26-6035

No. _____

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

KENNETH WILBERT BROWN— PETITIONER

vs.

JACOB BRUCE, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(United States Court of Appeals for the Sixth Circuit)

PETITION FOR WRIT OF CERTIORARI

Kenneth Wilbert Brown
(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

1) Whether a Court of Appeals violates the threshold standards governing a Certificate of Appealibility when it acknowledges that reasonable jurist could debate whether a procedural forfeiture should be excused, but then denies a certificate only after resolving disputed constitutional and prejudice questions against the Petitioner on their merits, contrary to *Slack v. McDaniel,* 529 U.S. 473 (200), *Miller-El v. Cockrell,* 537 U.S. 322 (2003), and *Buck v. Davis,* 580U.S. 100 (2017).

2) Whether the Sixth Amendment permits defense counsel to give affirmative and materially incorrect advice about the legally ascertainable effect of a guilty plea on parole eligibility when the defendant expressly identifies that consequence as important, relies on counsel's advice, and seeks to withdraw the plea before sentencing immediately after learning that the advice was false.

3) Whether a state court unreasonably applies *Strickland v. Washington,* 466 U.S. 668 (1984), *Hill v. Lockhart,* 474 U.S. 52 (1985), and *Lee v. United States,* 582 U.S. 357 (2017), by finding no plea-stage prejudice principally because conviction at trial appeared likely and the plea reduced the defendant's maximum exposure, while disregarding objective and contemporaneous evidence that the incorrect advice was material to the defendant's decision.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

Petitioner Kenneth Wilbert Brown was the Petitioner – Appellant in the United States Court of Appeals for the Sixth Circuit and the Petitioner in the United States District Court.

Respondent Jacob Bruce, Warden, was the Respondent – Appellee in the Sixth Circuit.

☐ 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:

No corporate entity is a party to this proceeding.

RELATED PROCEEDINGS

The proceedings directly related to this Petition are:

Brown v. Bruce, No. 25-5965. U.S. App. LEXIS 16202, 2026 LX 286851

Brown v. Hughes, No. 3-24-CV-062-CRS-HBB, 2025 U.S. Dist. LEXIS 182378, 2025 WL 2670574

Brown v. Commonwealth, No. 2022-CA-0885-MR-, 2023 Ky. App. Unpub. LEXIS 330, 2023 WL 3666456

Brown v. Commonwealth, No. 2018-CA-1180-MR, 2019 Ky. App. LEXIS 125

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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**:

The opinion of the Sixth Circuit Court of Appeals appears at Appendix A denying Petitioner's Application for Certificate of Appealability;

☒ reported at *Brown v. Bruce*, 2026 U.S. App. LEXIS 16202; 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 Dismissing Petitioner's Petition for Writ of Habeas Corpus;

☒ reported at *Brown v. Hughes*, 2025 U.S. App. LEXIS 182378, 2025 WL 2670574; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the Kentucky Court of Appeal's opinion affirming the denial of Post-Conviction relief appears at Appendix C to the petition and is

☒ reported at *Brown v. Commonwealth*, 2023 Ky. App. Unpub. LEXIS 330, 2023 WL 3666465; and,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Kentucky Court of Appeal's appears at Appendix D to Petitioner's Motion to Withdraw his Plea of Guilty and is

☒ reported at *Brown v. Commonwealth*, 2019 Ky. App. Unpub. LEXIS 125, 2019 WL 3367195; and,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Sixth Circuit Court of Appeals decided my case was June 3, 2026 denying Petitioner's Application for Certificate of Appealability.

☒ No petition for rehearing or rehearing en banc was filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 _____.

This Petition is filed within 90 days of the Sixth Circuit's Order and is timely under Supreme Court Rule 13.1

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 provides, in relevant part:

  "In all criminal prosecutions, the accused shall enjoy the right..... to have the Assistance of Counsel for his defense."

- The Fourteenth Amendment provides, in relevant part:

  "No state shall..... deprive any person of life, liberty, or property, without due process of law."

- Title 28 U.S.C. § 2253(c) provides, in relevant part:

  "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from the final order in a habeas."

STATEMENT OF THE CASE

A) The Criminal Proceedings

Petitioner Kenneth Wilbert Brown is currently serving a sentence imposed by the Oldham Circuit Court following his conviction for Intimidating a Participant in the Legal Process and for being a Persistent Felony Offender in the Second Degree. Brown has consistently maintained throughout the state and federal proceeding that his guilty plea was not knowingly, intelligently, or voluntarily entered because it was induced by materially incorrect legal advice concerning the effect of the plea agreement on his parole eligibility.

The charges arose from statements allegedly made during a court appearance while Brown was already incarcerated on an unrelated sentence. After a jury convicted Brown of Intimidating a Participant in the Legal Process, the parties negotiated a plea agreement concerning the Persistent Felony Offender charge. Under that agreement, Brown received a total of seven years.

B) Brown's Concern Regarding Parole Eligibility

Before accepting the plea agreement, Brown specifically questioned defense counsel regarding how the proposed agreement would effect his parole eligibility date. Counsel affirmatively advised him that accepting the plea would not change his existing parole eligibility date. Brown considered this information essential to his decision whether to plead guilty, or proceed with the P.F.O. proceedings. To be sure, he then raised the issue during plea colloquy. He received conflicting answers from his counsel and the prosecution, so he asked the court to clarify the matter. Rather than receiving a definitive explanation from the trial court, it expressesed uncertainty. Brown then asked the court if the answer to his question could be

verified before final sentencing, to which the court gave an affirmative head nod while pushing the plea agreement forward for his signature. The plea was accepted.

C) Motion to Withdraw Plea of Guilty

Upon learning that the advice he had received was incorrect, Brown acted immediately. Before sentencing – and before the Final Judgment was entered – he submitted a written request asking to withdraw his guilty plea pursuant to Kentucky Rule of Criminal Procedure 8.10. Brown explained that he accepted the plea only because he believed counsel's advice to be accurate.

The trial court acknowledged that counsel had provided incorrect advice regarding parole eligibility. Nevertheless, it denied Brown's Motion to Withdraw the plea, concluding that counsel's error did not constitute ineffective assistance because parole eligibility was considered a collateral consequence of the plea. Judgment was subsequently entered imposing the agreed seven-year sentence.

D) Direct Review

Brown appealed. The Kentucky Court of Appeals affirmed the trial court's refusal to permit withdrawal of the guilty plea. Although the court recognized that counsel had incorrectly advised Brown concerning parole eligibility, it concluded that Brown had failed to establish prejudice because parole eligibility constituted a collateral consequence of the plea. Subsequently, the Kentucky Supreme Court denied discretionary review.

E) Post-Conviction Proceedings

Brown therefore sought relief pursuant to Kentucky Rule of Criminal Procedure 11.42. His motion alleged numerous violations of the Sixth and Fourteenth Amendments, including ineffective assistance of counsel arising from counsel's failure to:

1) Do more to remove a Compromised judge;

2) Challenge the Validity of the Indictment;

3) Investigate available defenses;

4) Disclose material information concerning the alleged threat;

5) Challenge a Preemptive Strike of the only black juror by the Commonwealth;

6) Adequately advise Brown during plea negotiations;

7) Correctly advise Brown concerning parole eligibility; and

8) Preserve Brown's Constitutional Rights throughout the proceedings.

Brown requested an Evidentiary Hearing to develop these factual claims. However, the trial court denied relief without conducting one. The Kentucky Supreme Court again denied Discretionary Review.

F) Federal Habeas Proceedings

Brown timely filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court. The Petition asserted that his conviction and sentence violated the Sixth and Fourteenth Amendments because:

1) His guilty plea was involuntary;

2) Counsel rendered Constitutionally Ineffective Assistance;

3) The state courts improperly denied an Evidentiary Hearing despite unresolved factual disputes; and

4) The cumulative effect of the Constitutional errors deprived him of a fundamentally fair proceeding. The District Court denied relief.

G) Proceedings in the Sixth Circuit

Brown sought a Certificate of Appealability (C.O.A.) from the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit recognized that reasonable jurist could debate whether Brown's untimely objections to the magistrate judge's report should be excused in the interest of justice. Rather than resolving the appeal solely on procedural grounds, however, the court addressed the merits of Brown's Constitutional claims.

The court concluded that Brown had failed to demonstrate entitlement to a C.O.A. It reasoned that this Court had never expressly held that affirmative misinformation concerning parole eligibility constitutes Ineffective Assistance of Counsel under the Sixth Amendment. The Court further concluded that Brown failed to establish prejudice because he had received a favorable plea agreement reducing his potential sentencing exposure and therefore had not shown that rejecting the plea would have been a rational decision.

Finally, the Court rejected Brown's remaining Constitutional claims, including those concerning the Indictment, Evidentiary Hearing, jury issues, and judicial bias, and denied a C.O.A.

H) Basis for this Petition

This Petition does not ask this Court to correct an ordinary misapplication of settled law. Instead, it presents recurring and nationally significant Constitutional questions concerning the scope of the Sixth Amendment during plea negotiations. Specifically, this case asks whether counsel may provide materially incorrect legal advice regarding a plea's effect on parole eligibility, whether courts may avoid Constitutional review by characterizing that consequence as merely "collateral," and whether a Certificate of Appealability may be denied after resolving disputed Constitutional questions that reasonable jurist could debate.

REASONS FOR GRANTING THE PETITION

I. This case presents an Exceptionally Important Constitutional Questioning Concerning the Right to Effective Assistance of Counsel During Plea Negotiations.

More than ninety-five percent of criminal convictions in the U.S. are obtained through guilty pleas rather than trials. As this Court has repeatedly recognized, plea bargaining is not merely an adjunct to the criminal justice system – it is the criminal justice system for the overwhelming majority of defendants. Because guilty pleas now resolve nearly every criminal prosecution, the Constitutional guarantee of Effective Assistance of Counsel is most critical during plea negotiations. A defendant's decision to surrender the fundamental rights to a jury trial, to confront witnesses, to remain silent, and to appeal often rests almost entirely upon the legal advice provided by defense counsel.

This Court has repeatedly expanded Sixth Amendment protections during plea negotiations through *Strickland v. Washington,* 466 U.S. 668 (1984); *Hill v. Lockhart,* 474 U.S. 52 (1985); *Padilla v. Kentucky,* 559 U.S. 356 (2010); *Missouri v. Frye,* 566 U.S. 134 (2012); and *Lee v. United States,* 582 U.S. 357 (2017). Collectively, those decisions recognize that plea bargaining is a critical stage of a criminal proceeding and that Constitutionally competent legal advice is indispensable to a knowing and voluntary plea. The decision below significantly narrows those protections by allowing materially incorrect legal advice concerning parole eligibility to escape meaningful Constitutional review solely because the consequence was characterized as "collateral." That question affects criminal defendants in every jurisdiction.

II. The Sixth Circuit's Decision is inconsistent with This Court's Sixth Amendment Jurisprudence.

The Sixth Circuit acknowledged that Brown relied upon affirmative misinformation regarding parole eligibility. Nevertheless, it concluded that Federal Habeas relief was unavailable because this Court has never expressly held that incorrect advice regarding parole eligibility constitutes Ineffective Assistance of Counsel. That reasoning misunderstands the nature of Brown's Constitutional claim.

Brown does not contend that the Constitution requires defense counsel to predict every future parole decision or to guarantee parole outcomes. Rather, Brown urges that counsel affirmatively misrepresented the legal consequence of accepting the plea agreement after he specifically asked how it would affect his parole eligibility. This distinction is critical.

In *Padilla,* this Court rejected formalistic distinctions that insulated materially incorrect legal advice from Sixth Amendment scrutiny merely because the consequence was historically labeled "collateral." Instead, the Court recognized that when a legal consequence is clear, counsel has a Constitutional obligation to provide accurate advice. Similarly, *Lee* teaches that the Constitutional inquiry focuses on whether accurate advice would have altered the defendant's decision – not whether an Appellate Court later believes the plea bargain was objectively favorable. The Sixth Circuit instead transformed the inquiry into one asking whether this Court had previously decided the identical parole issue. That approach improperly narrows the broader Constitutional principles announced in *Strickland, Hill, Padilla,* and *Lee.*

III. Brown Presented Unusually Strong Evidence of Prejudice.

Unlike many Ineffective Assistance claims, Brown's allegations are supported by objective hardline evidence rather than post hoc assertions. The record demonstrates:

1) Brown specifically asked about parole eligibility on the record before pleading guilty;
2) Defense counsel provided a definitive answer;

3) The advice proved incorrect;

4) Brown sought to withdraw his plea before sentencing after discovering the error; and

5) Brown identified the erroneous advice as the reasoning for withdrawing his plea.

Those facts distinguish this case from the ordinary Habeas petition in which prejudice rests solely upon the defendant's retrospective assertion that he would have proceeded differently. Under *Hill,* prejudice turns on whether there exist a reasonable probability that, but for counsel's deficient advice, the defendant would have rejected the plea. *Lee* further instructs that reviewing courts may not substitute a defendant's reasoning for their own assessment of whether rejecting a plea would have been wise. The relevant inquiry is whether the defendant's decision would have been rational, in his mind, under the circumstances. Brown's punctual attempt to withdraw his plea before sentencing provides powerful objective evidence supporting that conclusion.

IV. The Decision Below Improperly Permits Generic Plea–Colloquy Responses to Supersede Specific Constitutionally Deficiencies.

This Court has consistently emphasized that a guilty plea must represent an informed and voluntary choice among available alternatives. The Sixth Circuit's reasoning effectively allows a routine plea colloquy to cure affirmative legal misinformation provided by defense counsel. That rule creates a dangerous precedent.

A defendant may honestly answer that he understands the plea agreement while simultaneously relying upon materially incorrect legal advice concerning one of the most important consequences of the plea. Here, Brown specifically identified parole eligibility as a decisive consideration. Rather than resolving that misunderstanding before accepting the plea, the proceedings continued. If allowed to stand, the decision below will encourage reliance upon

standardized plea colloquies while diminishing the Constitutional importance of competent legal advice.

I. This Case Is an Ideal Vehicle.

This case presents the Constitutional issue in an unusually clean procedural posture. Unlike many Ineffective – Assistance cases, there is no dispute that Brown raised the parole issue before pleading guilty and sought withdrawal before sentencing after discovering the error. The trial court acknowledged that counsel's advice was incorrect. Therefore, the issue does not depend upon disputed historical facts or credibility determinations. Instead, the question is purely Constitutional:

> May a court reject a Sixth Amendment claim arising from affirmative legal misinformation solely because the misinformation concerns a consequence historically labeled "collateral?"

That question has never been squarely answered by this Court.

II. The Question Presented Has National Importance.

The consequences of the decision below extend far beyond Kentucky. Every day, defense attorneys advise criminal defendants concerning:

1) Parole eligibility;
2) Sentence aggregation;
3) Mandatory minimum sentences;
4) Good-time credits;
5) Earned-time credits;
6) Consecutive sentencing;
7) Supervised release; and

8) Other legally determinable consequences of guilty pleas.

If courts may avoid Constitutional review simply by classifying those consequences as collateral, defendant throughout the Nation will receive diminished Sixth Amendment protections during the most consequential stage of a criminal prosecution. Conversely, a decision by this Court would provide clear guidance to defense counsel, trial courts, prosecutors, and reviewing courts regarding the Constitutional obligation to provide accurate legal advice when defendants seek guidance concerning legally ascertainable consequences of guilty pleas.

VII. The Question is Capable of Resolution Through a Narrow Rule.

This case does not require the Court to impose an expansive new obligation upon defense attorneys. The Court could resolve the question through a narrow rule:

1) When a criminal defendant specifically asks counsel about the legal ascertainable effect of a proposed guilty plea on parole eligibility, and counsel elects to answer that question, affirmative and materially incorrect legal advice is subject to the ordinary Ineffective-Assistance frame work established by *Strickland* and *Hill.*

2) Such a holding would not require counsel to predict discretionary parole decisions.

3) It would not guarantee any defendant release on parole.

4) It would not require defense attorneys to identify every collateral consequence of a conviction.

5) And it would not automatically invalidate a plea whenever counsel makes an error.

6) A defendant would still be required to satisfied both components of *Strickland,* including demonstrating prejudice under *Hill* and *Lee*.

7) The rule would simply establish that affirmative legal misinformation about a consequence material to the defendant's plea decision is not categorically removed from the Sixth Amendment scrutiny merely because the consequence bears the label "collateral."

That narrow question is clearly presented here.

I. Further Factual Development, If Necessary, Can Occur on Remand.

Additionally, this Court need not resolve every factual dispute or every Ineffective-Assistance allegation Brown has raised during the lengthy history of this litigation. Instead, the Court can decide the governing Constitutional question and remand the case for application of the proper standard.

If additional factual development is required concerning counsel's advice, Brown's reliance, prejudice, or related Ineffective-Assistance allegations, those matters can be addressed by the lower courts under the Constitutional standard announced by this Court. That makes this case particularly suitable for Certiorari. The Court can resolve an important question of federal law without becoming a fact-finder or deciding every subsidiary issue in Brown's underlying criminal proceedings.

II. This Case Also Presents an Important Question Regarding the Proper Application of the Certificate of Appealability (C.O.A.) Standard.

Finally, the decision below raises an important procedural issue concerning C.O.A's. The Sixth Circuit recognized that reasonable jurist could debate whether Brown's procedural default should be excused, but nevertheless proceeded to resolve the underlying Constitutional questions before denying a C.O.A.

This Court has repeatedly explained that a C.O.A. requires only a threshold showing that reasonable jurist could debate the Constitutional claims. Brown respectfully submits that the Sixth Circuit's analysis illustrates an increasingly common tendency to collapse the C.O.A. inquiry into a merits determination, contrary to *Slack, Miller-El,* and *Back.* Resolving that question would provide much-needed guidance to federal courts applying 28 U.S.C. § 2253.

CONCLUSION

For more than four decades, this Court has recognized that the Sixth Amendment guarantees not merely the presence of counsel during criminal proceedings, but the effective assistance of counsel at every critical stage of those proceedings. As plea bargaining has become the principal mechanism by which criminal cases are resolved, this Court has repeatedly reaffirmed that a guilty plea must be the product of informed and Constitutionally competent legal advice.

This case presents an important and recurring Constitutional question that has not been squarely resolved by this Court: whether defense counsel may provide materially incorrect legal advice concerning the legally ascertainable consequences of a guilty plea, and whether reviewing courts may avoid meaningful Sixth Amendment review by characterizing those consequences as "collateral." Petitioner does not ask this Court to Constitutionalize every prediction concerning future parole decisions. Rather, he asks this Court to reaffirm a narrower and fundamental principal: when counsel affirmatively provides incorrect legal advice regarding a consequence that defendant expressly identified as material to the discussion whether to plead guilty, the Constitution requires courts to evaluate that claim under the standards established in *Strickland, Hill, Padilla, Frye,* and *Lee.*

Brown's case presents the issue concretely and narrowly, which is why this case is an ideal vehicle to resolve that question. Few cases could present the unresolved question more directly. Brown's actions distinguish this case from the ordinary post-conviction claim resting solely upon hindsight. They present a clean Constitutional question regarding the scope of the Sixth Amendment and the validity of guilty pleas entered in reliance upon materially erroneous legal advice. The decision below also presents an important procedural issue concerning the proper application of the C.O.A. standard. By resolving disputed Constitutional questions on their merits while denying a C.O.A., the Sixth Circuit blurred the distinction between the threshold inquiry required by 28 U.S.C. § 2253(c) and the ultimate merits determination, creating uncertainty regarding the proper application of this Court's decision in *Slack, Miller-El,* and *Buck.*

Because the questions presented are exceptionally important to the administration of criminal justice throughout the Nation, and because the decision below is inconsistent with this Court's Sixth Amendment jurisprudence, the petition for a Writ of Certiorari should be granted.

Prayer for Relief

Wherefore, Petitioner

Respectfully submitted, Kenneth Wilbert Brown respectfully prays that this Court:

1) Grant the Petition for Writ of Certiorari;

2) Reverse the Judgment of the U.S. Court of Appeals for the Sixth Circuit;

3) Hold that the Kentucky Courts unreasonably applied clearly established federal law governing ineffective assistance of counsel and the voluntariness of guilty pleas;

4) Vacate the Judgment below and remand the case for further proceedings, including an Evidentiary Hearing consistent with this Court's opinion; and

5) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Kenneth Wilbert Brown
Petitioner, *Pro Se*

Date: September 1st 2026

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