NO. 15-8114

SUPREME COURT OF THE UNITED STATES

JAMES TYLER,
Petitioner

v.

LOUISIANA,
Respondent

On Petition for Writ of Certiorari to the
Louisiana Supreme Court

Respondent's Brief in Opposition to Petition for Writ of Certiorari

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

STATUTES

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE

On May 29, 1995, at approximately 9:30 p.m., Jock Efferson, Denise Washington, and Rahsaan Roberson were working in a Pizza Hut located in the 3900 block of Greenwood Road in Shreveport, Louisiana, when Petitioner, James E. Tyler, III, walked up to the drive-through window to inquire Efferson about purchasing a pizza. He later entered the restaurant through the back door carrying a handgun in one hand and a ski mask in the other (Vol. 16, pp. 3443, 3455). He ordered Efferson to open the cash register, and then forced all three employees into the cooler freezer, where he ordered them to lie on the floor. He shot each of them in the head (Vol. 16, p. 3511). Washington and Roberson survived their injuries; Efferson died as a result of his gunshot wounds the following day (Vol. 16, p. 3511).

The next evening, Sharlot Tedder, a prostitute, phoned a detective to report that she had stayed with a black male, later identified as Petitioner, at the Palomar Hotel across the street from the Pizza Hut. Tedder reported that on May 29, 1995, Petitioner left the hotel room at around 9:30, saying, "He had to do something." She also stated that he possessed a .22 caliber revolver. When Tedder saw the emergency vehicles at the Pizza Hut at approximately 10 p.m., she asked Petitioner if he "did that across the street." He replied, "Yes." Petitioner had a large sum of money in his possession. When Petitioner learned of Efferson's death from the local television news, he stated "one down, two to go." He later told Tedder that he "got three . . . what's one more?" (Vol. 16, pp. 3601-3602) Teddar also reported that later

that night, she witnessed Petitioner in the yard of the body shop next door. Petitioner told her he was looking for his gun that he thought he had dropped there (Vol. 16, pp. 3549-3552).

The owner of the body shop located next door to the Palomar Hotel testified that Petitioner came looking for a ski mask and a roll of duct tape he had left in the yard of the body shop. Petitioner also inquired about purchasing a gun (Vol. 16, pp. 3549-3552). Police were able to recover a dark-colored mask and a key ring tag for Room #39 of the Palomar Hotel in the yard of the body shop. The key ring tag was on the key ring when the Petitioner checked in, but was missing when he checked out (Vol. 1, pp. 85-86, Vol. 16, pp. 3495-3496). Petitioner also wrote a letter in which he confessed to the murder (Vol. 6, pp. 1364-1365).

On June 20, 1995, Petitioner was indicted by the grand jury for first degree murder (R. p. 13). Petitioner was identified by one victim, Washington, before trial, and by both surviving victims at trial (Vol. 8, p. 1825, Vol. 16, p. 3453-3454). On August 28, 1996, a jury found Petitioner guilty of first degree murder. On August 31, 1996, the same jury unanimously sentenced him to death. The district court formally imposed the death sentence on October 4, 1996. Petitioner's conviction and death sentence were affirmed on appeal and this Honorable Court denied writs. *State v. Tyler*, 97-0338 (La. 9/9/98), 723 So.2d 939, *cert. denied*, 526 U.S. 1073, 119 S.Ct. 1472, 143 L.Ed.556, *rehearing denied*, 526 U.S. 1166, 199 S.Ct. 2066, 144 L.Ed.2d 230 (1999).

Pursuant to an order from the state district court, Petitioner filed his first application for post-conviction relief on January 31, 2002. In this application, Petitioner complained of ineffective assistance of counsel. On August 11, 2006, the petition was denied. Writs and certiorari were also denied. *State v. Tyler*, 2006-2339 (La. 6/22/07) 959 So.2d 487, *cert. denied*, 552 U.S. 1044, 128 S.Ct. 656, 169 L.Ed.2d 518 (2007).

On May 8, 2009, Petitioner filed a supplemental application for post-conviction relief, alleging various claims of ineffective assistance of counsel, Sixth Amendment violations pursuant to *Boykin v. Alabama*, 395 U.S. 238 (1969), and *Brookhart v. Janis*, 384 U.S. 1 (1966), Sixth Amendment violations pursuant to *Faretta v. California*, 422 U.S. 806 (1975), suppression of evidence, and juror misconduct. On August 1, 2011, the state district court summarily denied some of these claims, and granted Petitioner further argument and hearings on Petitioner's claims of ineffective assistance of counsel, *Faretta* violations, and *Boykin* violations. On December 28, 2012, the state district court denied the Petitioner's remaining claims. Writs were subsequently denied. *State v. Tyler*, 2013-0913 (La. 11/06/15), 181 So.3d 678.

Petitioner's instant application for writ of certiorari followed.

ARGUMENT

1. **PETITIONER MUST SATISFY BOTH REQUIREMENTS SET FORTH IN *STRICKLAND V. WASHINGTON*, 466 U.S. 668 (1984) IN ORDER TO PREVAIL IN AN INEFFECTIVE ASSISTANCE CLAIM. THE STANDARD SET FORTH IN *UNITED STATES V. CRONIC*, 466 U.S. 648 (1984), DOES NOT APPLY TO THE INSTANT CASE.**

Petitioner attempts to have the court apply *United States v. Cronic,* 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657 (1984), rather than *Strickland v. Washington,* 104 S.Ct. 2052, 466 U.S. 668, 80 L.Ed.2d 674 (1984), to his claim in order to avoid having to show prejudice by his counsel's alleged errors.

Cronic sets forth three circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified. The first circumstance 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. The second circumstance set forth in *Cronic* occurs if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing. The final circumstance occurs when competent counsel very likely could not; the defendant need not show that the proceedings were affected. *Cronic, supra,* at 659-662, 104 S.Ct. 2039.

Petitioner contends that the second circumstance applies to the instant case. The State submits Petitioner has failed to show that such a complete failure occurred in his case.

In *Bell v. Cone*, 535 U.S. 685, 122 S.Ct. 1843, at 1951, 152 L.Ed.2d 914 (2002), the Supreme Court clarified that *Cronic* presents a very limited exception to the application of the two-part *Strickland* test, and that *Cronic* applies only where counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing." Thus, counsel "must completely fail to challenge the prosecution's case, not just individual elements of it." *Haynes v. Cain*, 298 F.3d 375, 380-381 (5th Cir 2002).

Ultimately, this court, in *Bell v. Cone*, held that disputes over tactics such as those employed in the instant case are to be considered under *Strickland* and not *Cronic.*

Evidence of Petitioner's guilty was overwhelming. Petitioner was identified by one victim, Washington, before trial, and by both surviving victims at trial. Further, Petitioner made several voluntary and inculpatory statements to Tedder, detailing the crime he committed and his specific intent to kill, and even made comments about the offense while watching the related news reports (Vol. 16, pp. 3598-3606). The details of the offense that Petitioner shared with Tedder corroborated the surviving victims' versions of what transpired (Vol. 7, pp. 1639-1641, Vol. 16, pp. 3434-3451, 3617-3618). Additionally, Petitioner wrote a letter to his friend, Elijah Clark, admitting his guilt (Vol. 6, pp. 1364-1365; Vol. 18, pp. 3961-3964). No reasonable doubt existed regarding Petitioner's guilt.

The state Supreme Court noted the finding of facts proven at trial:

> "On May 29, 1995, defendant shot and killed the manager of a fast food restaurant in the course of an armed robbery. He also shot two other employees in the head, but they survived the injuries.
>
> The day after the shooting, defendant's girlfriend informed the police that defendant told her he had committed the robbery and murder. According to the girlfriend, defendant could not understand how the other victims survived because he shot them in the head.
>
> Several days later, one of the surviving victims picked defendant out of a line-up at the police station, and the other victim tentatively identified defendant as the person who had shot him. At trial, both victims positively identified defendant as the perpetrator.
>
> Upon his arrest, defendant gave an equivocal statement in which he both offered to sign a confession if the police would write it and claimed he was too impaired by drugs to remember anything about the

> day or night of the crime. He also told the officers that he was wanted for a shooting in Missouri. . .
>
> Defendant's girlfriend testified that defendant, on the night of the murder, indicated that he committed the crime, and the next day, after watching the news, he described how he shot each of the employees in the back of the head. One of the surviving victims testified that the perpetrator forced them to lie down in the freezer and shot each of them in the back of the head. She picked defendant out of a line-up a couple of days after the incident and identified him in court. In addition, the other surviving victim also identified the defendant in court as the man who robbed and shot them." *State v. Tyler*, at 942-943, 948.

The state district court declined to follow *Cronic*, after noting that the *Cronic* standard is appropriate when the absence, actions, or inactions of counsel compromise the very reliability of the trial process, thereby actually or constructively denying a defendant's Sixth Amendment right to counsel.

In *Cronic*, the court noted that "the Sixth Amendment does not require counsel to do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." 104 S.Ct. at 2145, fn. 19. Since the evidence presented against the defendant was strong, his trial counsel utilized a strategy of not contesting his guilt in the guilty phase in order to retain credibility for the penalty phase. Ultimately, Petitioner's trial counsel sought to save the Petitioner's life in its attempt of avoiding a death sentence in the penalty phase. Counsel presented extensive mitigation evidence of Petitioner's psychiatric history and witnesses to prove that he had suffered from mental illness since early childhood. Petitioner had a substantial history of mental disturbances, and trial counsel

concentrated on his mental history during the penalty phase. Counsel's decision to utilize that strategy does not amount failure to subject the State's case to any "meaningful adversarial testing, as Petitioner argues. Further, Petitioner was not "constructively denied counsel" by his defense counsel's actions. As the state district court noted, the strategic actions and decisions of Petitioner's trial counsel were reasonable, calculated and designed to reach the most positive outcome for Petitioner. The fact that their strategy was unsuccessful does not make their strategy ineffective.

Cronic applies in very limited circumstances where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing. Further, Cronic sets forth a standard of presumption of prejudice based upon extreme non-performance by defense counsel. Petitioner, however, has failed to show that there was such extreme non-performance by his trial counsel.

In *State v. Haynes*, 27,499 (La. App. 2 Cir. 11/1/95), 662 So.2d 849, *writ denied*, 95-2768 (La. 2/1696), 667 So.2d 1050, Haynes complained of his counsel's argument conceding Haynes' guilt of the underlying felonies relied on by the State for a conviction of first degree murder. Haynes complains that the trial court erred by forcing him to accept his attorney's strategy in handling the case, especially after he notified the judge that he did not want his lawyers to argue that he was guilty of any of the accusations made by the State. That court determined that *Strickland* and not *Cronic* applies to conflicts over trial strategy:

> "Where the assertion that counsel was ineffective rests on actions of counsel pertaining to the incident proceedings the *Strickland* test is

> applicable. To successfully claim ineffective assistance of counsel, defendant must show that counsel's performance was both deficient and specifically prejudicial to defendant.
>
> Here counsel's strategy was to persuade the jury against a capital verdict in the bifurcated proceedings. The State did not rely on defense counsel's concessions. The State's evidence was legally sufficient to prove that Haynes was engaged in one or more of the enumerated felonies in the first degree murder statute. Based on the totality of the evidence, a reasonable juror could have concluded that Haynes had committed the aggravated kidnapping, rape and armed robbery of Fang Yang. Because the evidence (the wallet, the rape and the DNA and blood evidence) proved that Haynes committed the underlying felonies, only one of which was necessary to convict, Haynes was not prejudiced by counsel's strategy to focus on the specific intent element and the requirement that specific intent be proved by what the circumstances indicated to the exclusion of other reasonable hypotheses of innocence." *Haynes, supra*, at 852.

On federal habeas review, the Fifth Circuit Court of Appeals issued an en banc opinion also finding that *Strickland* and not *Cronic* applied where there was a disagreement between a defendant and his counsel as to trial strategy. *Haynes v. Cain*, 298 F.3d 375 (5th Cir. 2002), *certiorari denied*, 537 U.S. 1072, 123 S.Ct. 676, 154 L.Ed.2d 567 (2002).

Petitioner argues that *Florida v. Nixon*, 543 U.S. 175, 125 S.Ct. 551 (2004), does not apply to cases where the client expressly objected to his attorney's concession of guilt. In *Nixon*, the court noted:

> "Despite [trial counsel's] concession, Nixon retained the rights accorded a defendant in a criminal trial. . . The State was obliged to present during the guilt phase competent, admissible evidence establishing the essential elements of the crimes with which Nixon was charged. That aggressive evidence would thus be separated from the penalty phase, enabling the defense to concentrate that portion of the trial on mitigating factors. Further, the defense reserved the right to cross-examine witnesses for the prosecution and could endeavor, as (trial counsel) did, to exclude prejudicial evidence. In addition, in the

> event of errors in the trial or jury instructions, a concession of guilt would not hinder the defendant's right to appeal. . .
>
> Attorneys representing capital defendants face daunting challenges in developing trial strategies, not least because the defendant's guilt is often clear. Prosecutors are more likely to seek the death penalty, and to refuse to accept a plea to a life sentence, when the evidence is overwhelming and the crime heinous... In such cases, "avoiding execution [may be] the best and only realistic result possible." ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases § 10.9.1, Commentary (rev. ed.2003)." *Nixon, supra*, at 543 U.S. 188, 125 S.Ct. at 561, 563, citations omitted.

It is clear that *Nixon* is applicable to the instant matter. Petitioner's attempts to dismiss and minimize trial counsel's efforts cannot obscure the fact that there is no legitimate basis for Petitioner's claim that trial counsel completely failed to test the State's case. Trial counsel diligently represented Petitioner. Trial counsel filed numerous pre-trial motions, including but not limited to several motions to suppress. Pre-trial preparations included the use of mitigation experts who investigated Petitioner's family, academic and psychiatric history. Trial counsel even had new psychiatric testing administered.

Trial counsel filed a Notice of Defense based upon Mental Condition, hoping to adduce their client's extensive psychiatric history in the guilty phase of the trial rather than waiting for the penalty phase (Vol. 6, p. 1304). Trial counsel also filed motions to recuse the Caddo Parish District Attorney's Office in an attempt to force the State to submit its proposed 404B "other crimes" evidence to the court for a determination of admissibility. Motions to suppress Petitioner's statement, identification, and evidence were also filed, even though a search warrant was issued (Vol. 2, pp. 513, 522, 517, 519). Trial counsel also filed a motion for a bill of

particulars and sought the witnesses' pre-trial statements (Vol. 2, pp. 511, 515, Vol. 3, p. 744). A full preliminary examination and hearings for the 404B evidence and motions to suppress were conducted.

At trial, Petitioner's trial counsel objected to the State's introduction of evidence relating to Petitioner's arrest that resulted from a drug buy. They also limited their cross-examination of the State's witnesses in an attempt to avoid reinforcing harmful testimony for the jury. They decided, instead, to bring out evidence of petitioner's mental instability. Trial counsel presented the testimony of Dr. Cecile Guin, who possessed a Ph.D. in social work. Dr. Guin conducted an extensive family history (Vol. 17, pp. 3769-3827, Vol. 18, pp. 3834-3876). Petitioner's mother, co-worker, aunts, and grandparents also testified (Vol. 18, pp. 3882-3971).

When Petitioner renewed his objections to the court after the State rested its case, trial counsel, namely, Alan Golden, stated in response:

> "If there was a chance that had a reasonable chance of success in the guilt phase of any responsive verdict, much less a not guilty verdict, we would have asserted it."

Trial counsel also stated that they wanted to maintain some credibility in the penalty phase where they wanted to raise pertinent questions about Petitioner's state of mind.

It is clear Petitioner's trial counsel diligently pursued the best course for their client. Petitioner is not entitled to relief pursuant under *Cronic*.

2. PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO A FAIR TRIAL AND SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION WERE NOT VIOLATED.

Petitioner argues that his Fourteenth Amendment rights to a fair trial were violated when his counsel entered the "functional equivalent of a guilty plea." Specifically, Petitioner erroneously characterizes trial counsel's strategic admission of guilt as the "equivalent of a guilty plea," which would require the express consent of a defendant to utilize that tactic. Petitioner argues that trial counsel's alleged failure to obtain such consent would make their strategic decision a violation of *Boykin v. Alabama, supra.*

In *Florida v. Nixon*, supra, in an opinion written by Justice Ginsberg, the court clearly stated that the strategy of admitting guilt in order to fight the death penalty is not the "equivalent" of a guilty plea." Rather, it is often the only reasonable course left to defense counsel in a capital case facing overwhelming evidence of guilt:

> "To summarize, in a capital case, counsel must consider in conjunction both the guilt and penalty phases in determining how best to proceed. When counsel informs the defendant of the strategy counsel believes to be in the defendant's best interest and the defendant is unresponsive, counsel's strategic choice is not impeded by any blanket rule demanding the defendant's explicit consent. Instead, if counsel's strategy, given the evidence bearing on the defendant's guilt satisfies the *Strickland* standard, that is the end of the matter; no tenable claim of ineffective assistance would remain." *Florida v. Nixon,* 543 U.S. at 92.

The state district court recognized that this court, in *Florida v. Nixon, supra,* concluded that counsel has latitude to act in the defendant's best interest based on

counsel's reasonable professional opinion, looking to both the guilt and penalty phases of a trial, as Petitioner's trial counsel did. *Florida v. Nixon, supra.*

Petitioner also argues that Sixth Amendment right to self-representation was violated when the trial court failed to explain that he had the right to represent himself when he attempted to "fire" his trial counsel. He invokes *Faretta, supra,* in support of his argument.

Faretta involves a defendant's right to represent himself during a criminal trial. This Honorable Court concluded that a defendant who knowingly and willfully requests to represent himself and presents his own defense cannot be denied that right. In such an instance, a defendant must express unequivocally his wish to represent himself.

The record indicates that a few weeks before the trial was scheduled to commence, Petitioner indicated that he disagreed with his trial counsel regarding the strategy to utilize. During the course of the trial, he requested the trial court appoint new counsel for him, and filed a federal 1983 action which he subsequently used as the basis for a motion to remove his trial counsel for conflict of interest. The federal 1983 action was ultimately denied (Vol. 8, pp. 1923-1928). On appeal, the state Supreme Court credited the trial court's findings that Petitioner's efforts to remove his defense counsel were merely dilatory tactics. *State v. Tyler*, 97-0338 (La. 9/9/98), 723 So.2d 939. Petitioner did not request to represent himself at any time.

Jurisprudence requires a clear and unequivocal invocation of Petitioner's right to self-representation. *Batchelor v. Cain*, 682 F.3d 400, (5th Cir. 2012). Petitioner never made a clear and unequivocal invocation of his right to self-representation. Further, there is no duty imposed upon the trial court to inform Petitioner of that right every time there is a conflict over trial strategy. Since Petitioner was never denied the right to represent himself, his *Faretta* rights were not violated.

3. DEFENSE COUNSEL DID NOT RENDER INEFFECTIVE ASSISTANCE UNDER THE STANDARD SET FORTH IN *STRICKLAND V. WASHINGON, SUPRA.*

Petitioner argues that trial counsel rendered ineffective assistance when they conceded guilt after failing to investigate and present a readily available innocence defense against Petitioner's wishes. A claim of ineffectiveness of counsel is analyzed under the two-prong test developed by the United States Supreme Court in *Strickland, supra.*

To establish that his attorney was ineffective, the defendant first must show that counsel's performance was deficient. This requires a showing that counsel made errors so serious that he was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. The relevant inquiry is whether counsel's representation fell below the standard of reasonableness and competency as required by prevailing professional standards demanded for attorneys in criminal cases. See *Strickland, supra.* The assessment of an attorney's performance requires his conduct to be evaluated from counsel's perspective at the time of the

occurrence. A reviewing court must give great deference to trial counsel's judgment, tactical decisions and trial strategy, strongly presuming he has exercised reasonable professional judgment. *State v. Grant*, 41,745 (La. App. 2 Cir. 4/4/07), 954 So.2d 823.

Second, the defendant must show that counsel's deficient performance prejudiced his defense. This element requires a showing that the errors were so serious as to deprive the defendant of a fair trial. *Strickland, supra.* This means that the defendant must demonstrate that but for counsel's unprofessional errors, the result of the proceedings would have been different. *Knighton v. Maggio,* 740 F. 2d 1344 (5th Cir. 1984), *certiorari denied, stay denied, Knighton v. Louisiana,* 469 U.S. 924 (1984); *State v. Thompson,* 39,454 (La. App. 2 Cir. 3/2/05), 894 So.2d 1268, 1281.

A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland v. Washington, supra.* Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." *Id; Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed.83 (1955).

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. *Strickland v. Washington*, supra.

In order for Petitioner to prevail on his ineffectiveness claim, he must show that counsel's decision to admit guilt was objectively unreasonable pursuant to the *Strickland* standard. Petitioner must show that trial counsel's tactical decisions, even if undertaken against his will, were so seriously in error that he was effectively deprived of representation and that he suffered prejudice by the alleged error. While opinions may differ on the advisability of such a tactic, hindsight is not the proper perspective for judging the competence of counsel's trial decisions. Neither may an attorney's level of representation be determined by whether a particular strategy is successful. *State v. Brooks*, 505 So.2d 714, 724 (La. 1987); *Strickland, supra.*

In *Bell v. Cone*, 535 U.S. at 695, the court reviewed its *Strickland* findings:

> "We reasoned that there would be a sufficient indication that counsel's assistance was defective enough to undermine confidence in a proceeding's result if the defendant proved two things: first, that counsel's "representation fell below an objective standard of reasonableness," 466 U.S. at 688, 104 S.Ct. 2052; and second, that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different," *id.*, at 694, 104 S.Ct. 2052. Without proof of both deficient performance and prejudice to the defense, we concluded it could not be said that the sentence or conviction "resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable," *id.*, at 687, 194 S.Ct. 2052, and the sentence or conviction should stand."

As we established in Petitioner's first claim, the evidence was overwhelming. Petitioner was identified by one victim, Washington, before trial, and by both surviving victims at trial (Vol. 8, p. 1825, Vol. 16, p. 3453-3454). Petitioner made several inculpatory statements to Tedder detailing the crime he committed and his specific intent to kill, and even made comments about the offense while watching the related news reports (Vol. 16, pp. 3598-3606). The details of the offense that Petitioner shared with Tedder corroborated the surviving victims' versions of what transpired (Vol. 7, pp. 1639-1641, Vol. 16, pp. 3434-3451, 3617-3618). Additionally, Petitioner wrote a letter to his friend, Elijah Clark, admitting his guilt (Vol. 6, pp. 1364-1365; Vol. 18, pp. 3961-3964).

Nevertheless, trial counsel diligently represented Petitioner, filing numerous pre-trial motions, including but not limited to several motions to suppress. Trial counsel also filed a motion for a bill of particulars and sought the witnesses' pre-trial statements (Vol. 2, pp. 511, 515, Vol. 3, p. 744). A full preliminary examination and hearings for the 404B evidence and motions to suppress were conducted.

This court in *Strickland* concluded that without proof of both deficient performance and prejudice to the defense, it could not be said that the sentence or conviction "resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable," and that the sentence or conviction should stand. *Strickland, supra; Bell, supra.* Petitioner has failed to meet that burden and has failed to satisfy either the error or prejudice prong of Strickland, and both must be met to warrant relief. As the state district court noted, Petitioner's trial counsel,

in light of evidence against Petitioner, used reasonable strategy and professional judgment in conceding Petitioner's guilt to the offense in order to focus on proving that Petitioner's mental instability and erratic behavior does not warrant the imposition of the death penalty. Petitioner's claims are without merit.

CONCLUSION

Respondent State of Louisiana shows that the application for writ of certiorari should be denied in the instant case. *Strickand,* not *Cronic*, applies to petitioner's claim of ineffective assistance of counsel. Further, Petitioner has failed to prove that his constitutional rights were violated, and that he received ineffective assistance of counsel under the *Strickland* test. His claims are without merit.

WHEREFORE, the State of Louisiana prays that the application for writ of certiorari be denied.

Respectfully submitted,

Dated: August 1, 2016

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NO. 15-8114

SUPREME COURT OF THE UNITED STATES

JAMES TYLER,
Petitioner

v.

LOUISIANA,
Respondent

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 1st day of August, 2016, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying Opposition to Application for Writ of Certiorari was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:
Honorable Gary P. Clements
Capital Post-Conviction Project of Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112.

this 1st day of August, 2016.

James E. Stewart, Sr.