

In the
Supreme Court of the United States

WILLIAM NATHANIEL WASHINGTON,
Petitioner,

v.

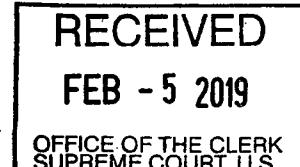
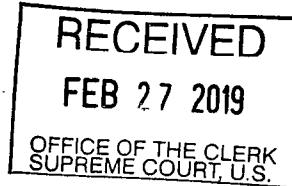
SCOTT FRAUENHEIM, Warden,
Respondent.

Petition for Rehearing to
United States Supreme Court Justice Brett Kavanaugh

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

TABLE OF CONTENTS

GROUND FOR REHEARING	1.
STATEMENT OF THE CASE	3.
REASONS FOR GRANTING THE PETITION	5.
ARGUMENT	
I. THE FAILURE OF THE STATE PROSECUTION IN ITS DUTY TO CORRECT THE SHOWING THAT EVIDENCE HAD BEEN DELIBERATELY FABRICATED TO FRAME PETITIONER, ON THE DAY OF ARREST, SIGNIFIED THAT ALL EVIDENCE THAT HAD BEEN COMPILED BY DETECTIVE DIAMOND, INCLUDING THE CREDIBILITY OF THE INVESTIGATION AGAINST PETITIONER, HAD BECOME TAINTED AND UNTRUSTWORTHY. FURTHERMORE, AND MORE IMPORTANTLY, THE STATE PROSECUTION, AS WELL AS, THE STATE COURT WERE PRECLUDED FROM USING ANY AND ALL EVIDENCE THAT WAS COMPILED BY DETECTIVE DIAMOND [WITHOUT THE STATE PROSECUTION REBUTTING THE SHOWING THAT EVIDENCE HAD BEEN DELIBERATELY FABRICATED, BY DETECTIVE DIAMOND, TO FRAME PETITIONER].	
CONCLUSION	10.
CERTIFICATION	11.

No. 18-6945

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PETITION FOR WRIT OF CERTIORARI

William Nathaniel Washington, Petitioner, petitions United States Supreme Court Justice Brett Kavanaugh to grant review of his Petition for Writ of Certiorari before this Honorable Supreme Court, which denied his petition on January 22, 2019.

GROUNDS FOR REHEARING

This Petition for Rehearing is being made on the grounds that:

1. Intervening Circumstances of a Substantial and

Controlling Effect Exist Within Petitioner's Case, Warranting This Court's Exercise of Discretionary Powers, and Adequate Relief Cannot Be Obtained In Any Other Form and From Any Other Court.

2. These Circumstances Require This Court To Revisit It's Ruling in *Gerstein v. Pugh*, 420 U.S. 103, 119-20 (1975), To Allow For the Limited and Narrow Exception To the Rule That There Is No Federal Constitutional Right To a Preliminary Hearing, So As To Grant Permission To the Lower Courts, Permitting Them To Exercise Federal Habeas Corpus Review Of Substantive Due Process Errors, Involving Allegations Of Individuals Being Framed By Law Enforcement and/or Other Government Personnel, [If] These Substantive Due Process Errors Occur and/or Surface During the Preliminary Hearing Stage Of the Criminal Proceedings.
3. Evidence That Has Never Been Rebutted By the Prosecution Exist In the Preliminary Hearing Record That Proves Petitioner Was Framed On the Day Of His Arrest. However, Due To the Fact That This Court Has Ruled That There Is No Federal Constitutional Right To a Preliminary Hearing, the Lower Court Has Refused To Grant Relief For An Error Surfacing During the Preliminary Hearing Which Proves That the Lead Investigator In Petitioner's Prosecution Deliberately Fabricated Evidence To Frame Petitioner On the Very Day Petitioner Was Arrested.
4. This Refusal By the Lower Court Led To the Assumption That the Remainder Of the Evidence That Had Been Compiled By the Lead Investigator, Including This Investigator's Investigation Against the Petitioner, Had Not Been Tainted By the Unrebutted Evidence Proving Petitioner Had Been Framed. Moreover, the Remainder Of the Evidence Compiled By the Lead Investigator Was Presumed To Be

Trustworthy By the Lower Courts, and Was Used To Find Probable Cause To Bind the Petitioner For Trial In Belief That Petitioner Committed the Criminal Offenses, and Was Used In Petitioner's Trial Proceedings In Order To Convict the Petitioner.

5. The California Preliminary Hearing Is a State-Created Liberty Interest That Is Supposed to Ensure and Guarantee That Defendants Federal Rights Are Protected. However, In the Instant Case, Petitioner's Constitutional Due Process Right "[Not To Be Subjected] To Criminal Charges" That Are Based On False Evidence That Was Deliberately Fabricated By the Government, (See *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001)(en banc)), Was Completely Ignored By the Lower Courts.

STATEMENT OF THE CASE

On January 26, 2012, Los Angeles Police Department Detective, Marc Diamond deliberately fabricated evidence to frame the Petitioner for the criminal charges that he had been arrested as a suspect to. This detective forged Petitioner's signature on a L.A.P.D. Investigative Action/Statement Form, and then, subsequently fabricated the L.A.P.D. Follow-Up Police Reports to state that Petitioner had confessed to this detective of being guilty of all the criminal charges that Petitioner had been arrested as a suspect to.

On October 31, 2012, during Petitioner's Preliminary Hearing, it was alleged by the Petitioner that L.A.P.D. Detective Diamond deliberately fabricated evidence to frame him on the day that he had been arrested, in which, Petitioner's signature had been forged on a Police Department document used for taking confessions, and then, subsequently, a fabricated confession was created to state that Petitioner was guilty of committing 20 criminal acts.

The Petitioner to prove that these above-mentioned allegations actually occurred, called Handwriting Expert, Laurie Hoeltzel, to testify on behalf of the defense. This expert testified to the fact

that the signature on the L.A.P.D. Investigative Action/Statement form HAD NOT been written by the Petitioner, and WAS, in fact, a FORGERY. See Appendix A, Pages 58-59.

The state prosecution DID NOT challenge this showing of false evidence, and DID NOT "correct" a showing of false evidence when it first appeared.

However, the state preliminary hearing court [IN ABSENCE OF THE STATE PROSECUTION REBUTTING THE SHOWING OF EVIDENCE BEING DELIBERATELY FABRICATED BY DETECTIVE DIAMOND] presumed that the remainder of the evidence compiled by Diamond had not been tainted, but was trustworthy.

Petitioner raised the issue of deliberate fabrication of evidence in the United States District Court for the Central District of California, in a petition for a writ of habeas corpus, filed under §2254.

The district court refused to grant relief for the Substantive Due Process violations occurring and/or surfacing during the preliminary hearing, on the grounds that there is no federal constitutional right to a preliminary hearing; and since there is no federal constitutional right to a preliminary hearing: "Even if Petitioner could prove that Detective Diamond forged his signature and lied about it and Petitioner's alleged confession at the preliminary hearing", "that would not support relief because there is no federal constitutional right to a preliminary hearing." See Appendix 36a, Lines 19-25, of the Petition for a Writ of Certiorari.

The district court denied and dismissed Petitioner's habeas corpus petition with prejudice, and refused to issue a Certificate of Appealability on the grounds that Petitioner had not shown the denial of a constitutional right.

The Ninth Circuit Court of Appeal also refused to issue a Certificate of Appealability on the grounds that Petitioner had not made a showing of the denial of a constitutional right, DESPITE it's own ruling in *Devereaux v. Abbey*, *supra*, that holds that there exist a constitutional due process right to be free from prosecution based on deliberately fabricated evidence.

REASONS FOR GRANTING THE PETITION

ARGUMENT

- I. THE FAILURE OF THE STATE PROSECUTION IN ITS DUTY TO CORRECT THE SHOWING THAT EVIDENCE HAD BEEN DELIBERATELY FABRICATED TO FRAME PETITIONER, ON THE DAY OF ARREST, SIGNIFIED THAT ALL EVIDENCE THAT HAD BEEN COMPILED BY DETECTIVE DIAMOND, INCLUDING THE CREDIBILITY OF THE INVESTIGATION AGAINST PETITIONER, HAD BECOME TAINTED AND UNTRUSTWORTHY. FURTHERMORE, AND MORE IMPORTANTLY, THE STATE PROSECUTION, AS WELL AS, THE STATE COURT WERE PRECLUDED FROM USING ANY AND ALL EVIDENCE THAT WAS COMPILED BY DETECTIVE DIAMOND [WITHOUT THE STATE PROSECUTION REBUTTING THE SHOWING THAT EVIDENCE HAD BEEN DELIBERATELY FABRICATED, BY DETECTIVE DIAMOND, TO FRAME PETITIONER].

The root of the problem existing in Petitioner's case is that this Court has ruled that there is no federal constitutional right to a preliminary hearing. See *Gerstein v. Pugh*, *supra*.

The United States District Court and Ninth Circuit Court of Appeal hold the view that since there is no federal constitutional right to a preliminary hearing, even if you could prove that the lead investigator responsible for your prosecution, who incidentally gathered and compiled all of the evidence against you, actually framed you the very day you were arrested, [at your preliminary hearing], this Fourteenth Amendment Due Process violation being shown to have occurred at the preliminary hearing stage of the criminal proceedings cannot form the basis of a federal habeas corpus claim. As such, the claim of deliberate fabrication of evidence is not cognizable on federal habeas corpus review.

This precise reasoning of a federal court is appalling and offensive to the very principles of Due Process. To allow the imprisonment of Petitioner to continue despite UNREBUTTED and CREDIBLE evidence existing, in Petitioner's state criminal record, which clearly proves that the lead investigator of his criminal prosecution "deliberately fabricated evidence", so as to frame the

Petitioner on the day he was arrested, and then, to turn around and say that the remainder of the evidence that was compiled by this investigator was not tainted by this showing of false evidence, and is trustworthy enough to be used to make a finding of probable cause and/or convict the Petitioner at trial [WITHOUT] having rebutted and overcome with independant evidence, the showing of false evidence [FIRST], is an absolute MANIFEST INJUSTICE that undoubtedly is contrary to the principles of due process.

Petitioner' case is a perfect example illustrating why false evidence shown to exist must be "corrected", at its appearance. The entire credibilty and integrity of the investigation against the Petitioner is compromised, by the State's failure to correct false evidence at its appearance.

How can any of the evidence compiled by the lead investigator be trusted, if there exist evidence in the record proving that this investigator is willing to deliberately fabricate evidence and frame a person, and the evidence in the record has never been rebutted and overcame by the prosecution?

The truth of this matter is that it would be impossible to make the accurate determination of which evidence compiled by the lead investigator can be trusted, and which evidence has been also deliberately fabricated to further frame the Petitioner.

This is the sole reason that regardless of the fact that there is no federal constitutional right to a preliminary hearing, an exception to this rule must be taken, that will allow for federal habeas corpus review in circumstances where there exist preliminary hearing evidence proving that a defendant has been framed by the government.

If evidence just so happens to surface at the preliminary hearing proving that a defendant has been framed by the Police, then, the criminal proceedings must be stayed pending a determination of whether evidence had been deliberately fabricated to frame the defendant. If the evidence in the criminal record that proves that the defendant was framed is not rebutted by the prosecution, then this case must be dismissed and the defendant is entitled to immediate release from incarceration.

The lower courts have been presented with evidence from, not only, the preliminary hearing record, (see Appendix A), but with evidence offered by a second expert in the field of handwriting, (see Appendix B), who incidentally was barred by the state trial court from testifying against Detective Diamond, and undoubtedly impeaching this detective, who had testified before the jury that the Petitioner had signed the L.A.P.D. Investigative Action/Statement form. See Appendix C.

The lower courts are well aware of the fact that the prosecution failed to correct a showing of false evidence at the preliminary hearing, and that Petitioner was held in-custody to answer to criminal charges based in-part on evidence that was testified to the fact was actually false evidence, and evidence that the prosecution never proved to be trustworthy and actually real.

However, without guidance from this Court, the lower courts are operating under the presumption that if a preliminary hearing is conducted, and evidence surfaces and it is revealed that a crime has actually been committed by the lead investigator of your prosecution, and this crime that was committed is an actual act of framing a person, then, this Fourteenth Amendment Substantive Due Process violation is not cognizable on federal habeas corpus review, since there is no federal constitutional right to a preliminary hearing.

This specific reasoning of a federal court refusing to grant relief simply because there is no federal constitutional right to a preliminary hearing is a manifest injustice. It is extremely prejudicial to ignore evidence showing that Petitioner was framed just because the state court was not obligated to conduct a preliminary hearing. To the contrary, the preliminary hearing, under the exact circumstances existing in Petitioner's case, became the evidentiary hearing that was supposed to ensure and guarantee that Petitioner's Constitutional Due Process right pursuant to *Devereaux v. Abbey*, *supra*, was not violated. The right "not to be framed by the government" is absolute. You, cannot break the law to uphold the law.

If, as in the case of the Petitioner, evidence was introduced into the criminal record showing that the defendant has been framed

by law enforcement personnel, and the prosecution fails in its obligation under *Napue v. Illinois*, 360 U.S. 264, 269, 3 L.Ed.2d 1217, 79 S.Ct. 1173 (1959), to CORRECT false evidence when it appears, then, these circumstances warrant and demand dismissal with prejudice of the charges that he or she is being held in-custody with, and entitle the defendant to immediate release from prison or jail.

SUBSTANTIVE DUE PROCESS

This Court time and time again has held that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974). This protection is designed to, or at least it was intended to "prevent government officials" "from abusing [their] power or employing it as an instrument of oppression". *Collins v. Harker Heights*, 503 U.S. 115, 126, 117 L.Ed.2d 261, 112 S.Ct. 1061 (1992); see also *Deshaney v. Winnebago County Dept. of Social Servs.*, 489, 196, 103 L.Ed.2d 249, 109 S.Ct. 998 (1989); *Davidson v. Cannon*, 474 U.S. 344, 348, 88 L.Ed.2d 677, 106 S.Ct. 668 (1986).

This Court holds the provision that "[n]o State shall... deprive any person of life, liberty, or property, without due process of law," U.S. Const., Amdt. 14, §1, to "guarante[e] more than fair process," *Washington v. Glucksberg*, 521 U.S. 702, 719, 138 L.Ed.2d 772, 117 S.Ct. 2258 (1997), and to cover a substantive sphere as well, "barring certain government actions regardless of the fairness of the procedures used to implement them," *Daniels v. Williams*, 474 U.S. 327, 331, 88 L.Ed.2d 662, 106 S.Ct. 662 (1986).

So, when this Due Process protection fails to prevent a law enforcement officer from "deliberately fabricating evidence" and framing a person, and it is revealed at the preliminary hearing that this misconduct actually occurred, should not the Substantive Due Process protections bar prosecution against the individual, UNLESS and/or UNTIL the prosecution rebuts and overcomes the showing that evidence had been deliberately fabricated to frame this individual?

The answer to this question of law is that the Fourteenth Amendment SUBSTANTIVE Due Process protection guaranteeing against arbitrary action of government should trigger the enforcement of a bar against prosecuting this individual, UNLESS and/or UNTIL the prosecution proves that the false evidence is not false evidence,

This bar against prosecution, in theory, creates a sphere of protection that is impenetrable by the prosecution, UNLESS the prosecution proves that the evidence presented by the defendant, that proves that the police framed him, is wrong. This has not occurred in the instant case.

The only reason, it seems, that the Petitioner's case is not being granted relief for this Fourteenth Amendment Substantive Due Process violation is strictly because this Court must revisit its ruling in *Gerstein v. Pugh*, *supra*, and amend its ruling allowing federal habeas corpus review of Substantive Due Process errors, involving allegations of individuals being framed by law enforcement and/or other government personnel, [IF] this Substantive Due Process violation is revealed to have occurred during the preliminary hearing stage of criminal proceedings.

In the State of California, defendants have been enjoying a state-created liberty interest to have a preliminary hearing conducted, which is supposed to ensure that no federal rights are in violation. And at this hearing if the state prosecution is unable to show by a preponderance of evidence that the defendant is guilty of committing the criminal charges, then the preliminary hearing court will dismiss the criminal charges, and release the defendant. The evidence that is being used by the prosecution at this hearing to prove that the defendant is guilty of committing the criminal charges at the preliminary hearing, was forwarded by the lead investigator to the prosecution.

Now, if evidence is presented at this same preliminary hearing proving that the lead investigator ACTUALLY committed a crime, and this crime was an act of framing the defendant, then, this evidence proving that the lead investigator framed you [precludes] the prosecution from being permitted from using ANY of the evidence that was forwarded to the prosecution by the lead investigator, UNLESS and/or UNTIL the prosecution proves that the evidence proving that

you were framed, is able to prove with other evidence that you were not framed, and that the evidence compiled by the lead investigator is credible and can be trusted.

Furthermore, and more importantly, [without] the prosecution overcoming the showing of "deliberate fabrication of evidence", ALL evidence compiled by the lead investigator is tainted, and CANNOT be used at the preliminary hearing stage and/or any other stage in the criminal proceedings. So, unless there is other evidence that is independant of the lead investigator and can be guaranteed by a supervising authority to have remained free from contact or influence by the lead investigator, which, in Petitioner's case, is Detective Diamond, the Fourteenth Amendment Substantive Due Process sphere mandates dismissal with prejudice of the criminal charges that were filed.

CONCLUSION

The integrity of the entire investigation against the Petitioner has been compromised by the failure of the prosecution to rebut and correct a showing of false evidence. There is not any guaranteed method of being able to distinguish between what evidence is real, and has not been altered, doctored, tampered with, modified, and/or planted to further frame the Petitioner, and what evidence is false.

This being the circumstances of Petitioner's case, this Court granting review of the petition to revisit it's prior ruling in *Gerstein*, WILL PERMIT the lower courts to review Substantive Due Process errors occurring or surfacing during the preliminary hearing stage of criminal proceedings, in cases involving allegations of individuals being framed by the government, in a federal habeas corpus petition.

The petition for rehearing should be granted.

Dated: January 27, 2019

Respectfully submitted,


WILLIAM NATHANIEL WASHINGTON

CERTIFICATION

I, William Nathaniel Washington, hereby certify under penalty of perjury that this petition for rehearing is limited to intervening circumstances of a substantial and controlling effect existing within my case, warranting this Court's exercise of discretionary powers, and adequate relief cannot be obtained in any other form and from any other Court. This petition for rehearing is being presented to this Court in good faith and not for purposes of delay or to inconvenience the Court.

Executed this 27th day of January, in the year 2019, at Coalinga, California.



WILLIAM NATHANIEL WASHINGTON

**Additional material
from this filing is
available in the
Clerk's Office.**