

No. _____

**In the
Supreme Court of the United States**

STEPHEN DUNCAN, Warden,
PETITIONER,

v.

LAWRENCE OWENS,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

No clearly established precedent of this Court holds that it violates the Constitution for a finder of fact to infer a criminal defendant's motive when the motive is a non-element of the offense and is not directly established by the evidence at trial. Respondent claimed that the judge at his bench trial made improper "extrajudicial" findings regarding his motive and thus found him guilty based on evidence not produced at trial. The state appellate court upheld respondent's conviction, holding that the trial court's speculation regarding motive was harmless. The Seventh Circuit overturned respondent's conviction on habeas corpus review, finding that the trial court's inference about motive violated respondent's right to have his guilt adjudicated solely on the evidence introduced at trial, and that the error was not harmless.

Did the Seventh Circuit violate 28 U.S.C. § 2254 and a long line of this Court's decisions by awarding habeas relief in the absence of clearly established precedent from this Court?

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PETITION FOR A WRIT OF CERTIORARI

Stephen Duncan, Warden of the Lawrence Correctional Center in Sumner, Illinois, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, which, in a published opinion, reversed the district court's denial of habeas relief pursuant to 28 U.S.C. § 2254.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit granting habeas relief (App. 1a-10a) is reported at 781 F.3d 360. The memorandum opinions of the United States District Court for the Northern District of Illinois denying relief (App. 11a-55a (denying habeas relief on respondent's ineffective assistance of counsel claim and declining to issue a certificate of appealability (CA) on all claims) & App. 56a-90a (denying habeas relief in part, including on the claim at issue in the present application)) are unpublished but are reported at 2014 WL 539125 and 2012 WL 1416432. The order of the Supreme Court of Illinois denying leave to appeal on postconviction appeal (App. 91a) is reported at 955 N.E. 2d 477 (Table) (Ill. 2011). The unpublished opinion of the Illinois Appellate Court affirming respondent's judgment of conviction on postconviction appeal (App. 92a-95a) is unreported. The order of the Supreme Court of Illinois denying leave to appeal on direct appeal (App. 96a) is reported at 788 N.E. 2d 733 (Table) (Ill. 2003). The unpublished opinion of the Illinois Appellate Court affirming respondent's

judgment of conviction on direct appeal (App. 97a-129a) is unreported.

JURISDICTION

The court of appeals entered judgment on March 23, 2015. App. 1a-10a. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

Section 2254 of Title 28 of the United States Code, enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), provides in relevant part:

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

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

STATEMENT

The Seventh Circuit's decision in this case violates both Congress's prohibition on habeas relief in the absence of clearly established precedent of this Court supporting the defendant's claim, 28 U.S.C. § 2254(d)(1), and this Court's repeated admonitions that the lower courts comply with this requirement, *see, e.g., Woods v. Donald*, 135 S. Ct. 1372, 1378 (2015) (per curiam); *Glebe v. Frost*, 135 S. Ct. 429, 430-32 (2014) (per curiam); *Lopez v. Smith*, 135 S. Ct. 1, 4 (2014) (per curiam); *Wright v. Van Patten*, 552 U.S. 120, 124-26 (2008) (per curiam) (reversing Seventh Circuit); *Carey v. Musladin*, 549 U.S. 70, 77 (2006); *see also Hardy v. Cross*, 132 S. Ct. 490, 495 (2011) (per curiam) (reversing Seventh Circuit and focusing on "unreasonable application" prong of § 2254(d)). The decision below should be reversed, either summarily or after briefing and argument.

1. On November 8, 2000, following a bench trial in the Circuit Court of Cook County, Illinois, respondent Lawrence Owens was convicted of first degree murder for beating Ramon Nelson to death with a baseball bat (or something similar) outside a liquor store in Markham, Illinois. App. 97a. Owens was identified by two eyewitnesses. App. 103a, 107a. Announcing its judgment, the trial court stated:

I think all of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer, who [respondent] knew he was a drug dealer. [Respondent] wanted to

knock him off. I think the State's evidence has proved that fact. Finding of guilty of murder.

App. 110a. The court sentenced respondent to twenty-five years of imprisonment. *Id.*

2. On direct appeal, respondent argued that the above-quoted remarks established that the court made improper "extrajudicial" findings regarding respondent's motive and based its finding of guilt on evidence not introduced at trial. App. 98a. Motive is not an element of first degree murder in Illinois, *see People v. Hobbs*, 220 N.E.2d 469, 472 (Ill. 1966), and the trial evidence did not address whether respondent knew the victim or knew that he was a drug dealer. The Illinois Appellate Court affirmed respondent's conviction, holding that the trial court's inference regarding respondent's motive was harmless. App. 120a. Respondent renewed his claim in a petition for leave to appeal to the Illinois Supreme Court, which the court denied in April 2003. App. 96a.

3. In December 2008, while his state collateral challenge was pending, respondent filed a petition for habeas corpus under 28 U.S.C. § 2254, arguing, in part, that the trial court had made improper "extrajudicial" findings regarding his motive and thus based its finding of guilt on evidence not introduced at trial. App. 57a. In April 2012, the district court ordered an evidentiary hearing on an unrelated ineffective assistance of counsel claim and denied respondent's other claims. App. 88a. With regard to the "extrajudicial" findings claim, the district court

held that respondent failed to identify “any Supreme Court precedent that the Appellate Court allegedly applied in an unreasonable or contrary way.” App. 76a. The district court also held that even if respondent could identify any Supreme Court precedent violated by the trial court’s inference as to motive, the state appellate court’s harmless error finding was a reasonable application of *Chapman v. California*, 368 U.S. 18 (1967). App. 76a-77a. Following a March 2013 evidentiary hearing, the district court denied habeas relief on respondent’s ineffective assistance of counsel claim and declined to issue a CA. App. 54a. The Seventh Circuit granted a CA limited to the question of whether respondent’s due process rights were violated because the trial judge relied on “extra-record facts” in determining respondent’s guilt.

4. On March 23, 2015, the appellate panel issued its opinion granting respondent habeas relief under 28 U.S.C. § 2254. App. 10a. The Seventh Circuit held that the trial judge’s inference about motive violated respondent’s right to have his guilt adjudicated based solely on the evidence introduced at trial, and that the error was not harmless under the standard articulated in *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). *Id.*

The Seventh Circuit stated that “only clearly established violations of a defendant’s constitutional rights permit [the court] to reverse a state court decision challenged in a federal habeas corpus proceeding.” App. 9a-10a. The Seventh Circuit then granted habeas relief, despite acknowledging that “we know of no case identical to this one,” but stating that

“identity can’t be required.” 10a. Citing cases from this Court in which the fact-finder was exposed to information or influences other than properly introduced evidence of defendant’s guilt, the Seventh Circuit concluded that the state trial judge’s inference as to respondent’s motive violated respondent’s “right to have [his] guilt or innocence adjudicated on the basis of evidence introduced at trial.” *Id.*

REASONS FOR GRANTING THE PETITION

The Seventh Circuit's published decision defies AEDPA and the many decisions of this Court establishing and reaffirming that clearly established Supreme Court precedent is required to support a grant of habeas relief.

1. Habeas relief is not permitted under § 2254(d)(1) unless a state court decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by” this Court. *See Davis v. Ayala*, 576 U.S. ___, slip. op. at 11 (2015) (state court decision holding a constitutional claim harmless constituted adjudication on the merits, and accordingly, habeas relief could not be granted unless state court's rejection of claim was contrary to, or involved an unreasonable application of, clearly established Supreme Court precedent). In discussing what law is clearly established enough to support habeas relief, this Court has repeatedly “cautioned the lower courts . . . against ‘framing [its] precedents at [] a high level of generality.’” *Smith*, 135 S. Ct. at 4 (2014) (quoting *Nevada v. Jackson*, 133 S. Ct. 1990, 1994 (2013) (per curiam)). The Seventh Circuit failed to abide by these requirements in this case.

2. None of the cases that the Seventh Circuit relied on provides the clearly established precedent of this Court that is necessary for habeas relief. More specifically, no case supports respondent's claim that because no evidence directly established the trial court's inference as to his motive, which was not an element of his crime, his rights were violated. Instead,

the cases on which the Seventh Circuit relied involved juries that were exposed to prejudicial and improper information or influences from which guilt could be inferred.

These cases are inapposite. In *Taylor v. Kentucky*, 436 U.S. 478 (1978), for example, *see* App. 10a, this Court held that the right to a fair trial was violated where the prosecution invited the jury to infer defendant's guilt from the fact that he had been arrested and indicted and where the court provided inadequate instructions regarding the State's burden of proof. 436 U.S. at 485-88. But unlike the defendant in *Taylor*, not only did respondent have a bench trial, but the State did not invite the trial judge to infer respondent's guilt from any improper basis. Indeed, respondent has never suggested that the trial judge relied on any information beyond the properly introduced trial evidence to find the elements of first degree murder.

The Seventh Circuit's reliance on *Estelle v. Williams*, 425 U.S. 501 (1976), *see* App. 10a, is similarly misplaced. *Williams* held that the right to a fair trial was violated where the defendant was compelled to appear before the jury in prison attire. 425 U.S. at 512. But again, respondent has never argued that any such prejudicial factor influenced the verdict in this case.

The final case of this Court on which the Seventh Circuit relied, *Holbrook v. Flynn*, 475 U.S. 560 (1986), *see* App. 10a, is even more inapposite. There, this Court held that the right to a fair trial was *not* violated

by the presence of additional, uniformed security personnel in the courtroom. 475 U.S. at 572. *Flynn* thus offers no support for respondent's claim.

In sum, so long as the State's evidence is sufficient to establish the elements of the crime and there is no improper influence on the fact-finder's decision-making process, no case relied on by the Seventh Circuit, and no other precedent of this Court, holds that due process is violated when the trier of fact infers a theory of the case that, while consistent with the evidence presented, also goes beyond it.

3. The Seventh Circuit pointed to two of its own decisions, *United States v. Moore*, 572 F.3d 334, 341 (7th Cir. 2009), and *United States v. Garcia*, 439 F.3d 363, 366-68 (7th Cir. 2006), as clearly establishing the legal merits of respondent's claim. App 10a. But circuit precedent cannot satisfy AEDPA's requirement of clearly established law. *Parker v. Matthews*, 132 S. Ct. 2148, 2155 (2012). Nor can a circuit court derive clearly established law by "refin[ing] or sharpen[ing] a general principle of Supreme Court jurisprudence into a specific legal rule that this Court has not announced." *Marshall v. Rodgers*, 133 S. Ct. 1446, 1451 (2013) (per curiam); see also *Smith*, 135 S. Ct. at 4 (quoting *Rodgers*). *Moore* and *Garcia* are thus irrelevant to the § 2254(d) analysis.

Even if reliance on Seventh Circuit precedent were appropriate, *Moore* and *Garcia* do not support, much less clearly establish, the legal merits of respondent's claim. In *Moore*, the court recited the general principle that "[g]uilt beyond a reasonable doubt cannot be

premised on pure conjecture,” 572 F.3d at 341, while *upholding* a conviction in which the jury had to infer a variety of connections between different pieces of evidence and disregard other evidence in order to accept the government’s theory of the case, *id.* at 337-41. Likewise, the *Garcia* court uncontroversially observed that the presumption of innocence means that a jury cannot be “encouraged (or allowed) to consider facts which have not been received in evidence.” 439 F.3d at 367. But *Garcia* also upheld the conviction over the defendant’s challenge to expert testimony that, he claimed, encouraged an inappropriate inference of his guilt. *Id.* at 368 (distinguishing *Taylor*, 436 U.S. at 484-90). Neither case supports respondent’s claim.

4. Perhaps recognizing that the lack of clearly established Supreme Court precedent is an insurmountable obstacle to the grant of habeas relief, the Seventh Circuit engaged in a labored (and ultimately unsuccessful) effort to conform petitioner’s claim to existing precedent by mischaracterizing the state trial judge’s remarks. The Seventh Circuit wrongly construed those remarks to establish that the trial judge found the State’s evidence insufficient to find respondent guilty, and that the trial judge’s conclusion was based solely, or at least primarily, on the inference that respondent knew the victim was a drug dealer. App. 8a-9a. But to the contrary, the judge explicitly referred to “the State’s evidence” in rendering his verdict. App. 4a-5a. That evidence, which included two eyewitnesses who identified respondent as the murderer, as well as respondent’s

attempted flight when he was stopped for speeding shortly after the murder, was more than sufficient to sustain respondent's conviction, and respondent does not argue otherwise. That the trial judge inferred a motive, which is not an element of the crime, while noting that the witnesses all "skirted" that issue, does not negate the fact that he relied on "the State's evidence" to convict respondent. *Id.*

In any event, even if the Seventh Circuit's description of the trial judge's thinking were accurate, habeas relief would still be precluded because the State's evidence was sufficient to establish the elements of the crime and there was no improper influence on the trier's decision-making process. No case relied on by the Seventh Circuit and no other precedent of this Court holds otherwise, thus precluding habeas relief. *See supra* at 8-9.

5. The Seventh Circuit's grant of habeas relief in this case is impossible to reconcile with AEDPA—as well as with the decisions of this Court construing it—which emphasizes comity, finality, and federalism. *See Williams v. Taylor*, 529 U.S. 420, 436 (2000). Given the importance of these interests, the absence of a circuit split has not deterred this Court from granting certiorari (and reversing) in numerous cases in which the federal appellate courts have ignored the dictates of § 2254 and granted habeas relief despite the absence of clearly established Supreme Court precedent. *See, e.g., Donald*, 135 S. Ct. at 1378; *Frost*, 135 S. Ct. at 430-32; *Smith*, 135 S. Ct. at 4; *Van Patten*, 552 U.S. at 124-26; *Musladin*, 549 U.S. at 77; *see also Cross*, 132 S. Ct. at 495. This Court should

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summarily reverse the judgment in this case, or, in the alternative, grant this petition and set the case for full briefing and argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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