

ORIGINAL

18-7069
No.

IN THE SUPREME COURT OF THE UNITED STATES

FILED
OCT 26 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Term,

JOHN LUDOVICI, Petitioner

Vs.

COMMONWEALTH OF PENNSYLVANIA, Respondent

Petition for Writ of Certiorari to the United States

Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

SUBMITTED BY: JOHN LUDOVICI
1111 Altamont Blvd.
Frackville, PA 17931

QUESTIONS PRESENTED FOR REVIEW

1. DID THE COMMONWEALTH COMMIT PROSECUTORIAL MISCONDUCT WHEN IT INTENTIONALLY WITHHELD VARIOUS FORMS OF MATERIAL EVIDENCE IN VIOLATION OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

The parties to this action are John Ludovici; the Petitioner, as well as the District Attorney of Lackawanna County and the Attorney General for the Commonwealth of Pennsylvania.

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APPENDIX

May 18, 2011 decision of the Court of Common Pleas of Lackawanna County PCRA relief

Appendix A

March 13, 2012 decision of the Superior Court of Pennsylvania denying the direct appeal of the PCRA Court decision.

Appendix B

December 27, 2012 decision of the Pennsylvania Supreme Court denying the Petition for Allowance of Appeal.

Appendix C

April 24, 2018 decision of the United States District Court for the Middle District of Pennsylvania denying habeas corpus relief.

Appendix D

September 21, 2018 decision of the United States Court of Appeals for the Third Circuit denying a Certificate of Appealability.

Appendix E

TABLE OF AUTHORITIES

Brady V. Maryland, 373 U.S. 83 (1963)

United States V. Agurs, 427 U.S. 97 (1976)

Haskell V. Superintendent SCI-Greene, 866 F.2d. 139 (3rd Cir. 2017)

United States V. Begley, 473 U.S. 667 (1985)

Strickler V. Greene, 527 U.S. 263 (1999)

OPINIONS BELOW

The opinions of all Courts of lesser jurisdiction are attached in their entirety.

UNITED STATES CONSTITUTIONAL PROVISION INVOLVED

Article III of the United States Constitution provides in pertinent part:

Section 1. The Judicial power of the United States Supreme Court, shall be vested in one supreme court, and in such inferior Courts as the Congress may from time to time ordain or establish..

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority.

B. BASIS FOR FEDERAL JURISDICTION

This court's jurisdiction is invoked pursuant to Title 28 U.S.C. 1254(1). This court's jurisdiction is further invoked as the issues presented are constitutional in nature.

C. FACTS:

On April 4, 2003, the Petitioner approached three individuals who were sitting in a car outside of a restaurant in Moosic, PA. He stated that he was a police officer and requested that they produce identification. When they questioned him about his identity, the Petitioner pulled a gun and chased them in a car. After their car was boxed in, the Petitioner once again pulled a gun, robbed them, and stole their car and fled the scene.

Later that same evening, the Petitioner encountered a car containing three other individuals as they were passing through Lackawanna County on Route 81. The Petitioner forced their vehicle off of the road with his stolen vehicle, approached the car and told the occupants that he was a police officer. When they asked to see his badge, the Petitioner pulled out a gun and forced them out of the car where he robbed them.

Still operating the stolen vehicle, the Petitioner left the scene of the robbery and when spotted by police, led them on a lengthy, high speed chase through several communities before crashing and being taken in to custody. While in custody at the State Police Barracks, the Petitioner loosened the shackles that held him and escaped from the barracks. He fled across the parking lot but was once again apprehended.

The Petitioner was subsequently charged with 6 counts of robbery, 6 counts of theft by unlawful taking, 6 counts of recklessly endangering another person, 2 counts of simple assault, 2 counts of impersonating a public servant, one count of fleeing or attempting to elude police and one count of escape.

A jury trial was held from October 18 through October 20, 2004. The Petitioner found guilty of all charged offenses. As a result of this conviction, the Petitioner received a sentence of not less than 66 years 3 months, nor more than 135 years of incarceration.

D. REASONS FOR GRANTING THE WRIT:

The Petitioner was denied his 14th Amendment right to due process of law. Additionally, the decisions rendered by the Pennsylvania Appellate Courts and the United States District Court are contrary to clearly established Supreme Court precedent necessitating relief being granted by this Court.

Was the State court's decision an unreasonable determination of the facts under 28 U.S.C. 2254(d)(2)?

Under 28 U.S.C. 2254(d), the Petitioner may not obtain federal habeas corpus relief 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; or;
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

In the instant case, the habeas court misapplied the law when it determined that the Petitioner had not presented his claim that the Commonwealth intentionally withheld exculpatory

evidence in violation of this Court's decision in Brady v. Maryland, 373 U.S. 83 (1963). At the Petitioner's PCRA hearing, several witnesses testified that the Petitioner was involuntarily subjected to LSD when it was poured into his drink without his knowledge on the day of the incident. Prior to trial, his fact was made known to the Commonwealth, and a request for the toxicology report was requested during the discovery phase of proceedings. The Commonwealth failed to provide the defense with a copy of the laboratory report, and the Petitioner was precluded from raising this defense during trial. The Petitioner presented this argument to both the Pennsylvania Superior and Supreme Courts, thereby preserving this issue for review by the federal habeas court.

The Petitioner filed his habeas petition and included this issue on the form that is provided by the Court (See exhibit 1). A review of page 6, ground 1, of the petition filed on December 16, 2013 clearly pertains to the report authored by Doctor Tim Michaels which deals with the issue of involuntary intoxication. Magistrate Shwab erred in finding that the Petitioner forfeited his right to raise the Brady violation at Page 25, Line 2 of her report and recommendation when she held that the Petitioner did not include this claim in his original habeas corpus filing. The Petitioner filed objections to this report and recommendation, pointing out this error, but it was ignored by the Courts. As such, the decision was clear misapplication of fact, and the petitioner was denied the ability to argue this issue to the habeas court.

Magistrate Shwab stated on a number of occasions that she did not understand the Petitioner's motions to the Court. In response, the petitioner notified the Court that he suffers from a mental defect and is unable to process words into written form. The Petitioner notified the Court that the assistance available to him in the corrections setting is limited, and he made several requests for the Court to either appoint counsel, or to schedule an evidentiary hearing to permit him to argue the issues verbally before the Court. Each of these requests were either ignored or denied.

In Magistrate Judge Schwab's discussion of Ground Two where she considered whether Petitioner had raised the same ground for relief in state courts (Doc. 25 at 23-26.) she stated:

Even though Ludovici's second ground for relief explicitly references "prosecutorial misconduct," it appears that Ludovici is actually raising a *Brady* claim. And, a complete review of the state court proceedings confirms that on direct appeal Ludovici exhausted a *Brady* claim, but only as it relates to the alleged error of the trial court in not granting his

request that the Commonwealth disclose the psychiatric reports and opinions of Dr. Timothy Michals, the Commonwealth's medical expert. *See, e.g.*, Doc. 11-1 at 16-20 (raising the **Brady** claim on direct appeal to the Pennsylvania Superior Court; *see id.* at 46-51 (raising this **Brady** claim once again on appeal to the Pennsylvania Supreme Court). Ludovici, however, has not included this exhausted **Brady** claim in the instant Petition. Instead, he raises what appear to be new and different **Brady** claims, none of which have been fairly presented to the state courts. Because "a general claim that the prosecutor has suppressed exculpatory information cannot satisfy the exhaustion requirement as to all subsequent **Brady** claims that a habeas petitioner may bring," **Landano v. Rafferty**, 897 F.2d 661, 669 (3d Cir. 1990), we conclude that Ludovici has not exhausted the new **Brady** claims he now raises in ground two of his Petition. *See id.* at 669-70 ("[The United States Court of Appeals of the Third Circuit] has consistently held that in complying with the exhaustion requirement a habeas petitioner must not only provide the state courts with his legal theory as to why his constitutional rights have been violated, but also the factual predicate on which that legal theory rests. This requirement is especially appropriate in the context of an alleged *Brady* violation since the materiality of the suppressed information is determined by considering the strength of the state's case as a whole." (citing **United States v. Agurs**, 427 U.S. 97, 112-13, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976))).(Doc. 40 at 24-25.)

Once again, the District Court erred in finding that the Petitioner was raising a separate *Brady* claim, when in fact he inexpertly raised the same exhausted *Brady* claim in his habeas petition which was misunderstood by the District court. This deprived the Petitioner of his right to due process under the 14th amendment to the United States Constitution.

The Petitioner avers that the Commonwealth intentionally and maliciously withheld the toxicology report authored by Doctor Tim Michaels from the Petitioner to prevent him from using said evidence as part of defense of involuntary intoxication. At the PCRA hearing, the Commonwealth readily admitted that they withheld this report, and further, they admitted that it was withheld intentionally as they felt that it was inconsequential. The PCRA Judge ordered the Commonwealth to provide the Petitioner with a copy of this report to enable him to argue this issue on appeal, and to date, the Commonwealth has still failed to provide the Petitioner with this exculpatory evidence.

The Petitioner's argument is not dissimilar that that presented in *Brady*. The *Brady* Court held that: "Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. In the instant case, although inexpertly drawn, it is clear that the Petitioner did in fact raise the issue of a *Brady* violation in his initial habeas application, and that Magistrate Shwab erred in finding that he failed to do so.

The Petitioner contends that his convictions were obtained in contravention of his constitutional rights because the Commonwealth violated the rule of **Brady**. A **Brady** violation occurs when the government: (1) knowingly presents or fails to correct false testimony; (2) fails to provide requested exculpatory evidence; or, (3) fails to volunteer exculpatory evidence never requested. **Haskell v. Superintendent Greene SCI**, 866 F.3d 139, 149 (3d Cir. 2017) (citing **United States v. Agurs**, 427 U.S. 97 (1976), holding contends that his convictions were obtained in contravention of his constitutional rights because the Commonwealth violated the rule of modified by **United States v. Bagley**, 473 U.S. 667 (1985)).

The Petitioner asserts that the Commonwealth withheld evidence that he was under the influence of LSD, a mind altering drug, that was placed in his drink without his knowledge, prior to his committing these crimes. The Commonwealth was armed with the report from Doctor Michaels prior to trial, and failed to provide the same to the Petitioner or defense counsel. This effectively precluded the Petitioner from seeking this defense at trial and violated his right to due process of law under the 14th Amendment to the United States Constitution. The petitioner contends that if he is not entitled to habeas relief on any individual *Brady* claim, he is entitled to it because of the "cumulative prejudice" he incurred as a result of the suppressed evidence.

The Petitioner raised his *Brady* claims in his PCRA proceeding and a substantial portion of the evidentiary hearings held before the PCRA court dealt with the allegations he made in them. Shannon Barney, Jeffrey Fuller and Evelyn Christiano testified at the PCRA hearings that LSD was placed in the Petitioner's drink without his knowledge. Immediately after ingesting this drink, the Petitioner's behavior changed. So did Attorney Gretz who represented the

Petitioner at trial. At Pages 66 through 68 (Exhibit 2), Attorney Gretz states that he requested the report authored by Doctors Michaels and that this report would have been helpful in presenting an intoxication defense. He further testified that he was never provided with this report. This very fact establishes the petitioner's Brady violation claim, and the Courts of inferior jurisdiction have all erred in denying the Petitioner relief based on this claim.

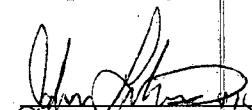
To prove his suppressed-evidence Brady claim The Petitioner had to demonstrate to the state court that: (1) the evidence at issue was favorable to the defense, either because it was exculpatory or because it was impeaching; (2) the Commonwealth suppressed the evidence; and (3) the evidence was material. Strickler v. Greene, 527 U.S. 263, 281-82(1999). The Commonwealth readily admitted that they withheld the report of Dr. Michaels, thereby negating the Petitioner's requirement to further prove that they possessed the material in question. Attorney Gretz testified that he requested this report on a number of occasions and never received it. He further testified that if armed with this report, that it would have assisted in building an intoxication defense. The Petitioner has met the standard set forth by this Court in Strickler, and must be granted relief.

CONCLUSION:

Wherefore, the Petitioner has shown that the decision of the state courts violated his rights under the Fourteenth Amendment to the United States Constitution as he was denied due process of law when the Commonwealth intentionally withheld exculpatory evidence prior to trial that would have assisted in presenting an intoxication defense. The Petitioner further avers that this case must be remanded to a Court of inferior jurisdiction for further proceedings.

Dated: October 24, 2018

Respectfully Submitted:


John Ludovici, pro se