CAUSE NO. 18-7016

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

****

TUAD DAMONN WASHINGTON
PETITIONER PRO-SE

****

LORIE DAVIS, DIRECTOR, TDCJ-CID
RESPONDENT

****

FROM THE 5TH CIRCUIT COURT OF APPEALS
NO. 17-20745
U.S.D.C. SOUTHERN DISTRICT OF TEXAS
NO. 4:17-CV-1650
TEXAS COURT OF CRIMINAL APPEALS
PDR NO. 308-17
TEXAS 9TH COURT OF APPEALS
NO. 09-15-00462
TEXAS 9TH JUDICIAL DISTRICT
NO. 13-01-00068-CR

****

PETITION FOR WRIT OF CERTIORARI

****

Tuad Damonn Washinton
Petitioner Pro-Se
2030037 Michael
2664 FM 2054
Tennessee Colony, TX 75886

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Tuad Damonn Wasgington — PETITIONER
(Your Name)

vs.

Lorie Davis, Director TDCJ-CID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Southern District Court - Houston
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tuad Damonn Washington, Pro-Se
(Your Name)

#2030027 Michael, 2664 FM 2054
(Address)

Tennessee Colony, TX 75886
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Would jurists of reason find the district courts assesment of Washington's constitutional claims debatable or wrong; or that the petition should have been resolved in a different manner; or that the issues presented were adequate to deserve to proceed further?

2. Was the state court's decision based on an unreasonable determination of the facts in light of the record before the court?

3. Should a comparative analysis been used to ferret out discrimination in the prosecution's explanation for its peremptory strikes?

4. Was Washington's VI and XIV Constitutional Amendment Rights violated as determined in Batson v. Kentucky 476 U.S. 79 (1986)?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] 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:

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INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

[ ] reported at _____; 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 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the 9TH APPEALS COURT OF TEXAS court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] 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 Court of Appeals decided my case was July 11, 2018.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 13, 2018, 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. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was May 03, 2017. 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

Fourteenth Amendment United States Constitution

Sixth Amendment United States Constitution

28 U.S.C. §2254 (d)(2)

28 U.S.C. §2254 (e)(1)

STATEMENT OF THE CASE

A panel of 98 venirepersons were seated for voir dire. After strikes for cause, only one African-American remained on the venire panel. The defense made a Batson challenge in response to the strike. A Batson hearing ensued. The trial court ruled, "I -- I see a racial reason for making the strike ." (R.R. vol.2 p.163), but still overruled the Batson challenge.

The 9th Appellate District of Texas ruled that the trial court was not clearly erronous in its ruling.

The Texas Court of Criminal Appeals refused to grant a discretionary review.

The United States District Court for the Southern District at Houston ruled that Washington's claim was not an unreasonable determination of the facts in light of the evidence presented in the state court proceeding and that Washington's claim was not contrary to or an unreasonable application of Batson, and denied the issuance of a COA.

The United States Fifth Circuit Court of Appeals ruled that Washington was not entitled to a COA because the propriety of the district courts assesment of his constitutional claims could not be debatable amongst jurists of reason, nor are they adequate to deserve encouragement to proceed further.

REASONS FOR GRANTING THE PETITION

"I -- I see a racial reason for making the strike." (RR vol.2 p.163) was the determination that the trial judge made after hearing the prosecutors reasons for striking the lone Africn-American female remaining after strikes for cause. The trial judges next determination was unprecedented in its dubiuosness, when he overruled Petitioner's Batson challenge.

It is well established by this Honorable Court that the Equal Protection Clause of the United States Constitution forbids counsel from exercising peremptory strikes on the basis of race. Batson v Kentucky 476 U.S. 79, 89 (1986). This is steeped in precendence for more than a hundered years when this Honorable Court once ruled, "in the selection of jurors to pass upon a [defendant's] life, liberty or property, there shall be no exclusion of his race and no discrimination against them because of color." Neal v Delaware 103 U.S. 370, 394 (1881); quoting Virginia v Rives 313, 323 (1880).

This Honorable Court has set the precedent that, "a trial court is best situated to evaluate the words and demeanor of jurors who are peremptorily challenged, as well as the prosecutor who exercised those strikes. As we have said, "these determinations of credibility and demeanor lie particualry within the trial judges providence," and "in absence of exceptional circumstances, we [will] defer to the trial court." Davis v Ayala 135 S.Ct. 2187, 2201 (2015).

In this case the trial court ruled that there was a "racial reason for making the strike", but every court to this point has failed to even note this ruling, let alone defer to it.

In Batson, this Honorable Court "adopted a procedure for ferreting out discrimination in the exercise of peremptory challenges, and this procedure places great responsibility in the hands of the trial judge, who is in the best position to determine whether a peremptory challenge is based on an impermissible factor." id at 2208. In Miller-El v Dretke 545 U.S. 231 (2005) this Honorable Court established a comparative juror analysis, and in Snyder v Louisiana 128 S.Ct. 1203 (2008) this Court employed this comparative juror analysis with the efficiency that is expected of this great Court.

In determining whether to grant this petition, Petitioner would request that this Honorable Court employ a comparative juror analysis as a way to understand, why, the trial judge came to rule, "I -- I see a racial reason for making the strike."

First, lets take a look into the record before the court so that we can prpperly employ the comparative juror analysis, as it is obvious the trial judge did. A venire of 98 members was seated. After strikes for cause, only one African-American female remained on the venire, veniremember #58, Ms. mary Fisher. The prosecutor used a peremptory strike to remove her from the venire. The defense amde a Batson challenge and a hearing ensued. With the first two prongs of Batson conceded, the prosecutor proffered his expalnation for his strikes.

In justification of his strikes, the prosecutor proffered that he struck eight (8) veniremembers, seven (7) of them for the same reasons, expdaining that veniremember numbers, 43, 53, 58, 67, 68, 70 and 79 were all on two lists ... all of those folks were on the list of people that answered that they knew someone incarcerared,

and they were also on the list -- the opposite list of the first scale question that you asked, Judy. All of those people that did'nt strongly agree with that one, so what I did was I took everyone that was on both of those lists and we struck all of those folks." (RR vol.2 p.161-162).

The trial judge refered to his voir dire notes and responded, "Where you ask do you know somone in jail, and I have no.58 responding to that. And what was the second one?" (RR vol.2 p.162).

After refering to his own notes, the prosecutor then responded, "It was the third slide. The people that strongly agree, she went thorugh." (RR vol.2 p.162).

The prosecutor then stated that he did not even know the races of the people that he struck. (RR vol.2 p.162). It is highly debatable whether the prosecutor knew that Ms. Fisher was an African-American, being, near the begining of the prosecutors turn at voir dire, a bench conference was held to note that veniremember #58, was in fact present, under a different name. (RR vol.2 p.37).

The disingenuousness of the prosecution was so evident from the record before the court, that the trial judge asked, "So the numbers you struck were really for the same reason?" (RR vol.2 p.162).

After the state attempted to further expalin his reasoning (RR vol.2 p.162-163), it still did not deter the trial judge from determining, "okay. I -- I see a racial reason for making the strike." (RR vol.2 p.163).

> "When illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives." Miller-EL supra at 252.

"The rule in Batson provides an opprotunity to the prosecutor to give the reason for striking the juror, and it requires the judge assess the plausibility in light of all evidence bearing on it." id at 251-252.

This Honorable Court has established a comparative juror analysis as a way of showing purposeful discrimination. Miller-El supra; Snyder supra. It is clear from the record that the trial judge employed this analysis, for he did in fact, "find a racial reason for making the strike."

To show this Honorable Court the beauty of a textbook example of a comparative juror analysis functioning exactly the way that the great minds of this Court envisioned, then a breakdown of the record is in order.

The prosecutor explained that seven (7) of his eight (8) strikes were for the same reasons, being (1) they were on the list of those who knew someone that was incarcerated; and (2) the second slide questioned asked by the defense. The State and the lower courts have made an issue as to what lists the prosecutor was refering to, when that is a none issue, because Ms. Fisher, veniremember #58, only appeared on two lists throughout the entire voir dire. So, whatever lists the prosecutor chose to base his reasoning, are the lists at issue.

Of the 18 veniremembers on the first list that Ms. Fisher veniremember #58 apperaed on, of the seven (7) allegedly struck for the samesame reasons, only veniremembers #68, #70 and #79 appeared on that list. (RR vol.2 p.90-91). And, as to the second list, of the seven (7) allegedly struck for the same reasons, only veniremembers #67 and 68 appeared thus. (RR vol.2 p.103 and Defense Exhibit A

p.1-2). So, culmatively, only veniremember #68 met the criteria that is used in explaing why he struck veniremember #58, Ms. Fisher from the venire.

In Miller-El supra at 240, thsi Honorable Court stated, "more powerful than these bare statistics, however, are side-by-side comparisons of some black panelists who were struck and white panelists allowed to serve. If a prosecutors proffered reason for striking a black panelist applies just as well to an other-wise similar non-black who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batsons third step."

With this standard as a guide a further examination of the record will reveal the most telling evidence of disperate treatment, being the explanation that the prosecutor proffered was, "so what I did was I took everyone that was on both of those lists and we struck all of those folks." (RR vol.2 p.162). The record bears out that this statement is disingenuous of the prosecutor.

Taking a look at the record we will find amongst the 19 veniremembers on the first list mentioned by the prosecutor, veniremembers #23 and #49 listed along with veniremember #58. (RR vol.2 p.90-91). And, as to the only other list that Ms. fisher, veniremember #58 appeared on, we will also find veniremembers #23 and #49 listed amongst the 66 veniremembers who responded to this question. (RR vol.3 p.103 and vol.8 Defense Exhibit A p.2).

Both veniremembers #23 Ms, Vicki Stewart, an Asian-American, and #49 Mr. Daniel Eaton, an Anglo American, went on to be empaneled on the jury. These two jurors both answered the relevant questions exactly as did Ms. Fisher, the only difference being, Ms. Fisher was African-American.

An examination of the record, employing a comparative juror analysis sheds illumiantion on the reason that the trial judge came to determine, "I -- I see a racial reason for making the strike."

A comparative juror analysis proves that "jurists of reason" would find Petitioner's Fouteenth Amendment Constitutional Rights claims, "debatable or wrong, or that the issues are adequate to deserve encouragement to proceed further." Miller-El v Cockrell 537 U.S. 322 (2003); see also Slack v McDaniel 529 U.S. 473, 484 (2008); and persuant 28 U.S.C. §2254(d)(2), that the state appellate court's determination "was based on an unreasonable determination in light of the record before the state court." Harrington v Richter 562 U.S. 86 (2011); and that the trial court's determination was "clearly erroneous" and that there was "clear and convincing evidence" to the contrary,(see 28 U.S.C. §2254(e)(1), Davis v Ayala 135 S.Ct. 2187, 2219-2220 (2015)).

It is firmly established that, "State court factual findings, moreover are presumed correct; the petitioner has the burden of rebutting the presumption by clear and convincing evidnence." Davis supra at 2200. But, in this case no court to this point has adhered to this precedent. The error committed in this case is not that the trial judge did not find a racial reason for making the strike, for he was unequovical when he ruled "I -- I see a racial reason for making the strike", but that he overruled the Batson challenge and did not dismiss the jury and start voir dire anew.

It is the dubiousness of the trial judges ruling that seem to have confounded the lower courts. It is baffling to this pro-se Petitioner how this case can make it to this point with tools such

as the comparative analysis as a guide, in conjunction with the trial judge actually finding that the prosecutor did in fact use discriminatory practices in exercising his peremptory strikes. It leads me to wonder if as a pro-se petitioner my filings have been dismissed systematically, without a true comtemplation of the merits, for there is no other explanation why this case should have to occupy a spot on the docket of the greatest court the whole world over.

"As we have held, the Fourteenth Amendment prohibits a prosecutor from striking potential jurors based on race. Discrimination in the jury selection process undermines our criminal justice system and poisions public confidence in the evenhanded administration of justice." Davis supra at 2208.

Petitioner prays that this Honorable Court will grant this petiton and/or remand this case to the Fifth Circuit for a COA; or reverse and remand this case back to the trial court for a new trial, or any and all relief that this Honorable Court deems appropriate to rectify this injustice.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Tuad Damonn Washington — PETITIONER
(Your Name)

VS.

Director
Lorie Davis, TDCJ-CID — RESPONDENT(S)

PROOF OF SERVICE

I, Tuad Damonn Washington, do swear or declare that on this date, November 19, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI 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 the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Susan San Miguel, Assistant Attorney General
300 West 15th Street, Austin, Texas 78701
Phone # (512) 936-1400

I declare under penalty of perjury that the foregoing is true and correct.

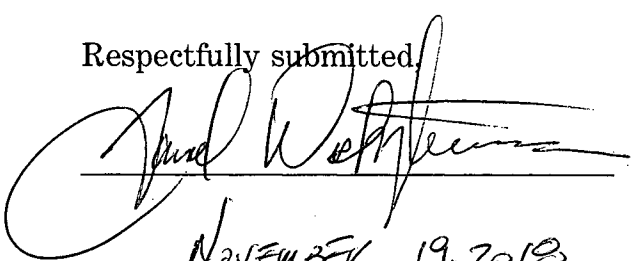
Executed on November 19, 2018

(Signature)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: NOVEMBER 19, 2018