995 and the Louisiana Supreme Court denied Certiorari on June 16, 1995.

REASONS FOR GRANTING THE WRIT

(b) The decision of the state court of last resort, the Louisiana Supreme Court, has decided Petitioner's claim of ineffective assistance of counsel, in such a way that it conflicts with the decision of a court of last resort of a United States Court of Appeals.

CLAIMS

The conviction was obtained in violation of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution. The right to obtain testimony of witnesses and compel their attendance is fundamental element of due process and Petitioner was denied these substantial rights through counsel's deficient representation.

(1) Counsel's deficient performance prejudiced Petitioner when counsel failed to conduct an independent investigation and subpoena alibi to corroborate his story.

(2) Counsel's deficient performance prejudiced Petitioner when counsel failed to examine the police and prosecutor files and conduct an independent investigation after a retained expert found exculpatory evidence in these files and did this deficient performance prejudice Petitioner

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This appeal for certiorari review now follows:

1. Charles Ficher seeks Writs of Certiorari based on the lower court's denial of his ineffective assistance of counsel claim. Counsel's failure to interview or call Kimmie Alexander deprived Ficher of effective assistance of counsel.

Charles Ficher raises the only claim that could have perhaps offered some light regarding the fact that he was innocent, and that Kimmie Alexander's testimony would have convinced the jury to acquit him of murder had counsel properly investigated the prosecution's case against him. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel at all stages of the proceedings against them. Strickland establishes a two prong test for evaluating claims of ineffective assistance of counsel. 466 U. S. at 688 Under Strickland, the defendant must show that counsel's performance, and or representation fell below an objective standard of reasonableness 466 U. S. at 688. Second, the 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. Id at 694. Kimmie Alexander was the only person who could corroborate Mr. Ficher claim that he did not shoot and kill Kevin Smith. Counsel's performance is deficient when it is less competent than the assistance that should be provided by a reasonable attorney under the same;

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circumstances. The decision to interview a potential witness is not a decision related to trial strategy. Rather, it is a decision related to adequate preparation for trial. Counsel had " a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Because Kimmie Alexander was never interviewed by defense counsel, the question is whether counsel's decision not to interview Alexander was reasonable from counsel's perspective at the time his decision was made. Kimmie Alexander agreed to sign an affidavit on behalf of Mr. Ficher **See attached as exhibit A.** Ms. Alexander in her statement details the following:

" On May 13th, 1992, around 12 noon, I Kimmie Alexander, witnessed the murder of Kevin Smith while looking out my window. I saw the man come from behind the bushes with a long black gun in front of the 3800 block of Martin Luther King. He began shooting as he came from out the bushes. He kept firing and pumping the gun until he caught up with Kevin. When he stopped shooting, he ran right in front my house and then into the Thalia Courtyard. The man's face was not familiar, however, the man was not Charles Ficher who I've known to stay around that area for some years. After finding out later that Charles Ficher was being charged with that same murder, I volunteered to tell what I saw after getting in touch with his people. I was told that I would be subpoena by his lawyer but I was never subpoena"

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Charles Ficher never made any statements which could support the fact that he shot and killed Kevin Smith. Ficher's defense today as it was on the day the crime happened, is that he did not kill Kevin Smith. Ficher made several pleas to his attorney to contact Kimmie Alexander because Ms. Alexander saw the full events of the crime. And that she may have saw the killer. It was Kimmie Alexander who first contacted counsel letting him know that she was available to testify on behalf of Mr. Ficher. Counsel neglected the law of this case where he used a defense that lacked evidentiary support. **See Chambers v. Armontrout, 907 F. 2d 825, 828 (8th Cir./ 1990); see also Strickland v. Washington, 466 U. S. 668(1984).** The result of counsel's ineffective assistance to Ficher was that Kimmie Alexander was not interviewed by counsel, she was not even considered by counsel as being a witness who could have provided crediable testimony on behalf of Mr. Ficher. **Byrd v. Armontrout, 880 F. 2d 1,4 (8th Cir. 1989).** Not only did trial counsel's failure to investigate the testimony of this witness, it shows that counsel was not in the best interest of Mr. Ficher, and that counsel wasn't fully prepared to defend the rights afforded to Charles Ficher under the constitution of both the Louisiana Constitution, and the United States Constitution. Mr. Ficher believes that had counsel called Kimmie Alexander, reasonable jurors would have debated the reasonableness of trial counsel's actions for his failure to call Kimmie; Alexander. Charles Ficher should have been granted a evidentiary hearing. See

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Murphy v. Johnson, 205 F. 3d 809,815(5th Cir. 2000). The district court's opinion does not dispute that petitioner's claims based on the testimony in Kimmie Alexander's affidavit, if credible, meet the standards of Strickland. Instead, the district court quarrels only with whether Ms. Alexander's affidavit could provide a sufficient factual basis for the claim. Counsel failed to perhaps realize that Kimmie Alexander's affidavit, and her willingness to testify in Ficher's behalf, could have form a basis for an actual innocence claim that could only be resolved based on credibility determinations made after an evidentiary hearing. Under rule 8 of the rules governing section 2254 proceedings, reasonable jurors could conclude that the district court should have held an evidentiary hearing. Contrary to the Magistrate's report and recommendation, petitioner reiterates that his claim of innocence is in fact credible. He raised this claim in his first State PCR and supplemented with Kimmie Alexander's affidavit. The State's case against petitioner rested primarily on representation by Robert Young, and Arland Burrell. Petitioner made trial counsel aware of Ms. Alexander and believed that counsel would subpoena Kimmie Alexander for trial. Unlike both counsels, Ms. Kimmie Alexander lived in the community, and she knew just about everyone. Kimmie Alexander was only familiar with petitioner because of her long life of living in the community where the crime occurred.

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Kimmie Alexander witnessed the brutal murder of Kevin Smith. She voluntarily came forward to say that Charles Ficher was not the man who shot the victim Kevin Smith. Counsel obviously did not discussed this information with the prosecuting attorneys representing the State of Louisiana.

Mr. Ficher's rights to compulsory process was violated. Ficher preserved his claims for review under dictates pursuant to **Yohey v. Collins, 985 F.2d 222,224-25(5th Cir. 1993); Fed. R. App. P. 28(a)** Mr. Ficher believes that had counsel properly subpoena Ms. Kimmie Alexander there would have been a different outcome. But unfortunately, the inconsistencies were not borne out in proceedings because counsel failed to call Ms. Alexander to testify. Kimmie Alexander's testimony would have consisted of, and based on the fact that Charles Ficher was not the murderer she saw on the day this crime was committed. Charles Ficher upon a showing and on the merits, should be Granted certiorari based on counsel's ineffectiveness in this case.

CONCLUSION

Petitioner, Charles Ficher, prays this Honorable Court will agree that the nexus of his conviction and the incomplete state court record for review are due to ineffective assistance of counsel and appellate counsel and that these issues are debatable among reasonable jurists. He further prays a that this Honorable Court will grant Writ of Certiorari and remand this to the district court for an evidentiary hearing to expand the record to allow Petitioner a full and fair judicial review.

Charles Ficher

Charles Ficher